PRINCIPLES OF CIVICS

BY

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PREFACE

THIS book, which is primarily meant for those who wish to have a grasp of some of the fundamentals of Civics, is also intended as an introduction to the study of Politics. My experience of teaching Civics has been that, notwithstanding some good books written by Indian scholars, there is still scope for more books on that subject. I do not believe that it is desirable either to treat Civics as a branch of Ethics or to identify it with Administration, as some writers in India have done. I think Civics should be elucidated and studied in a realistic manner.

With this object in view, I have written the following pages in which I have analysed the concept of Civics and along with it its derivative concepts. Secondly, I have utilized, especially in the first chapter, the matter usually studied by students under the heading of World History in our Universities. If the study of World History in the lower College classes is to be really useful, and is not to be forgotten at the end of the academic term, then, some of its facts are to be carried on to the higher classes where we study Civics and Politics. And, thirdly, I have included the concept of Civics as it was known to the ancient Indians, and some facts relating to the state of individual liberty, as it is today in India. There is no reason why we should not teach our students the ancient Indian concept of Civics ; and likewise there is no justification, in my humble opinion, why our young men and women should not be acquainted with the facts as they are today in India. In a word, I have endeavoured, in a very cursory manner, to give in this book an historical and an analytical approach to the study of Civics.

That the students might be induced to do a bit of reading by themselves, I have given in the Bibliography and in the foot-notes the names of only such of the authorities as the students are usually familiar with. If this book were to create an interest in the vital problem of Civics and Politics in the minds of both the students and the general public, I should think my labour more than amply rewarded.

AHMEDABAD,
May, the 11th 1945.

B. A. S.

"We enjoy security and order. But the security we enjoy means the protection of most in their impotence, and the order is, very largely, the safeguarding of the few against the demands of the many for a richer and a fuller life."

(HAROLD LASKI)

"Democracy must show a capacity for producing, not an higher average man, but the highest possible types of manhood in all its manifold varieties, or it is a failure No matter what it does for the body, if it does not in some sort satisfy that inextinguishable passion of the soul for something that lifts life away from prose, it is a failure. Unless it knows how to make itself gracious and winning, it is a failure"

(JAMES RUSSELL LOWELL)

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THE CONCEPT OF CIVICS

Summary: 1. Why should we study Civics? 2. Derivation of the word Civics. 3. History of the concept of Civics. 4. The content of Civics. 5. Distinctions. 6. The relation of Civics to allied subjects.

1. WHY SHOULD WE STUDY CIVICS?

The importance of the study of Civics has never been so keenly felt as now, when we are faced with problems which are both varied and complex in their nature. In a continually changing world we are required to solve questions that demand of us certain conditions and traits. We should, for example, have a knowledge of abstract ideas which are pertinent to our subject. A grasp of broad views on political, economic, and social questions is by itself of great value in the acquisition of citizenship. It gives the necessary discipline to the mind, which is of much importance to a citizen. Our habits, ideas, and ways of thinking affect our individual behaviour and collective action; and it is precisely to train ourselves in the proper ways of thinking individually and acting collectively that we study the science of civics. It has been rightly said that that which makes a man a citizen is thought.

Habits, or tendencies to think and act upon the same general lines, are due to hereditary predispositions as well as to ideas which each person forms for

himself or acquires from others. When habits are solidified, they constitute the permanent basis of conduct, and form the standards by which an individual judges himself as well as others. The importance of habit is that it is the basis of moral action. And what habit is to an individual, tradition is to a nation. The history of the popularly governed countries like the U.S.A., Britain, and Switzerland affords ample proof to show how ideas, habits, and traditions influence the conduct of citizens and their political development.

As regards the importance of ideals in the evolution of a people, the Rt. Hon'ble Srinivasa Sastri has correctly maintained the following—"In fact, in this world of ceaseless flux, an ideal is the only fixed object, the only reality. Without a reference to it, no comparison is possible, no due appraisement, no taking stock of where exactly we stand."[1]

In addition to the training of the mind which results from a study of civics, its principles are important because they influence our political conduct, and ultimately have a bearing on the evolution of democracy. It cannot be denied that education helps men to acquire political wisdom. This is best seen in Switzerland, where the high level of intelligence among the people, the attention paid to the teaching of civic duty, the traditional sense of that duty in all classes, and the long practice in local self-government

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[1] V. S. Sastri, Kamala Lectures on *The Rights and Duties of an Indian Citizen*, p. 17. The remarks of Sir Henry Jones cited by the Rt. Hon'ble Sastri may be read with profit in this connection.

have been the causes of the success of democracy in that country.[1]

But the education that is needed for evolving the right kind of political order is not necessarily education as it is commonly understood. The type of education required for the former is generally different from that required for the production of "the good German" or "the good American." One refers to a general system upon the elements of which practically all political experts must agree, and the other to a special territorial-ethnic-cultural group.[2]

Moreover, the study of the principles of civics is essential in the modern world which is witnessing a rapid change that has been brought about by science. The latter half of the nineteenth and the first half of the twentieth century have witnessed profoundly significant changes in human life and thought. These changes brought about by science have transformed the moral and material outlook of man. Since political changes are most often due either to changes in the external conditions of man's life, relating to his economic and social well-being, or to changes in his thoughts and feelings, or to a combination of both, it is essential that a citizen should know them, if he is to

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[1] Bryce's assertion that the diffusion of education among the "backward races" like the Russian peasantry and the Indian ryots, "will not, desirable as it is, necessarily qualify them to work a democratic government, and make it more difficult to work in its earlier stages" (Low Bryce, *Modern Democracies*, I, p. 89) has been disproved in the U.S.S.R. as well as in India.

[2] Merriam, *The Making of Citizens*, p. 6.

benefit from the wisdom of others and add his own experience to that of his neighbours.

Finally, the study of civics is important because it enables us to work out better the problems of central, and especially of local government. It is while working out local government that we, indeed, make citizenship truly creative.

2. DERIVATION OF THE WORD CIVICS

The word Civics is derived from the Latin word *civicus* (*civis*), meaning a citizen. It refers to a Roman who lived in a city or in a municipality, and who was distinguished from others, who also lived in a city or in a municipality, by certain privileges which he possessed and obligations which he discharged.

3. HISTORY OF THE CONCEPT OF CIVICS

(A) Among the Ancients

But the Romans were not the earliest people to have such a concept of the privileges and obligations of certain residents in a city or in a municipality. They borrowed this notion from the Greeks, who were one of the earliest peoples to have a clear idea of citizenship. But city-building and city-life were certainly not the inventions of the Greeks. So early as the fifteenth century B.C., the Phoenicians had built their great cities of Tyre and Sidon, and later on the famous city of Carthage (814 B.C.) on the northern coast of Africa. These early ancient people, who were the greatest navigators of the ancient world, must certainly have, in some way of other, influenced the later ancient people like the Greeks, although we are now in the

dark as to the precise debt which the Greeks owed to the Phoenicians. Hence we shall restrict ourselves to the Greek concept of civics, because it has greatly affected not only the Roman idea of citizenship, but also the later concept of civics in Europe. It is only when we have understood the Greek conception of civics that we shall be able to see how divergent is the modern view on the same subject.

(B) In Ancient India

But before we proceed to explain how the Greek idea of civics has developed into the modern conception, we might elucidate a point which deserves some comment. It need not be assumed that the Greeks were the only early ancient people in the East who had a civic sense in them. The ancient Hindus, like the ancient Greeks, possessed a political sense which we may briefly describe here.

(i) The Idea of Social Good

Our main source of information in regard to these details is the work called *Arthasastra* written by the famous Kautalya, who was the Brahman minister of Chandragupta Maurya (4th century B.C.). From this work, which is a mine of information on political, economic, and social matters, we learn that the ancient Hindus were certainly aware of what is nowadays termed as "social good." Thus, for instance, Kautalya, while explaining State policy in regard to peace and war, says the following—"Strength is Power, and Happiness is the end."[1] The relationship between

[1] Kautalya, *Arthasastra*, Bk. VI. Ch. II. 261, p. 291 (Shama Sastri's ed.).

politics and progress is summed up in the statement that "It is on this science of government (called *dandaniti*) that the course of the progress of the world depends."[1]

But Kautalya does not deal with hypothetical cases and imaginary situations. When he writes about progress, he undoubtedly has in view the material and spiritual progress of the people. This is evident from the following injunction which he gives—"For Danda used in the three senses of Sceptre, Punishment, and Army), when awarded with due consideration, makes the people devoted to righteousness, and to works productive of wealth and enjoyment"; and when ill-awarded, excites fury and disaffection among all sections of the people.[2]

(ii) People and Community

The term he uses for the people is *loka,* which, according to his conception, consists of the four castes and the four orders of religious life. This term is to be distinguished, on the one hand, from the term *prajah,* meaning a mass of people, and, on the other, from *varga,* meaning a community. The concept of a community is clearly set forth in a later context, when he informs us that "Superintends of a hundred or a thousand communities shall regulate the subsistence, wages, profits, appointment, and transference of the men under them."[3]

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[1] *Ibid.*, Bk. I. Ch. IV. 9, p. 8.

[2] *Ibid.*, Bk. I. Ch. IV. 9, p. 8.

[3] *Ibid.*, Bk. V. Ch. III. 248, p. 277.

(iii) City-life

The ancient Hindus were well acquainted with city-life. Kautalya mentions not only different kinds of cities, but also the distinction between the citizens and the rest of the people, their rights, and their duties. The capital city was called *nagaraka,* which had a City Superintendent whose duties are enumerated in detail. The citizens of a city were distinguished from the residents of a town (*pattana*) and from those of a village (*grama*). The towns were divided into ordinary towns (*pattana*), market-towns (*panya-pattana*) and towns within a fort. The villages were sub-divided into the *sangrahana* (or a stronghold in the midst of a collection of ten villages), the *kharvatika* (or a stronghold in the centre of two hundred villages), a *dronamukha* (or a stronghold in the centre of four hundred villages), and a *sthaniya* (or a stronghold in the centre of eight hundred villages).[1]

(iv) Citizens, subjects, and aliens

The distinction between citizens and subjects is borne out in the following contexts, first where Kautalya refers to the needs of espionage on the part of the king; and, secondly, when Kautalya urges the necessity of protecting the people. In regard to the first point, Kautalya says—"Having set up spies over his prime-minister (*mahamatra*), the king shall proceed to spy upon both the citizens and country-people."[2] Concerning the second point, he writes

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[1] Kautalya, *op. cit.*, pp. 160-167.

[2] *Ibid.*, p. 22.

thus—"A king wiith depleted treasury will eat into the very vitality of both citizens and country people."[1]

Citizens were further distinguished from labourers, hirelings, slaves, and mlecchas. Labourers were those who were compelled to do forced labour (*visti*); hirelings were those who were called *ahitaka*, with the right of protection at the hands of the king; and both were distinct from the common Sudras.[2]

The slaves were termed *dasas*. Slavery was not permitted among the Aryans. Kautalya enjoins thus—"But never shall an Arya be subjected to slavery."[3] Only out of dire necessity and at his own option could an Arya become a slave, but he could redeem his freedom with the help of his kinsmen.[4] The slaves possessed personal rights, like the hirelings, which were to be protected by the king.[5] In another context Kautalya writes as follows—"A slave shall be entitled to enjoy not only whatever he has earned without prejudice to his master's work, but also the inheritance he has earned from his father."[6]

The *mlecchas* were those who were outside the pale of Hindu society. Kautalya writes that "It is no crime for the Mlecchas to sell or mortgage the life of

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[1] *Ibid.*, p. 46.

[2] *Ibid.*, pp. 10, 47, 209.

[3] *Ibid.*, p. 206.

[4] *Ibid.*, p. 206.

[5] *Ibid.*, p. 47.

[6] *Ibid.*, p. 207. The existence of slavery is denied by Western witnesses like Strabo, whose observations are in some places superficial. Read MacCrindle, *Ancient India as described in Classical Literature*, p. 66.

their own offspring."[1] No duties or rights are ascribed to the mlecchas.

(v) Rights and duties of citizens

All classes of people—those who belonged to the four castes, the four stages of life, the elders of villagers, and even those who desired to become ascetics—had duties imposed upon them. These duties are connoted by the word *dharma*. Kautalya mentions them in detail.[2] We may mention here that, according to Kautalya, it was the duty of a capable person "to maintain his or her child, wife, mother, father, minor brothers, sisters, or widowed girls; failure to do so rendered him or her liable to a fine of twenty *panas* at the hands of the State.[3]

It must be confessed, however, that in ancient India stress was laid more on duties than on rights.[4] Some of the rights mentioned by Kautalya are almost modern in character. For instance, two classes of citizens enjoyed freedom from arrest. "Cultivators or government servants shall not be caught hold of for debts while they are engaged in their duties (or at work)." This right was extended to women in certain cases. "A wife, who has (not) heard of the debt shall not be caught hold of for the debt contracted by her husband, excepting in the case of herdsmen and joint-

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[1] Kautalya, *op. cit.*, p. 206.

[2] *Ibid.*, pp. 6-7, 47, 196, 209. We may note here that, according to the ancient Hindu concept, no person could become an ascetic, and no ascetic could enter a village, without the permission of the State. (*Ibid*, p. 47.)

[3] *Ibid.*, p. 47.

[4] Cf. Sastri, *op. cit.*, p. 13.

cultivators. But the husband may be arrested for the debt contracted by his wife."[1]

Another right which the citizens possessed was that of receiving wages. Thus writes Kautalya—"The servant shall get the promised wages... Failure to pay wages shall be punished with a fine of ten times the amount of wages, or six *panas*; misappropriation of wages shall be punished with a fine of twelve *panas*, or five times the amount of wages."[2] Further, "Cultivators, or merchants shall, either at the end or in the middle of their cultivation, or manufacture, pay to their labourers as much of the latter's share as is proportional to the work done. If the labourers, giving up work in the middle, supply substitutes, they shall be paid their wages in full." This right to receive wages belonged to single workers as well as to guilds of workers.[3]

(vi) The concept of the State

One right, however, the citizens and the people possessed—and that was the right to resist the State. But before we explain it, it is worthwhile to note the concept of the State as understood by Kautalya. To him "The king and his kingdom are the primary elements of the State."[4] In another context he writes thus—"....as is the king's character, so will the character be of his people; for their progress or downfall depends upon the king; the king is, as it were, the aggregate of the people."[5] The great Mauryan poli-

[1] Kautalya, *ibid.*, p. 199.
[2] *Ibid.*, p. 208.
[3] *Ibid.*, p. 209.
[4] Kautalya, *op. cit.*, p. 352.
[5] *Ibid.*, p. 350.

tician has given in minute detail the duties of the king to all classes of the people, including the aged, the afflicted, the helpless, and the orphans. He has done so because he believes that "In the happiness of the subjects lies his (the king's) happiness." "Hence the king shall be a active in the discharge of his duties."[1]

(vii) Forms of the State

As regards the forms of the State, Kautalya recommended only the monarchical, the oligarchical, and the republican types. His partiality for the monarchical type is pronounced. "A royal father who is the only prop for many (people) shall be favourably disposed towards his son. Except in dangers, sovereignty falling to the lot of the eldest (son) is always respected." But in the very next sentence, Kautalya pays a tribute to the oligarchical and the republican types of government. "Sovereignty may (sometimes) be the property of a clan; for the corporation of clans is invincible in its nature, and being free from calamities of anarchy, has a peculiar existence on earth."[2]

He distinguishes between the oligarchical and the republican types of government thus—"The corporations of warriors (Kshatriya-*sreni*) of Kamboja, and Surastra, and other countries, live by agriculture, trade, and wielding weapons. The corporations of Licchavika, Vrjika, Mallaka, Madraka, Kukura, Kuru, Panchala, and others live by the title of a Raja."[3] That the latter were, indeed, a type of republican organizations is admitted even by Western

[1] *Ibid.*, pp. 38-39, 46-47.

[2] *Ibid.*, p. 34.

[3] *Ibid.*, p. 407.

witnesses, who came to India along with Alexander the Great, and who have written in great detail about India in the fourh century B.C. For instance, the Mallaka were no other than the Malloi, or the Mallotes, better known as the Malavas, who, along with other republican bodies called the Ksoudrakas (the Oxydrakoi), have become famous in Indian history as the people who confronted Alexander the Great with the stiffest opposition, and almost killed him when he had invested one of their capitals, Multan.[1]

(viii) Theory of Contract

Kautalya was not only aware of the different forms of government but also of a sort of an agreement or a contract, as it has become known in later history. While dealing with the question of the oppression of the citizens by the king, he writes thus—"People suffering from anarchy, resulting from the proverbial tendency of a large fish to swallow a small fish, first elected Manu, the Vaivasvata, to be their king; and

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[1] This is related by Strabo, who tells us that Alexander narrowly escaped death at Multan from a wound he received while assaulting the fortress. MacCrindle, *op. cit.*, p. 40 Plutarch repeats thus. *Ibid*, p. 207. On the nature of the wealth of the Malavas, read Vincent Smith *Oxford History of India*, p. 65 (2nd ed.). That Kautalya was correct in his estimate of the longevity of the republican types of government is evident when we note the history of the Malavas and of their neighbours, the Yaudheyas. These two republican States occupied the territories now known as Malwa, a large part of Rajputana, and the country on both the banks of the Sutlej. They survived the shocks of the great Rudradaman's conquests (in the middle of the second century A.D.) and of the great Samudra Gupta (in the last quarter of the fourth century A.D.). The leader of the Malavas, Yasodhavarman, inflicted a crushing defeat on the Huns, called in Indian History the Hunas, at Korur in A.D. 533. Read Stein, *Ancient Khotan*, I. p. 58; Satis Chandra Vidyabhushan, *History of Mediaeval Schools of Indian Logic*, pp. 14-15.

allotted one-sixth of the grains grown and one-tenth of merchandise as sovereign dues. For this payment, the kings took upon themselves the responsibility of maintaining the safety and security of their subjects, and of being answerable for the sins of their subjects, when the principle of levying just punishment and taxes was violated."[1]

(ix) The Right to Resist and Freedom of Movement

The extensive privileges of the kings were circumscribed by one right which the people possessed, and which Kautalya repeatedly mentions. This is the right to resist, oppose and overthrow the king. "...a king of unrighteous character and of vicious habits, will, though he is an emperor, fall a prey to the fury of his own subjects or to that of his enemies."[2] Then again Kautalya affirms that when a people become impoverished, greedy, and disaffected, they voluntarily go over to the side of the enemy or destroy their own (royal) master.[3]

Notwithstanding the right to resist the State, which Kautalya conceded to the people in general, we may observe that the conception of freedom was, on the whole, of a restricted type. Free movement of people was prohibited by the blowing of trumpets two hours and a half after night fall and two hours and a half before dawn. But midwives, physicians, bier-carriers,

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[1] Kautalya, *op. cit.*, pp. 22-23.

[2] *Ibid.*, p. 289.

[3] *Ibid.*, pp. 305, 340, 350. Kautalya's political principles were true not only of his own age but of later times as well. Witness, for example, the opposition which the Rastrakuta monarch Govinda III met with at the hands of a Confederacy of Twelve Kings in A.D. 804. Fleet, *Dynasties of the Kanarese Districts*, p. 395.

"those who go out with a lamp in hand at night," and those who wished to visit the officer in charge of the city or to find out the cause of a trumpet sound, those who went out to extinguish a fire, and those with a government permit, were all exempted from arrest.[1] Women, we may incidentally mention, possessed the right to property consisting of the means of subsistence and jewellery. They had the right to use that property by lawful means for themselves and for their children, and the right to re-marriage. But in other matters they were denied freedom.[2]

(x) Local administration

We may conclude our meagre sketch of ancient Indian polity as given in the *Arthasastra* of Kautalya, by noting how carefully the State looked after local administration. The king was to give special protection to the villages and rural areas. The villagers were protected from ascetics, foreign guilds, money-lenders, musicians of all kinds, and even from buffoons. Specially constructed roads connected the centre of fortress towns with the rural areas. And special royal officers were appointed to look after the general welfare of the villagers.[3]

(C) Concept of Civics among the Greeks

Let us now turn from India to Greece in almost the same age (the fourth century B.C.). By this time

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[1] Kautalya, *ibid.*; pp. 163-164.

[2] *Ibid.*, pp. 172-174, 75 ff.

[3] Kautalya, *ibid.*, pp. 47, 53, 158 ff. I do not wish to prove how scrupulously most of the injunctions of Kautalya were carried out by the ancient Indian monarchs. It is a subject that could be dealt with in a treatise by itself. For conditions in Northern Indian history, read R. N. Saletore, ***Life in the Gupta Age.***

the Greeks had practically played their noble part in the history of the world, and were almost a decadent people. We are concerned here with their civic life, which centred round a city-state.

(i) Origin of a City-state

The Greek city-state grew up around a hill called the *acropolis,* which sheltered the people in times of danger. On the top of the hill was a fort, and around it temples of gods. Close by them was the market-place, where the people met to transact business, conduct meetings, and have social intercourse. The market place was the centre of their public and private life.

In addition to the fear of a common danger, the Greeks were knit together by a belief in common descent, by common worship, by annual religious festivals like those held in honour of Apollo in the island of Delos, and by common games like the Olympic games. These bonds of union were so highly valued by them that when a citizen moved from one city-state to another, he was said to lose his citizenship. And in the new city-state he remained merely a foreigner without any rights, a man without a native land. Thus arose the idea of a citizen and an a alien in ancient Greece. The aliens were not identical with slaves, who toiled for their masters and were denied all rights.

The entire area within the walls of the fort and the neighbouring district, where also many people lived, was called the city-state (*polis*). The total population of a city-state ranged from about 50,000 to about a quarter of a million. Athens, the greatest city-state in Greece, in the height of her prosperity is said

to have possessed about 50,000 people, while her rival Sparta had fewer citizens. Other city-states like Corinth and Thebes, could not boast of more than 30,000 people.[1]

(ii) Citizens and non-citizens: their administration

But not all the people in a city-state were the citizens. "The small size of a Greek republic, the territory of which seldom extended beyond a few dozens of square miles round the city, and the number of free citizens, usually less than ten and seldom exceeding thirty thousand, made it easy to bring within the hearing of one voice a majority of all who were entitled to vote in the popular assembly, and enabled every body to form his opinions on the personal qualities of those who aspired to leadership or to office. But it increased the power of personal attraction, intensified hatreds and antagonisms, furnished opportunities for conspiracies or secret combinations, formed by a few families or a group of ambitious politicians."[2]

Each city-state, like any modern State, governed itself, made alliances, declared war, and concluded peace with its neighbours. It administered its affairs by means of an assembly in which the nobles at first had all the power, the humbler sections of the citizens having practically no opportunity to express their will. But gradually the people secured control over the administration of the city-state, and they ruled direct-

[1] There is no agreement among historians on the exact number of people either in Athens or in any other city-state. Read Zimmern, *The Greek Commonwealth*, p. 174, note (3). I may mention in this connection that a good many dates in the history of ancient Greece are likewise to be considered as merely approximate.

[2] Bryce, *Modern Democracies*, I, p. 187.

ly, every citizen taking an active part in the administration of the city-state. Two specific features marked their lives—their intense patriotism and their active political life.

The citizens performed almost all civic duties in person, excepting the duty of policing, which, as in Athens, was left to be done by the Scythians. But the other duties, like serving on the jury, in the army and the navy, participating in public worship, constructing works of public utility, like ships, and beautiful edifices in the city, bestowing patronage on artists and musicians, etc., were privileges coveted by the Greek citizens.

(iii) Types of city-states

The development of the early city-states into the later powerful city-states in Greece does not fall into any well defined periods, although certain general causes brought about their gradual transformation. Their kings, excepting in Sparta, were generally overthrown by the nobles by about 700 B.C., when aristocracy was established in Greece. But in Sparta monarchy was never abolished, because the Spartans solved the question of kingship by establishing two kings to rule conjointly. The oppression of the aristocrats gave rise to tyranny by about the middle of the sixth century B.C. But the deterioration in the condition of the peasants towards the end of the seventh and the beginning of the sixth century B.C., saw the appearance of lawgivers like Draco (624 B.C.) and Solon (594 B.C.), the latter of whom wrote down the laws as a guarantee of the rights of the peasants. But in Athens the lawgiver Solon was followed by the

tyrant (Pisastratus, 560 B.C.); and it was only after about fifty years that tyranny gave place to democracy in Athens, under the guidance of the liberal statesman, Cleisthenes (511 B.C.).[1]

The above sketch of the political development in Greece will help us to understand what an intimate bearing the form of a State has on the life and the political thought of a people. Kingship practically gave nothing remarkable to Greece, excepting in Sparta, where the dual kings and the Ephors (or the five nobles who were elected every year by the citizens) completely subordinated the welfare of the individual to the interests of society, and gave it the most perfect type of military life which the ancient world ever witnessed. Aristocracy, on the other hand, was responsible for the great colonisation, the individual development, and the progress in ship-building which marked the activities of the Greeks during this period. Tyranny gave great impetus to the development of Greek art, while the age of the liberal statesmen, especially of Cleisthenes and of his successor Pericles (462 B.C.),[2] saw the broadening of the conception of citizenship and an extension of democratic ideas.

(iv) Athenian Democracy (B.C. 508-404)

Athens is the most conspicuous example of a city-state which went through the successive changes from kingship into aristocracy, and thence to tyranny, and finally to democracy. Her popular government, the

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[1] These dates almost agree with those given by Zimmern. See his *Greek Commonwealth*, p. 452 ff.

[2] Periclee's first appearance was in 462-0 B.C.; and he died in the autumn of 429 B.C. Zimmern, *op. cit.*, pp. 454-455.

liberal outlook of her statesmen, the immense wealth which her citizens secured from the trade with the Mediterranean and the Black Sea regions, their uncommon devotion to the cause of their city-state, and, finally, her signal victory over the Persians (first at Marathon in B.C. 490, then at the pass of Thermopylae in 480, and then again off the island of Salamis in the same year),—these were the causes which explain the predominant position which Athens occupied in the entire Greek world.

These great victories which the Athenians won over the Persians had a profound effect upon Athenian life. While there is no doubt that their government was a democracy, that all citizens had an equal opportunity of paricipating in the administration, that they governed through an assembly which was composed of all free citizens who had attained the twentieth year, that they settled all important questions like those of peace and war in their assembly, the fact remains that Athenian democracy was essentially class-rule. Firstly, even among free men, all were not citizens. Secondly, a large body of people living within the city limits, like the numerous foreign merchants who had settled down in Athens, labourers, and the hundreds of slaves,—all these were denied the right to citizenship. Finally, even those who were present in the popular assembly did not exceed 5,000, (or 6,000, according to other estimates), and they did not include the numerous Athenians who lived in the country district of Attica. Hence while it is true that the Athenians enjoyed a democratic government, or popular rule, we may note that it was neither representative nor delegated democracy which prevailed in Athens. Mere

direct democracy is the contribution of the Greeks to world civilization.

Let us now consider the effect of Athenian progress upon Greek political thought. So far as the Athenians themselves were concerned, their great victories over the Persians made them think in terms of an empire. This gave rise to the famous Confederacy of Delos under the guidance of Aristeides (478-7 B.C.). Secondly, the democratic epoch produced great writers and thinkers, among whom was Socrates, who died in B.C. 399, but whose wisdom lives forever in the dialogues of his great pupil Plato. The Greek ideas spread to Macedonia, where was born Aristole, the tutor of Alexander the Great.

The vicissitudes of Athens and of the other city-states influenced considerably the mind of Aristole. That the Athenian concept of democracy was incompatiable wih the then existing state of affairs is proved by the manner in which he defines a citizen in his famous work on *Politics*. In one context he maintains that a citizen is "he who has the power to take part in the deliberative or judicial administration of any state"; and in a later context, he modifies his own definition thus—That he is a citizen in the highest sense who shares in the honours of the State.[1] Evidently, Aristotle realized that the Greek conception of citizenship, and, therefore, of democracy, was not perfect, even at the height of Athenian ascendency.

(v) The Decline of the City-states (431-338 B.C.)

The age of Pericles (462-431 B.C.) which witnessed the zenith of Athenian power, saw also its

[1] *Politics*, III. 1, 12; III. 1, 10-11.

decline and fall. In the great conflict which took place during and after the time of Pericles, first between Athens and Sparta, and then between Sparta and Thebes, the Greek city-states were utterly destroyed. By the middle of the fourth century B.C., a new and an invincible power came to the forefront in the shape of Macedonia. Not all the vehemence which the great orator Demosthenes hurled at king Philip of Macedonia could save the Greeks from subjection to that Macedonian monarch, and afterwards to his son Alexander the Great. Although Alexander the Great championed the cause of Greek culture, yet it was evident that the Greek city-states as a power had ceased to exist. And when he died (B.C. 323), ancient Greece came to an end.

(vi) An Estimate of the Hindus and the Greek idea of citizenship

We may pause here to consider the relative superiority of the Hindu and the Greek concepts of citizenship. Without discussing the causes which brought them about, we may merely observe the following differences between the view-points of the Hindus and of the Greeks. Firstly, the Hindu concept of citizenship was more ethical, while the Greek idea was more political in nature. This explains why the Hindus laid more stress on the *dharma* of each citizen, while the Greeks estimated the services of a citizen in terms of administrative activity. Secondly, the Hindu concept of duties and rights was more comprehensive than the Greek idea. This is proved by the fact that, as we have already seen, women, hirelings, and even slaves had rights; while in Athens and in Sparta, women had no rights whatsoever, and their duties were confined to

their households. And, finally, the Hindus equated the King with the State, while the Greeks identified Society, as made up of privileged citizens, with the State. The Hindu concept of citizenship guided the destinies of the Hindus till the nineteenth century, when owing to the impact of a new political ideology coming from the West, the ancient idea which had long been the basis of Hindu society, was destroyed. But the Greek concept of citizenship, long after the downfall of the Greeks, left the shores of Greece, and was taken up by the Romans, who added their own contribution to it, and handed it down to the peoples of Europe in later centuries. It is in this sense that we may maintain that ancient Greece to a large extent influenced the later European conception of civics.

(D) In the Roman Empire

(i) Early days

The Romans first came into contact with the Greeks in the early Greek colony of New City (modern Naples), in Syracuse, and in the island of Sicily. This contact continued uninterrupted from about the foundation of Rome (753 B.C.) till the conquest of Greece by the Romans in the second century B.C. Its general result was the Hellenization of Rome. The Romans had no theory of citizenship in this early period.

(ii) Development of Rome

Rome passed successively through the stages of a city-state, monarchy, tyranny, aristocracy, republic, dictatorship, and, finally, an Empire, through a long and eventful career that began about 753 B.C. and lasted till A.D. 476, when the Roman Empire came to

an end as a result of the invasions of the Teutonic peoples.

(iii) Progressive Citizenship in the Roman Empire

Of the above stages we shall select only those of aristocracy, the age of the Republic, and, finally, the era of the Empire, since these periods have a direct bearing on the principles of civics. In the aristocratic age, Rome witnessed a struggle between the privileged nobles, called the patricians, and the commoners called the plebeians. This struggle on the part of the plebeians for legal equality with the patricians, ended in a victory for the former. The legal rights of the plebeians were written down in the Twelve Tables (450 B.C.). These Twelve Laws mark the beginning of Roman Civil Law. The next right which the plebeians secured was the right to hold office. In 287 B.C. they secured the important right by which the laws (*plebiscita*) made by the plebeians in their assembly were declared to be binding on the whole community. In addition they possessed the right to property.

In the Republican age (circa 509 till 264 B.C.), Roman citizenship was extended to all the conquered peoples of Italy, all of whom could hold property, contract valid marriages, which entitled their children to citizenship, vote in the popular assemblies, and hold public offices. The attempt made by the Gracchi brothers (133 B.C.) to pay the citizens of Rome for participating in government, did not meet with success. The importance of Republican period lies in the fact that it gave rise to the principle of *jus sanguinis*, by which a child inherited the nationality of either or

both of its parents, which passed on to the Germans of the later ages.

The next important stage in the history of the growth of citizenship is seen in the reign of Emperor Caracalla (211-217 A.D.), who passed a decree making all freemen in the Roman Empire full citizens. This enabled Egyptians, Syrians, Greeks, Britons, Gauls, and Spaniards to possess the same civic rank as the Roman citizens themselves.

Even towards the slaves, who were at least twice as numerous as free men in Italy, Rome showed some kindness. They could be emancipated, if their masters were well disposed towards them, and by the end of the first century B.C., the Roman law gave them the right of appeal to the courts against the cruelty of their owners.

To the labourers also the Roman State showed some sympathy. The hours and days of their work in Rome were fixed, they were entitled to enjoy public games and public baths, free corn, elementary education, and medical treatment. But the extraordinary partiality shown by the Roman State to the free labourers was solely because the latter helped the former to plunder the great provinces of the Empire in order to minister to the pomp and luxury of the great imperial city.

But the position of women before the law remained unchanged. Although the Romans, like the ancient Egytians and the Hindus, honoured women, yet the latter had no legal rights. The few instances of Romen women who belonged to the noble families and who sometimes influenced the career of their children, do

not help us to assert that the Romans made any conscious endeavour to improve the legal position of women.[1]

(E) In Early Mediaeval Europe (A.D. 476-1453)

From the occupation of Rome by the Teutons in A.D. 478 to the capture of Constantinople by the Turks in A.D. 1453, for about a thousand years three distinct forces affected the conception of civics. These were Christianity, the Holy Roman Empire, and Feudalism. Christianity, with its doctrine of the brotherhood of man, and its corresponding belief in the oneness of God, laid emphasis on the virtues of charity and on the duty of supporting the fallen, the sick and the poor, and thereby considerably influenced the general conception of civics. Along with the Roman idea of equality and the humane teaching of the Stoics, the Christian doctrine of the universal brotherhood of man broke down the earlier idea of the right to life and liberty and of free life, by recognizing the right of man as independent of particular citizenship.[2]

The Holy Roman Empire, which came into existence with the crowning of Charles the Great in A.D. 800 by the Pope, but which broke up on the death of that great Frankish king, did practically nothing in regard to the idea of citizenship. Its contribution may be summed up in the statement that it forshadowed the later national-state conception of western Europe.

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[1] Lord Bryce writes thus on the relative position of women in Rome and in Athens. "Athenian women had a life less free than Roman women, but Athens was a democracy and Rome was not." *Modern Democracies*, II, p. 574.

[2] Green, *Political Obligations*, p. 157.

But feudalism affected the concept of civics. According to this military system of land tenure, rights and duties were determined on the basis of land held from a superior lord. The vassals owed the duties of military service, attendance on ceremonial occasions, assistance in trying cases, and giving money payments to their lords. The vassals, however, were entitled to the protection of their lives and property at the hands of their lords. But since neither the lords nor the vassals observed their promises, feudalism did not mean so much the guarantee of rights as constant warfare. The feudal system, therefore, is noteworthy because, excepting in one detail, it retarded the growth of the conception of civics which the Roman idea of equality, the Stoic teachings, and the Christian doctrines had so carefully tried to foster. The one detail in which it marked a departure from the ancient Greek and Roman procedure, was in regard to nationality. In the feudal age, a child's nationality was determined by the place of its birth, and not by the citizenship of either or both of its parents. The law was called *jus loci* or *jus soli,* which, as we shall see later on, influenced the subsequent conception of civics in Europe.

(F) In Later Mediaeval Europe (A.D. 1453-1789)

This age witnessed the establishment of the national States like France, Spain, and England, the rise of great cities like Milan, Florence, Venice, Lyons, Cologne, Paris, Vienna, Hamburg, Bremen, and London and York; the development of cathedrals and monastic schools into universities like Paris, Montpellier, Padua, Salerno, Orelans, Bologne, Salamanca, and others; the revival of learning and arts in Italy;

the Protestent Reformation in Germany; and the wiping out of the entire bundle of mediaeval survivals like the absolutism of monarchs, the obstinacy of aristocracy, and the discontent of the masses in the Civil Wars of England (1603-1660), the American Revolution (1776-1783), and the French Revolution (1789). It was during these eventful centuries that the great cities, which had originally no political rights, obtained them from their feudal lords; that the Universities spread liberal arts; that the printing press emancipated man from intellectual bondage; that the people of England speaking through their representatives, asserted their privileges in the Bill of Rights of 1869; that the Americans settled once for all the inalienable Rights of Man, when they declared their country independent in 1776; and that the French people, imitating the English and the American nations, overthrew their monarchy in 1789, and vindicated in their Constitution of 1791 the Rights of Man. These rights were summed up in the three watchwords, Liberty, Equality, and Fraternity, and comprised eligibility to public offices, freedom from arrest, the right to a legal trial, the right to pay taxes, and the right to property. The French Declaration of Rights together with the English Bill of Rights and the American Constitution profoundly influenced the course of events in Europe in the nineteenth century.

(G) In the Modern World (1789 onwards)

(i) Characteristics of the modern age

But the modern conception of civics has to some extent outgrown the French idea of citizenship. Political experience and the social progress of mankind

after the French Revolution of 1789, have necessitated an amplification of the concept of civics which had prevailed in Europe and in America in the last quarter of the nineteenth century. The modern concept of civics is essentially a realistic one: it rejects, to some extent, the concept of the general will as enunciated by Rousseau. We are not content with merely saying that man is born with certain rights; and that his will is identical with the will of every member of society. Neither can we maintain with those who added to the "substance of State action" in the eighteenth century, that man is a rational animal; nor can we agree with Aristotle that man is a political animal; nor with the view that man is a creature of mere impulse. The modern concept not only looks upon man as a combination of all the characteristics of rationality, political instinct, and impulse, but adds to it another idea, namely, that man is a creature who is impelled by civic instinct.[1]

(ii) The modern concept analysed

The modern concept resolves itself into three assumptions—the first relating to rights and duties; the second, to fellowship; and the third, to discipline.

(a) RIGHTS AND DUTIES

The first assumption maintains that civics is the consciousness of rights and duties. That is to say, one has the civic sense in one self only when one realizes that one has rights and duties. Without this perception of the double aspect of an individual's life, there can hardly be any citizenship in the modern sense.

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[1] Laski, *Grammar of Politics*, pp. 16, 18, 22, 28, 42 (3rd ed.).

(b) FELLOWSHIP

But the above presupposes not only that an individual is aware of his true self, but is prepared to admit that others like himself possess similar true selves of their own. This true self which an individual possesses is not what the French political philosophers believed in, *viz.*, the self which always made an individual rationality adjust means and ends for the common good; but, on the other hand, it is the mark which an individual leaves upon the general fraternity of which he is only a part. In other words, a mere knowledge of rights and duties on the part of an individual is not of much use, unless that knowledge is made to conform to the needs of our fellow-beings in society. This is what is meant by an individual's true self being the total impression which he produces upon the fellowship of which he is a member. And since human fellowship is ever expanding, civics truly becomes, in the second resort, a partnership in a growing and continually enriching fellowship.[1]

(c) DISCIPLINE

But there can never be any training in fellowship to satisfy the needs of an individual or even of a body of individuals without discipline. In fact, we can neither understand the needs of our fellow-beings nor grasp the larger outlines of the modern State, until we have the necessary uniformity of conduct, which should be in some measure related to the conduct of our fellow-beings. This implies discipline, a most essential requisite in a citizen. It is discipline of both the

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[1] Laski, *op. cit.*, pp. 31, 37; Sastri, *op. cit.*, p. 115.

mind and the body directed to a particular purpose, on behalf of society, called social good. We shall presently see what is meant by this term "social good" or "social welfare." For the present we may observe that social good is the aim of an individual in the modern State as well as of the State itself.

To achieve this end the individual must learn to subordinate his self-interest to the common welfare of the society in which he lives, and to recognize the fact that the rights or privileges of some must give way before the rights of all. But discipline implies two characteristics—character and vigilance, without which there can never be true citizenship. Truly has it been said that "Every State lives upon the character of its citizens...."[1] And character implies honesty, public spirit, and knowledge—the three essentials which, according to Lord Bryce, go to make up a good citizen.[2] It is character alone which can make a citizen work for the common good, even though that common good may not be recognized by an existing State. It is character which enables a citizen to be interested in life itself.[3]

As regards vigilance, this trait implies alertness, spirit, and industry. We should be vigilant in regard to political power, because, as we shall see later on, those that possess political power are more prone to misuse it than to use it well. Hence citizenship becomes, finally, a continuous scrutiny of power which by its very nature is subject to continual abuse. But

[1] Laski, *ibid.*, p. 37.
[2] Bryce, *op. cit.*, I. p. 88.
[3] Laski, *ibid.*, pp. 42, 43, 96.

we can never do this if each of us is isolated; therefore, vigilance to be truly effective should be organized. It is here that we see the difference between the ancient Greek conception and the modern one: in the Greek city-state, which was small, a citizen could make himself felt at the seat of power; today he can do so only by concerted action. Neither vigilance nor character can be secured, unless we have been deliberately trained to cultivate and use them. It is only education of the proper type that can make citizenship a training in social discipline.

(iii) Social Good

An appreciation of the modern idea of social good will tell us that we have advanced beyond the view of Aristotle, who thus wrote about social good—"The State originates in the bare needs of life, and continues for the sake of good life."[1] But, as will be shown in the following pages, a citizen in the modern world is not content merely with the "good life," which he together with his fellow-beings might bring into existence, or which the State might out of compassion give him. He desires to know how that good life has been brought into existence, and the ways and means of improving and adding to it. This he does by contributing his instructed judgment to the public good.

We may bear in mind here that social good not only refers to the good of the majority, but also to the good of the minorities, and to those who may live in society without possessing the privileges and obligations of citizenship. For good is either social or it is

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[1] Aristotle, *Politics*, I. 2, 8.

not good at all. If we are to live in society, what we attain for ourselves should benefit others as well; and since this cannot be done except when we act harmoniously with our fellow-beings, social good has been rightly defined as the product of co-ordinated intelligence.[1]

Hence social good "is thus such an ordering of our personality that we are driven to search for things it is worth while to obtain that, thereby, we may enrich the great fellowship we serve."[2]

(iv) The advantages of the modern concept

The modern concept of civics is more intelligible and more realistic than the eighteenth century or the mediaeval idea of citizenship. An individual need not dwell on a high metaphysical plane in order to understand it, for it tells us that civic, and, therefore, political acts follow from persons, who give support to governmental action only so long as the latter helps them to realize the best in themselves. Further, the modern concept brings into relief individual personality, which is not paralysed by a vague "general will", such as the eighteenth century political thinkers believed in, but which, on the other hand, has free scope to self-expression, and which seeks to give to the State the import of the meaning it finds in its life. That is to say, an individual is given, according to the

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[1] Laski, *op. cit.*, p. 24.

[2] Laski, *op. cit.*, pp. 25, 29, 113. The Rt. Hon'ble Mr. Sastri uses the terms "social well-being" and "social-welfare" in the same sense, and rightly places emphasis on the training which a citizen should have in order to understand and impliment them. *Kamala Lectures*, pp. 5, 6. The distinction made between the ethical and the intellectual side of citizenship (p. 6) may also be noted.

modern concept, the fullest scope to add to social experience, whose fruits are realized by the State for the good of the community.

4. THE CONTENT OF CIVICS

By the term content of citizenship we mean the objectives of civic education—*i.e.*, those means or methods which help to produce attitudes, dispositions, forms of reaction to stimulus, and types of behaviour, which are essential to political conduct, and the State group under which a citizen lives.

Notwithstanding some minor differences in social values, as Prof. Merriam observes, the basic traits which are the result of social living or gregariousness are, on the whole, common to all peoples. For instance, all literature, language, and lore have praised competence and diligence in officials, inculcated respect for laws, condemned the traitor, and immortalized the patriot. Likewise obedience, honesty, and respect have been preached in all climes. "Love of Liberty appears in more recent times."

In modern times a marked trait noticeable in this connection is the ideology of the particular order relating to democracy, Fascism, Bolshevism, Federalism or Centralism, aristocracy or monarchy,—in fact, whatever form of political organization is dominant in a group at a particular moment. Each ideology sets forth in rational form its special and exclusive advantages, and the difficulties and dangers of all other systems in any manner differing from them. According to Prof. Merriam, these ideologies are naturally a part of every system of civic training, both school and adult, in all modern states, and occupy a central position in the process of education.

Secondly, the new way of politico-social life is "always connected with material advantages which the ideology illuminates and interprets." For example, the Bolshevik ideology signifies land for the peasant and factories for the workers; the Republican German ideology was associated with the decline of Prussianism or militarism and special economic privileges for the aristocrats; the Fascist Italian ideology was associated with the superior energy and efficiency of the Fascist type of rule and the stimulation of the spirit of nationalism and a pride in the defence of the motherland.

The third trait refers to the emphasis laid on the special territorial-ethnic country or nation, as in England, Germany, and America. "Every system of civic education is full of the glorification of the country in question and its general or specific superiorities over all others."

The fourth trait refers to the veneration and glorification of national heroes, victories, and superiorities, which have a second religion, and which cannot be questioned but have only to be analyzed by reason.

These traits are by no means characteristic of all phases of civic education; nor is it unlikely that in the future new techniques may be employed by different groups in the community to solve the problem of civic training.

5. DISTINCTIONS

(A) Citizens and Slaves

The definition of a citizen as given by Aristotle, viz., one who has a share in the government of the City-

state, and one who is entitled to share in the honours of the State, is not suited to modern conditions, where the rights of citizenship are not always identified with political privileges. Hence we have to seek a modern definition of a citizen.

The Supreme Court of the U.S.A. defined a citizen in a famous case thus—"Citizens are members of the political community to which they belong. They are the people who compose the State and who in their associated capacity have established or subjected themselves to the domination of a government for the protection of their general welfare and for the protection of their individual as well as their collective rights."[1]

Today a distinction between a citizen and a slave is not necessary, because slaves, or those who possess neither legal nor political rights, do not exist in the modern world.[2] But we have seen above that the idea of slaves was common in the ancient Hindu Greek, and Roman world.

(B) Citizen and Subject

Another distinction which might be disposed of is the one that is sought to be made between a citizen and a subject. According to some writers on politics, unfranchised individuals should be called subjects, while those who enjoy legal and political rights should be styled citizens. But this distinction is more fanciful

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[1] U.S. *v.* Cruickshank, 92, U.S. 542, cited in *Garner, Introd. to Pol. Science,* p. 331, and (n) 2 for further reading, and particularly John C. Calhoun's definition of a citizen. Cited by Wise, *Treatise on American Citizenship,* p. 5, also cited by Garner.

[2] Sastri, *op. cit.,* pp. 1-2.

than real. For in some countries like those of the British Empire, we are all alike subjects of His Majesty, the word citizen being not known to English law. But in the U.S.A., France, and Germany, only the term citizen is recognised. That is to say, apparently the arbitrary distinction between a citizen and a subject seems to have arisen out of the distinction between parliamentary government like the one which prevails in Britain, and the presidential government which exists in the U.S.A.[1]

But how unscientific this distinction is will be apparent when we cite the example of Ireland which, although following in general the British constitutional procedure, prefers to call all individuals as citizens. But another country (the Union Government of South Africa) which likewise follows the British model, denies that the dark people within its jurisdiction are citizens, much in the same way as we do with the so-called Untouchables in India.[2]

The difference between these two terms seems to be really more in the context in which they are used than in their connotation. Thus, no one would object to "the subjects of the Indian Government," but every one would object to "the subjects of Bombay." Likewise we are not accustomed to speak of "the citizens of India," but we can only speak of the "citizens of Bombay."

(C) Citizen and Elector

The distinction between a citizen and a voter is seen prominently in the U.S.A., where in all the consti-

[1] For a further discussion of this detail, read Garner, *ibid.*, pp. 332-333.
[2] Sastri, *op. cit.*, p. 2.

tuent states there are citizens who are not electors, and in some states there are electors who are not citizens. The distinction between these two terms—citizens and electors—seems to centre round the question of franchise, or the right of indicating what persons a citizen desires should undertake the task of government. According to Prof. Garner, "The possession of the electoral privilege is not essential to citizenship and there is no necessary connection between them." This scholar would restrict the term "citizens" only to those who enjoy full civil and political rights, and adopt a different term to denote all others. The French and German examples are cited in this connection. In France all those who enjoy full civil and political privileges are called *citoyen,* while all those who owe allegiance to the State and are entitled to protection regardless of their civil and political rights, are called *nationaux.* And in Germany the same distinction is indicated by the terms *Staatsburger* and *Staatsangehorige.*[1]

The above distinction seems to perpetuate the difference between those who enjoy rights and those who do not, such as has existed in ancient Greece and India. It cannot be made out how such a distinction is compatible with the modern conception of democracy, which, among other things, seeks to identify the adult body in a State with the adult population that has the right to franchise.

As regards the essential duty of an elector, namely, the duty of voting, we may bear in mind the wise

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[1] Garner, *op. cit.*, p. 331-332; Howard, *The German Empire*, p. 134.

words of Prof. E. A. Ross, who maintains that responsible voting means, firstly, that one's vote should register an act of judgment; secondly, that personal bias should be avoided; thirdly, that public interest should be preferred to party interest; and, fourthly, that one's vote should safeguard the interests of the weak. The same authority informs us that "Vote for your friends" is a false ideal; and that the true maxim should be "Vote not for your friends but for the public friends."[1]

(D) Naturalized Citizens

Naturalization is the name given to the formal granting of citizenship by the State. In its broadest aspect it means the process of adoption of a foreigner within the political body of a nation, and of giving him the privileges which a citizen of that body enjoys. This is done by the State, and it may be conferred even upon an alien, and may be withdrawn by the State at will. In its narrow sense, naturalization means the granting of citizenship by a court of law, when an applicant has fulfilled certain prescribed conditions. In America the right of granting citizenship to aliens rests with the Congress; while the power to naturalize has been delegated to specified judicial tribunals.

In Britain till 1870 the common law declared that no alien could hold property, although he could hire a house, take a lease for twenty-one years at the longest, hold moveable goods, and bring action for death or for

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[1] Ross, *Civic Sociology*. This excellent book should be read by every Indian. How far we in India have satisfied any one of the essential conditions mentioned by Prof. Ross in *Chapter Thirty* of his book, may be left to each one of us to determine!

wrong done to his person or his goods. But in 1870 the law was changed by the Naturalization Act which declared that real and personnl property of every kind in the United Kingdom could be acquired, held, and disposed of by an alien, as though he were a British subject, but that he could not own a British ship, could not hold office, and could not claim parliamentary, municipal, or other franchise. The position today, as modified by the 1901 Report on Naturalization, is that an alien may cease to be alien by becoming naturalized; and an act of parliament may turn an alien into a subject. Such acts have not been uncommon. British nationality can now be granted by a Secretary of State on condition that the applicant has resided in the United Kingdom for five years, or has been in the service of the Crown for five years, and that the applicant must intend when naturalized to reside in the United Kingdom, or serve under the Crown, and must take the oath of allegiance to the Crown. If the Secretary of State, who has an absolute discretion in giving or withholding the desired certificate of naturalization, without giving any reason for refusal, grants such a certificate, the applicant is turned from an alien into a naturalized subject, and possesses all political and other rights and privileges which a British subject enjoys.[1]

The French and Belgian methods of naturalization need a passing note. These two countries distinguish between "grand naturalization" and "ordinary naturalization." According to the former, an alien is

[1] Maitland, *The Constitutional History of England*, pp. 427-428 (1909 ed).

placed on a footing of political equality with a native Frenchman or a Belgian. In Belgium the granting of grand naturalization depends upon the following conditions—if the applicant is married, the attainment of twenty years, and ten years of residence in Belgium; or if he has married a Belgium woman, only five years of residence; if he is a widower but childless, or an unmarried foreigner, the attainment of forty years and fifteen years' residence.[1]

(E) A Citizen and an Alien

The distinction between a citizen and an alien is real and important. It is also the remanant of the ancient times when, especially in Greece, the right of governing went with the obligation to fight. Since this obligation fell upon all free adult males, it meant in practice that the army coincided with the voters. Thus privilege and duty went together in the ancient world. But this conception does not hold good now-a-days, since in the modern world the right of voting is given to women, and since it is not universally agreed that all citizens should be conscripted into the army.[2]

By the term alien is meant in the modern world one who, having been a subject of one State, establishes his residence in another State, and is fully subject to the jurisdiction of the latter in which he is either sojourning or is domiciled. Such a person is said to

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[1] The process of *denization*, which refers to an intermediary stage between that of a subject and of an alien, means the process by which a person is made a denizen by the King's Letters' Patent, *i.e.*, by an act done by the King without referring to Parliament. This method, which was sometimes used in England in the past, is now obsolete. Maitland, *op. cit.*, p. 427.

[2] Bryce, *op. cit.*, I. pp. 162-163.

owe a temporary and local allegiance to the State in which he is domiciled or travelling; and is subject to all its laws which he must obey like any other citizen of that State. If he refuses to acknowledge allegiance to it, or attempts to break its laws, he is liable to prosecution for treason and punishment equally with its citizen. Finally, he must share with the citizens the public burdens of the State in which he is domiciled, although, unlike other subjects, he is not subject to conscription. These conditions do not apply to members of the diplomatic service of one State residing in another State. Such members are exempt from the local jurisdiction by international law. Aliens of a friendly power are called *alien friends,* while those of an enemy country, *alien enemies.*

Aliens possess two important rights which are universally acknowledged—the right of protection in their person and property, and the right of suing in the highest judicial tribunal. Thus, in the U.S.A. the Federal and the State courts are open to aliens on the same terms as to the average citizens. A sovereign State can expel an alien on grounds of public safety; but this right is to be carefully exercised, because its arbitrary use might mean violation of international law.[1]

(F) Empire Citizenship

This incongruous term, in spite of the ingenuity of some statesmen, does not exist. Prof. Dicey's pro-

[1] Some countries like Russia (before the Revolution of 1917) had discriminated against aliens like the Jews, in regard to holding property, engagement in certain occupations, and travelling or settling down in the country. The antipathy to the Jews spread to Nazi Germany which, especially after the rise to power of Adolf Hitler in 1933, discriminated merciclessly against the Jews.

phecy in regard to it has come out true. "Events suggest that it may turn out difficult or even impossible, to establish throughout the Empire that equal citizenship of all the British subjects which exists in the United Kingdom and which Englishmen in the middle of the nineteenth century helped to see established throughout the length and breadth of the Empire.[1]

The Union Government of South Africa has fully borne out Prof. Dicey's doubts, as is evident from the statements made by General Smuts at the Imperial Conference, 1923 in regard to Indian claim for equal franchise in the Empire. General Smuts said that "The Indian claim for equal franchise rights in the Empire outside arise, in my opinion, from a misconception of the nature of British citizenship. There is no equality of British citizenship throughout the Empire. On the contrary there is every imaginable difference."[2]

(G) How citizenship is acquired, lost, and regained

(i) How Citizenship is acquired

The methods by which citizenship may be acquired may be divided into ten categories. The first of these is the principle of *jus sanguinis,* which we memtioned while dealing with the history of the concept of

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[1] Dicey, *Law of the Constitution,* Intr. pp. XXXV—XXXVII.

[2] Cited by Sastri, *Kamala Lectures,* pp. 59-61. The Rt. Hon'ble Sastri's remarks on this question should be read by every Indian student of Civics. The Natal Residential Property Regulation Ordinance passed by the Union Government, relegates Indians permanently to a position of inferiority. It goes back on the Pretoria Agreement and on the assurance given by Lord Salisbury in 1895, and has compelled the Government of India to pass the Reciprocity Act imposing certain restrictions on the few African Nationals in India.

citizenship, in the Roman Empire. The second is the principle of *jus soli* or *jus loci,* which we cited while describing feudal conditions. The U.S.A. and Britain follow the principle of *jus soli* in regard to the nationality of children born of alien parents within their territories, and the principle of *jus sanguinis* in regard to children born of their own citizens abroad. But France follows the principle of *jus sanguinis* in regard to children of French parents wherever born. Belgium follows France in this respect.

The third method by which citizenship is acquired is by naturalization. This might mean three things—the act of formally adopting an alien within the political body of the State and of giving him the privileges of a citizen of that State; or the bestowal of citizenship on an alien through legislation, adoption, naturalization of children through the naturalization of the parent, the naturalization of a woman through marriage to a citizen, naturalization through the purchase of real estate, through service in the army, navy, air force, civil service, by domicile, or through annexation of foreign territory; or, finally, the granting of citizenship by a court or an administrative officer after the fulfilment by the applicant of certain prescribed conditions. It is in the last sense that naturalization is understood in Britain and the U.S.A.

The fourth method is by legislation. Citizenship is acquired by legislation when an illegitimate child of a citizen-father and an alien-mother is legetimatized.

The fifth and the six methods are by marriage and adoption, which we have already explained above.

The seventh method is by the purchase of real estate. For instance, in Mexico and in Peru, an alien purchasing real estate is turned into a citizen.

The eighth method relates to residence. The Mexican law requires residence of ten years in the case of an alien who desires to become a Mexican citizen.

The ninth method relates to admission into the public service of a State, as in Norway and Austria, where appointment of an alien to the public service naturalizes him into a citizen.

And, finally, citizenship is conferred on a large body of people collectively when the territory they occupy is annexed by a State either by conquest, or as a gift, or through purchase. The inhabitants of California, Texas, Alaska, Louisiana, and Hawai became the citizens of the U.S.A. through annexation; but the inhabitants of Porto Rico and the Philippines, which were acquired by the U.S.A., were not given the rights of citizenship of the U.S.A., although they are entitled to full protection at the hands of that government.

(ii) Denationalization--Expatriation and Repatriation

(a) DENATIONALIZATION

Denationalization means the loss of citizenship which is brought about in many ways. If women are married to aliens, they lose their citizenship. Secondly, if a citizen of one State serves in the civil, military or naval service of another State, without the permission of his own government, he loses his citizenship. Thirdly, securing honours from a foreign government likewise entails the loss of citizenship on the part of a citizen who has received such honours. Fourthly, desertion from military, naval, air service by a citizen

involves the loss of citizenship on the part of the deserter. Fifthly, condemnation by a judicial tribunal may make a citizen lose his citizenship. Sixthly, expulsion by a State or dismissal may also mean the loss of citizenship. Seventhly, citizenship may be lost by continued absence abroad. This is *expatriating* an absentee. And, finally, voluntary withdrawal of a citizen from the land of his origin and naturalization abroad may likewise denaturalize him.

(b) EXPATRIATION

Examples may be given from the history of progressive countries in order to show the practical working of the above regulations. The laws of Portugal and Bolivia declare that the acceptance of honours at the hands of a foreign government denaturalizes their citizens. The laws of Sweden, Denmark, the Netherlands, and Hungary enact that ten continuous years of absence abroad, without a declaration of an intention to the contrary, brings about the loss of citizenship or *expatriates a citizen.* According to French law, a citizen does not lose his citizenship even by continued absence abroad, until he formally renounces his original nationality. German law maintains that ten years of consecutive absence abroad entails the loss of citizenship, but expatriation does not operate if such a citizen registers with a Consul or a pro-consul a passport. According to English Common law, a subject cannot lose his original allegiance by residence abroad, except with the consent of the sovereign, but this principle of indelible allegiance was given up by Parliament later on, when it enacted that a British subject who voluntarily naturalizes in a foreign land, ceased

to be a British subject. In the U.S.A. the earlier conception of a similar indelible allegiance has given place to the view that naturalized citizens of the U.S.A., even while residing abroad, are entitled to the same protection as natural born citizens. Thus the right of voluntary expatriation has come to be recognized in the U.S.A. But in Russia and Turkey this right of voluntary expatriation is not recognised. In both these States a subject can become a naturalized citizen abroad only with the permission of his own government.

(c) REPATRIATION

This means the resumption of the original citizenship by a subject who has become naturalized abroad. It is also called the reversion of nationality, or *redintegration*. French and Belgian law provides for resumption of citizenship by allowing a citizen to return home and make a formal declaration of his intention to reside, and by establishing his domicile. This law is almost the same as in Portugal, Spain, and Italy. British law permits a citizen naturalized abroad to regain his citizenship in the same manner as it allows an alien to become naturalized, provided he has ceased to be a subject of a foreign State. The U.S.A. practice follows the British rule in regard to the repatriation of an American citizen naturalized abroad, except in the case of women married to aliens.

6. THE RELATION OF CIVICS TO ALLIED SUBJECTS

(A) Civics and Politics

Since a citizen is one who has certain rights which are guaranteed and maintained by the State, and who

is entitled to "a share in the government" through expressing his mind and will on public questions, it follows that a knowledge of government, embodied in the science of the State or Politics, is intimately connected with the science of Civics or principles of citizenship. In fact, civics is a part of the larger science of Politics. It is no exaggeration to maintain that there cannot be a progressive State without efficient citizenship.

(B) Civics and Jurisprudence

With the science of human law or Jurisprudence, likewise, civics is closely connected. Law is a command issued by the State, which a citizen has to obey in the maintenance of his rights and in the performance of his duties.

(C) Civics and Sociology

We have seen that it is only persons living in society, and not isolated individuals, who can claim rights and have duties. This idea, which will be further clarified in the following passages, presupposes that an individual is only a unit in the social aggregate with which Sociology deals. Civics, therefore, becomes to some extent a part of Sociology, since it is only as a social creature, or as a co-worker, that an individual exerts himself on his own behalf and on that of his fellow-beings. In this sense Civics is a study of investigation within the scope of Sociology.

Although, generally speaking, civic training is adjusted in whole or in part to social training, yet there are spheres of conflict between civics and sociology. Thus, for instance, country and race, religion

and authority, class and nation, neighbourhood and state—these are causes as much of internal struggle as of external conflict. "Civic education has little significance when taken as it were a thing apart from the rest of human life." In this great problem, the State should help the development of the personal factor in a citizen, so that he might add to social utilities.

(C) Civics and Economics

The relation between these two subjects is equally important. Economics, in general, is the science of the production and distribution of wealth. The production and distribution of wealth depends no doubt on the existing form of government, but it also largely affects the condition of the individual in society. The right to work, the right to reasonable hours of labour, the right to wages, which involves the right to a share in production, on the part of a citizen as a wage earner, are essential rights. A solution of this problem of economic rights would lead to a change in the methods of industrial organization. It cannot be denied that the present industrial organization in capitalistic countries is defective. Although we are far away from the period of a conscious control of social organization, and have not attempted to inquire into the principles which it involves, yet we may at least maintain that a citizen as an industrial unit must somehow be given the power to share in the making of those decisions which affect him as a producer, if he is in any way to use his freedom to the maximum advantage for the good of the community.

CHAPTER II

RIGHTS AND DUTIES

Summary: 1. Citizens and Social Good. 2. History of the Concept of Rights. 3. The Definition and Importance of Rights. 4. Theories of Rights. 5. The Nature of Rights. 6. Categories of Rights. 7. The Problem of Rights and their guarantee. 8. Rights against society and Rights against the State. 9. Resistance to the State. 10. Rights and Restraints. 11. Rights and Duties. 12. Categories of Duties. 13. Rule of Law. 14. Civic training in some modern countries.

1. CITIZENS AND SOCIAL GOOD

We are concerned here with the question of the citizens enriching social good. In order to understand this we have to recall one of the three aspects of citizenship mentioned above, *viz.*, that pertaining to discipline. In a citizen discipline is an essential requisite. It underlies the idea of social good in the sense that it is only by consciously and deliberately exerting themselves in each generation that citizens can add to the stock of social good. But this cannot be done unless citizens are able to estimate their own position in relation to their neighbours in society. That is to say, we can enrich social good only when we use the powers conferred upon us as citizens, not merely for our own welfare, but for the welfare of the others amidst whom we live. These powers are called rights, and the welfare of the neighbours, social good.

2. HISTORY OF THE CONCEPT OF RIGHTS

(A) Introduction

But the idea of rights, like that of social good, has undergone a perceptible change in the course of ages. The modern concept of rights is not exactly the same

as the Greek idea of rights; neither is it similar to the notion that prevailed in Feudal Europe and in the France of the eighteenth century.

(B) The Greek Idea of Rights

The clearest conception of rights is met with in the history of the Greek city-state from the sixth century B.C. onwards, when the Greeks struggled for liberty against arbitrary power. To an ordinary Greek citizen oppression by a tyrant or by an oligarch, who confiscated his property, setting at naught common justice and old usage, meant the negation of freedom. Any exemption from the exercise of arbitrary power meant liberty to the Greek. This in turn came to mean equal laws for all.[1]

But the Greek view of liberty is inadequate for the present times. We have already seen that it was responsible for the modification of the concept of citizenship by Aristotle. Even at the height of Athenian greatness, as we have already seen, there was a very large percentage of the population in that City-state which could not claim the protection of law. From the modern standpoint, the Greek concept is inadequate because it hardly benifits the masses of men.[2]

(C) The Mediaeval Concept of Rights

(i) In early mediaeval Europe (5th century A.D.—9th century)

In the earlier part of the middle ages, especially from the fifth century A.D. till the ninth century Europe witnessed a peculiar phenomenon. In theory Europe was regarded as a single commonwealth, but in

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[1] Bryce, *op. cit.*, I. pp. 57-58.

[2] Laski, *op. cit.*, p. 99.

practice, ultimate power was shared between the Emperor at Vienna and the Pope at Rome. The former claimed political supremacy over Europe, and the latter, spiritual supremacy over the Christian world. During this age, rights were considered as merely particular aspects of universal justice, the Pope and the Emperor alone having the privilege of granting them, and the common people having no claims to rights at all. A clash between the Emperor and the Pope was bound to follow, and it ultimately led to the modern theory of rights.

(ii) In mediaeval Europe (9th century—15th century)

The idea of rights in Feudal Europe was different from that which prevailed in Europe in the eighteenth century. Since feudalism was a system based upon landed estates, the State differentiated between rights in terms of the property which citizens possessed. In feudal society, the fuedal noble possessed the rights of a petty sovereign, viz., the right of levying taxes, of requiring his dependents to give him military assistance, of trying them in his own courts, of coining his own money, and of declaring war and peace. But his dependents were essentially vassals, who had hardly any rights against their lords, and who had only duties to perform. The utmost a vassal could claim from his lord was protection against enemies and a just treatment in all matters.

(iii) In later mediaeval Europe (15th century—16th century)

The earlier conceptions of the equal rights of the Pope and the Emperor and of the feudal lords were bitterly attacked by the great thinkers, preachers, and men of action of the fifteenth and the sixteenth centu-

ries. When Martin Luther, for instance, appealed against the Church (1517), he laid the beginnings of the modern national State. The Prince took the place of the Priest; the will of the sovereign came to be regarded as more important and real than the will of the Church; and consequently rights came to mean privileges originating from a single centre in the body politic of the country.

(iv) The Modern Concept

(a) THE OLD REGIME (ANCIEN REGIME) IDEA

The deification of the Prince which had followed the downfall of the Pope in the sixteenth century, seemed naturally to glorify and strengthen the power of the monarch. It is this which explains the absolutism of the monarchs and the arrogance of the nobles—the former of whom claimed to rule by divine right, and the latter, to possess privileges and honours by inherent virtue. During this period the masses of the people remained burdened with feudal dues and taxes, and were excluded from any share in the government of their country. The few rights which the people imagined they possessed, were differentiated by the State as those arising from the religion professed or of the taxes paid by the people. Thus in France liberty meant the power of a citizen to worship God in his own way, while in England it meant the absence of arbitrary taxation by the monarch. The Old Regime, therefore, was on the whole characterized by the division in society between the privileged classes and the oppressed masses.

(b) THE EIGHTEENTH CENTURY IDEA

Just as the Reformers and the men of letters of the sixteenth century had overthrown the narrow

the sixteenth century had overthrown the narrow-ideas which had preceded them, so the great French, American, and English political philosophers of the seventeenth and eighteenth centuries destroyed the last vestiges of feudalism in Europe. Their writings brought about changed ideas of liberty and equality. This new conception might be called the Theory of Natural Rights. It is best seen in the famous Declarations of the American and the French peoples. The American Declaration of Independence of 1776 contained the following—"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness, that to secure these Rights, Governments are instituted, deriving their just powers from the consent of the governed."

An identical Declaration of the Rights of Man was made by the French Assembly of 1791, when it proclaimed as follows:—"Men are born and continue equal in respect of their Rights. The end of political society is the preservation of the natural and imprescriptible Rights of man. (These Rights are liberty, property, security, and resistance to oppression.) The principle of all Sovereignty resides essentially in the nation. Nobody, no individual, can exert any authority which is not expressly derived from it. All citizens have a right to concur personally, or through their representatives, in making the law. Being equal in its eyes, then, they are all equally admissible to all (dignities, posts, and public employments.) No one ought to be molested because of his opinions, even his religious opinions."

Stated briefly, this declaration means that all men are born equal, with an equal right to the pursuit of happiness; that each man is born free, with a mind to think for himself; that each man possesses a will to act for himself; that subjection of one man to another, except by his own free will, is against nature; and that, since each man has an equal right to the pursuit of happiness, he has likewise an equal right to share in the government of the community to which he belongs.[1]

Although the theory of Natural Rights has now been discarded, yet it has left permanent effects behind it. Firstly, it has served to strengthen the case of popular sovereignty, especially bringing into prominence the direct methods of legislation like the Initiative, the Referendum, and the Recall. And, secondly, it has secured an extension of the electoral franchise to women in England (1870).

(c) THE MODERN CONCEPT

The French Revolution of 1791, notwithstanding the stress it laid on the fundamental principles embodied in its Declaration of the Rights of Man, was not so much a revolution which desired to wrest political liberty from the rulers, as it was a movement which planned to establish social privileges.[2] Neither the attractive theory of Natural Rights which Rousseau preached, nor the apparently convincing theory of Separation of Powers which Locke and Montesquieu enunciated is true of the modern times, where rights have ceased to mean the privileges of a few or of a

[1] Bryce, *op. cit.*, I. pp. 48-49.
[2] Bryce, *op. cit.*, I. p. 42.

class, and have come to be accepted only as the freedoms enjoyed by all the members of a society.[1]

3. DEFINITION AND IMPORTANCE OF RIGHTS

We shall attempt in this section a further elucidation of the modern concept of rights, their definition, their essential aspects, their relation to Freedom, Liberty, and Equality, the conditions amidst which they thrive, and, finally, the importance of the modern concept of rights.

(A) The modern view elucidated

According to modern writers on politics, the demand for rights may be postponed but cannot be denied.[2] This means that the granting of rights is not a matter of grace but a question of necessity which can only grow worse the longer the demand for rights is evaded or procrastinated. And the granting of rights by the State should precede its demand on their loyalty. It is only then that the State can morally justify its existence, and that its directions of authority can truly become precepts of conduct.

(B) Definition of Rights

Rights have been defined by some thinkers as arrangements, rules, or practices sanctioned by the law of the community and conducive to the highest moral good of the citizen.[3] This view approaches that of Green. "A right is a power of which the exercise by the individual or by some body of men is recognized by a society, either as itself directly essential to a com-

[1] Laski, *op. cit.*, p. 92.
[2] *Ibid.*, p. 100.
[3] Sastri, *op. cit.*, pp. 15-16.

mon good, or as conferred by an authority of which the maintenance is recognized as so essential."[1]

These two definitions, while, no doubt, they rightly lay emphasis on the social good which accrues from rights, are nevertheless inadequate, because rights are something more than mere regulations sanctioned by the law of community, and more than the powers recognized by society. They are "conditions of social life without which no man can seek, in general, to be himself at his best."[2] These conditions of social life, being shaped in the laboratory of social experience, are never static.[3] Further, such conditions of social experience, which enable every citizen to be "himself at his best," form an environment in which an ideal system of rights may be said to exist. We shall see later on that the formulation of such an environment for the citizen is the work of the State.

(C) The Essential Aspects of Rights

There are three essential aspects of rights which are discernible when we examine the position which an individual occupies in relation to himself, the group of which he is immediately a member, and the society to which his group belongs. In the first place, the interest of a citizen is always isolated from that of his fellow individuals. Secondly, there is the interest of the group or groups through which the citizen finds channels of expression. And, finally, there is the interest of the larger group or the community which is the sum

[1] Green, *op. cit.*, p. 113.
[2] Laski, *op. cit.*, p. 91.
[3] Laski, *ibid.*, p. 263.

total of all the social forces working in society. Whether we take the purely isolated individual aspect, or the group aspect, or the largest community aspect, we find that up to a certain point each citizen is able to express his desires as he gathers experience. This minimum level "which makes possible the interpretation of a citizen's experience by himself," is true not only of one individual but of all the others in the community.

(D) Rights and Freedoms

Since rights are identical, at the lowest level, for all citizens, we have to ascertain their relationship with freedoms. Rights are so closely related to freedoms that they might be said to merge into the latter. Indeed, just as rights, as we have seen, are conditions of social existence which enable a citizen to be his best self, so freedoms are opportunities which, according to history, are essential to the development of an individual's personality. Hence rights are inseparable from freedoms.[1]

(E) Rights and Liberty

We shall discuss the connotation of the word liberty in a later context, while describing the categories of rights. Here we may note the relationship between liberty and rights. We can appreciate better this relationship if we consider liberty not merely as one of the categories of rights, but also as "a definite whole," because liberty is concerned with life which is a totality. Citizens should strive to realize their entire

[1] Laski, *op. cit.*, p. 144.

personality in the totality of life.[1] In this sense liberty is the multiple of rights. And just as rights become real only when Government is called to account for having violating them, so liberty becomes real only when Government is made answerable for violating it.[2]

(F) Rights and Equality

If rights are identical "at a minimum level," as we have just seen above, it is clear that all citizens must have access to those essential needs without which life becomes impossible and meaningless. These wants are those of hunger, shelter, clothing, knowledge, and the like, in regard to which every citizen "can perform his functions with a maximum return to society as a whole." But all citizens can give maximum returns to society only when they possess equal rights, and when every one has access to the economic means around him. Viewed from this stand point, rights amount to equality which is, on the whole, a problem of proportions—that is to say, rights are economic opportunities which citizens should equally possess in order to add to social good.[3]

(G) Where do Rights thrive?

The brief outline of the concept of citizenship given in the preceding pages must have made it clear to the reader that throughout the history of man there has been some recognition of rights. But in the modern world we are not content with merely having rights: we are satisfied only when rights are made to prosper.

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[1] Laski, *ibid.*, p. 145.
[2] Laski, *ibid.*, pp. 145-146.
[3] *Ibid.*, pp. 158-159.

Now they thrive and succeed only when the State recognizes them and helps the citizen to realize them. This is possible only in a democratic form of government, because it acknowledges their universal application.

(H) Rights and their importance

From whatever point of view we might look at rights, it is evident that they are of the greatest importance in the modern world. Firstly, they are the foundation upon which the whole fabric of the State is built. Secondly, they justify the moral existence of the State, when it helps the citizen to realize them. Thirdly, they are necessary in order that citizens might add to social good. And, finally, they make possible right living on the part of citizens.

4. THE THEORIES OF RIGHTS

(A) Introduction—The Natural and Ideal Theory of Rights

We have seen above two theories of rights—one called the theory of Natural Rights, and the other, the theory of Ideal rights. The former was popular in France and in America in the eighteenth century; and although it is the basis of the modern theory of rights, yet is not much in favour in modern times. The other theory of Ideal Rights does not exist anywhere, because the idyllic conditions amidst which it can be created are not visible in any State. Hence, we have to mention the theories of rights as they are in vogue in the modern age. These are the Legal and the Functional theories of rights.

(B) The Legal Theory of Rights

Stated in simple terms, the legal theory of rights means that every right belonging to a citizen implies

an act or forbearance which he can compel from others or from the State. This is the lawyer's conception of rights.[1] In this sense, a right is known to the law of the land, and, is, therefore, enforceable in the courts, either against the State or against other citizens. That is to say, if a right is violated, the aggrieved party has access to law by which its grievances may be redressed.[2]

Rights, thus, are claims recognized by the State—claims to substantiate which the force of the State will, upon order of its courts, be used. This was the view of Bentham, who maintained that the legal code of a State lays down with some exactness the rights which each citizen may be expected to enjoy.

But this legal theory of rights is inadequate. Firstly, it makes rights follow law: changes in law will produce changes in the substance of rights. This is hardly desirable, since changes in law might be made by a State when it passes from a demoractic government into a dictatorship,[3] and the rights of citizens might consequently be adversely affected. And, secondly, the legal theory fails to satisfy the test of political philosophy, because it is made up of presumptions which require scrutiny before they are accepted as correct.[4]

(C) The Functional Theory of Rights

When we realize that rights are not the gift of a benevolent Nature, that they do not reflect a natural

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[1] Sastri, *op. cit.*, p. 8.
[2] *Ibid.*, p. 16.
[3] As it happened in Fascist Italy and in Nazi Germany in our own days.
[4] Laski, *op. cit.*, p. 91.

order, that they do not represent the power to satisfy desire, as Hobbes maintained, and that they are not merely claims recognized by the State, as Bentham argued, we are compelled to find out their true origin and nature, in terms of progressive politics. It is while examining this point that we come across what is known as the Functional Theory of rights. Professor Laski enunciates this theory thus: "By this we mean that we are given powers that we may so act as to add to the functions of our social heritage. We have rights not that we may receive, but that we may do.[1] Rights are thus correlative with functions. We possess rights or privileges in order to perform our functions and to contribute to the social good. There can be no right, therefore, without functions.

Now since rights are, at least to a great extent, privileges granted by the State and maintained by it, we have to find out how the functional theory of rights may be made to agree with the sense of loyalty which citizens owe to the State. Political loyalty depends upon the equipoise of social interests of which it is an index. Indeed, without social interests political loyalty ceases to have any meaning. And the feeling of political loyalty in the long run has also a functional basis —that is to say—it "must serve some useful social purpose in the life of those associated in the community."[2]

5. THE NATURE OF RIGHTS

The nature of rights to which we have alluded above, while dealing with the functional theory of

[1] *Ibid.*, p. 40.
[2] Merriam, *op. cit.*, p. 8.

rights, deserves further clarification. Right are neither mystic conceptions of sublime ethics, nor vestiges of "a lost inheritance." They are aspirations and interests which all people living in a community try to realize.

Green, in analysing the nature of rights, considers that, on the one hand, we may look upon a right as a claim of the individual, arising out of his rational nature, to the free exercise of some faculty; and, on the other hand, we may consider it as a concession of that claim by society, a power given by it to the individual of putting that claim in force.[1]

Although we have seen, while defining the term right, that it is more than a claim or a power given by society, yet there cannot be any doubt that, as Green contend's, it is only a man's consciousness of his having an object in common with others, *viz.* a social well-being which is as much his as it is theirs, that gives him the "claim" or "power" mentioned by Green.

On the question which of the two—the State or rights—existed earlier, it is argued by some political thinkers that rights are older than the State. This is because whether we recognize them or not, they form the essential condition from which the State derives its strength and justification. According to Green, "The Sovereign, and the State itself as distinguished by the existence of a sovereign power, presupposes rights and is an institution for their maintenance.... The State presupposes rights, and rights of individuals."[2]

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[1] *and* [2] Green, *op. cit.*, p. 144.

If rights had an existence prior to that of the State, we have to find out to what extent they are historical and natural. It may be argued that we have to look upon them as historical in the sense that they have been recognized in some ages. But it is more correct to consider them as having been demanded in a given land and age, because of the character of the State. Likewise rights are not natural because they can be enumerated in an unchanging order, but because in a given land and age, "the facts demand their recognition." They are best viewed in their dynamic nature as privileges which change with time and place. They are most secure when they suit best the conditions around them; and they are valuable because ultimately they enable the State to justify its existence.[1]

There is another point of view from which rights may be considered. They may be looked upon as of a positive nature, and of a non-positive nature. Rights of a positive nature are those by the exercise of which organizations and institutions are brought into existence. Thus, for instance, the right to franchise and the right to freedom help us to bring government into existence. The rights of a non-positive nature are those which are conducive to the general prosperity of society and the State, as for example, the right to work. The rights of the former category can be safeguarded; while the rights of the latter category cannot be safeguarded.[2]

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[1] Laski, *op. cit.*, pp. 91-92.

[2] Laski, *op. cit.*, p. 137.

6. CATEGORIES OF RIGHTS

(A) Connotation of the term 'liberty'

(i) Different meanings

In an earlier context we saw the close connection between rights and liberty. The term "liberty" has conveyed different meanings to different persons in different ages. To the ancient Greeks it meant struggle against arbitrary power and oppressive laws. In the thirteenth century in England, it meant to the English barons securing from the king a promise to maintain the ancient and customary law of the land. But in the sixteenth century in England liberty was at first taken to mean preventing the monarch from levying unauthorised exactions, and later on, the term was applied to mean religious freedom—that a subject should not be forbidden to express and disseminate religious opinions and worship God according to his convictions. Gradually the term 'liberty' came to be applied in England to political liberty, in the sense of restricting arbitrary power and transferring supremacy from the crown to the people. In this last sense liberty came to mean self-government—a connotation which it still retains in our own days.

(ii) Is the doctrine of liberty less prominent now?

According to some writers, the doctrine of liberty, which in the seventeenth and the eighteenth centuries had fascinated the western world, is less prominent now-a-days, since with the attainment of social and political equality in progressive countries, attention seems to be concentrated on economic equality.[1]

But it may not be supposed from the above that the doctrine of liberty has ceased to have the foremost

[1] Bryce, *op. cit.*, I. p. 43.

place in the hearts of men. It does not mean that because there are more restrictions than there were in former generations, we prize liberty in a different manner. Wars are still being fought on the issue of independence and liberty. What has happened is that, whereas in the eighteenth century that which concerned men was freedom from restrictions, orders, and prohibitions, today that which concerns citizens is the great attempt to do away with ignorance, fear, lack of skill, and the desire to bring in their place health and happiness to all the citizens of a country. Therefore it is not true to say that "the enthusiasm for liberty which fixed men's hearts for a century or more from the beginning of the American Revolution down to our own time has now grown cool,"[1] or to maintain that the doctrine of liberty has become less prominent; but it is more correct to affirm with Professor Ross that the way of interpreting liberty and applying its sanctions has undergone a change, since men's thoughts are now concentrated on questions of material comfort and well-being.

(iii) Difficulty in classifying liberty and rights

It is rather difficult to classify liberty and rights because of the conflicting views about them. Some scholars like Green, for example, write of Personal Rights, Rights of Property, Private Rights, Private Relations.[2] Lord Bryce described four kinds of liberty; Civil Liberty or the exemption from control of the citizen in respect of his person and property; Religious Liberty or exemption from control in the

[1] Bryce, *op. cit.*, I. p. 66.
[2] Green, *op. cit.*, p. 154 ff.

expression of religious opinions and the practice of worship; Political Liberty or the participation of the citizen in the government of the community; and Individual Liberty or the exemption from control in matters which do not so plainly affect the welfare of the whole community so as to render control necessary.[1]

But Lord Bryce's classification is unsatisfactory because, firstly, as he himself admitted, his definition was vague and general. Secondly, it does not clearly distinguish between civil liberty and individual liberty. And, thirdly, because it does not make provision for another aspect of liberty which has become prominent in the modern world, and of which Lord Bryce was aware, viz., economic liberty.

(B) The Three Aspects of Liberty

(i) Definitions

This brings us to the three aspects of liberty, as it is now understood—Private liberty, Political liberty, and Economic liberty. By Private liberty is meant that mode of liberty which "the substance is mainly personal to a man's self." It is "the opportunity to exercise freedom of choice in those areas of life," where the result of his action affects the isolation by which he is surrounded. We have seen above that one of the three aspects of a citizen's life refers to his isolated existence, when he lives all by himself, almost apart from his group and his society. Private liberty concerns this life which a citizen leads apart from the group life; and it bestows upon him those freedoms which enable him to direct his effort to the use of the

[1] Bryce, *ibid.*, I. p. 60.

opportunities around him to the best advantage. In this sense Private or individual liberty signifies exemptions from legal control.[1]

Political liberty is the power to be active in the affairs of the State. Since one of the functions of the State is to promulgate law, it follows that Political liberty means participation in legal control.[2]

Economic liberty means "the security and the opportunity to find reasonable significance in the earning of one's daily bread."[3] This aspect of liberty may be said to be a definite advancement on the eighteenth century concept of liberty which, as related above, makes "the pursuit of Happiness" one of the Natural rights of man.

(ii) Private or Individual or Civil Liberty

We shall first deal with Private liberty, otherwise called Civil liberty. It is evident that since it refers to the individual, and since "individuality is precious,"—"because the nation profits by the free play of its best minds and the unfettered development of its strongest characters," civil or private liberty in the long run approaches Individual liberty.[4]

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[1] Laski, *op. cit.*, p. 146; Bryce, *op. cit.*, I. p. 62.

[2] Bryce, *ibid.*

[3] Laski, *op. cit.*, p. 148.

[4] Bryce, *ibid.*, I. p. 61. Lord Bryce, however, distinguishes Civil liberty from Individual liberty thus:—He maintains that the distinction between these two is rather historical than theoretical; that both consist in exemptions from control, *i.e.*, in the non-interference of State authority with the free exercise of the citizen's will; but that Civil liberty, especially as understood in the seventeenth and the eighteenth centuries, referred to freedom from certain restrictions imposed by arbitrary monarchs, like arbitrary arrests and general warrants, against which men had to fight; whereas now-a-days Individual liberty refers to the need of defending the individual's freedom against the constitutional action of a self-governing community. (Bryce, *ibid.*, I. p. 63.)

(a) RELATION BETWEEN CIVIL LIBERTY AND POLITICAL LIBERTY

According to Lord Bryce, Civil liberty may exist without Political liberty, for a monarch or an oligarch may find it profitable to respect and recognise it. But since Civil liberty has been won by political struggles, it has seldom been found where Political liberty did not exist to guard it. Further, the presence of Political liberty generally involves that of Civil liberty, in the sense that citizens desire to secure freedom of person and property after the State has been established.[1]

(b) WHERE DOES CIVIL LIBERTY GROW BEST?

While sometimes monarchs or autocrats may create an atmosphere of security that gives the citizens a sense of individual liberty, it is doubtful if Civil liberty can prosper in any but a constitutional government, permeated by the spirit of democracy, because it is only such a government that fosters the sense of initiative and independence on the part of the citizens, which is so vital for the safety and stability of the State itself.

(c) KINDS OF CIVIL LIBERTY

(1) *Personal Freedom or Liberty of the Person.*—This has the foremost place in the categories of rights, since we cannot think in terms of speech or action, where existence is denied. Thus Life is the first inalienable right in the American Declaration of Independence (1776). In the French Declaration of the Rights of Man (1791), too, the statement cited already, that "Men are born and continue equal in respect of

[1] Bryce, *ibid.*, I. pp. 61-62.

their rights" means the same. And liberty of Person is likewise the first of the Eighteen Rights which the German Republic drew up in 1919.

Stated in general terms it means the right to live freely in the community, but within the restrictions which are necessary for the maintenance of social good. In terms of English history, it means an individual's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification.[1]

(2) *Freedom of Speech.*—Next in importance comes the right to free speech, which means freedom to express one's views on general subjects, and the absence of all powers of censorship in the government of the State.[2] Freedom of speech does not mean the right to spread scandal; but it means, in the words of Judge A. B. Anderson "the right to say foolish things as well as the right to say sensible things."

Freedom of speech exists in that government which not only tolerates the utterance of opinion to which it is indifferent, but permits the propagation of ideas it might detest or dread, even when it has it in its power to suppress them. The right type of freedom of speech was described by a famous philosopher of ancient France, when he wrote to his opponent thus—"I detest what you say but I will fight with my life for your right to say it."[3]

The importance of the right of speech is very great in Civics. "Men who are prevented from free

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[1] Dicey, *op. cit.*, pp. 203-204.
[2] Laski, *op. cit.*, p. 121.
[3] Cited in Ross, *op. cit.*, p. 278.

thinking cease to think; men who cease to think cease to be in a genuine sense citizens.[1] Further it is only when there is true freedom of speech that the ground is prepared for scrupulous obedience of law: it is only when the State has given the citizen the right to speak freely or agitate that it can expect him to obey the laws which he considers either vexatious or stupid. And, finally, freedom of speech makes for social safety. Repression of free speech, as history proves, has led to great "social explosions," like the French Revolution and the Russian Revolution. President Wilson expressed it well when he said that "The seed of revolution is repression." Free speech, thus, makes possible large-scale social readjustments.

The case for free speech has been forcibly put by Prof. Laski in the following words: "The view that I am concerned to urge is that from the standpoint of the State, the citizen must be left unfettered to express either individually, or in concert with others, any opinions he happens to hold. He may demand its overthrow by armed revolution. He may insist that the political system is the apotheosis of perfection. He may argue that all opinions which differ from his own ought to be subject to the severest suppression. He may himself as an individual urge these views or join with others in their announcement. Whatever the form taken up by their expression he is entitled to speak without hindrance of any kind. He is entitled, further, to use all the ordinary means of publication to make his views known. He may publish them as a book or pamphlet or in a newspaper; he may give them

[1] Laski, *op. cit.*, p. 120.

in the form of a lecture; he may announce them at a public meeting. To be able to do any or all of these things, with the full protection of the State in so doing, is a right that lies at the basis of freedom.[1]

But it may be noted that while a citizen has the right to do all of the above, he must concede the same right to every member of society likewise. In this sense freedom of speech becomes a matter of social concern. In America it is a social concern in the sense that no one is "free to utter smut from the public platform, pour forth profanity, call people vile names, or insult the nation or its flag." Thus while citizens should have the right to express ideas about matters of public importance, they should not be allowed the right of stirring people to violence or hatred against each other.[2]

An important point concerning the right of speech is that relating to its exercise in war time. In a responsible government freedom of speech in war time "involves the same right as freedom of speech in peace." In the opinion of Prof. Laski, a citizen "must support the war if he thinks it right and oppose it if he thinks it wrong." And if the Executive penalises the citizen for uttering "a hostile opinion," "it is fatal to the moral foundation of the State." And a State that stifles criticism, according to the same authority, prepares ultimately its own destruction.[3]

(3) *Freedom of Association.*—Since a man cannot speak but to his fellowmen and act with them, it follows

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[1] Laski, *ibid.*

[2] Ross, *op. cit.*, p. 274.

[3] Laski, *op. cit.*, pp. 121, 125.

that freedom of speech goes together with freedom of association and of public meeting. But here it may be noted that, just as freedom of speech cannot be interpreted to mean license of expression, so freedom of association cannot be utilised to create a breach of peace.

Freedom of association is related to the question whether a government can prohibit political meetings, and if so, under what circumstances. It is said that the American Statute book is full of regulations against various political assemblages. It is argued that such restrictions have no place in an adequate theory of the State; and that where too many restrictions exist, they serve only to make the activities of the objectionable citizens more difficult to discover. We may carefully bear in mind the judicious observations made by Professors Dicey and Laski in this connection.

Both these authorities deal with English law which has laid down that a peaceful demonstration does not become illegal merely because other people are thereby incited to violence.[1] While discussing the principle arising out of the judgment given in the famous case of *Beatty versus Gillbanks*, Prof. Dicey opines thus—"The principle, then, that a meeting otherwise in every respect lawful and peaceable is not rendered unlawful merely by the possible or probable misconduct of wrong-doers, who to prevent the meeting are determined to break the peace, is, it is submitted, well-established, when it follows that in general an otherwise lawful meeting cannot be forbidden or bro-

[1] Laski, *op. cit.*, p. 122.

ken up by the magistrates simply because the meeting may probably or naturally lead to a breach of the peace on the part of wrong-doers."[1]

Professor Laski writes thus in regard to the question as to when a government can ban meetings. "To prohibit a meeting on the ground that the peace may be disturbed is, in fact, to enthrone intimidation in the seat of power.... There ought....to be the probable danger of conduct and not merely the influence of conduct from opinion." The Executive is justified in banning a meeting only if the former is able to convince a court of law that the continued existence of the meeting would lead to imminent danger.[2]

(4) *Freedom of Inquiry.*—We can impress our views not only by freely expressing them but by acting together with our fellow beings, and, what is equally important, by criticising at the proper time and in a relevant manner. The right of free inquiry must, therefore, be preserved in every individual; and no institution or person, however powerful or high placed, should be immune from criticism by competent persons in the proper way and at the right time.

(5) *Freedom of the Press.*—The press has become in the modern world the widest and the most powerful

[1] Dicey, *op. cit.*, p. 272. But read pp. 273-274 for two limitations on this principle, *viz.*, firstly, that there should be nothing unlawful on the part of the conveners of the lawful meeting to make violence probable on the part of their opponents; if there should be, then, the lawful meeting itself becomes unlawful; and, secondly, that if on the provocation of a clash between the strictly lawful conveners and their opponents, there is no other way out for the Executive but to interfere and restore peace by dispersing them, and if the members of the lawful group do not disperse, they themselves become an unlawful assembly.

[2] Laski, *ibid.*, p. 123.

medium for the expression of the views of citizens. It has made the working of democracy possible in many countries. The common assumption that liberty of the press means the right of every man to say and to write what he pleases on social, political, or religious topics, without fear of legal penalties, is an error. Likewise it is a mistake to suppose that English law has sanctioned the use of the term "liberty of the press" in the above sense.[1] The law of the press in England is merely a part of the law of libel. The term "freedom of the press" is understood to mean a person's right to make any statement he likes subject to the consequences of law. From this point of view, liberty of the press means the application of the general principle that no man is punishable except for a distinct breach of the law. Writers in the press, therefore, are like ordinary citizens subject to the law of the realm.[2]

(6) *Freedom of Conscience.*—Liberty in its totality cannot be said to be real without freedom of thought and conscience. Independence of thought is one of the virtues which a popular government should foster. The intellect should be allowed a free play without relation to current prejudice; and it should examine all vital questions of local or national importance, in the light of reason and history. At the same

[1] According to Dicey, this term like the other one "freedom of discussion" is rarely found either in the English Statute book or in the maxims of English common law. Dicey, *ibid.*, p. 235.

[2] Dicey, *op. cit.*, pp. 237, 244-5. Lord Bryce's plea that "the cherished maxims" of the British people in regard to the newspaper press, are inapplicable to India (Bryce, *op. cit.*, I. pp. 106-107), is both false and primitive. The student should read in this connection the Rt. Hon'ble Sastri's pertinent remarks. *Kamala Lectures*, pp. 46-47.

time it should have the courage to defend unpopular opinions. The training of such a type of individual character, lies at the basis of Civil and Political liberty. In earlier ages, independence of thought was punished by monarchs; in modern times, popular and despotic governments threaten its existence by special ordinances.[1]

(7) *Freedom of Religion.*—The concept of religious liberty has, like the other concepts in Civics and Politics, undergone a change. In the sixteenth and the seventeenth centuries in England, for instance, the Whigs associated Civil liberty with religious liberty, and took the opposite of the latter to mean the practising or profession of those religious beliefs which may be injurious to public order or to morality, and, therefore, thought it fit to forbid them.[2] It was precisely the religious persecution which the original settlers in America had suffered in England that had led to their seeking in the New World a "place where they might be by themselves and worship God as they thought fitting."[3]

Religious liberty did not exist in Europe from the middle of the sixteenth century to the end of the seventeenth century, when the people of Europe believed that "God is pleased when we wipe out those other faiths than our own." It took more than a hundred years of bloodshed to make them realize that "it does not pay to try to force others in matters of conscience." It was only in the nineteenth century that

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[1] Bryce, *ibid.*, I. p. 66.
[2] Bryce, *ibid.*, I. p. 58.
[3] Ross, *op. cit.*, p. 305.

the people of Europe realized, what the ancient Indians had for centuries believed and maintained, that the exercise of religion is an individual's own concern, it being a matter in which restrictions should not be imposed by the State. And it was only in America that people agreed to dwell in friendship with those of other confessions, and "to overlook religious differences in all matters of citizenship." Religious toleration in the best sense of the term, therefore, came to be a vital part of true Americanism.[1]

(8) *Freedom of Education.*—With the progress of the world, the right to education has come to be almost universally included among civil rights. This is because, firstly, in modern civilized countries ignorance of letters has become a sign of backwardness which puts a man on a lower scale in society. Secondly, such ignorance prevents him from utilizing the advantages of the printing press. Thirdly, literacy has generally come to be associated as a qualification for voting, although it is by no means true that a person who can read a printed page is necessarily a better citizen than an untutored but intelligent rustic.

The importance of education to a citizen, however, lies in the fact that it fits him for the tasks of citizenship. It is a right which every citizen should claim, because, firstly, it is an instrument that enables him to understand life; secondly, because it enables him to give expression to his wants; thirdly, because it enables him to interpret to others his own experience, and thereby unfold his personality; fourthly, because

[1] Ross, *op. cit.*, pp. 304-305.

it enables him to formulate ideas, and, ultimately, to direct political power as well; and, finally, because it helps him to follow the course of politics and understand those things which affect his life and help him to make his will creative in society. And a citizen lacking education becomes a slave of others, fails to convince others, dwarfs his own personality, and fails to make use of his reason and his judgment.[1]

Freedom of education refers not only to primary education, as we have till now believed; neither does it mean "identical intellectual training for all citizens." But it connotes training till a certain point when every citizen can form his own judgment on any question of public interest.[2]

(d) KINDS OF POLITICAL LIBERTY

(1) *Political liberty in relation to Civil liberty.*— Civil liberty or Individual liberty can never be real unless it is nurtured in an atmosphere of political liberty. Lord Bryce has expressed the relationship between the two in the following words—"It (Individual Liberty) is, like oxygen in the air, a life-giving spirit. Political liberty will have seen one of its finest fruits wither on the bough if that spirit should decline."[3]

(2) *History of the concept of Political liberty.*— This term too has come to acquire a slightly different meaning to the one which was attached to it in the previous centuries. We have seen that in the days of

[1] Laski, *op. cit.*, pp. 114.
[2] Sastri, *op. cit.*, p. 10.
[3] Bryce, *op. cit.*, I. p. 67.

Aristotle, political liberty meant little more than an effective share in the government of the city-state. This conception continued to prevail during the sixteenth and the seventeenth centuries in England, when the English Parliament fought with its monarchs. Gradually the term came to mean restriction of arbitary power and transference of supremacy from the Crown to the Nation. To this was added the idea of the right of electing the representatives through whom the people were to exercise power. Thus, political liberty came to be associated with self-government.

(3) *Definition of Political liberty.*—But the modern concept of political liberty is slightly more elaborate than the preceding one. Political liberty today implies three "derivative rights," which are the following—the right to the franchise, the right to choose one's rulers, and the right to be chosen for political office.[1]

Of these the right to the franchise deserves some explanation. It is the right to point out the persons whom the citizens think fit to undertake the task of government. There should be no limitation of sex or property or race or creed or even education on the exercise of this right. Modern writers are of opinion that the franchise should be a general and an unlimited right. If a citizen makes a wrong choice in the persons into whose hands he desires to place political power, it is argued that the State should help him to acquire that knowledge which will enable him to rectify his error. And political power, which is another term for political liberty, cannot be built upon

[1] Laski, *op. cit.*, pp. 115-117.

birth or property but only upon the personality of men.[1]

(e) ECONOMIC LIBERTY

(1) *The three Aspects of Economic Liberty.*—The concept of economic liberty is not entirely new in the sense that we see its germs in the French Declaration of the Rights of Man (1791), when, as already mentioned above, it was included in the category of Natural Rights.[2] Neither is Economic liberty as understood by modern writers precisely the same as the one given in the following words—"the attempt to expunge all differences in wealth by allotting to every man and woman an equal share in the worldly goods."[3]

The modern concept of economic liberty has three aspects—the first, which deals with private property; the second, which deals with the right to work; and the third, with the right to receive an adequate wage for one's labour, and, with it, the derivative right of claiming leisure.

(2) *The Right to Property.*—The right to property is surrounded with limitations. Its validity is acknowledged not because it is mentioned in any Declaration of Rights, but because it is essential for the development of the personality of an individual. Secondly, it is a means by which a citizen can perform services to society. Thirdly, because it has a function to perform. Property can never justly be owned "if the result of my ownership is a power over the life of

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[1] Laski, *op. cit.*, pp. 16, 115-117.
[2] Bryce, *op. cit.*, I. p. 43.
[3] Bryce, *ibid.*, I. p. 75.

others." Thus the justification of a system of property ultimately rests on the functions served by its owner in society; and when its possession is shown "to be related to the common welfare as a condition of its maintenance."[1]

(3) *The Right to Work.*—Therefore, it is not the possession of property but the deliberate and conscious striving of each one of us "to increase the social heritage" that justifies its existence. The performance of functions becomes meaningless unless they are directed to the creation of that environment in which every individual can play his part well. It is while bringing into existence such an environment that we see the justification of the right to work. This right is almost an inherent right which a citizen possesses. "The citizen has a right to work. He is born into a world where, if rationally organised, he can live only by the sweat of his brow. Society owes him the occasion to perform his function.[2]

But the Right to Work is not to be understood in the light Lord Bryce interpreted it. That is to say, it can hardly be maintained now-a-days that we could allot "to every man and woman an equal share in worldly goods." Neither can we suppose that the right to work means "the duty of the State to provide employment for every one who seeks it,"[3] unless on the assumption that such a State is identified with the entire political community. Nor can it be argued that the right to work means the right to some particular

[1] Laski, *ibid.*, p. 130.
[2] Laski, *op. cit.*, p. 106.
[3] Bryce, *op. cit.*, II. p. 624.

work. "A Prime Minister who has been overthrown has not the right to be provided with labour of an identical character."[1] It merely means the right to be occupied in producing some share of those goods and services which are necessary for the maintenance of a rich and full social life.

We might give some examples to show how this Right to Work has been implemented in modern constitutions. Among the people who have deliberately included this right in their constitution, mention may be made of the Socialist and Trade Unionist Party of New Zealand, which put forward in 1915 a Right to Work Bill, with a minimum wage, a citizen army, "democratically organised" on a voluntary basis, and never to be used in industrial disputes, and the Referendum, the Initiative and Recall.[2] The Right to Work was the 20th right in the Declaration of Rights of the German Republic of 1919. In our own days this right has been included in the Bolshevik scheme of socialization. It is evidently the same as the Freedom from Want which the late President Roosevelt included in his well-known list of Four Freedoms (Freedom of Speech, Freedom of Religion, Freedom from Want, and Freedom from Fear), when he drafted the Atlantic Charter.

(4) *The Right to an adequate Wage and to Leisure.*—The Right to Work carries with it the right to an adequate wage for the labour expended. The object of securing an adequate wage is to secure for the individual those things and services which help

[1] Laski, *ibid.*, p. 106.
[2] Bryce, *ibid.*, II. p. 348.

him to become a creative citizen. This does not mean that there should be identical wages for all citizens; but it does imply that "there must be a sufficiency for all before there is a superfluity for some."

There cannot be any right to an adequate wage unless there is likewise a right to reasonable hours of work. That is to say, work must be followed by leisure, not only because the physical energy of a man is limited, but because he who toils should be given the leisure to fathom the wealth of his mind and the riches of his soul. Leisure has therefore, correctly been defined as "the key to the intellectual heritage of the race."[1]

7. THE PROBLEM OF RIGHTS AND THEIR GUARANTEE

(A) The Antiquity of the Problem

Where rights are established, their existence and continuance have to be guaranteed. This is a problem which faced politicians and citizens since earliest times. The problem of guaranteeing rights has nowhere been better expressed than in the famous Funeral Speech delivered by the great Athenian statesman Pericles in 431 B.C. This was when he spoke about the Athenians who had fallen in the first phase of the Peloponnesian War, thus—

"My first words shall be for our ancestors; for it is both just to them and seemly that on an occasion such as this our tribute of memory should be paid them. For, dwelling always in this country, generation after generation in unchanging and unbroken succession, they have handed it down to us free by

[1] Laski, *op. cit.*, p. 111.

their exertions. So they are worthy of our praise; and still more so are our fathers.... For our government is not copied from those of our neighbours: we are an example to them rather than they to us. Our constitution is named a democracy, because it is in the hands not of the few but of the many. But our laws secure equal justice for all in their private disputes, and our public opinion welcomes and honours talent in every branch of achievement, not for any sectional reason but on grounds of excellence alone. And as we give free play to all in our public life, so we carry the same spirit into our daily relations with one another. We have no black looks or angry words for our neighbour if he enjoys himself in his own way, and we abstain from the little acts of churlishness which, though they leave no mark, yet cause annoyance to whoso notes them. Openly and friendly in our private intercourse, in our public acts we keep strictly within the control of law. We acknowledge the restraints of reverence; we are obedient to whosoever is set in authority, and to the laws, more especially to those which offer protection to the oppressed and those unwritten ordinances whose transgression brings admitted shame. Yet ours is no work-a-day city only. No other provides so many recreations for the spirit—contests and sacrifices all the year round, and beauty in our public buildings to cheer the heart and delight the eye day by day. Moreover, the city is so large and powerful that all the wealth of all the world flows in to her, so that our own Attic products seem no more homelike to us than the fruits of the labours of other nations.

"Our military training too is different from our opponents. The gates of our city are flung open to the world. We practise no periodical deportations, nor do we prevent visitors from observing or discovering what an enemy might usefully apply to his own purposes. For our trust is not in the devices of material equipment, but in our own good spirits for battle.

"So too with education. They toil from early boyhood in a laborious pursuit after courses, while we, free to live and wander as we please, march out none the less to face the selfsame dangers.... Indeed, if we choose to face danger with an easy mind rather than after a vigorous training, and to trust rather in native manliness than in state-made courage, the advantage lies with us; for we are spared all the weariness of practising for future hardships, and when we find ourselves amongst them we are as brave as our plodding rivals. Here, as elsewhere, then, the city sets an example which is deserving of admiration.

"We are lovers of beauty without extravagance, and lovers of wisdom without unmanliness. Wealth to us is not mere material for vainglory but an opportunity for achievement; and poverty we think it no disgrace to acknowledge but a real degradation to make no effort to overcome. Our citizens attend both to public and private duties, and do not allow absorption in their own various affairs to interfere with their knowledge of the city's. We differ from other states in regarding the man who holds aloof from public life not as 'quiet' but as useless; we decide our debate, carefully and in person, all matters of policy, holding,

not that words and deeds go ill together, but that acts are foredoomed to failure when undertaken undiscussed. For we are noted for being at once most adventurous in action and most reflective beforehand. .... We secure our friends not by accepting favours but by doing them.... We are alone among mankind in doing men benefits, not on calculations of self-interest, but in the fearless confidence of freedom. In a word I claim that our city as a whole is an education to Greece, and that her members yield to none, man by man, for independence of spirit, many-sidedness of attainment, and complete self-reliance in limbs and brain."[1]

(B) Meaning of Guarantees

In the simple statement of Pericles that "the secret of liberty is courage" we have the key to the solution of the question of the guarantee of rights. These guarantees refer to the safeguards which will enable rights to exist and to flourish, so that the ends of the state might be fulfilled and the heritage of the community enriched. That is to say, an adequate protection of rights has to be found if efficient and creative citizenship is to function.

(C) The Dual Nature of the Problem

There are two sides to this question. We cannot think of safeguarding rights only from the point of view of the individual: we must think in terms of the State as well, for it is the State that ultimately maintains them. In other words, a citizen can claim privileges with a view to develop his personality and add to

[1] Zimmern, *op. cit.*, pp. 202-205.

the social good, only when he is prepared to do so in terms of his services on behalf of the State. This dual nature of the problem is not to be lost sight of in our estimate of the entire topic of citizenship.

(D) The Test of Rights

Therefore, whether we look at rights from the point of view of the individual himself, or from that of the State, it is evident that usefulness is the best of rights—usefulness to the person in unfolding his individuality, and usefulness to the State of which he is a member.[1]

(E) Guarantees Enumerated

(i) Negative Safeguards

The safeguards which are necessary to maintain and protect rights are of two kinds—negative and positive. Negative safeguards refer to the elimination of those conditions in which rights cannot thrive. For instance, since freedom cannot prosper where special privileges exist, elimination of special privileges is the first negative work which secures the guarantee of rights. Nothing is more harmful to the cause of citizenship, and, therefore, to the existence of the State, than the fatalistic belief that some people are created by Heaven only to govern others, and that some are ordained only to obey. Such a habit of thinking deteriorates human character and deprives men of the power and the will to act for themselves.

There is another obstacle to the guarantee of rights which must be eliminated before positive safeguards can be created. This refers to the rejection of

[1] Laski, *op. cit.*, pp. 92, 95.

the belief that the rights of some depend upon the pleasure of others. This is a condition that has unfortunately not yet been destroyed in the modern world.

Likewise the elimination of the third obstacle to the guarantee of rights has not yet been attained, *viz.*, that "the State power will not be perverted to the use of some few." In other words, State action is still prejudiced even in the most progressive countries.[1]

These three negative aspects of the guarantee of rights may continue to exist side by side with the positive safeguards which might serve to make rights more serviceable to society.

(ii) The Positive Aspect of Guarantees

(a) MAJORITY RULE

It is commonly assumed that if a party has a majority in a legislative assembly, it necessarily will guarantee the rights of the citizens. This is an error, for the possession of a majority in the legislature may itself be the basis of an abuse of power by that party.

(b) VIGILANCE

Indeed, the greatest danger against which a citizen in the modern world has to guard is that of an abuse of political power. Those who govern forget that Power is only a trust, and that it "is always held upon conditions."[2] But it is not a trust in the sense that it is a claim bestowed by Nature upon one people to govern eternally another people. It is a trust only in so far as it is a claim emanating from the people themselves.

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[1] Laski, *op. cit.*, pp. 149-152.

[2] Laski, *ibid.*, p. 35.

The difficulty is not in determining the origin of such a claim, but in finding how it affects those who wield it. "Power, in other words, is in its nature dangerous to those who exert it." In history there are more examples of those who have misused Power than of those who have used it well. Hence, the creation of safeguards against the misuse of Power is a matter of grave necessity.

The most effective way in which an invasion of rights can be prevented is by being vigilant. Eternal watchfulness on the part of the citizen is needed to see that the State is not perverted to the use of some few. If vigilance is slackened, the ends of the State are perverted, power is misused, and rights, endangered.

Vigilance might take the form of just and timely criticism. The citizens have a right to criticize the will and action of the State, because it is the State which moulds the substance of their lives. Where the right of criticism is denied, there political power has the greatest chance of being perverted.[1]

(c) RIGHTS MUST BE WRITTEN

Citizens are better able to criticize the action of the State, other conditions being given, when rights are written in documents. This does not mean that written documents are of necessity held inviolate by the State. What is necessary is not the antique character of documents in which the rights are embodied, but the guarantee that such rights will be realized. The American Constitution is the best example of a document in which rights are written, but it is also a

[1] Laski, *ibid.*, p. 152.

typical example of a constitution whose rights have been rendered inoperative. For instance, the famous XV Amendment guarantees franchise to the Negroes, but this Amendment has never been put into force. It is true that English and French constitutions have proved that rights need not necessarily be written down, so long as they are guaranteed by custom and tradition. All the same written documents have the advantage of giving to the citizens greater courage to "attack the executive in terms of a law if it has clearly offended." In this connection it is worth while to remember Prof. Laski's statement that "it is the proud spirit of citizens, no less than the letter of the law, that is their most real safeguard."[1]

(d) SEPARATION OF POWERS

The theory of Separation of Powers, which we shall briefly describe in a later context, is supposed to be the best guarantee of rights. It is argued that an independent Judiciary safeguards rights. While it is true that, according to this theory, any encroachment of one organ of government upon the other, is prevented, and that each is made to work within its own sphere, it does not determine the extent and quality of the powers allotted to each organ. And, moreover, the fact that the Judiciary is in the last resort appointed by the Executive, detracts from the independent nature of its judgments.

(e) JUDICIAL PROTECTION

A better safeguard than the above which, however, cannot be dispensed with, is the judicial protection

[1] Laski, *op. cit.*, p. 104.

of rights as afforded by the Rule of Law. This term too we shall explain in a subsequent connection. For the present we may note that those who break law should either be punished or indemnified, and that civil courts should be held superior to military tribunals. It is only an Executive carefully guarded by an independent-minded Judiciary that can guarantee rights in the proper manner.

(f) OTHER GUARANTEES

Further guarantees are suggested by modern writers. For instance, the decentralisation of the State, the setting up of advisory bodies whose advice the State must seek on vital questions, and the restriction of the power of the State to interfere with the internal life of other social organisations—these are some of the remedies suggested by modern thinkers which, however, seem to remain only ideal safeguards not observable in any existing constitution.

8. RIGHTS AGAINST SOCIETY AND RIGHTS AGAINST THE STATE

(A) Introduction

The question of an individual's right against society and against the State is solved only when we have grasped a few preliminary notions which we have already enumerated in the previous pages. The first refers to rights in general. It must be clearly understood that, as Prof. Leon Duguit maintained, man has no rights as man but only as a member of the social order.[1] Secondly, we must bear in mind clearly too the distinction between society, social institutions, and

[1] Cited in Follett, *The New State*, p. 273.

the State, which we have outlined in the preceding pages.

(B) Rights against Society and Public Welfare

(i) Rights inherent in Society

Since rights are based on the fact of social interdependence, that is to say, on the relation of the individual to his neighbours, and consequently on his obligations, it follows that he has no right but only duties and powers, especially in relation to society. In fact, all power and all obligation is found, according to Prof. Duguit, only in social solidarity.[1]

(ii) Rights dependent upon Functions

Therefore, our rights are not independent of society but inherent in it. The immense social forces amidst which we live alone make possible our individual attempts to "safeguard our uniqueness." We possess them not to do what we like but to perform our functions as members of society and to protect it.

(iii) Rights and Public Welfare

We possess rights in order to develop individual personality, which is ultimately bound up with the progress of society. Now since public welfare is inseparably connected with the welfare of each individual, it follows that no citizen can claim rights against public welfare.

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[1] This was precisely the ancient Hindu conception of society. The Rt. Hon'ble Sastri is correct when he asserts the following:—"An active solicitude for the feelings of others, with a readiness when necessary to stand aside to let another pass, is an essential part of the ideal citizen's character. Our forefathers seem to have recognised this subordination of one's self as lying at the very root of a well-ordered nature: the word dharma certainly lays more emphasis on duties than on rights." *Kamala Lectures*, p. 13.

(iv) Rights against Institutions

The question whether an individual has any rights against a social institution, depends upon the nature of the latter. If a social institution succeeds in promoting the cause of rights, and, therefore, social welfare, then, an individual cannot claim rights against that institution. But if it fails to promote the cause of rights, then, he may have rights against it.

(v) Conclusion

An individual, therefore, can never claim rights against society, because "every right is derived from some social relation." But his right against any group of men will depend upon his association with them and the serviceability of that association for the promotion of rights.[1]

(C) Rights against the State

(i) Rights not the creation of the State

Concerning this vital question, opinion among political thinkers is not unanimous. Green, for instance, maintains the following—"Now for a member of a State to say that his rights are derived from his social relations, and to say that they are derived from his position as member of a State, are the same thing." Evidently in this sense rights arise out of the complex of those social relations which form the State. Green expresses this idea thus—"Nor can the citizen have any right against the State, in the sense of a right to act otherwise than as a member of some society, the State being for its members the society of societies, the society in which all their claims upon each other are mutually adjusted."[2]

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[1] *and* [2] Green, *op. cit.*, p. 146.

But Green admitted the right of an individual to resist the State under certain conditions which we shall presently enumerate.

The above view is not accepted by some modern thinkers, who, as we have already seen, look upon rights, not so much as privileges conferred by authority, as conditions of social life without which no man can seek "to be his himself at his best." The element of gift, therefore, does not come in the concept of rights. The modern view has been expressed by Prof. Laski thus—"It (the State) is not the body from which other bodies derive; its relationship to them is pre-eminent only as it is so judged by citizens upon grounds of moral rights.... These, therefore, are not born of the State, but with it." Further, "Rights are not the creatures of law, but its condition precedent." They are the primary condition upon which the existence and quality of the State depend.[1]

Viewed from this angle of vision, the State must help to create that "minimum level" of rights which makes it possible for all citizens to secure them and to utilize them for the development of their personality. The State, therefore, does not create rights but merely recognizes them.

(ii) There are Mutual Rights

Another consideration which has to be noticed in this connection is that rights are mutual. They are mutual between one individual and another, and between all individuals and the State. That is to say, if it is granted that there is a "minimum level" of rights, it is obvious that the interest of each individual

[1] Laski, *op. cit.*, p. 105.

is of equal importance. No claim of one particular citizen can be held superior to that of another, however socially or otherwise prominent the former might be in the community. It is only when this is admitted that every person can "be his best self."

Further, rights are not to be considered as privileges in a state of nature, or as powers according to which an individual might act independently of others. They belong to an individual as a member of a society in which he recognizes that others like himself are originators of action, and in which he regards "the free exercise of his own powers as dependent upon his allowing an equally free exercise of his powers to every other member of the society."[1]

Collectively the same principle holds good of the relations of all individuals to the State. "The mutual claims of the State and of its citizens must be claims justified by reference to a common good which includes the good of all."[2]

(iii) Rights of the State against the Citizen

It must not be presumed from the above that the State has no right against the individual. Although we cannot entirely uphold the view of Green, which was the necessary corollary of his concept of rights,—that the State has the right over the individual in war, the right to violate the freedom of life, the right to regulate property, and the right in regard to family,[3] yet we have to admit that under certain conditions the State has some rights over the citizen. The modern

[1] Green, *op. cit.*, p. 143.
[2] Laski, *op. cit.*, p. 96.
[3] Green, *ibid.*, p. 160 ff.

view is that the State has a right to exact from each citizen "that conduct which secures to others the enjoyment of the rights which the State secures to himself."[1]

(iv) Rights of the Citizen against the State

But the citizen likewise has rights against the State. Green admitted such rights of the individual against the State under certain conditions. If the State is to be regarded as the sustainer and harmoniser of social relations, then, the individual has no rights against the State; but if the State enacts laws which are "inconsistent with the true ends of the State as the sustainer and harmoniser of social relations," the individual is not under obligation to conform to the law of the State.[2]

Green's opinion is endorsed by modern thinkers. Prof. Laski affirms that if the State is directed to ends other than the common good of society, then, the citizen has rights against the State. The State directs its will to ends other than those of common good when, firstly, it fails to evoke "the fullest potentialities" of the moral self of a citizen; secondly, when it fails to remove all hindrances to the attainment of the best in each citizen; and, thirdly, when it fails to observe his rights. This happens when Government, that is to say "a body of men and women in possession of actual power," may be mistaken in their judgment of the rights that ought to be recognised. Under these conditions, then a citizen has rights against the State.[3]

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[1] Laski, *op. cit.*, p. 96.
[2] Green, *ibid.*, p. 148.
[3] Laski, *op. cit.*, pp. 93, 96.

9. RESISTANCE TO THE STATE

(A) Introduction

Of all the rights which a citizen has against the State—that of scrutinizing the motives of government, that of examining its action, and that of calling it to account—, the last is the most important, because it is allied to another right which a citizen possesses, *viz.*, the right of resistance to the State. Modern political thinkers are agreed on the importance of this right.

(B) History of the Idea of Resistance to the State

Here too we see how the idea of resistance to the State has gradually grown out of the older conception. For instance, in the seventeenth and the eighteenth centuries, political thinkers started with the assumption of Natural Rights; and hence the question of determining the validity of resistance to the State by an individual "was never put on its proper footing." The political philosophers asked merely the question—"What sort of injury to person or property gave an individual a natural right to resist?" But in modern times the question is put in a different way—"When, for the sake of the common good, should the citizen resist the State?"[1]

(C) The Theory of Green

It is while answering this question that Green admits the right of the individual to resist the State, although under certain conditions. Green maintains that the individual has the right to resist the State, not because, as Rousseau maintained, the individual possesses a right derived from Nature, and therefore

[1] Green, *op. cit.*, p. 116.

not originating from society, but because it is a right against the State that acts against the general interest, which term, according to Green, is the same as "the General Will" of Rousseau.[1] But, then, the question arises—How is an individual to judge whether a particular law is for the common good? There are four situations in which an individual might resist law. These are, firstly, in the case of disputed sovereignty and the consequent doubtful nature of the legal authority which issues a command. Secondly, in the case of a government so constituted that there are no legal means of obtaining the repeal of law. Thirdly, in the case of the perversion of the whole system of law and government by private interests which are hostile to the good of the community. And, finally, in the case of an authority which issues an objectionable command which is separable from that source on which the maintenance of social order and the fabric of settled rights depend, and resistance to which will not cause the overthrow of that order and fabric. Green writes that the last case is most frequent in the modern age.

In the first case, Green asserts that there is nothing amounting to a right on either side; and that, at the utmost, one might maintain that in such a case, the citizen has no rule of right to guide him.

In the second case, Green affirms there is a "possible duty of resistance" by the individual to the State. This happens when, firstly, no law can be appealed to against a command of the State which has been issued contrary to public good; secondly, when there is no

[1] Green, *op. cit.*, p. 110.

"counter-sovereignty" to which the individual might appeal against such a law; and, finally, when people have no share, direct or indirect, in the government, and consequently cannot obtain a repeal of the said law by legal means. Under these conditions, the right of resistance becomes "the possible duty of resistance" on the part of the individual.[1]

Without going into the discussion of the remaining two situations in which a citizen might resist the State, we may cite Green's assertion concerning the general question of resistance to the State. "The presumption must generally be that resistance to a government is not for the public good "when made on grounds which the mass of people cannot appreciate; and it must be on the presence of a strong and intelligent popular sentiment in favour of resistance that the chance of avoiding anarchy, of replacing the existing government by another effectual for its purpose, must chiefly depend."[2]

(D) The Modern View

The Rt. Hon'ble Srinivasa Sastri has admirably expressed the same idea in the following words—"Now resistance to the State may sometimes become a right and at that very moment it becomes a duty as well. No one who cares for citizenship and for the public welfare can question the right of each citizen to judge for himself in the last extremity. When he has fought his fight and failed to undo a public wrong and he feels in his conscience that he cannot acquiesce in it, nothing ought to keep him from resistance if he thinks he

[1] Green, *ibid.*, pp. 112-116.

[2] Green, *op. cit.*, p. 117. Read also *ibid.*, p. 120.

should resist. But before he comes to that conclusion he ought to look round the question from every point of view, for the duty of resistance is to be exercised only with the greatest circumspection."[1]

Professor Laski sums up the modern concept of resistance to the State in these words—"Liberty is nothing if it is not the organised and conscious power to resist in the last resort."[2]

(E) The Two Aspects of Resistance to the State

The problem of resistance to the State by an individual has two aspects which deserve consideration. These two aspects might be termed the positive and the negative aspects of resistance to the State.

(i) The Positive Aspect of Resistance

This relates to the motives which prompt a citizen to rebel. "The good citizen should set himself in contemplation of a possible rebellion," to use Green's words, only when he is satisfied that by his "rebellious" conduct, he succeeds in making, or aims at making, "the best of existing institutions," in maintaining social order—which for the time being might suffer a set-back—, and in estimating the *bona-fide* value and intentions of the existing government in its relation to public good.[3] A rebellion, therefore, undertaken from this standpoint is not a political misadventure.

(ii) The Negative Aspect of Resistance

But resistance to the State might not be always either desirable or commendable from the point of

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[1] Sastri, *op. cit.*, pp. 97-98.
[2] Laski, *op. cit.*, p. 144.
[3] Green, *op. cit.*, p. 120.

view of both the individual and the society. Admitting that "Liberty is the organisation of resistance to abuses,"[1] it is clear that the individual has to bring forth effort in order to make his resistance both certain and effective. But it is precisely here that citizens fail in the exercise of this important duty. For they generally become indifferent and careless after a certain point, and "withdraw from the arena," leaving those in power unchecked in the misuse of power. Inactivity and indifference, therefore, become contagious, and they create a situation which justifies the truth of H. D. Thoreau's statement that "under a government which imprisons any unjustly, the true place for a just man is also prison."[2]

Secondly, unjustified or ill-advised resistance to the State is dangerous in the sense that it spreads the cult of disobedience to the State. This is best seen in the U.S.A. where "Thousands, especially young people, are looking eagerly for an excuse to their conscience and to their friends for violating some law, and the example of the prominent unpunished law-breaker furnishes them with the coveted excuse."

Thus, defiance to law is followed by law-breaking which is accompanied by bribery and corruption. This is because "those charged with the duty of enforcing the law impartially on all are bribed to shut their eyes to what is going on." What Professor Edward Alsworth Ross says of the American law-breaker holds good of their tribe in India as well. "The man with

[1] Laski, *op. cit.*, p. 171.

[2] H. D. Thoreau's book "On the Duty of Civil Disobedience" should be carefully studied in this connection.

money who bribes himself free of the laws whenever they lie across his path is like a dairyman with tuberculous cows who lets the drainage of his barn-yard find its way into the community's reservoir of drinking water."[1]

10. RIGHTS AND RESTRAINTS

(A) Definition and Importance of Restraints

Restraints have been defined as rules which govern a citizen's intercourse, which define the conditions of his personal security, and which maintain his health, and his spiritual and material standard of life.[2] They are to be borne if rights are to be effective and real.

(B) Restraints in relation to Liberty

While it is certainly true that "Liberty means absence of restraint," it has also to be remembered that liberty involves restraint.[3] This is because, as already remarked, a citizen possesses liberty not in order to invade the liberty of his neighbours, but in order to construct for himself his own course of conduct which furthers social good.

(C) Restraints and Freedom

The relation of restraints to liberty will be further made clear when we note in what manner restraints are related to freedom. We have already seen that man is not born free, and, that, therefore, there are no Natural Rights. This is because an individual is born into a society "the institutions of which are in large part beyond his individual control." And his freedom is the result of maintaining and observing those

[1] Ross, *op. cit.*, pp. 238-239.
[2] Laski, *op. cit.*, p. 18.
[3] Laski, *ibid.*, p. 18.

rules which govern all his actions and his dealings with his fellow-citizens.

(D) Restraints which help Freedom

If freedom is thus to a great extent born of restraint, we have to see in what way restraint reacts on freedom. There are restrictions which may positively aid freedom. They are becoming more and more prominent in the complex world around us. Thus, for instance, there is the restraint pertaining to contagious diseases. According to modern science, certain diseases are spread by some specific microbes which thrive in the human system. Now the spread of such dangerous germs can be prevented only by restraining the movements and habits of ignorant, selfish, and careless persons, who are infected by those microbes. It is only such restraint that will help man eventually to lengthen and glorify human life.

In like manner when growing trees which breed noxious insects that become a menace to one's neighbours, is prohibited, as in America; when drinking liquor is disallowed; when a ban is put on prize-fighting; and when the production of lurid and unwholesome films is prevented by law, individual freedom may outwardly seem to be under restraint.[1] But these are restraints which conduce to social good and which add to public morality.

(E) Restraints which are to be obeyed

Evidently there are some restraints which are not to be considered as burdensome. They deserve to be obeyed, not because they are or have been made by "an

[1] Ross, *op. cit.*, p. 227 ff.

authority legally competent to do so," neither because they are to the liking of "social regulators," who do not want that others should take pleasure in those things which do not appeal to themselves, but because such restraints are "related to one's will," because they promote right living, and because they thereby become justifiable limitations on freedom.[1]

(F) Restraints which are to be disobeyed

There are, however, restraints which are to be disobeyed. They are to be withstood, according to modern political thinkers, in the first instance, when they are "unrelated to one's will." In other words, restraints become an evil when they "destroy the harmony of impulses." They are a danger when they stultify the citizen's moral and spiritual growth. And, finally, they may be resisted when they hamper and destroy the individual's initiative.[2]

(G) Restraints on Individual Liberty in India

The restraints peculiar to modern India have been enumerated by the Rt. Hon'ble Srinivasa Sastri in his inspiring lectures on the *Rights and Duties of the Indian Citizen.* We shall select those relating to civil liberty, and leave the remaining for the perusal of the reader.

(i) Civil Liberty

(a) FREEDOM OF PERSON

On this vital point, the Rt. Hon'ble Sastri says the following—"But you would be wrong to infer from this parallel that the individual in India enjoys the

[1] Ross, *ibid.*, p. 229; Laski, *op. cit.*, pp. 142–143.
[2] Laski, *ibid.*, p. 143.

same amount of liberty as the individual citizen in England. Not by any means, for while in England, owing to the constant vigilance of the courts and the power of resistance of the individual citizen, the executive are kept well in check, here the weakness of public opinion and the comparatively restricted sphere in which even our courts work render the executive too free of control.'"[1]

In this connection we may note the statutory power given to the Executive (the Police). The Judicial Committee of the Privy Council, on October the 17th, 1944, delivered an important judgment in this connection. Lord Porter, delivering the judgment in *Khwaja Ahmad vs. the Crown,* said, among other things, that the Judiciary should not interfere with the Police in matters within their province; that the functions of the Judiciary and Police were complementary and not overlapping; and that a combination of individual liberty, with due observance of law and order, could only be obtained by leaving each to exercise its own functions, always of course subject to the right of the court to intervene in an appropriate case when moved to give directions of the nature of *Habeas Corpus.*

(b) FREEDOM OF SPEECH

This is limited by Section 124-A of the Indian Penal Code, although it is no doubt based on the language of the English law of sedition.[2]

A peculiarity of this restriction is that relating to private correspondence by post. The Hon'ble Sastri,

[1] Sastri, *op. cit.*, p. 28.
[2] Sastri, *ibid.*, p. 29.

while dealing with the "sanctity of private postal correspondence," says the following—"But we know not only from our countrymen, but from English visitors to this country somewhat partial to our political movement, well authenticated instances could be produced of the executive having interfered with private communications upon comparatively slight provocation."[1]

The same authority gives another instance of an "arbitrary restriction on the liberty of the citizen," in the Government of India Act, Section 111, which gives "the Governor-General-in Council a very big prerogative. A written order from him will be a sufficient justification for any act called in question before the High Court in its original jurisdiction."[2]

(c) FREEDOM OF ASSOCIATION AND OF MEETINGS

According to the Hon'ble Sastri, "There are sections in the Criminal Procedure Code dealing with the suppression of an assemblage or an unlawful assembly, which seem to me to go beyond the standard set in advanced countries." He gives the instances of the Riot Act, the Seditious Meetings Act X of 1911, which empowers a District Magistrate to prohibit any meeting "without assigning any reasons"—, and Part II of the Criminal Law Amendment Act of 1908, which empowers the Governor-General-in-Council to declare an association unlawful if in his opinion, which cannot be challenged in a court of law "that association is

[1] Sastri, *ibid.*, p. 29.

[2] Sastri, *op. cit.*, p. 35. An equally unpaletable Section is No. 126 which gives the Governor-General or the Governor-in-Council of a Province, power to arrest and detain any person suspect of dangerous and illicit correspondence with Maharajas, Chiefs, Zamindars, and such other dignitaries. *Ibid.*, p. 36.

engaged in the work of interfering with the administration of justice or otherwise disturbing the peace."[1]

But it must not be imagined that Government has not repealed some obnoxious laws. Thus the unpopular Bengal Martial Law Regulation X of 1804, a similar Madras Regulation Law VII of 1808, the State Offences Act XI of 1857, the Incitement to Offences Act VII of 1908, the 1st part of the Indian Criminal Law Amendment Act XIV of 1908, and the Anarchical and Revolutionary Crimes Act XI of 1919, which last was known by the name of Rowlatt Act, have all been repealed by the Government.[2]

(d) FREEDOM OF THE PRESS

In the same manner the Government of India has also withdrawn the Press Act I of 1910.[3] Although there are certain provisions which safeguard the Government against the excesses of the Press, yet it must be admitted that the Press in India enjoys a great deal of freedom which has made it the envy of certain Asiatic countries.[4]

(e) FREEDOM OF CONSCIENCE AND RELIGION

The almost complete freedom of worship guaranteed to the citizen by the Act XXI of 1850, which removed the disabilities attendant on change of religion, is, however, qualified by the conscience clause in the Education Code by which an Indian child, especially in an educational institution run by Christian

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1 Sastri, *ibid.*, pp. 69-72.

2 Sastri, *ibid.*, p. 30.

3 Sastri, *ibid.*, pp. 30, 64.

4 The Turkish Official Delegation which visited India, some time ago, as is well-known, was of the opinion that the Press in India enjoyed a great deal of freedom.

missionaries, is obliged, as the Rt. Hon'ble Sastri asserts, to submit himself "to religious indoctrination." Public opinion, as he rightly says, is not yet "fully conversant with the nature and scope of the conscience clause."[1]

11. RIGHTS AND DUTIES

(A) Change in the Concept of Duty

Before we proceed to trace the relationship between rights and duties, it may not be out of place to mention the classical Greek conception of duty. To the Greeks duty and power were the same thing. This was because the right of governing went along with the duty to fight. And the obligation to fight fell upon the free citizens. The army thus came to mean in practice the voters, and the voters meant the army.[2] But in the modern world the Greek idea does not hold good. This is because of the extension of the franchise to women and the recognition of the claims of those who object to compulsory military service. Hence the ancient Greek concept has been replaced by the modern idea of duty.

(B) Rights in Relation to Duties

The modern concept of duties allies them with rights. In order to understand the close relationship that exists between rights and duties, we have to recall some of the ideas concerning rights which we have above enumerated. For instance, it must be borne in mind that no man is sufficient unto himself, that rules and regulations govern the habits of an individual's

[1] Sastri, *op. cit.*, pp. 62-63. On the question of equal eligibility to office, the student should read pp. 65-66 of the same work.

[2] Bryce, *op. cit.*, I. p. 162.

social contact with his neighbours, and that his freedom to a large extent originates because of the maintenance of these rules and regulations.

If these considerations are granted, it follows that rights are not privileges devoid of certain responsibilities. That is to say, "Rights are not possessions empty of all duties."[1] In this sense rights are correlative of functions. We possess rights so that we may live socially, and add to the social good. Thus duty becomes implied in right, in the sense that a citizen receives privileges only in order to be able to contribute to the common heritage. He receives some rights merely because he performs some given duties.[2]

Indeed, rights and duties may be looked upon as the same thing from different points of view. Thus, franchise is both a right and a duty in Australia. It has been well said that rights are not of much use until they ripen into duties.[3]

12. CATEGORIES OF DUTIES

(A) The Moral Basis of Duties

This is best seen when we recall one of the rights enumerated above, *viz.*, the right to resist the State. This right will figure as one of the duties to be narrated in the next section. We have already cited the opinion of Green who, while dealing with the individual who has no legal way of getting a bad law repealed, affirms that it is the duty of that individual to resist

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[1] Laski, *op. cit.*, pp. 93.

[2] Laski, *op. cit.*, pp. 30, 94.

[3] Sastri, *op. cit.*, pp. 9, 12. Every Indian citizen should read the Rt. Hon'ble Sastri's wise remarks on the right which some people seem to claim in the matter of disturbing a public meeting! *Ibid.*, pp. 14-15.

the State.[1] According to the Rt. Hon'ble Sastri this is a moral duty as well as a right.[2] That this is correct is apparent when we note the modern view as expressed by Professor Laski in the following words—"Rebellion is a contingent duty of a citizen.[3]

(B) Legal Basis of Duties

By the term legal basis is meant the obligations which law imposes upon a citizen to perform certain functions. Thus, according to law, a citizen should pay taxes, customs duties, and cesses, and should bear other public burdens according to his capacity. He may have to perform certain honorary functions like those of jurymen and assessors.

We may cite here two legal duties peculiar to India. The first is laid down in Section 44 of the Code of the Indian Criminal Procedure, and the second, in Section 17 of the Police Act. The former compels a citizen to give to the authorities any information which he may happen to possess regarding the committing of or attempt to commit certain grave offence against the community. Section 17 of the Police Act lays it down that in any disturbed area, if it appears to the magistrate that the regular police force is not sufficient for the maintenance of order, he might require some citizens to enrol themselves as special Police Officers, after which they come under the discipline of the regular police force.[4]

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[1] Green, *op. cit.*, p. 116.
[2] Sastri, *ibid.*, pp. 102-103.
[3] Laski, *ibid.*, p. 289.
[4] Sastri, *op. cit.*, pp. 90-91.

(C) Political Duties

(i) Duty to Vote

The most important of the citizen's political duties is that relating to franchise, which we have included among rights, though "the ideal of citizenship requires that it be regarded as a duty."[1] Lord Bryce puts it thus—"The first and nearest duty of a citizen is to bear his part in selecting good men, honest and capable, to do the work needed by the community, and to make sure that they do it."[2]

The neglect of this important duty can only mean great disadvantage to the individual, and ultimately harm to the community and the State. The individual who refuses to vote, when called upon to do so, "deals a blow at the establishment on a firm basis of a democratic constitution."[3]

(ii) Duty of Scrutiny

Modern political thinkers maintain that the citizen has the duty of scrutinizing both the motive and the character of governmental acts.[4]

(iii) Duty to Serve

Along with the above fundamental duties is another equally essential duty, which every citizen should perform. It is the duty to serve on important committees, to have his share "in the drudgery of an association or political body." There is no man who is free from the responsibility of his civic and political life.[5]

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[1] Sastri, *ibid.*, p. 92.
[2] Bryce, *op. cit.*, II. p. 537.
[3] Sastri, *ibid.*, p. 93.
[4] Laski, *op. cit.*, p. 89.
[5] Sastri, *ibid.*, pp. 95-96.

13. RULE OF LAW

(A) Introduction: Law and Rights

It is not enough if the citizen performs his duties and is conscious of his rights. There is something else which he has to learn, and in the realization of which the State has to play its part. And that is the relationship of the citizen to law. In this connection we have to study the nature and meaning of law, the relation between law and rights, and, finally, the justification of law.

(i) The Nature and Meaning of Law

Law is a command issued by the State. It is superior to a command given by any other association in society in the sense that, whereas a command issued by any other association within society cannot be enforced promptly, the one issued by the State can be effectively and promptly enforced. But it is not the object of law to enforce punishment; on the other hand, it should be the object of law to create those conditions in society without which no citizen can hope to achieve the best in him. Therefore, rights are not created by law; on the contrary, they are the conditions precedent to law.[1]

(ii) The Relation between Law and Rights

We have now to see the relation between law, rights, and obedience. When we think of obedience, it is in regard to the commands issued by the State. Generally men obey the State either because they are convinced that a particular act is right, or because of sheer indifference, or because of ignorance and fear.

[1] Laski, *op. cit.*, p. 105.

A very small section, on the other hand, may actively oppose a given law, when they are convinced that a given act represents an abuse of power.

(iii) The Justification of Law

This small body truly represents the proper civic spirit in a people, for the modern view maintains that a law passed by the State is not necessarily superior to laws passed by other associations in society, of which a citizen is also a member; that the acts of a government receive the moral support of its citizens only when such acts enable them to realize the best in themselves; and that, finally, "the power of government is the right of government in the degree to which it is exercised for the end of social life.[1] In the last resort, therefore, obedience to government is conditioned by the obligation on the part of government to create that environment which would enable the citizen to develop his personality to the best possible extent.

(B) Meaning of Rule of Law

The above does not mean that obedience to law is optional on the part of a citizen. The reverse is correct: if it is true that rights are precedent to law, then it is also true that obedience is precedent to rights. There cannot be any obligation on the part of the State to help the citizen to realize the best in himself, unless he is, on his part, prepared to respect law. It is here that we have to explain the term Rule of Law.

(i) The Ancient Concept of the Rule of Law

The ancient idea of respect for law has been admirably expressed by Socrates who, when con-

[1] Laski, *ibid.*, p. 36,

demned to death for impiety, declined to escape the punishment inflicted upon him by the city-state of Athens. His friend Crito persuaded Socrates to flee the country, but the latter refused to do so, because the Laws of Athens seemed to question him thus—"Is it your purpose by acting in this way to destroy us, the Laws, and the whole city, so far as your influence extends? Do you think it possible for a city to exist and avoid utter ruin in which the decisions of law do not stand valid, but are set aside, and nullified by individual citizens?"

The Laws reminded Socrates how, for seventy years, they had benefited him, and then proceed to say the following—"We bestowed upon you life and nurture and education; we gave you and the other citizens a share in all the good things we possess; and, still more, we announce and give authority to every Athenian, when he has come of age and has seen the laws and administration of the city, to take his property, if we do not please him, and depart whithersoever he pleases... If after this any man remains, having seen in what way we administer justice and the other affairs of the city, then, we affirm that such a man has by his very act ratified an agreement with us to do whatever we command." Saying thus Socrates preferred to remain in prison, and drank the hemlock.[1]

(ii) The Modern Concept of the Rule of Law

The modern view of the Rule of Law is more comprehensive than the Athenian concept of the sanctity of law. Broadly speaking, we might say that the law

[1] Cf. Ross, *op. cit.*, p. 236.

is our shield; we must not only respect the law ourselves but teach our neighbours to respect the law and teach aggressive officials to do likewise.[1]

The supremacy of law or the Rule of Law is nowhere better illustrated than in the English Constitution, where it comprises three ideas—firstly, that no man is punishable, or can be lawfully made to suffer in body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. Secondly, the Rule of Law as understood in England means not only that no man is above the law, but that every man, whatever his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. And, thirdly, the Rule of Law means that the general principles of the constitution (*e.g.*, the right to personal liberty, or the right to public meeting) are the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts, as distinct from the conditions prevailing in other countries, where "the security (such as it is) given to the rights of individuals results or appears to result from the general principles of the constitution.[2]

(C) How the Rule of Law can be implemented

If the security given to the rights of individuals is to be complete, it is evident that not only the omnipotence or the undisputed supremacy of the State should be recognised, but that the State itself should

[1] Sastri, *op. cit.*, p. 109.
[2] Dicey, *op. cit.*, pp. 183-91.

guarantee certain conditions which alone can make the Rule of Law real and effective. The first condition refers to the personal freedom of the individual. The freedom of person should not be the result of the law of the constitution, but rather the basis of the law of the constitution. In other words, the freedom of person should not be a special privilege but should be the outcome of the ordinary law of the land enforced by the courts. The second condition is that there should be free speech as ground for obedience to law. It is because a citizen is at liberty to agitate for the repeal of an obnoxious law in a democratic State, that we can insist on his obeying laws which he thinks objectionable, even though at great inconvenience to himself. That is to say, the existence of free speech is therefore the ground on which we can put it up to a man's conscience to obey even laws he considers no good.[1]

The third condition is the one which refers to the private judgment of the individual. True citizenship consists not merely in obeying a necessary law even when it might appear to be annoying, but also in obeying a law which might be considered useless and meddlesome. If a citizen should have merely the right of judgment without conceding such a right to his neighbours, nothing but anarchy would result in society. We have to obey laws just because they are laws. It is only in this way that private judgment can add to the atmosphere that completes the Rule of Law.

(D) Difference between Free Peoples and Ruled Peoples

Reverence for law, therefore, should as much be cultivated by the citizen as it should be nurtured by

[1] Ross, *op. cit.*, p. 241.

the State. It helps us to distinguish between free peoples and ruled peoples. The former are marked by their reverence for law; while the latter are marked by their reluctance to obey laws. A free people obey laws just because they are laws; a ruled people obey laws because vast and terrorized agencies make them obey laws. Finally, with a free people, laws are generally in harmony with public sentiment; while among ruled people, laws are, on the whole, in harmony with the caprices of a king, or, nobles, or a body of officials.[1]

(E) Respect for Law and Objection to Law

Respect for law is most precious in a democracy. Its importance has been immortalized by Abraham Lincoln in the following words—"Let reverence for the law be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in Colleges; let it be written in primers, spelling books, and almanacs; let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And in short, let it become the political religion of the nation.[2]

Sometimes it might happen that a law which is worse than useless meets with opposition from citizens. This happens when they have to do what may be against their conscience. Such citizens are styled "conscientious objectors." They are prompted to oppose a law from high motives, and they cannot be classed with ordinary lawbreakers, who violate a law from unworthy motives. Thus, for instance, citizens might object to laws concerning slavery and war as

[1] Ross, *op. cit.*, p. 237.
[2] Ross, *ibid.*, p. 243.

being against the Laws of God. American history abounds with examples of such conscientious objectors. Thoreau, who preferred to go to jail than pay a tax to a government which had passed the notorious Fugitive Slave Act of 1850—which required a citizen to assist in catching and returning slaves to their owners—and Wendell Phillips, who advocated disregard of the law, and who thereby earned for himself a statue in the Public Gardens of Boston—these are two of the many examples of American citizens who opposed obnoxious laws on high moral grounds.[1]

14. CIVIC TRAINING IN SOME MODERN COUNTRIES

(A) Introduction

Citizenship does not merely consist in the enumeration of rights and duties, nor in a knowledge of their existence. Nor does civic solidarity consist only in living in a society that claims rights and acknowledges duties. Since society is largely a union of social groups,—the religious group, the ethnic group, the economic group, the cultural group, and many others besides—, each competing with the other and sometimes with the State itself, civic training in the broader sense of the term means an adjustment in whole or in part to social training. The history of progressive countries shows that a radical improvement is possible in the imparting of civic education, and consequently in the betterment of the political system.

(B) Examples of some countries

(i) Switzerland

This small country which was confronted with the question of the racial heterogeneity of her population,

[1] Ross, *op. cit.*, p. 242.

their sharp religious differences, their intense local feeling, and, finally, the country's geographical isolation, has practically been knit together into a national political group by wars, rivalries, agreements, and wars again, and peaceful adjustments extending over many long generations. The local civic education in Switzerland has the background of tradition, symbolism, race, language, and religion, supplemented by the methods of instruction adopted by modern parties, and by the character and standing of the governmental services. Truly in Switzerland has liberty been combined with authority, and sentiment with rationality in a most remarkable manner.

(ii) Italy

Italy is another country where all the known agencies of civic education for the furtherance of civic training and loyalty have been utilized. At first it was done by leaders like Mazzini, Garibaldi, and Cavour in the nineteenth century; and later on by Mussolini in the twentieth century. Neither the regional problem nor that of a diverse and antagonistic population prevented the nation-makers of Italy from realizing their dream of a united Italian political group. The cultural pride of, for example, Florence or Venice, has given place to the pride of a greater Italy; and the diversity in race and language, as was noticeable between a Goth in the north and an Oriental in the south, and between a Genoese, a Neapolitan, a Sicilian, and a Venetian, has been overcome by a common language, and a common general type of stock. The economic difficulties have been surmounted by Fascism, which incorporated the industrial

employers, employees, and agrarians in corporations that served as the basis for the government and the State. Six organisations of employers, six organisations of employees, and six organisations of intellectuals were interwoven as an integral part of the whole Fascist order. The Fascist experiment at civic training, rivalled only by the Bolshevik, had at its base the elements of tradition, symbolism, language, and literature, and at its apex the devices of education and patriotic organisations.

In the field of education, a complete reform was undertaken, schools for building national character were built up, new methods were introduced along with a new curriculum. In fact, from the Kindergarten to the university, the whole system was overhauled with the object of creating a new educational life and a new political philosophy. The patriotic organisations were those of the Youths, the Adults, and the Veterans, Boy Volunteers, Girl Volunteers, Adult Fascist Organisations, and Veterans' Associations.

Thus every device which appealed to reason or emotion or interest was used to further the civic sense among the Italians.

(iii) Germany

Endowed with a population that is, on the whole, ethnically united, and a country that is likewise geographically a compact region, Germany has succeeded in giving civic education to her citizens chiefly through two media—the educational system and the governmental services. "The German school is a civic agency of the first importance." The pupils in a German

school are taught German history, the important places and scenes in Germany, civic habits, and finally, good-will to all the nations of the world. And the integrity, dignity, and intelligence of the German governmental services have for generations been a factor in developing civic interest and civic allegiance in that country.

(iv) Russia

Here we have a most notable example of a country that has succeeded in evolving an admirable system of civic education. The enormous nature of the experiment undertaken by the Bolsheviks can be understood to some extent when we realize that they had to construct a new type of a socio-political order upon the ruins of an old regime, which, although politically, economically, and religiously antiquated and useless, had nevertheless moulded the destiny of the Russians for a thousand years. The Russians before the Bolshevik Revolution had built their State upon a political and territorial basis; the Bolsheviks after the Revolution constructed the State on a proletarian basis without reference to political demarcations and territorial divisions. The success in civic training which the Bolsheviks secured has been attributed to three causes—firstly, the medium of universal education; secondly, the democratic social system; and, thirdly, "the aptitude of the Soviet group for schematic training and for organised and vital forms of propaganda."

The Union of Socialist Soviet Republics covers a huge territory and contains peoples of various races. From the Arctic Ocean to the Caucasus in the south, and from the Pacific to the Atlantic Ocean, the

U.S.S.R. is a huge continent by itself. The ethnic groups that make up the peoples of the U.S.S.R. are the following—the Great Russians, who make up about 52.9; the Ukrainians, 21.2; the Finn-Mongolians, 5.4; the White Russians, 3.2; the Tartars, 2.0; the Jews, 1.8; the Turks, 1.1; and others, 12.4 per cent of the total population. The enormous geographical, linguistic, and cultural difficulties in the U.S.S.R., instead of wrecking "the ship of the state in almost every storm,"—as expected by European statesmen—have been so cleverly solved by "an easy-going policy of toleration" that the U.S.S.R. may, without any exaggeration, be said to have maintained the necessary morale for common government.

What is of special interest to the student of Civics is the fact that the Bolsheviks have made little use of the devices used by other peoples for furthering civic solidarity. Thus "traditions, love of locality, governmental services, political party struggles, which loom so largely in other systems, are relegated to the rear in the Rusian concept of civic education. On the other hand the use of the schools, the development of new types of symbolism based upon the new social situation, and the new ideology, and adult education through the instrumentality of improvised schools, of literature and the press, of the radio and the movie, are conspicuous elements in the system of the Soviets."

(v) Great Britain

The British system of civic education is one of the most interesting in the world, for it illustrates in the highest degree the results of modernism in the

economic and political fields, extraordinary skill in the development of industry and remarkable faculty in political management. The political development of Britain has been characterized by a growing system of common law, unusual parliamentary institutions, and a rare faculty in dealing with alien peoples. Together with these there has been an uncommon aptitude for modern industrialism, and a gift to hold widely distant and racially different peoples under one stable political order. Since the economic basis of the British political organisation lies in "an equilibrium between the landowners, progressively diminishing in importance, the great industrialists, and highly organised industrial workers," and since the labour-group shows "strong signs of devotion to national interests and policy," the chances of an economic and political revolution in England are both small and remote "as compared with the probability of gradual even though fundamental readjustments of the economic and political structure." The British people have utilized language, literature, and the press to strengthen their civic cohesion. But Britain has made little use of civic training in the formal sense of the word. Her public schools and the two Universities of Oxford and Cambridge have been merely training grounds for the governing classes; while in the ordinary schools little use has been made of formal civics.

(vi) The United States of America

In this respect Britain offers a striking contrast to Germany, France, and the U.S.A. In these countries civic education is deliberately planned, "and a conscious effort is made to induce political interest and loyalty." In Germany as well as in the U.S.A. the

agency of the schools and of the special polytechnic organisations is conspicuous. In the U.S.A., which is a wide stretch of territory spreading from ocean to ocean, special emphasis has been laid upon the schools, the political parties, and the press; but unlike Germany, in the U.S.A. less use has been made of the governmental services, love of locality, symbolism, literature, and of traditions. In the U.S.A. as in Germany, great stress is laid on the value of the school as a democratic agency as well as a cultural agency. This has resulted in the development of a large amount of formal training in "the history of the republic as well as in civics or civic government." In many of the constituent states this has been made obligatory by legislative Acts, and where there has been no such law, great emphasis has been placed upon the civic form of education. It is of particular interest to note that in the U.S.A. "A wide range and variety of courses in government, many of them superficial and formal, have been set up for the purpose of developing a type of citizen familiar with the history and structure of government." In no other country has there been a more elaborate development of this particular form of civic training in its formal outline than in the U.S.A.[1]

[1] This Section is based on Prof. Merriam's learned book cited already in these pages, *The Making of Citizens*, pp. 8 ff. An impartial, matter-of-fact, and interesting account of the present condition of education is given in the small brochure styled "Education in America" released by the U. S. Office of War Information (pp. 1-19), for a copy of which I am indebted to Vice-Consul Dr. Ray L. Thurston of Bombay. Every one in this country, who is interested in education, would do well to read and digest the information given in this excellent little monograph. On the civic training given in modern Russia and Germany, read the works of Kosok and Harper mentioned in the Bibliography at the end of this book.

CHAPTER III

SOCIAL INSTITUTIONS

Summary: 1. Introduction—Society and Social Good. 2. Social Institutions—Marriage and Family. 3. Property. 4. Caste System. 5. Religion. 6. Social Problems.

1. INTRODUCTION: SOCIETY AND SOCIAL GOOD

(A) Preliminary Remarks

We have till now studied the individual in society, a unit in a vast organization. It is necessary for us to understand what is meant by the term society, and the various problems connected with it. At the outset it is advisable that we should bear in mind the significant fact that all aspects of society—political, economic, and social—are not self-existent but to a large degree the result of geographical factors. Geographical homogeneity or isolation not only helps or retards political unity but also determines to a great extent the activities of citizens and their form of government. The geographical situation of the country of the ancient Greeks, the English, and the Dutch peoples has determined their economic structure, their social advancement, and their political instincts.[1] But within the limits imposed on society by topography and climate, it has moved forward and conducted its manifold activities.

(B) Definition of Society

A mere assemblage of human beings unconnected by a unifying bond does not constitute society. Hence society means an organised association of individuals. The modern view of society is expressed by Prof.

[1] Garner, *op. cit.*, pp. 78-79.

Laski thus—"A society is a system of finite selves, each unique and precious by reason of its uniqueness, and an individual seeks embodiment in a society so that it may help him to reach the maximum of social effort."[1]

(C) Nature and Functions of Society

When we refer to society in Civics and Politics, we mean generally organized society. Society is an organism whose component parts are individuals; and therefore it is marked by those qualities and attributes which characterize the individuals that compose it. There are a few traits of society which we may bear in mind here. In the first place, social facts never recur at regular intervals as the manifestations of general forces, but rather as the actions of certain individuals. Secondly, the units that compose a society—the individuals—may differ infinitely from one another.[2] Thirdly, notwithstanding this divergence between one individual and another, society as a whole may be characterized by one general trait—the service it can render to the individuals, in the same manner as they have to render service to it. In other words, society has rights and duties in the same way as individuals, and is, therefore, functional in character. This means that, while the individual must respond to the needs of society, the latter must respond to men's needs in terms of the substance of those needs.[3]

(D) The Theories of Society

Since we have to take into consideration only society which has been unified by some bond, we have

[1] Laski, *op. cit.*, pp. 105-106.
[2] Garner, *op. cit.*, p. 20.
[3] Laski, *op. cit.*, pp. 106, 163.

to find out the views advocated by writers concerning this unifying element. Four theories have been advocated by writers on politics on this subject—the monistic theory, the monadnistic theory, the dualistic theory, and the organic theory concerning society.

The monistic theory views society as an organization in which the individual is so merged in the whole that he has no independence of his own. The monadnistic theory, on the other hand, conceives of society as a mere collection of independent individuals, each of whom lives an isolated life. The dualistic view is a compromise between these two theories, in so far as it considers an individual neither completely merged in the whole nor entirely isolated from his neighbours, but partially dependent upon society. And, finally, the organic theory looks upon society as a biological organism, in which an individual is related to the whole society in the same manner as a cell is related to the organism of a living being.

(E) Society and the Individual

Of these theories we have to dispense with the two extremes—the monistic and monadnistic as being incompatible with the concept of Civics. The dualistic and the organic theories contain some elements of truth which deserve consideration. Taken together they suggest that society is an organisation in which the members are in a peculiar sense dependent upon the whole and the whole in turn is conditioned by the parts.[1]

The inter-relation of the two—society and the individual—is to be properly understood, because it is

[1] Garner, *ibid.*, pp. 56-57, 63.

of the greatest importance in the evaluation of civic studies. The individual has no value without society, and society has no importance without the individual. The individual is created by the social process, and is daily nourished by that process. "There is no such thing as a self-made man. What we think we possess as individuals is what is stored up from society, is the sub-soil of social life." The individuality of a man, therefore, consists of his relation to the whole.[1]

(F) Society and the Crowd

(i) Civic Sense and Apathy

Although the individual sometimes realizes that he lives in an organized community, yet very often neither he nor his neighbours are aware of their responsibilities. In most instances, apathy marks social action. This is because a large number of citizens is without the sense of the State. They are lost in their private interests; they do not follow the general stream of social tendency; they view the political conflict as a drama in which they have no part; and they ask only that their private affairs remain unfettered by public interruption. The individuals pursuing their private contexts, contract the herd-mentality, acquire the habit of "unthinking obedience" to the will of the few, and live a political and social life of inertia.[2]

(ii) Society and the Crowd

The evil of people turning apathetic to civic consciousness is that they might turn themselves in the long run into a crowd. The crowd-mentality is described thus—"Every crowd poses as the people, and

[1] Follett, *op. cit.*, pp. 61-62.

[2] Laski, *op. cit.*, pp. 19, 42. Bryce, *op. cit.*, II. p. 600 ff.

affects to speak in its name. The larger the crowd, the less is it guided by reason and the more by its emotions." It was in this manner that 60,000 enthusiasts, who were recruited in the First Crusade, perished before they had reached their destination. The crowd-mentality was particularly visible in the large Athenian assemblies which were influenced by the pursuasive force of the few strenuous spirits, who impresssed views upon the mass.[1]

In the modern world, there is a further danger of the personality of the individual being impaired by the crowd-self. This happens when individuals, who are otherwise conscious of their powers of self-restraint, are in a crowd where powerful streams of suggestions produce a narrowing down of attention and judgment. But the crowd-self is both simple and short-lived, since the more abiding qualities in the individual regain their normal level and again function.

This does not mean that the crowd or the mass or the mob can be treated with contempt by the politicians. "No statesman of our own day," writes Prof. Laski, "could dare, whatever he thought, to speak of the swinish multitude." This is because in the theory of politics, "the swinish multitude" is enthroned in power. Neither does it mean that all those who make up the crowd should be given political power. For not only is the multitude not able to express its needs, but, what is more important, it is not trained to give its judgment on particular points at issue.[2]

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[1] Bryce, *ibid.*, I. pp. 165-166; II. p. 598.

[2] Laski, *op. cit.*, p. 16.

(G) How can Society add to Social Good?

While describing the concept of Civics in an earlier context, we had an occasion to define the term social good. We are here concerned with the relation between society and social good—that is to say, how far society can further social good. To answer this question we have to recount a few considerations which were mentioned in connection with the individual in society. Social progress consists not in individuals adding more and more to themselves, but in offering more and more of themselves. Not appropriation but contribution is the law of growth. If contribution is the law of growth, the potentialities of the individual are to be released in proportion to the progressive organization of society.[1] Expressed in terms of rights and duties, it means that a citizen has claims upon society only in relation to others; and that his rights as a member of society are counterbalanced by the duties which he owes to others in return.[2]

As to the means by which society can speed up social progress, we cannot do better than to listen to Prof. E. A. Ross, who gives five valuable basic principles "to save society from being clogged with out-of-date customs and institutions." These five principles are the following—Firstly, to commit the helm to younger men; secondly, to get the able into high political places; thirdly, to preserve to the individual the freedom of initiative; fourthly, to apply critical scholarship to the history of institutions; and, fifthly, to test results by measurements. Failure to adopt these

[1] Follett, *op. cit.*, p. 65.

[2] Laski, *ibid.*, p. 39; Sastri, *op. cit.*, p. 104.

methods brings about mental laziness of the people, control by the old, veneration for precedent, and an all-round static condition of society.[1]

(H) Social Trends

Certain social trends are visible in society as a whole in India, although not so markedly as in the society of the western countries. Firstly, there is a marked growth in population without a corresponding increase in the national wealth of the country. The increased national wealth has meant more of superfluity for some rather than sufficiency for the many. The second trend is the drift to the cities from the urban areas, because of the development of the means of transport, the improvement in the living conditions of the cities, and the many attractions which the cities offer to the wealthy and the spendthrifts.

2. SOCIAL INSTITUTIONS

(A) Social Institutions and Civic Cohesion

The general importance of social institutions to civic life has been expressed by Green, whose arguments may be summarised thus—Social institutions are valuable in the sense that they give reality to the capacities of will and reason in an individual, and enable such capacities to be really exercised. They render it possible for a man to realize his reason, *i.e.*, his idea of self-perfection, "by acting as a member of a social organization in which each contributes to the betterment of all the rest."[2]

All social institutions, however, have not uniformly served the great purpose mentioned above

[1] Ross, *op. cit.*, pp. 213 ff.

[2] Green, *op. cit.*, pp. 32-33.

Some social institutions like, for example, slavery have decayed or have been destroyed by man. This is because such social institutions did not exist for the well-being of all but only for the sake of the few.[1]

But the fundamental social institutions have survived the weight of ages. These are marriage, family, property, and caste. While there is no doubt that they have, on the whole, benefited mankind, they have also been responsible for the retrogression of man's civic and political condition. They have made possible an unfair manipulation of power by the few as against the many, and have made impossible the attainment of freedom by the masses.

(B) Social Institutions in detail—Marriage and Family

(i) Marriage and Family

(a) DEFINITION AND DISTINCTION

Although we are not strictly concerned with the question of the relative antiquity of the two institutions—marriage and family—, yet it may not be out of place to mention the opinion of sociolgoists on this interesting question, so that we may be able to understand the importance of the family as a social institution in the modern world.

Sociologists are divided on the question of the precedence to be given to marriage and family. At the outset it is desirable to know the difference between the two terms marriage and family. Marriage is distinguished from mating, which is sexual intercourse that rests upon an impulse of the most elemental of instincts, and stands very close to the group of reflex

[1] Laski, *op. cit.*, p. 160.

phenomena. Marriage on the other hand, as Lippert maintains, is the basis of the family organisation in any of its forms, and is the creation of social foresight.[1]

As regards the concept of a family, sociologists are likewise divided in their opinion. One view held by McLennan maintains that by family is meant a group composed, at first, of a man and his wife and children. But the position of the father and the mother is again the subject of controversy. Westermarck holds the view that the father was an element in the human family;[2] but Lippert maintains that the original family was made up only of mother and child. "It required no reflection to establish this union, no agreement and contract to bind the mother to her child. Both, however, were necessary for the inclusion of the father in the family, which therefore, did not take place until much later.[3]

This divergence of opinion concerning the relative position occupied by the father and the mother in primitive society will have an important bearing on the question of the origin of the State which we shall mention presently. For the present, we may observe that the advocates of the opposite views, however, are unanimous in their recognition of the famliy as the earliest social unit. Thus the advocates of the first view affirm that the family was the original unit, and that through the marriage of children, it brought about new marriages.[4] The champions of the view

[1] Lippert, *The Evolution of Culture*, p. 66.
[2] Westermarck, *Human Marriage*, I. pp. 37-53.
[3] Lippert, *ibid*, pp. 73-74.
[4] Cf. Garner, *op. cit.*, p. 114; Lippert, *ibid.*, p. 73.

which emphasises the importance of the mother in the primitive family, inform us that the first social state of mankind may be called primitive family. In it the fundamental constructive principle is matriarchal descent, the determination of membership by derivation from the same mother.[1] Sumner affirms that the family is an institution that was antecedent to marriage.[2]

(ii) Functions

The family is not merely biological, but economic, cultural, and political in importance. There is no doubt that primarily through marriage it regulates the permanent union of the sexes. Thereby it fulfils another function, viz., meeting the needs of human offspring. Thirdly, it nurtures the offspring during the latter's most delicate, inexperienced, and immature period of infancy and youth. But in satisfying this need, the parents themselves have to struggle hard to secure their own livelihood and that of their offspring. It is here that we see the economic side of the family. And, finally, the parents mould the character of their child, teach him noble principles, help him to enjoy pleasures, and to admire and emulate the great and the good. And when these biological, economic, and cultural duties have been performed, the family takes deep root in the social life of the community, and determines to a large extent the community's political relations.

(iii) Types of Families

Families might be classified into three categories—those regulated by the principle of descent and

[1] Lippert, *ibid.*, p. 88.

[2] Sumner, *Folkways*, pp. 348-349.

inheritance, those dependent upon persons, and those governed by status or degrees of kinship.

(a) THE FIRST CATEGORY

To the first category belong the patriarchal and matriarchal (or matrilineal) families. The term patriarchal is given to that group of a man and of his wife and children and of new families resulting from the marriage of the children, in which the authority of the father of the first family, as the eldest member of the social group, is acknowledged by the whole body of his descendants. In the patriarchal family both descent and inheritance are claimed through the father, who is the patriarch or the natural chief of the social group comprising all the members of his family.

Distinct from this is the matriarchal family which is founded on kinship through the females, and in which the mother's brother is the person who wields all authority. The difference between the patriarchal and the matriarchal types consists in the following—Firstly, in the status of the husband; secondly, in the position of the wife; and, finally, in the position of their children. In the matriarchal family, the father is not of much consequence, he may live with his wife's family, or he may be permitted to visit her occasionally; and the household will consist of the mother, her children, and her brother or brothers.[1]

Examples of the patriarchal family are almost universal; while those of the matriarchal type are found in some islands of the Pacific, in Malabar, and among some sections of the people of Assam.

[1] For a fuller account of the Mother-right or the matriarchal order, read Lippert, *op. cit.*, p. 223 ff.

(b) THE SECOND CATEGORY

Under this head are families based upon the number of persons whom a person marries. Thus families are monogamous, polygamous, or polyandrous. A family is called monogamous when one man marries one woman. If one man marries several women, there is polygamy or polygyny. And if one woman is married to several men, there is polyandry.

Examples of monogamous families are universal; those of polygyny are common among certain tribes in Africa, and among the Hindus; while those of polyandry are found only among some tribes in Tibet.

(c) THE THIRD CATEGORY

We now come to the classification of marriages with reference to the boundaries of the blood relationship of the parties. In general, a union between near relatives is forbidden among most of the civilized peoples. According to this classification, there is endogamy or the practice of marrying within the group, and exogamy or the practice of marrying outside the group. These are not mutually exclusive customs, but may exist side by side among the same people, but with reference to different groups.[1] What has brought about the endogamous nature of the family is the presence of such factors as the differences in racial origin, social status, and religion. The Hindu castes are classified under the endogamous category by Sociologists. The Muslim custom of a man marrying the daughter of his father's brother is by no means common among other people. Since earliest times the Hindus, who have tackled this question of marriage

[1] Lippert, *op. cit.*, p. 665.

with reference to the degrees of blood relationship, have forbidden a marriage within the same *gotra* or clan or group.[1]

(iv) Family and Society

The relationship between the family and the group or society is expressed by Lippert thus—That the family is the germ cell of society.[2] Of the types of families described above, the patriarchal and the matriarchal families have come in for a detailed study at the hands of historians and sociologists. Some thinkers have advocated the view that the patriarchal family was responsible for the genesis of society. They argue thus: The elementary group is the family connected by common subjection to the highest male descendant. The aggregation of families forms the *gens* or house; the aggregate of houses makes the tribe; and the aggregate of tribes constitutes the commonwealth. This view of Sir Henry Maine makes the family the earliest form of the State. According to it the political power wielded by the State is nothing but the extension of the authority wielded by the patriarch of the family.

As opposed to this patriarchal theory of the origin of the State, writers have advocated the matriarchal theory of State-origin which may be briefly stated thus: The patriarchal family was by no means universal; rude societies existed before the patriarchal societies came into existence; in these pre-patriarchal families, there were both polyandrous and the matri-

[1] It is only in our own times that some people in India are talking of legalizing *sa-gotra* marriages.

[2] Lippert, *ibid.*, p. 320.

archal types; and the former type gave place to the monogamous type, and the latter (matriarchal) gave place to the patriarchal type. This theory, as enunciated by Edward Jenks, Willoughby, and Leacock, presupposes the existence of a horde or a pack, and not a single household, and promiscuity of sexual relations in which kinship is traced through the mother.

Although historically neither of these theories can be corroborated, yet there is no doubt that they offer a plausible explanation of the origin of society in the early stages of man's development. It is true that, for example, in some countries like ancient Rome and ancient India, the patriarchal family was the dominant type of family. But this type of family has already lost its place of honour and is promising to become only a product of the past. The modern tendency is towards the monogamic type, which has finally triumphed.

(v) Family and the State

In regard to the relationship between the family and the State, there is divergence of opinion among writers on politics. For instance, some maintain that there is little connection between the family and the State. Prof. Garner, for example writes thus: "The family and the State are totally different in essence, organization, functions, and purposes, and there is little reason to suppose that one should have developed out of the other or that there should have been any connection between them."[1]

[1] Garner, *op. cit.*, pp. 118-119. Lord Bryce is also of opinion that the forms of government have practically no effect upon the family. He affirms that family relations depend much more on the structure and the religious ideas of a race than on forms of government Bryce, *op. cit.*, II. p. 575.

But the State, especially in modern times, is intimately bound up with the family, and it may even determine the well-being of the family. For example, the State influences the family when it lays down the minimum age of marriage, legalizes only the monogamic type of marriage, determines the share of inheritance as between man and woman, and, finally, permits divorce on reasonable grounds. The two important measures of reform in modern India affecting the family are the Sarda Act, which lays down the minimum age of marriage at eighteen for boys and fourteen for girls; and the draft Code of the Hindu Law Committee, under the chairmanship of Sir B. N. Rau, which proposes to permit only monogamous marriages, granting of divorce under certain conditions, and equal share of ancestral property to boys and girls.

(vi) The Family and its Future

To understand this question we must acquaint ourselves with the vicissitudes of family life in the course of the last two centuries. In the East as well as in the West, the old conditions no longer hold good. Woman is no more either subservient or secluded. The industrial inventions, the scientific discoveries, the improvements in the means of transport, the consequent demand for labour, the laxity of law in regard to divorce, and the extension of State interference even in purely maternal affairs like the instruction to the young—all these factors have been responsible for making woman more independent of man, less mindful of the hearth, and least careful about her children. It seems, therefore, reasonable to suppose that the ancient vessel of the family is about to founder on the

rock of modern civilization. Indeed, some of the political experiments conducted in recent years (*e.g.*, in the first decade of the Bolshevik Government) seem to point out to the fragile nature of this most ancient of social institutions.

But we may note at the same time that the family has shown signs of recovery from the shock which it has repeatedly received in recent years. Indeed, according to some thinkers, it promises to be as sound and strong in the future as it has been in the past. The family no more rivals the State, but thousands of families are interlaced in the larger fabric of the State, and influence it in unnumbered ways. And no wise statesman would for a moment ignore the practical importance of these deep rooted attachments.[1]

3. SOCIAL INSTITUTIONS (contd.): PROPERTY

(A) Concept of Property

We have to trace briefly the evolution of the concept of property from the earliest times till the present times, if we wish to understand how vitally the institution of property has affected man's concept of the State and his general well-being. Uncivilized man had no concept of property and did not establish a group or society on the basis of property right. As soon as man had a tool, he had the concept of property but it was restricted to the tool alone.... This primitive property showed, however, no trace of communalism: the evolution of property began with the contrary idea. The few possessions which aided in gaining

[1] Merriam, *op. cit.*, p. 28.

a livelihood were created anew by each generation,—a circumstance which did not permit the accumulation of capital. The rule of primitive times was that property went into the grave with its owner. Thus, along with the concept of property that of inheritance too was limited in scope.

The use of tools marks an advance in the life of primitive man. Then he conceived of an artificial extension of the arm into the staff. The manufacture of the staff was the first departure in the idea of private property. With this idea of a weapon is to be associated that of ornament, which, together with the former, gave rise to the idea of "taking possession" of material things. The concept of property in grazing followed next. In primitive groups there was no ownership of property, but merely common use of property. This common land was generally that upon which the primitive hordes had settled. To a later period in the history of the development of man is to be assigned the origin of the property in land and persons, covered by the term "estate". The concept of property in "land" did not arise until the later period of prevailing father-right, when land was merely the land of the vocation of the woman but not herd-property.[1]

In modern times the word 'property' connotes the right of an individual or a group of individuals to the exclusive use or ownership of a particular thing. This right is to be directed to the realization of social ends. By exercising it, the individual secures material goods

[1] Lippert, *op. cit.*, pp. 63-64, 188, 273; Gumplowiez, *Outlines of Sociology*, p. 115.

and freedom. It is here, in the realization of these two divergent aims, that the individual is confronted with the enigma of property. The difficulty is heightened when, with the progress of man, there came about inequality in wealth. This brings about the close connection between power and property, as seen, for example, in the ancient world, when helpless debtors became the slaves of their creditors, or when a captured people were dragged into captivity by their conquerors. The final stage in the evolution of property, viz., the concentration of property in the hands of a few was reached in the eighteenth century, when as a result of the Industrial Revolution an unbridgeable gulf was created between the few, who possessed property, and the many, who helped in its creation but toiled for their daily bread.

(B) Property and Society

It is this wide difference between the capitalists and labourers that explains why there is no social unity in the modern world. "The evil qualities like envy, arrogance, hatred and vanity, which are born out of a difference in the possession of property"[1]—these are the most prominent features that mark the behaviour of those who stand on either side of the gulf that divided the two great classes in the modern world. There is an unequal pressure upon the social institutions, because of the unequal distribution of wealth. "There are men in every community whose power is built not upon what they are or do, but upon the possession they embody. The influence they exercise is

[1] Laski, *op. cit.*, pp. 162-163.

not a tribute to themselves but to their wealth. They act by owning. They command the services of others to the performance of functions built upon a private will not necessarily relevant to social welfare."[1]

(C) Property and Rights

The question of the right to property is a fundamental issue. If an individual is to be his best self, it is evident that he must possess property. But it is not property without limitations. We have already seen that rights and duties are correlated. It is argued now-a-days that a citizen has the right to property, if what he does is of some service to the community. He has the right to own property provided that, by owning it, he furthers the course and volume of public welfare. It cannot be said that a man owns property if, as a result of his ownership, he gets power over the life of others. For by owning property, in this sense, an individual might prevent the development of the personality of other individuals. Therefore, the right of property is justified only to the extent that, like other rights, it is used for the realization of some functions useful to society.

(D) Property and Government

The importance of the institution of property has been acknowledged in all governments. One of the methods of distributing legislative representatives among the political divisions of the State is in relation to the amount or value of property held by each individual. The possession of property "whether of land

[1] Laski, *ibid.*, p. 161.

or personality" has also been looked upon as a test for participation in government.[1]

This test has had an adverse effect upon the structure of the State. It is unsatisfactory, especially where wealth is inherited, for the reason that it does not rest upon intrinsic merit. The system of private property as it exists in capitalistic countries is defective in so far as it does not serve the community, but merely enables its owners, who might not have exerted themselves in order to secure it, to gain economic power "without reference to the quality of wants supplied." It is precisely because the concentration of property in the hands of the few is fatal to the purpose of the State, that the Communists have attacked the institution of property. "It was that perception which Marx, in the *Communist Manifesto,* made the foundation of the most formidable political philosophy in the modern world." The communists urge that the great inequalities of wealth make impossible the attainment of liberty, because such inequalities mean the control of the engines of government to the detriment of the less fortunate by the few, who appropriate to themselves all the advantages accruing from their possession of property. The physical and mental circumstances, the legislative system, the educational system, the judiciary, and even the religious institutions—all these will be so transmuted as to reflect the whims of the wealthy, and will fail to meet the needs of the community. Since under the present system of private property, the control of the industrial machine is left to the few owners of

[1] Garner, *op. cit.*, pp. 216, 440-444.

capital, and since it does not give the single worker either a share in the control of the technique of industrial direction or permit him to work for himself as a single handicraftsman, it has been condemned as an institution that prevents the attainment of individual freedom.[1]

4. SOCIAL INSTITUTIONS (contd.): THE CASTE SYSTEM

(A) Origin and Basis of the Caste System

The caste in India is a social institution of considerable antiquity. Indologists have traced its origin to the early Vedic age when there was a caste language, and especially to one of the latest hymns of the Rig Veda—the *Purusa-sukta*—in which the beginning of the later caste system may be said to lie. Here in this famous prayer it is said that Purusa's mouth became the Brahma, his arms, the Rajanya (warrior), his thighs, the Vasiya (agriculturist), and his feet, the Sudra (or serf). But it is only when we come to the age of the *Brahmanas* that we find the four castes distinctly mentinoed.[2] Since the Vedas cannot be brought to an age lower than B.C. 2500,[3] we have to trace the origin of the caste system to that age, although it might have received its definite shape only about a thousand years after the age of the Vedas, namely, about B.C. 1500, when the *Brahmanas* might have been composed. The great law-giver, Manu, mentions in detail the duties of the castes, but his age has as yet not been fixed by scholars. The next

[1] Laski, *op. cit.*, pp. 112-113, 156, 161-162.

[2] Macdonell, *Sanskrit Literature*, pp. 33, 34, 133.

[3] Cf. B. A. Saltore, *The New Review*, for July, 1939, pp. 28-35.

earliest detailed treatment of the caste is by the famous Kautalya, who, in his incomparable manual on state-craft cited in the first chapter of this book, gives the respective duties of the four castes. This means that by the fourth century B.C., the caste system had already become an integral part of society in India.

(B) Nature of the Caste System

When we examine this ancient social institution of India, we notice that it has certain peculiar features of its own. Firstly, the basis of the caste system was originally birth. Secondly, it was also based upon occupations or crafts, and in some instances also upon territory or merely on nicknames. Thirdly, the castes were distinguished by certain food restrictions, as in the case of some castes that will not eat food or drink water from certain other castes. In this category the restriction of personal contact may also be included. Fourthly, there are certain graduations concerning social precedence among some castes. And, finally, the Hindu castes are endogamous in the sense that marriage outside the caste is forbidden.[1]

(C) Advantages of the Caste System

In the ancient times the caste system undoubtedly served useful purposes. Firstly, it helped the fusion of races, and maintained the homogeneity of Hindu society. Secondly, it served to preserve the industrial capacity of the country in the various castes, which conserved technical and industrial skill among their members. Thirdly, it laid emphasis on the principle of division of labour, and thereby made

[1] Ghurye, *Caste and Race in India*, pp. 6, 8, 18-22, 28-31.

possible increased efficiency in trades and professions. Fourthly, it gave adequate protection to individual workers or association of workers against state jealousy or state interference. And, finally, it furthered the cause of social solidarity.

(D) Disadvantages of the Caste System: Its Future

But the caste system has serious defects. Its main basis—birth—is its weakest point. Just as inherited wealth is by no means a satisfactory test of political capacity, so inherited social status is not an adequate test of an individual's ability to participate in government. Since intelligence is not the result of birth, there cannot be any "natural classes" with "natural rights" and "natural functions." Thirdly, the caste system permits the development of the personality of the individual only within the group to which he belongs, and not within the entire society. This narrows down the scope of individual initiative, and thus prevents an increase in the volume of social good. Fourthly, it prevents co-operation between members of different groups for social, religious, and political ends. And, finally, it adds to class-pride which is inimical to the interests of the community as a whole.[1]

With the progress of modern civilization, and the many avenues afforded to the individual to develop his personality, and to increase his wealth and influence, the old caste system is gradually losing its once-powerful sway, and is already in a decadent state. No doubt the great mediaeval Reformers like Kabir and Guru

[1] Cf. Ghurye, *op. cit.*, pp. 15-18; Smith, *Oxford History of India*, p. 40 (2nd ed.).

Nanak had already started a movement directed against the caste system; but their endeavours, being mainly based on religious and moral principles, did not destroy the caste system. More powerful influences were necessary to dislodge the caste system from its entrenched position, and these came in the wake of modern civilization. The most noteworthy of these influences are those relating to class and competition. Everywhere it is felt that "No one is born with his life-work cut out in advance for him. No one's task and lot are fixed by his father's task and lot." And the old idea that a son has to follow the calling of his father, has given place to the new idea that "we discover what we are fit for by experiment," and that "In a series of competitions we test the impression we make on others, size ourselves up, and find out whether there is any use in our trying for the higher occupations or posts."[1]

The individual, therefore, has today a greater chance of developing his personality, without the protection of his group, than he had ever before; and the State is prepared to protect him against his own caste. Both the Legislature and the Judiciary in India have accelerated the dismemberment of the caste system. The Caste Disabilities Removal Act of 1850 did not remove civil disabilities among the different castes, but made conversion from one caste into another religion or admission into another caste possible and legal. The Special Marriage Act of 1872 legalizes inter-caste marriages, provided the parties registered the contract of marriage, and declared, among other things, that

[1] Ross, *op. cit.*, pp. 281-282.

they did not belong to any other caste or religion.[1] The High Courts of India have, on the whole, emboldened the non-Brahmanical castes to dislodge the Brahmins from their monopoly of priesthood. In Bengal and in North India generally it is now settled that there is no office of priest recognized as such by law, and a householder may employ any one he likes for the performance of any priestly service and pay the fees to him. Although in the Madras and Bombay Provinces a similar view has been taken, yet the Bombay High Court has decreed that the hereditary priest must be paid some fees by way of compensation.[2]

Movements like those of the Brahmo Samaj, the Arya Samaj, the Prarthana Samaj, the Theosophical Society, and the work of individual social reformers have done a little to hasten the disintegration of the caste system.

As to what the future of Indian, especially Hindu, society will be, in the event of a complete disappearance of the caste system, it is difficult to prophesy for the present. Although some have maintained, not altogether convincingly, that the caste system will reappear under the new garb of the national spirit,[3] yet it appears that the days of the rigid caste system are definitely numbered; and that in the near future, it may practically vanish from Indian society.

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[1] Ghurye, *op. cit.*, pp. 152-53. The Special Marriage Amendment Act of 1923, which applies only to Hindus, including Jains, Sikhs, and Brahmans, enjoins that persons marrying under the provision of this Act, whatever their caste might be, need not make the declaration prescribed by the Act of 1872. Read Ghurye, *ibid.*, p. 153 for a criticism of this Amendment.

[2] A. B. Latthe, Memoir of H. H. Shri Shahu Chhatrapati Maharaja of Kolhapur, II. p. 373 cited by Ghurye, *ibid.*, p. 152.

[3] Cf. Radhakamal Mookerjee, *Civics*, pp. 56-57.

But lest there should be undue optimism in this direction, we may note certain considerations which are gradually assuming large proportions. These relate to the new turn the caste system has taken, and the deliberate attempts made both by the State and the people to perpetuate the caste system. The old caste spirit has given place to the communal spirit, and along with it the provincial spirit has raised its head. There is no walk of life into which the communal spirit has not entered. Although the State has done a great deal to mitigate the evil effects of the caste system, yet the State itself fosters the old spirit under a new garb when it bases franchise on communal principles introduced since 1909 by the Minto-Morley Reforms, and recruits candidates into its Civil Service on communal considerations. The example of the State is copied by all public bodies, including the Universities, which skilfully manoeuvre to allocate scholarships and posts on principles which, notwithstanding the high sounding label of impartiality and justice put on them, are nothing but a vindication of the old caste rivalry and jealousy in modern terms. And to crown it all, politicians are not wanting in this country who, not satisfied with the existing intricate problems facing the people, dwell on the negligible and reactionary differences like those of custom, manners, and religion, and preach gospels which serve only to perpetuate the communal differences and aggravate the political, economic, and social misery of the people.

5. SOCIAL INSTITUTIONS (contd.): RELIGIOUS AND CIVIC LIFE

It is not too much to presume that such thinkers, who are talking and preaching in terms of religion,

are labouring under the idea that religion should necessarily play a vital role in the political and civic life of the people. That religion in the past certainly played a great and noble part in the history of man, there cannot be any doubt. It has certainly influenced the evolution of human institutions. As Lord Bryce maintains, it has been "for the finer and more sensitive spirits the motive force behind Morality."[1] As an extension of the care for life, as a means of enforcing discipline, as a source and a sanction of morality, and as a medium of cultural evolution, religion throughout all ages and in all climes has certainly shaped man's destiny.[2] And, finally, it has been beneficial to mankind, because for ages it has brought incalculable comfort to its devotees.[3]

But no people in the twentieth century can afford to hark back to the primitive times when, as Prof. Garner relates, religion was called to the aid of rulers to seek a religious sanction for their important acts. Obedience was inculcated by them as a religious duty, and religious worship was usually supported by their governments.[4] Whatever might have been the virtues of the mediaeval State, which thus connected religion with politics, the modern State is hardly in need of the sanction of religion for its acts. Indeed, it has been discovered by painful experience that social welfare is unthinkable in terms of religious dogmas. The opinion of modern political thinkers is that religion has "not affected the substance of the social order."[5] The

[1] Bryce, *op. cit.*, II. p. 666.
[2] Lippert, *op. cit.*, pp. 28-33, *et passim*.
[3] Laski, *op. cit.*, pp. 98-99.
[4] Garner, *op. cit.*, p. 91.
[5] Laski, *op. cit.*, pp. 98-99.

great experiment in the U.S.S.R. has shown that the prospects of political progress are not necessarily linked up with those of religious advancement. It is much to be hoped, therefore, that people should, while dealing with the civic and political problems of this country, talk less of religion which, when all things are said in its favour, is ultimately a matter which may be left in the background.

6. SOCIAL PROBLEMS

While describing above the social institutions, mention was made of two evils which are really major social problems. These are the inequality of wealth and the grave danger of the communal spirit. The former is related to the problem of the Labour-Capital struggle, and the latter, to communalism and provincialism. In addition to these two are other social problems like social vice and civic apathy.

(A) The Labour-Capital Struggle

The labour-capital struggle is not confined to any particular country: it has become one of the biggest of world problems. The concentration of capital in the hands of the few, the influence of machinery and business combinations on industrial relations, and the tendencies of workmen and employers to aggregate into large bodies, each group tenaciously defending its rights—these are some of the causes of the Labour-Capital struggle all over the world. This has truly become a huge social problem; and upon its solution depends the welfare of society.[1]

A few of the methods to lessen the conflict between labour and capital may be given here, as sug-

[1] Ross, *op. cit.*, p. 328 ff.

gested by Prof. Ross. Firstly, the concept of private property must be changed. Private property is to be looked upon "in the large sense a public trust," and even large concerns like railroads, etc., should be considered only as public utilities. Secondly, there should be an extension of social control over industry. Protection of the lives of workers against accidents, improvement in the working and living conditions, and the relaxation of laws relating to the immigration of workers will go a long way in the direction of social control over industry. Thirdly, the workers should have a share in the exercise of political power. And, finally, autocracy should give place to democracy in industry.[1]

(B) Communalism

We had an occasion to mention this growing evil in a preceding context. We can neither analyse the great question of communalism, nor suggest a comprehensive solution of the same, in a small work like this. However, we have ventured to suggest one remedy above, *viz.*, that religion may be given a place of secondary importance in the affairs of man. It might further be suggested that a country-wide attempt should be made to study the language, history, and culture of the minority communities with whom our lot has been cast for centuries. Thirdly, we might with profit adopt certain "time-tested means of keeping sectional feeling and loyalty from cutting into national feeling and loyalty." These refer to the principle of equal representation to equal numbers, and proportional sharing of the burdens and benefits

[1] Ross, *op. cit.*, pp. 328 ff.

of government. Fourthly, "each section should be willing to listen to the leaders of other sections."[1] But the complex communal problem of India needs a more comprehensive and detailed treatment, and the sooner we set about solving it, the better it will be for the whole country.

(C) Other Social Problems

Two other social problems which we have to solve are those relating to social vice and civic apathy. The magnitude of the former is hardly realized by us now; but it is eating into the vitals of society, and it threatens to undermine our very existence. Poverty and ignorance are the two main causes of its prevalence. This evil may be put down only by co-ordinated social effort backed up by State legislation. It is only an organized society which is economically and intellectually alert and strong, that can stamp out this grave evil in India.

As regards civic apathy, we may observe that this is a problem that exists in almost all countries with the exception, perhaps, of the U.S.S.R. A very large section of the people, especially in the rural areas, is indifferent to questions of public importance. Their position has been described thus by Lord Bryce—To them business, family affairs, and social pleasures cover the whole of life; so, though they count as possible voters, they do not count for the purpose of expressing (except almost mechanically at elections), a real popular will.[2] The same authority enumerates the classes of people who are generally apathetic to

[1] Ross, *ibid.*, pp. 298 ff.

[2] Bryce, *op. cit.*, I. p. 323.

political life. These are the peasants, the labourers, the lower middle classes, men of letters and science, and "most of the teachers in the Universities and high schools, as well as many of those who follow the learned professions." Although these latter "have knowledge and capacity, an admirable power of expression and a patriotic interest in the country's fortune,"[1] yet their indifference to political affairs is responsible for their opinion not making itself felt on governmental questions.

The consequences of continued civic apathy are serious for the State. It impairs the influence of public opinion; it prevents the formation of the national will; it gives a chance to unworthy persons to take hold of political power; and it saps the foundation of social life. We may recall here what we mentioned in an earlier connection, *viz.*, that it is only when a citizen is alert and active, that he will be in a position to scrutinize the actions of the State and to prevent the misuse of power by those who have been charged with the task of administration.

[1] Bryce, *ibid.*, I. p. 324. These words of Lord Bryce which refers to the French people, may be, on the whole, applied to the members of the liberal professions in India.

CHAPTER IV

THE MACHINERY OF THE STATE

"No State can survive that is half-bond and half-free."
—ABRAHAM LINCOLN.

Summary: 1. Distinction between Society and the State. 2. Definition of the State. 3. The Individual and the State. 4. Forms of the State. 5. Dictatorship and Democracy. 6. Functions of Government. 7. Constitutions. 8. Direct Legislation. 9. Good Government, Popular Government, and Self-Government. 10. Socialism. 11. Public Opinion. 12. Political Parties. 13. Civil Service.

1. DISTINCTION BETWEEN SOCIETY AND THE STATE

(A) Introduction

In the preceding pages we dealt with the individual and the society in which he lives. We shall now be concerned with the most abiding and powerful work the individual may do in society. Man's inherited instinct, as we have seen, drives him to live with his fellows—that is to say, to be a member of society; while his acquired impulse compels him to work together with his fellow-beings towards the formation of an organisation or an association or merely an organ called the State.

(B) Comparison between a Social Institution and the State

We shall give below a detailed definition of the State; but for the present we may merely affirm that the State, in its simplest form, is only a social institution. In this sense it is like other social organisations like the family, the church, etc., which expect loyalty from their members, perform a number of functions,

and possess power,—all of which are exercised for the common good.[1]

In a still more modern sense the State is something more than a mere association. The State is to be regarded not only as an association among others, but also "in fact and wholly in the logic of its functions" a corporation. "It commands only because it serves; it owns only because it owes. It creates rights not as the lordly dispenser of gifts, but as the agent of society for the creation of rights. The servant is not greater than his master. As other rights are relative to function and are recognized as limited by it, so too the rights of the state *should* be. It has the function of guaranteeing rights."[2] In this sense the State is only an organ of society existing for social good.

(C) Difference between Society and the State

The State differs not only from social institutions found in society, but from society itself. Prof. MacIver states this difference thus: "To identify the social with the political is to be guilty of the grossest of all confusions, which completely bars any understanding of either society or the state."[3] The State differs from social institutions, and from society itself, in regard to loyalty, power, will, and finally, in regard to the ends in view. Unlike social institutions, the State can exact loyalty from its members, extend its power, and enforce its will.[4]

As regards the State and society, it may appear outwardly that both are conterminous with each other.

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[1] Laski, *op. cit.*, pp. 26, 132.
[2] MacIver, The *Modern State*, p. 480.
[3] MacIver, *op. cit.*, pp. 4, 5.
[4] Laski, *op. cit.*, p. 37.

But in reality the difference between the two is fundamental. The State is no doubt, as Prof. Laski maintains, the keynote of the social order,[1] but it is not identical with society itself. There are many problems which the State will undertake, but which society will shrink from undertaking. The will of the society is not the will of the State. The former comprises a variety of interests which may not be effectively enforced; but the latter is "a particular aspect of the whole," and is especially formed by the small number of men whose decisions are legally binding upon the community, and who form the government.

Therefore, it is quite clear that "there are social forms, like the family or the church or the club, which owe neither their origin nor their inspiration to the state; and social forces, like custom or competition, which the state may protect or modify, but certainly does not create; and social motives like friendship or jealousy, which establish relationships too intimate and personal to be controlled by the great engine of the state. The state exists within society, but it is not even the form of society. We see it best in what it does. Its achievement is a system of order and control. The state in a word regulates the outstanding external relationships of men in society."[2]

(D) Position of the State in Society

If the State, then, is not identical with society, we have to find out its position in the community. It is precisely here that we see the value of the study of Civics. For Civics teaches us that the State for all

[1] Laski, *ibid.*, p. 26.

[2] Maclever, *ibid.*, p. 5.

practical purposes is Government—that is to say, those few persons, "the real rulers," who legislate, and whose decisions are legally binding upon the whole community.

(E) The State and Social Good

Whether these few persons are seen or not, the State is as much bound to further social good as any other social institution. It must so perform its services or functions as to enable the individual to acquire those capacities which are conducive to social good. This means that the State should give expression to the wants and desires of its citizens, maintain their rights, and build up an educational system which will not turn them into scribes and servants, but will create an environment "in which an appreciation of the best lies open" to all of them.

(F) Importance of the Modern Concept of the State

The above ideas are important in the sense that, firstly, they help us to discard the ancient and mediaeval notions of society and the State; secondly, to arrive at a new concept of law; and, thirdly, to understand, the modern idea of democracy.

To the ancient Greeks as well as to the later mediaeval thinkers, like Rousseau, Hegel, and even Bosanquet, the State and society were equal. The danger of the ancient and the mediaeval concept is that "it paralyses the will," in so far as it does not give to the individual the confidence to judge for himself the action and motive of the State, which he comes to look upon as truly representative of himself. Modern thinkers deny that such a thing like the true self of an individual exists at all, it is only "the total impression"

which an individual might produce upon his fellow citizens.[1]

The modern realistic view of the distinction between the State and society also helps us to recast our concept of law. Laws are no more looked upon as necessary relations of society, as Montesquieu thought;[2] but they are commands issued to be as much obeyed by the individual as by the State itself. "The state is not exempt from the imperative, 'thus far and no further,' to which all agencies are subject."[3] The integrity of the State is determined not only by the manner in which it compels its citizens to obey its laws, but also by the way it besets his life with the proper judicial safeguards.[4] Law is not, as the eighteenth century thinkers maintained, something which the individual invoked against the State, but it is something created by society through which the individual found a means of securing his interests so far as society recognized them."[5]

And, finally, the modern concept of society and the State enables us to grasp better the idea of democracy which we shall elucidate presently.

2. DEFINITION OF THE STATE

(A) The Ancient Concept

Even for the purpose of defining the State, we notice that there has been a gradual evolution of the idea of the State. This will be evident when we note, firstly, the ancient idea, next, the mediaeval view, and,

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[1] Read Laski, *op. cit.*, pp. 30, 31, 34.
[2] Laski, *ibid.*, p. 91
[3] Maclver, *op. cit.*. p 480
[4] Laski, *op. cit.*, pp. 128-129.
[5] Follett, *op. cit.*, p. 122

finally, the reasons which may be responsible for the modern idea.

To the Greeks as well as to the Romans, the State was identified with the city (*polis*). The Greeks identified the State with the city-state; and the Romans likewise identified the *civitas* or *republica* with the State. Both in Athens and in Rome, the provinces outside the city-state were considered merely as dependencies of the mother city.[1]

(B) The Mediaeval Concept

Another stage in the growth of the concept of the State is reached in the early Middle Ages, when the Germans conceived the idea of territorial commonwealth as expressed by the terms *Landtag, Landesstaatsrecht,* and *Landesgesetz.*[2]

In the later mediaeval ages, the Italians first used the word *Stato* (the State), enlarging thereby the ancient Roman conception of the city-community. Then in the sixteenth and the seventeenth centuries, the English, the French, and the German peoples used the words *state, etat,* and *staat* respectively.[3]

Thus we see that the city-municipal conception of the Athenians gave place to the territorial idea of the Germans, which later on was unified by the Italians, the English, and the French peoples to mean a municipal-urban-territorial organization.

(C) The Modern Concept of the State and Government: Reasons for the same

The ancient Athenian conception has got to be abandoned, because of the following reasons: Firstly,

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1, 2 *and* 3 Garner, *op. cit.*, p. 42.

the modern State has out-grown the ancient city-state in size and population. It is impossible to have in a modern State any equality without the greatest decentralisation; while in the ancient city-state, equality was possible without the decentralisation of authority. Secondly, the modern state is faced with complex problems, especially of an economic nature, which never confronted the city-state.[1]

Therefore, in modern times the State has come to mean the community of persons more or less numerous, permanently occupying a definite territory, independent of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience.[2]

But, according to still more recent opinion, although the State is "a sovereign community," politically organized for the promotion and satisfaction of common ends, yet it is not a reservoir of power," and its will "is not a will charged with special or pre-eminent authority."[3] In terms of society, the State is a territorial society divided into government and subjects claiming within its allotted area a supremacy over all other institutions."[4] And Government, we may observe here, is the collective name for the agency, magistracy, or organization through which the will of the State is formulated, expressed, and realized.[5]

This modern concept of the State is the result of its territorial growth, the complexity and variety of

[1] Laski, *op. cit.*, pp. 170-171.
[2] Garner, *op. cit.*, p. 41.
[3] Laski, *ibid.*, p. 132; Garner, *ibid.*, p. 44.
[4] Laski, *ibid.*, pp. 21, 105.
[5] Garner, *ibid.*, p. 44.

the problems that face it, the new forms of property, a change in the nature of religious belief, and physical conditions beyond the control of man.

3. THE INDIVIDUAL AND THE STATE

If the State is "a sovereign community" and "a fellowship of men aiming at the enrichment of the common will,"[1] then, what is the relationship of the individual to the State? Historically the causes which have made the individual obey the State are the herd-instinct of implicit acceptance of orders, fear, habit, utility, and, finally, "the complex facts of human nature." The relationship between the individual and the State is, however, neither that of antagonism nor that of subservience, but it is essentially one of conditional co-ordination. If the State desires to be enlightened, it must respect the individuality of the citizen; if the citizen wishes to preserve his individuality, he must respect the State that is enlightened.[2] But the individual cannot develop his personality unless, as already remarked in an earlier context, he is disciplined, alert, and has the right character. It is only when citizens are endowed with the requisite qualities that they will enable the State to function in the proper manner and to confer freedom upon them. If they are indifferent to the State, or careless about their duties, "the most ingenious mechanism" cannot prevent an abuse of power.[3] And with an abuse of power by those who are termed the Government, the rights of the citizens are jeopardized.

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[1] Laski, *ibid.*, p. 37.
[2] Laski, *op. cit.*, p. 172.
[3] Laski, *ibid.*, pp. 142, 171.

4. FORMS OF THE STATE

(A) Aristotle's Classification

(i) Forms of the State as given by Aristotle

Following Plato, Aristotle in his Politics, has given the following classification of governments:—

We usually call a state which is governed by one person for the common good, a monarchy; one that is governed by more than one, but by a few, an aristocracy.... when the citizens at large govern for the public good it is called a polity, which is also a common name for all other governments."

But Aristotle subdivided the above three forms which he calls pure or normal, into corrupt or abnormal, according to the manner in which or motive with which the sovereign power was exercised. Thus, a kingdom may degenerate into a tyranny, an aristocracy into an oligarchy, and a polity into a democracy. Now a tyranny is a monarchy when the good of one man is the object of government. An oligarchy concerns only the rich, and a democracy only the poor; but neither of them has a common good in view.[1]

(ii) Criticism of Aristotle's Classification

The above classification of Aristotle was followed till and after the sixteenth century, when political thinkers found it defective. These critics of Aristotle's classification were Hooker (sixteenth century), Hobbes (seventeenth century), and Rousseau (eighteenth century). The existence of absolute and limited monarchies in the Middle Ages was one of the reasons why the classification of Aristotle came in for criticism at the hands of political thinkers.

[1] Aristotle, *Politics*, III. 7; *Ethics*, VIII. 12.

Modern writers on Politics have enumerated the defects of Aristotle's classification, two of which have already been mentioned above. Firstly, the modern country State has outgrown the size of the city-state, and, therefore, Aristotle's classification is inapplicable to it. Secondly, the modern State is faced with problems which are both complex and great, while the city-state was faced with questions which were simple and small. Thirdly, the classification of Aristotle is based upon the number of persons in whom the sovereign power of the State rests. But modern experience has shown that the number of persons may not necessarily reflect the capacity of the masses for self-government. Fourthly, Aristotle did not distinguish between State and Government; whereas, in modern times, a distinction between the two is real and necessary. And, finally, Aristotle's classification would be inapplicable to a modern State like England where the legal sovereignty lies in the electorate.[1]

(B) The Modern Classifications

(i) Introductory Remarks

Before we enumerate the modern classification of States, it is necessary to dispose of the classifications that were common in the eighteenth and the nineteenth centuries. For example, some writers mentioned theocratic and non-theocratic States. A theocratic State meant a State in which the sovereign ruled directly without the help of human agents, the ultimate source of his power being traced to some spiritual being.

[1] Garner, *op. cit.*, pp. 125-128.

Then came the idea of the mixed States, which were composed of monarchical, aristocratic, and democratic elements. This classification was really an elaboration of Aristotle's idea of the mixture of oligarchy and democracy.[1]

(ii) The Modern Classifications in detail

Since none of the above classifications is applicable to the modern States, classification of states into the following forms is now considered plausible.

States are, firstly, either monarchies, aristocracies, or democracies. Secondly, they are either Parliamentary or Presidential. Thirdly, they are either Unitary, or Federal, or Confederal. And, finally, they are either Burcaucratic or Popular.

(a) MONARCHIES, ARISTOCRACIES, AND DEMOCRACIES

The modern classification rejects Aristotle's identification of the State with Government, because Government is only an instrument or contrivance through which the State acts in all cases in which it does not act by direct operation of its sovereignty;[2] but accepts the other basis, namely, that of the number of persons in whom the supreme power is vested.

According to this basis, a monarchy is that form of government in which the supreme power is vested in a single person; aristocracy, that form of government in which the supreme governing authority is entrusted to a small group of persons; and democracy, that form of government in which the great majority of citizens share in the government, either directly by means of

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[1] Garner, *ibid.*, pp. 134-135.

[2] Lieber quoted in Garner, *op. cit.*, p. 169.

the Initiative or the Referendum, or indirectly, through a popular assembly of the representatives of the citizens themselves.

Each of these may be subdivided thus: monarchies may be either hereditary or elective or both, and absolute or limited; aristocracies may be either of wealth or hereditary or official or military or a combination of all these elements; and democracies may be pure or direct, and representative or indirect.

(1) *Monarchies.*—The subdivision of monarchies into hereditary and elective rests on the principle of the source and tenure of office. The monarchies that survive today are mostly hereditary; while the elective monarchies existed in early Rome, in the mediaeval Roman Empire (in which the Emperor was elected by a College of Electors), and in ancient Poland. In a limited sense the English monarchy is still elective, since Parliament claims and exercises the right to regulate the law of succession at its pleasure.[1]

Monarchy is absolute when the ruler is sovereign, and the State and the government are legally and politically identical; and it is constitutional or limited, when the ruler is limited in powers by a constitution which he has sworn to support, and when, therefore, he becomes only an organ of government.

Although the days of the monarchical government seem to be over, yet we may enumerate some of its advantages. It is argued on behalf of a monarchy that a monarch is ever intent on promoting the welfare of his subjects, that his resolutions are not

[1] Garner, *ibid.*, p. 173.

irrevocable as those of the rival interests in a national assembly, and that, unlike an assembly, he cannot disagree with himself out of envy or interest. But as against these merits, we may mention that the wisdom of a monarch is merely a matter of accident, that his association with his subjects is by no means universal, that he is most often not prepared to take his subjects into his confidence, and that the privileges of birth and divinity upon which monarchy essentially rests, are no tests of political wisdom.

(2) *Aristocracies.*—Aristocracies may be based on wealth, property, ownership of land, birth, office, intellect, or military skill, or a combination of some or all of these principles. Some of the special features of an aristocratic government are the following:—its reliance on quality rather than on quantity, and on character rather than on numbers; its emphasis on birth and political training; and its veneration for long-established custom and tradition. Since emphasis is laid on a quality possessed by the few wealthy, aristocracy is, according to Prof. Seeley, only a euphemistic name for oligarchy, which is itself a "perverted" or "diseased" form of aristocracy, in which the few govern in their own interests.[1]

There is no doubt that government by aristocracy has been beneficial in those countries where, thrown between monarchy and democracy, it has restrained monarchy and curbed democracy, and has been noted for moderation. Further, it has also possessed vigour, and has made for strength, efficiency, and security. There is no doubt that, as John Stuart Mill truly

[1] Seeley, *Introduction to Political Science*, pp. 323, 331.

remarked, "the governments which have been remarkable in history for sustained mental ability and vigour in the conduct of affairs have been generally aristocracies," although, as he remarks, they have been aristocracies of public functionaries—that is, of men who have made public business an active profession and principal occupation of their lives.[1]

But these merits of an aristocratic government are more than counter-balanced by its defects. Political experience has shown that there is no such thing as hereditary capacity to govern; that property, whether landed or personal, is an unsatisfactory test of political wisdom; and that there is a natural tendency in all aristocratic governments to be arrogant, conservative, narrow-minded, and to prevent the "wholesome progress" of the mass of the people. The fact that throughout history—in the ancient Greek world, in Rome, and in mediaeval Germany—they degenerated to the detriment of the mass of the people, proves that their "pure nature" is only a myth.[2]

(3) *Democracies.*—Democracies are pure or direct, when the will of the State is formulated and expressed directly by the people themselves "in their primary capacity." The best example of a modern democracy is that of Switzerland, where in four Cantons the people rule themselves directly. Representative democracy is that in which the will of the State is formulated and expressed through the representatives of the people. Representative democracy is also called a republic or a republican government.[3]

[1] Mill, *Representative Government*, p. 107.
[2] Cf. Garner, *op. cit.*, pp. 217-218.
[3] Garner, *ibid.*, pp. 174-175.

(b) PARLIAMENTARY AND PRESIDENTIAL GOVERNMENTS

This classification is based upon the following considerations—Firstly, on the relation between the Legislature and the Executive; and secondly, on the manner in which governmental power is concentrated.

According to this classification, governments are parliamentary and presidential. Parliamentary government is also called Cabinet, Ministerial, or Responsible government. Under this form the real executive, which is the ministry or the cabinet, is *immediately* or *legally* responsible to the legislature for its legislative and administrative acts, and *mediately* or *politically* responsible to the electorate, while the nominal or titular Executive Head occupies the position of irresponsibility.[1] Great Britain, Belgium, Italy, and France are examples of this type of government.

Presidential government is that government in which the Executive does not depend upon the Legislature either for its tenure of office or its action or its policy. Examples of this type of government are the U.S.A., Switzerland, and most of the Latin American States. In a modified form the Presidential government existed after 1918 in Germany, which possessed ministerial but not parliamentary responsible government.[2]

Merits and Defects of Parliamentary and Presidential Types of Governments.—We may now examine the merits and defects of these two types of government. Parliamentary government functions suc-

[1] Garner, *op. cit.*, p. 180.
[2] Garner, *ibid.*, p. 187.

cessfully only when well-defined political parties exist; when the Executive is supported by the Legislature; when the ministers, who form the Executive, by being present in the Legislature, can correctly appreciate and interpret the will of the Electorate through its representatives in the Assembly; and when those who form the Executive are made really responsible in the sense that their actions are scrutinizable by the Assembly and they are made responsible for their acts while in office.

But the very foundation upon which the parliamentary government rests, *viz.*, the party system, is its weakest point. For the parties may degenerate into factions, which may discuss questions other than those of national importance. Secondly, where the Executive depends upon the party caucus, as in France or in Australia, it may lose the confidence of the Electorate. Thirdly, the Executive may arrogate to itself the right of initiating legislation, and thereby rendering the members of the Legislature powerless in matters of legislation, as in the British Parliament. And, finally, the stability of the parliamentary government may be made precarious, if its life depends upon the support of the majority and the passage of a bill on the whims and fancies of a Legislature.[1]

The Presidential government has advantages and disadvantages. Its merits are the following: Firstly, since the position and powers of the Executive are fixed by the Constitution (in governments that have written constitutions), there is greater responsibility and strength in the Executive than under the Parlia-

[1] Bryce, *op. cit.*, II. pp. 348, 390, 495-6, 513.

mentary government. Secondly, the independent position of the Executive, as typified in that of the President of the U.S.A., is further enhanced by the immunity from judicial control. And, thirdly, since the ministers, who form the Cabinet in the Presidential government, are directly responsible to the President, the Executive can give continuity to administration, because it does not depend upon the Legislature.

This irresponsibility and independence of the Executive towards the Legislature is the main defect of the Presidential form of government, because it makes impossible the close co-operation between the Executive and the Legislature, which is essential for the smooth working of government. The representatives of the people cannot question the administration excepting by means of Committee; while the administration, excepting through a Committee, cannot be in touch with the representatives. Hence, delay, confusion, and "working at cross purposes," especially in financial matters, are the result of this want of harmony between the Legislature and the Executive. Further, the Executive Head, whose term of office is fixed by the constitution, may become so powerful that he may continue in office in succession, and may thereby give a dictatorial touch to an elective office, as recent events have shown in the U.S.A.

(c) UNITARY, FEDERAL, AND CONFEDERATE GOVERNMENTS

The distinction between the Unitary, Federal, and Confederate governments centres round the question of the concentration and distribution of power.

A Unitary or centralized government is that government in which the powers of government are concentrated in one supreme organ or organs, which are located at one common centre, and from which all local governing authorities derive their existence and powers. Examples of unitary governments are Great Britain, France, Portugal, Italy, and the minor states of Europe.[1]

A Federal government is that government in which the power of government is distributed by the constitution between a central organisation and a number of local organisations, the latter of which do not depend upon the former, but on the constitution itself. It is a system of central and local government in which neither is subject to the control of the other.[2]

A Confederate government is that in which there is a central organisation and local governments, but instead of a single sovereignty there are as many sovereignties as there are local governments.[3]

(d) BUREAUCRATIC AND POPULAR GOVERNMENTS

Governments are divided into Bureaucratic and Popular forms according to the organisation and spirit of the administrative source. When the administration is conducted by officials especially trained for the public services, who enter the employ of the government only after a regular course of study and

[1] Garner, *op. cit.*, pp. 191-192. Decentralization, we may note here incidentally, means the development of local government and the transference to it of as many administrative functions as possible. Decentralization relieves to a great extent the strain upon the Central Government. (Bryce, *op. cit.*, II. pp. 478-9.)

[2] Garner, *op. cit.*, pp. 191-192.

[3] Garner, *ibid.*, p. 196.

examination, and who serve usually during good behaviour and retire on pensions, we have a Bureaucratic government. While a Popular government is that government administered by persons drawn at regular intervals from the people, who after a brief service retire to the private walks of life.[1] This ideal form of government is non-existent at present.

The Bureaucratic government has merits and defects. It ensures skill and accumulates experience, and under certain conditions, makes for economic administration.

But its defects are more numerous than its advantages. The administrators in a Bureaucracy, because of their training, position, and power, degenerate into an arrogant class, and always look upon themselves "apart from the rest of the population, possessing different ideals and interests." They become irresponsible in a large country, and "little affected by public opinion." A Bureaucracy is "marked by an excessive formalism, is inclined to parade and pomp, and has a tendency to over-emphasise administrative routine rather than conditions and principles,—in short, it tends, as Burke remarked, to think more of forms than of substance."[2] The disease from which a Bureaucratic government always suffers is routine. Bureaucratic governments "perish by the mutability of their maxims and still more by the universal law that whatever becomes a routine loses its vital principle." A Bureaucratic government then becomes what Mill called "a pedantocracy."[3]

[1] Garner, *ibid.*, pp. 197, 199.

[2] Garner, *ibid.*, pp. 197-198.

[3] Mill, *Representative Government*, pp. 109-110.

The best example of an efficient Bureaucracy is that of the German Government, especially from 1720 till 1808. According to Lord Bryce, the German Bureaucracy is the best in the world.[1] Bureaucracy exists in England, in India, and in the U.S.S.R.[2]

5. DICTATORSHIP AND DEMOCRACY

(A) Introduction: "Failure of Democratic Government"

Since we are living in an age when democracy has been criticized and threatened by dictatorship, we should know what is meant by the term dictatorship, and whether democracy can survive the modern fusillade against it. "Representative government, party organisation, majority rule, with all their excrescences, are dead wood.... Representative government has failed. It has failed because it was not a method by which men could govern themselves."[3] Thus do its critics condemn it.

One reason why such a judgment has been passed on democracy is the successful attempt made by the Fascist, the Nazi, and the Soviet States, which have hurled the mightiest challenge ever known in history at Representiative government in general. It must be admitted that the rise of dictatorships in Europe in the twentieth century was to a large extent due to the abuse of the majority rule and the failure of the "Ballot-box democracy" in the Western countries, and to the unequal distribution of wealth and power by the Allies at the end of the 1914-1918 World War.

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[1] Bryce, *op. cit.*, I. pp. 49, 309; II. pp. 395, 401.
[2] Garner, *op. cit.*, p. 198; Bryce, *ibid.*, II. p. 647 ff.
[3] Follett, *op. cit.*, pp. 4, 5.

(B) Change in the Concept of Democracy

(i) In the Ancient Times

The concept of democracy, like other concepts discussed in this book, has undergone a change in its connotation. To the Greeks it meant only the rule of the many as opposed to the rule of the monarch or the rule of the few. For nearly fifteen centuries after the downfall of the Greeks, there is no concept of democracy in Europe. The struggle between the first two Stuarts and their Parliaments in England marks an important stage in the evolution of the concept of popular government from the old feudal type to the modern democratic type. The American and the French Revolutions ushered in the ideas of Liberty, Fraternity, and Equality which had a most profound effect on the course of events in the succeeding ages in Europe.[1]

(ii) In the Modern Times

Democracy has been defined in various ways by modern writers. For example, Lord Bryce writes thus: "Democracy really means nothing more or less than the rule of the whole people expressing their sovereign will by their votes."[2]

Another political thinker maintains that democracy is not liberty and equality, it is not the majority rule, it is not the crowd, but it is "the rule of an interacting, interpermeating whole." According to this writer, democracy is a "great spiritual force evolving itself from men, utilising each, completing his incompleteness by weaving together all in the many-

[1] Bryce, *ibid.*, I. p. 30, 40 ff.

[2] Bryce, *op. cit.*, I. Intr. p. VIII.

membered community life which is true Theophany."[1]

Prof. Laski thus defines democracy—"A democracy, in other words, must if it is to work, be an aristocracy by delegation."[2]

(C) The Bases of Democracy

Whatever may be the divergence of opinion among political thinkers, on the definition of democracy, it is evident that they are all agreed upon the supreme need for it in political life. This is clear when we note their views on the bases of democracy. Thus Lord Bryce writes about this question:—"The Sovereignty of the People is the basis and the watchword of democracy."[3] The relationship between the citizen and democracy is given by him in the following words:—"Popular Government rests upon the principles that it is every citizen's business to see that the community is well governed. Each man, rich or poor, learned or ignorant, is alike bound to discharge his duty as a voter, or a representative, or an official, or a juryman, according to the measure of his powers. In this concentration of all the disinterested activity and wisdom the community possesses the strength of democracy was expected to lie."[4] And, finally, he writes thus:—"Democracy is based on the expectation of certain virtues in the people, and on the tendency to foster and further develop those virtues. It assumes not merely intelligence, but an intelligence elevated by honour, purified by sympathy, stimulated by a sense of duty to

[1] Follett, *op. cit.*, p. 161.
[2] Laski, *op. cit.*, p. 43.
[3] Bryce, *ibid.*, I. p. 161.
[4] Bryce, *ibid.*, II. p. 536.

the Community. It relies on the people to discern these qualities and choose its leaders by them."[1]

(D) Principles of Democracy

Writers are disagreed on the principles upon which democracy rests. One set of thinkers maintains that "the democratic form of governments today are founded on the theory that any honest and self-supporting male citizen is, on the average, as well qualified as another for participating in the business of government.[2] Another body of thinkers maintains that nowhere can we find the principle that one man is as good as another.[3]

The correct view seems to be the one expressed by Jefferson that the principle of democracy rests on confidence in the self-governing capacity of the great mass of the people and in the ability of the average man, or average men, to elect rulers who will govern in the interests of society.[4]

(E) Kinds of Democracy

Democracies have been divided into two kinds—the pure and the representative types. The pure type is also called primary or direct democracy, while the representative type is called indirect democracy.

The difference between the two kinds of democracy lies in the manner in which the will of the State is expressed, and in the areas where they function. In pure democracy, the State's will is ascertained and expressed directly and immediately; while in a

[1] Bryce, *ibid.*, II. p. 666.
[2] Garner, *op. cit.*, p. 215.
[3] Seeley, *op. cit.*, p. 327; Sidgwick, *Elements of Politics*, p. 610.
[4] Jefferson cited in Garner, *ibid.*, p. 219.

representative democracy, the State's will is formulated and expressed indirectly, through the people's representatives.

Moreover, pure democracy functions best in States with a smaller area, the voters of which are comparatively few, and their needs not multifarious; while representative democracy is best suited for large States, with numerous people, whose problems are complex.

Of these two types, the pure democratic type exists in the modern world in Switzerland and in a few states of the U.S.A.; while the repesentative type prevails elsewhere, because it seems to be better suited to the growing needs of the modern world. But even in countries where the representative type flourishes, it may be noted that "the institutional forms of democracy," like the Initiative, the Referendum, the Recall, and proportional representation, reveal the increasing self-consciousness of the people.[1]

(F) Democracy and Liberty

Notwithstanding the fact that eminent thinkers like Lecky and Maine have denied that there is any connection between democracy and liberty,[2] yet modern opinion definitely traces the relationship between the two through character. Freedom is essential to the development of character; and character, as we have already seen, is a cardinal virtue in a citizen. The minimum amount of freedom in a community is

[1] Bryce, *op. cit.*, I. p. 410, (n); Garner, *ibid.*, p. 230.
[2] Read Garner, *ibid.*, pp. 225-226.

necessary so that every citizen is given the fullest opportunity to develop his individuality.[1]

But here we are confronted with a difficulty, to the nature of which we referred in an earlier context, while dealing with the modern concept of citizenship. We had an occasion to affirm that, in order to further citizenship, certain uniformities of conduct are necessary. It may be argued that uniformity as secured in a democracy would tend only to dullness, and that "politicl equality tends to depress individuality, and originality, disparaging genius."[2] James Russell Lowell gave an answer to the charge against democracy, when he said that it should aim at producing "not an higher average man, but the highest possible type of manhood in all its manifold varieties."[3] Therefore, in a democracy emphasis is laid only on such of the uniformities of conduct as conduce to the development of the best in the individual.

(G) Democracy as a Form of the State and a Form of Government

As a form of the State democracy is one in which the exercise of sovereignty rests with the mass of the population; and as a form of Government, it means the great mass of the adult male citizens sharing in government, either through the choice of their agents, through participation in the enactment of laws or by means of the Initiative or the Referendum, or through a popular assembly of all the citizens.[4]

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[1] Laski, *op. cit.*, p. 100.

[2] Bryce, *op. cit.*, II. 569 ff.

[3] See the Frontispiece of this book; Bryce, *ibid.*, II. p. 574.

[4] Garner, *op. cit.*, pp. 125, 170.

(H) Democracy—Its Merits

The great advantage of democracy is summed up in the statement that "it serves as a sort of training school for citizenship."[1] Mill has expressed the relationship between democracy and citizenship in the following words:—The most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves and the first consideration in judging of the merits of a particulur form of government is how far it conduces to foster intellectual and moral qualities in the citizens. The government which does this best, he adds is likely to be the best in all other respects. Government is thus an agency of education as well as an organisation for managing the collective affairs of the community.[2] Of the types of government, especially in the modern world, it is only the democratic type that may be said to secure these advantages to the greatest extent. And democracy as a form of government has undoubtedly dispelled the old mistrust of government, when it was virtually in the hands of either one person or a propertied class.[3]

These advantages are prominently visible in the U.S.A., where the citizen has learned to look to government for help and protection in matters too big for him to deal with; and where, as De Tocqueville remarked long ago, the people take an active interest in public affairs, with natural patriotism and a high degree of intelligence in regard to political matters.[4]

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[1] Garner, *ibid.*, p. 222.
[2] Mill, *op. cit.*, p. 29.
[3] Ross, *op. cit.*, p. 226.
[4] Tocqueville cited in Garner, *op. cit.*, p. 222.

(I) Democracy—Its Weakness

But the U.S.A. affords an example of a government in which we can see some of the demerits of democracy. For instance, the very principle upon which it rests, *viz.*, that one man is as capable of governing as another, or that all men are specialists—, is responsible for the emphasis on quantity rather than on quality. Secondly, the tendency to have uniformities of conduct, is itself unfavourable to the growth of higher intellectual life, because democracy will "level down as much as up."[1] The unregulated corporations, the irresponsible trusts and cartels, "the oil-stock swindlers," and the quack practitioners of the U.S.A. have proved that wealth can be used to pervert administration and legislation; that politics may be made "a gainful profession"; that there may be extravagance in administration; that the doctrine of equality may be so abused as to cause inequality of fortune and opportunities; that party organization may be made unduly powerful; and that the entire concept of justice and law may be perverted by vested interests which can buy votes and stifle the true spirit of democracy. If the great democratic government of the U.S.A. shows so glaringly the defects of democracy, the two poorest popular governments of the Orange Free State and Switzerland show how admirably the spirit of democracy can be worked out for the well-being of citizens.[2]

(J) Safeguards of Democracy

Given the above demerits of democracy, it is necessary for the people to have safeguards which would

[1] Bryce, *op. cit.*, II. pp. 569-570; Garner, *ibid.*, p. 227.
[2] Bryce, *op. cit.*, II. pp. 503-504.

make for the successful and permanent working of democracy. For, when all things are said against democracy, there remains the fact that "the rule of the Many is safer than the rule of the One," as Cavour truly said; that however faulty a legislative chamber may be, an ante-chamber is worse; and that the rule of the multitude is gentler than the rule of a class.[1]

But it must be admitted that since individual liberty is not necessarily secure under a democracy, it is imperative that there should be safeguards which would protect both individual liberty and maintain democracy. Some of the essential safeguards are the following:—Firstly, there is the guarantee of a written constitution, which secures property and contract, restricts the power of the majorities, places difficulties in the way of organic changes, and prevents outbursts of mere temporary discontent and mere casual coalitions from overthrowing the main pillars of the state.[2]

But a written constitution presupposes not only all this, but also a Judiciary which should be the guardian of the constitution, and not merely "a special organ for the exercise of coercive jurisdiction."[3] These two safeguards refer to the wide distribution of governmental powers.

The third safeguard requires that there should be an intelligent and virtuous citizenship. "....for upon this strong foundation more than upon anything else, the future of democracy throughout the world depends." "An intelligent and virtuous citizenship"

[1] Bryce, *ibid.*, II. p. 668.
[2] Lecky, *Democracy and Liberty*, I. p. 112.
[3] Laski, *op. cit.*, pp. 134-135.

means, among other things, a body of citizens taking a widespread interest in public education and civic honesty.[1] But this presupposes that in a democracy active citizenship coincides with the adult population, and not as in ancient Athens, only with a section of the people.

Fourthly, there should be guarantees, enforceable by law for the civil rights of the individual. Fifthly, the masses should be given full opportunities for stating their grievances. That is to say, there should be healthy and independent public opinion in a democracy. Sixthly, the masses should have the means for expressing their opinions upon questions within their knowledge. In other words, the channels of discussion should be multipled. And, finally, there should be "Protection by international agreement against aggression or exploitation by the civilized Powers."[2]

(K) The Present and the Future of Democracy

The dark cloud of dismay that hung over democracy, because of the serious threat given to it by the non-democratic States of Europe in the course of the last twenty-two years, seems to be lifting, and the future of democracy appears to be safe all the world over. Granting that democracy has meant in a way "herd life"; that the number of persons to whom happiness is open in it is still pitiably small, that the State is "biased in the emphasis it places upon the attainment of rights"; that the decisions of the State are weighted on behalf of the actual holders of power; that it does not distribute knowledge and economic

[1] Garner, *op. cit.*, p. 229.

[2] Bryce, *op. cit.*, II. p. 567.

power equally among the masses in order to influence its policy; and that "the rule of the rich has served only to add to their wealth and to prevent its diffusion,"[1] yet the future of democracy seems to be assured if we are to believe what has been said above, *viz.*, that democracy is intimately based upon the moral and intelligent progress of mankind as a whole; that the question of its permanence rests on the hope that mankind is growing in wisdom and virtue; and that whatever may be or may have been the alternatives which its opponents have offered in its place, they have not been successful in giving a form of government which demands so much from the citizens and which gives so much back to them as democracy.[2]

6. FUNCTIONS OF GOVERNMENT

(A) Definition of the Three Functions

We shall be concerned in this chapter with the activities or functions of government. These functions of government fall into three categories, each of them coming within the sphere of a particular organ of government. The three functions are the following—the legislative, the executive, and the judicial; and the three organs which are concerned with them are the Legislature, the Executive, and the Judiciary respectively. The legislative activities of the State refer to the laying down of rules of conduct for the citizens. These rules or regulations are called laws. The executive activities refer on the whole, to the carrying out or enforcing of such regulations. The Judicial functions interpret the meaning and scope of such laws when applied to particular cases.

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[1] Laski, *op. cit.*, pp. 98-99.

[2] Read Bryce, *ibid.*, II. pp. 666-669.

Therefore, the Legislature formulates the will of the State; the Executive enforces that will, and the Judiciary interprets it in particular cases. All citizens are legally bound by the orders which the Legislature issues, the Executive enforces, and the Judiciary interprets.

(B) Necessity for Separating the Three Functions

Since the modern State has considerably outgrown the city-state of the time of Aristotle and the State in the Middle Ages, in size, in population, and in the nature and number of the problems which confront it, the necessity has been felt for differentiating the three functions of government mentioned in the preceding paragraphs.

Further, the experience of the Middle Ages has amply shown that, as Maddison remarked, "the accumulation of all powers....in the same hands....may justly be pronounced the very definition of tyranny."[1] This danger threatens the maintenance of freedom; for power that is not in some manner divided is irresponsible, and it needs to be limited before it can be exercised with safety.[2]

(C) The Theory of Separation of Powers

Hence it was this fear which made the great French political thinker Montesquieu (*The Spirit of Law,* 1748) enunciate the theory of Separation of Powers in the following famous passage:—

"When the legislative and executive powers are united in the same person or body, there can be no

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[1] Madison, *Federalist,* No. 46, p. 319 (ed. Ford).

[2] Laski, *op. cit.,* p. 297.

liberty, because apprehension may arise lest the same monarch or senate should enact tyrannical laws, to enforce them in a tyrannical manner.... Were the power of judging joined with the legislature, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor."[1]

The above theory, which became a part of the political philosophy of the American and French Revolutions of the eighteenth century, may be briefly summarized thus:—

That the three organs of government should be so separated that each organ or department exercises all the power which belongs to it, and does not, on the whole, encroach upon the power of the other. It may be observed here that in practice, however, it is impossible to draw a strict line of demarcation between the several departments. This is because, as Woodrow Wilson remarked, government is not a machine, but a living thing.[2] The three functions are, therefore, theoretically equal and co-ordinate; but in practice, the departments are not equal, since the legislative power regulates administration and is consequently the most powerful, and the Executive and the Judiciary are inferior to it.[3]

(D) The Organs in detail: The Legislature

(i) Its Duties

The Legislature, or the law-making organ, is the most powerful of the organs of government, not only

[1] Cited in Laski, *ibid.*, p. 297.

[2] Wilson, *Constitutional Government in the U.S.A.*, p. 56.

[3] Garner, *op. cit.*, pp. 424-425.

because it formulates the will of the State, but also because it is a mine of all the powers which are not assignable to the other departments. Further, it is the body which creates laws according to which the Executive acts, and which the Judiciary interprets. It has the control over taxation, the appropriation of money, and the army.[1]

(ii) Kinds of Legislature

Attempts have been made to conduct the enormous work of the legislature either in one chamber or in two chambers. When there is only one chamber or House of the Legislature, there is the Unicameral system; and when there are two chambers or Houses, there is the Bicameral system.

The Unicameral system is not so popular now as it was some time ago. The two most conspicuous examples of a Unicameral chamber are those of France during the French Revolution and of England during the Commonwealth. The French single chamber which had been established in 1791 was abandoned in 1795 in favour of a Bicameral system. Likewise the English experiment of the Commonwealth was abolished soon after the Commonwealth. In the modern times, the Unicameral system exists in small states like some of the Swiss Cantons, Greece, British Columbia, Luxemburg, Serbia, Manitoba, and Ontario. The unicameral system was found unsatisfactory in large States, because it was marked by hasty impulse, instability, and want of deliberation.

Avoidance of the defects of the unicameral system is the merit of the bicameral system. Deliberation,

[1] Garner, *ibid.*, pp. 425-426.

stability, want of violence, moderation, and unity—these are the essential requisites of a law-making body, which are best seen in a bicameral legislature. So far as the citizen is concerned, the bicameral system protects his liberty against the despotism of a single chamber and even against the errors of the Legislature itself. The bicameral system, finally, is a check on popular government.

But the bicameral system is not without its defects. Firstly, since the difference in the functions between the two Houses rests chiefly on finance, and since the Lower House—after the historic example of the British House of Commons—possesses the right over money, the Upper Chamber is virtually reduced to a position of inferiority. And an assembly that is not directly chosen by the tax-payer, as the Lower House essentially is, becomes not only less powerful but also less popular. Therefore, the Upper House is continually under the disadvantage of fearing to displease the popular House.[1]

(iii) Relations between the Two Houses

This brings us to the next question—What is the relative importance of the two Houses in money matters and in legislation? In matters of initiating and passing legislative measures, it is generally accepted that both the Houses are co-ordinate in their power. For example a legislative bill may originate in either House in England. Such a Bill has to pass through three stages called "readings"—the first reading, when the general principles of the Bill are

[1] For further remarks read Bryce, *op. cit.*, II. pp. 24, 269, 432-436 ff, 442, 453 ff.

discussed; the second reading, which is the most critical, when the Bill is examined by select committees; and the third reading, when the Bill, clause by clause, is submitted to the House for formal sanction and approval. If the Bill survives all these three stages, and is passed by one House, it must be passed in the same manner by the other House. And when passed by both the Houses, it is then sent up for Royal Assent after which it becomes law.

The conflict between the two Houses does not centre round the question of legislation but on that of money. Here the success which the English House of Commons won over the House of Lords from the seventeenth century onwards, has had not a little to do with the enhancing of the position and power of the Lower Houses all over the world. It is now accepted as a principle that all money bills should originate in the Lower House which controls taxation. Thus, in England the Government presents every year the budget or a statement in detail of the items of expenditure, and the ways and means of raising the required money. After this estimate of the annual national income and expenditure has been passed by the House of Commons, it is scrutinized by the Accountant-General, whose duty is to see that the Lower House's directions in regard to expenditure under each item have been fulfilled, to examine the accounts at the end of the financial year, and to submit a report of the same to the House. This report is examined by the Committee on Public Accounts belonging to the Lower House.

(E) The Executive

The word Executive is used in a narrow and a broad sense. In the narrow sense it comprises that supreme authority of either one person or a body of persons, which appoints, supervises and controls the various minor agencies through which it carries out the will of the State. In the broad sense it refers to the entire governmental organization, excepting the Legislature and the Judiciary, from the Heads of the Departments forming the Cabinet down to the post-masters and the excise officials, which collectively forms the Executive.

(i) Meaning

(ii) Kinds of Executive

(a) SINGLE AND PLURAL EXECUTIVES

We must distinguish between the single Executive and the plural Executive; and likewise between the real Executive and the nominal Executive. When the executive power is in the hands of a single person or a very small body of persons like the British Cabinet, we have a single Executive; but when executive authority is equally divided between two kings, as in ancient Rome, or between seven persons, as in modern Switzerland, we have a plural Executive.

(b) REAL AND NOMINAL EXECUTIVE

The British Cabinet is also an example of the real or actual executive, because it actually administers, while the British Crown is an example of a nominal or titular Executive, since it has little to do with the actual work of government.

(iii) How Selected

An executive Head may be chosen by means of the hereditary principle, or by direct election by the people, or by an indirect election, through a body of intermediate electors, or finally by the Legislature itself.

The hereditary principle has governed the choice of the Executive in Europe for centuries, but has few admirers anywhere except to some extent in England. The direct election of the Executive by the people is popular in some South American States (like Brazil, Peru, and Bolivia); but this principle is objectionable, especially in large States where the masses are neither qualified nor intelligent enough to judge on the merits of the person who wishes to be the Executive. The indirect method of election is followed in choosing the Presidents of the U.S.A., Mexico, and Chile. Here it is an intermediate body of electors, who are not swayed by the passions and whims of the populace, and who are able to discern and discriminate the merits of the proposed candidate, who select the real Executive head. The fourth method of selecting the supreme Executive by the Legislature is followed in France and in Switzerland, where the two Houses in a joint session select the President.

(iv) Powers

Of all the organs of government, it is the Executive that is very often in direct touch with the citizen. Therefore, it is necessary to know the range and nature of the powers of the Executive. Prof. Garner has summarised the five kinds of executive power thus—Diplomatic power, or that which relates to the conduct of foreign relations; Administrative power, or that

which has to do with the execution of the laws and the administration of government; Military power, or that which relates to the conduct of war and peace; Judicial power, or that which grants pardon to individuals convicted of crime; and Legislative power, or that which relates to legislation.[1]

(v) Dangers of the Executive

This problem of the judicial and legislative powers of the Executive affects the life of the average citizen at certain times. The working of the constitution of Britain and the U.S.A. has shown that the Executive, so far as the Legislature is concerned, has the power to summon, open, prorogue, and dissolve the Legislature, as in Britain; to give by means of "a message" all the information needed by the Legislature, as in the U.S.A.; to veto (or to disapprove) acts of the Legislature, as in Britain and France; and to compel the Legislature to publish its acts.

In regard to the Judiciary, the Executive is generally immune from the control of courts for its acts or its policy. But while this is specially true of the Crown in Britain, it is not true of the Cabinet, which is subject to the Rule of Law; while in the U.S.A., the President is responsible for his criminal acts to the Senate which can impeach him.

It is not in the normal exercise of the legislative and judicial powers that the Executive may become a source of danger to the citizen: we see its detrimental power in times of war when "An executive that has a free hand will commit all the natural follies of dictatorship. It will assume the semi-divine character of

[1] Garner, *op. cit.*, pp. 547 ff.

its acts. It will deprive the people of information upon which it can be judged. It will misrepresent the situation it confronts by that art of propaganda which enables it....to deceive its friends without deceiving its enemies. It will regard inquiry as menace. It will be careless of truth." It is thus because the Executive will penalize the critic and "poison the moral foundation of the State" that it will become a source of danger to the average citizen.[1]

(vi) The Cabinet System

(a) MEANING

The term Cabinet is given to a group of ministers, who are virtually, if not formally, selected and dismissed by the Legislature, and who are responsible to it. It is the working Executive in the Parliamentary type of government. The Cabinet, therefore, is a corporate council of parliamentary leaders, who are also the Heads of the Executive, responsible to Parliament.[2]

(b) COMPOSITION

It is evident, therefore, that the group called the Cabinet must consist of members, who are, everywhere by custom, and in some countries by law, members of the Legislature.[3]

(c) ITS FORMS

In a Parliamentary government, the ministers who form the real working Executive, are, as stated

[1] Laski, *op. cit.*, p. 126.
[2] MacIver, *op. cit.*, p. 206.
[3] Bryce, *op. cit.*, II. p. 508.

above, selected and dismissed by the Legislature. According to Lord Bryce, a Legislature elected by the citizens for a prescribed period is liable to be dissolved by the Cabinet.[1]

But in a Presidential government the Cabinet is chosen by and dismissed by the President. It acts under his orders and is responsible not to the Legislature but to the President. Its members cannot sit in the Legislature.

The Cabinet system in Parliamentary governments has the following advantages: Firstly, the ministers who make up the Cabinet, are members of the Legislature. They are in constant touch with the members of their own party as well as with those of the Opposition. Hence they are best fitted to feel the pulse of the Assembly, and the pulse of public opinion. And, secondly, their position as makers of the policy of government as well as repositories of the confidence of the people's representatives, enables them to transact business swiftly and vigorously, and to carry through both domestic and foreign work which they think is beneficial to the country.

But it has disadvantages as well. The Cabinet system intensifies the party spirit and keeps it always on the boil. Since there is always an Opposition, the latter always opposes all legislation, good, or bad, and, thereby, delays legislative activity. Further, the Cabinet has to depend upon the support of its majority party in the Legislature, and has, therefore, to think more of popularity and less of the vital needs of the nation. The fate of able men in the Cabinet is linked

[1] Bryce, *op. cit.*, II. p. 508.

up with the fate of trivial bills in the Legislature; and if these latter are defeated, the former, however, much their presence may be needed by the nation, will have to quit office. And, finally, the concentration of power in the hands of a few ministers, according to Bryce, is a source of danger."[1]

The Cabinet in the U.S.A. is composed of about ten administrative Heads, who are generally experts selected and appointed by the President, subject to the approval of the Senate. But it also happens, as in England and France, that electioneering considerations prevail, and posts in the Cabinet are filled by men who have pleased particular parties or done special party service. Since the Cabinet members in the U.S.A. have no place in the Legislature, they are unaffected by its storms. But this advantage is their greatest defect: they do not declare the policy of the Legislature, and they do not speak on its behalf.

(d) CABINET AND PARLIAMENTARY RESPONSIBILITY

In England and France every member of the civil administration is responsible for the proper discharge of his duties to some superior in the department; and ultimately to the minister at the head of that department. The minister is responsible to the Legislature, in which he has a seat, and where he has to answer questions relating to his department. If he is censured in the Legislature, he has to resign; if a vote of censure is passed against the whole Cabinet, the latter resigns as a body. This is because of their collective responsibility. In England when the Cabinet is censured

[1] Bryce, *ibid.*, II. p. 514.

by the Legislature, it resigns, and the nominal Executive Head, which is the Crown, commissions the Leader of the Opposition to form a new Ministry. The sides are forthwith changed: the Opposition now becomes the Government, and the former Government may become the Opposition. This prevents trouble and cost of election, and the administration is carried on smoothly.[1]

In the Legislature there is usually a tendency to talk at length, especially by the members of the Opposition, with a view to delay legislation. Various methods have been introduced to lengthen debates and to delay the progress of business. In England, the U.S.A., Germany and Australia, the methods adopted are called *Obstruction, Filibustering, Stonewalling,* and *Dauerreden* respectively. All these are methods by which members speak against time, or by a series of amendments prevent the Legislature from coming to any final decision. These methods are evidently an abuse of the right of free speech.[2]

The remedies against these methods are called the *Closure* and the *Guillotine*. Closure refers to the rules which bring a debate to an end, the questions under discussion being put at once to vote; while the Guillotine refers to the method by which the discussion on a particular question is limited to specified days, at the end of which that question is put to vote. In the U.S.A. till 1917 there was no closure of debates, but in that year a rule was passed by which the method of Closure could be imposed by a two-thirds majority. In

[1] Bryce, *op. cit.*, II. p. 512.
[2] Bryce, *op. cit.*, II. pp. 378-379.

Australia a time limit is imposed. In England the hope that talkative and obstructionist members would not be re-elected has never been fulfilled.[1]

(F) The Judiciary

(i) The Function of the Judiciary

In applying law to particular cases, the Judiciary has three functions or duties to perform—It has to discover the hidden meaning of the written law; it has to give effect to the presumable intention of the law-maker; and, finally, it has to mete out justice. When it discharges its first duty, it rectifies an error made by an indifferent or incompetent "parliamentary draughtsman"; in the performance of its second duty, the Judiciary makes law to some extent; and while discharging its third duty, it enables the citizen to be his best self. It is only when the weak are protected and the strong are restrained, when the welfare of the humble is promoted along with that of the powerful, and when all citizens are given equal opportunities of acquiring sufficiency by identically responding to their primary needs that law becomes, in the words of Lord Bryce, "the shield of innocence and the impartial guardian of every private civil right."[2]

(ii) Qualifications

The Judges should possess courage, uprightness, capacity, learning, and independence—virtues which are quite essential if the Judiciary is to function well, and which can be secured only when the judges are assured of permanence of tenure, a salary above want and corruption, and social status.

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[1] Bryce, *ibid.*, II. pp. 64-65, 206.

[2] Bryce, *op. cit.*, II. p. 420; Laski, *op. cit.*, p. 160.

(iii) Selection

The Judges are either appointed by the Executive Head, as in England and the U.S.A. (where the President appoints them with the consent of the Senate); or elected by the Legislature, as in France, where the highest Court of Appeal is elected by the Executive, and in Switzerland, where the Federal Legislature chooses the Supreme Federal Court; or elected by the citizens, as in many states of the U.S.A., where the judges are elected by the people for terms of various lengths, with salaries varying in amounts, but almost always insufficient to attract the highest talent.[1]

(iv) Relation of the Judiciary to the Legislature

The power of the Judiciary is seen not so much on occasions when it is compelled to make law, as when it has the power to annul the acts of the Legislature and to declare them unconstitutional. This is best seen in the U.S.A. where the Judiciary holds an act of the Legislature void, when it is satisfied that the Legislature has transgressed the constitutional limits. This restraining and compelling power of the Judiciary in the U.S.A. constitution is attributed by American jurists not to the superiority of the Judiciary, but to the paramount position of the will of the people which is embodied in the Constitution, and which is superior to the will of their representatives.[2]

(v) The Judiciary in Modern Democracy

The above remarks enable us to understand the place of the Judiciary in a Federal constitution and in a Parliamentary government. In the U.S.A., for

[1] Bryce, *ibid.*, II. pp. 422-423.
[2] Garner, *op. cit.*, pp. 604-606.

instance, the Judiciary is truly the guardian of the constitution, and the greatest barrier against the tyranny of political assemblies. In England, on the other hand, the Judiciary is only an interpreter of the Acts of Parliament; and even while interpreting them, it cannot do otherwise than refer to the words of the enactment. However, British constitutionalists maintain that "The principle that Parliament speaks only through an Act of Parliament greatly increases the authority of the judges!"[1]

7. CONSTITUTION

(A) Meaning of the term

The word 'constitution' has had many meanings attached to it since the Middle Ages. At first it meant merely certain statutes or laws promulgated by the king; next it came to be applied to royal charters; then, it was understood to mean fundamental laws pertaining to the organization of government; and finally, in modern times it has come to mean the body of fundamental laws and principles written or customary, according to which the State is organized and its functions arranged and distributed.[2]

Bryce styles constitutions instruments which give the most concrete expressions to the fundamental principles of democracy. Viewed in this light, a constitution embodies the principles of liberty and of self-restraint, and issues from the doctrine that power comes only from the People, because the People is recognized as of right the supreme law-giving authority.[3]

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[1] Dicey, *op. cit.*, p. 403.

[2] Garner, *ibid.*, pp. 374-376.

[3] Bryce, *op. cit.*, II. pp. 10-11.

(B) Kinds of Constitutions

Constitutions have been classified as Real and Formal, Historical and *a priori,* Evolved and Enacted, Written and Unwritten, and Flexible and Rigid.

(i) Real and Formal

The term Real is given to that constitution which has evolved under the operation of political and social forces, which is administered, and which the people obey; while the Formal constitution is that which exists in theory as a concept of the law-givers and as the legal instrument stripped of all its conventions and historical additions.[1]

(ii) Historical and *a priori*

The historical or evolutionary constitution is, according to Sir Henry Maine, that which has developed through the accumulation of experience; while the *a priori* constitution is that which is based on speculative assumptions which are remote from experience.[2]

(iii) Evolved and Enacted

An evolved or historical constitution is that which owes its origin mainly to custom, and which largely comprises accumulated usage and common law principles; while the enacted constitution is that which has been formally enacted by an assembly or a ruler at a particular time. The evolved constitution is more the result of chance growth; the enacted constitution is the result of deliberate effort. The former is not, while the latter is, embodied in a written document.[3]

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[1] Garner, *op. cit.*, p. 375.

[2] Maine, *Popular Government*, p. 172.

[3] Garner, *ibid.*, pp. 377-78.

(iv) Written and Unwritten

There is not much difference between the above two types and the written and unwritten constitutions. An unwritten constitution comprises regulations which are not embodied in a formal written instrument or document, its prescriptions being mostly a large body of usage, custom, common judicial decisions, and a comparatively small number of statutes of a fundamental nature. A written constitution, as its name suggests, is a document which contains most of the regulations, with dates and other details, which are all permanently set down.

(v) Flexible and Rigid

Lord Bryce called an unwritten constitution by the name Flexible, and a written constitution, by the term Rigid constitution. According to him, the British constitution is an unwritten constitution, because it includes all the laws, both statutes and common law doctrines embodied in reported cases, which relate to the management of public affairs. The American constitution is written or rigid, because it is a single legal instrument prescribing the structure, scope, powers, and machinery of the American government. Further, a flexible constitution, like the British constitution, is enacted and is capable of being changed in the same way as ordinary statutes are changed by the ordinary modes of legislation; while a rigid constitution, like that of the U.S.A., is not enacted and is not capable of being changed by the ordinary modes of legislation, but only by a specially convened body which is formed in a specially prescribed way.[1]

[1] Bryce, *op. cit.*, II. pp. 10-11.

(vi) Advantages and Disadvantages of Flexible and Rigid Constitutions

(a) FLEXIBLE CONSTITUTIONS

The flexible constitution possesses adaptability and elasticity, in the sense that it makes new laws to suit new needs without any special machinery. Secondly, it helps the legal and orderly growth of advanced States. Thirdly, since it harmonizes the conservative with the progressive elements of the people, it lessens the chance of revolutions. Fourthly, its adaptability is also responsible for making it grow along with the maturity of the nation, and for registering principles of civil and political liberty.[1]

But the disadvantages are equally prominent. Firstly, the conditions under which a flexible constitution is workable, make it clear that it does not promote the cause of real democracy. For if, as Lord Bryce remarks, a flexible constitution is workable only where supremacy remains in the hands of a politically educated and a politically upright minority, and if the bulk of the people, though legally supreme, must be content to let the trained minority manage the details of the business of government,[2] then, it is evident that, whatever the designation and whatever its advantages, a flexible constitution can hardly be better than some type of a refined oligarchy either of officials or of people formed into a party with a view to monopolize power and to administer in the interests of the few as against the interests of the many.

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[1] Garner, *op. cit.*, pp. 393-94.

[2] Bryce, cited in Garner, *ibid.*, p. 395, n (2).

While the minority may be upright and educated, it is very doubtful whether they will always observe the theoretical ends of the State.

Further, in a flexible constitution the limits of the power of the government are not clearly discernible. There is no single centre of reference, and hence the citizen cannot grasp the meaning of authority.[1]

(b) RIGID CONSTITUTION

A rigid constitution has undoubtedly many advantages. Firstly, it makes for stability, definiteness, and certainty. Secondly, it prevents a sudden gust of public opinion from overthrowing things which deserve to be maintained. Thirdly, it enables the larger body of people to understand and appreciate the nature of institutions. Fourthly, it guarantees individual liberty, by making it impossible for the law-courts to twist and bend the constitution to mean what the demands of the moment may require. And, finally, it restricts the organs of government to their respective spheres, and thereby protects the rights of citizens from the encroachment of the Legislature, the Executive, and the Judiciary.[2]

But it has likewise disadvantages. The allotment of the respective spheres of work to the three organs of government means in practice the superiority of one of them over the other two. Thus the predominance given to the Judiciary tends to make the judges control the constitution, and "the death of a single judge may well shift the whole balance of interpretation." Secondly, the undue preponderance which the

[1] Laski, *op. cit.*, p. 136.
[2] Laski, *ibid.*, p. 135; Garner, *op. cit.*, p. 392.

Judiciary has in a rigid constitution encourages it to flout public opinion, which, when watchful and just, acts as a check on a legislative assembly. Thirdly, since a rigid constitution cannot be easily amended, it prevents the natural and healthy growth of the State. And since the problems which seem fundamental to one age appear unimportant to another, it might breed in the minds of those who wish to introduce changes the desire to violate the constitution.

(vii) The Modern View on the above Classification

Prof. Laski comments thus on the above classification:—"The attempt to weigh the respective advantages of what Lord Bryce has called 'flexible' and 'rigid' constitutions is an impossible one. The balance of merit depends always upon factors on the state-traditions which are inapplicable elsewhere." Although the advantages of a rigid constitution are very great, yet in actual practice the safeguards which it affords are not so straightforward as they might appear.[1]

8. DIRECT LEGISLATION

(A) Definition

The term direct legislation is given to the enactment of laws by the whole body of citizens by their own direct action.

(B) The Needs for Direct Legislation

Three causes are responsible for the popularity of direct legislation in certain countries. Firstly, the distrust of the representative system of government, which was at one time imagined to be the only type of

[1] Laski, *op. cit.*, p. 185.

government suitable to progressive countries. Secondly, the disappointment which citizens have felt with legislative bodies that possess faults. And, finally, the conviction that, since sovereignty lies with the People, it is only the People acting together who can exercise directly, and not through their representatives, all political power.

(C) Kinds of Direct Legislation

The two well known kinds of direct legislation are the Initiative and the Referendum. When a prescribed number of citizens bring forward a proposal of a constitutional amendment, or a law, to be voted upon by the whole body of people, we have the Initiative. In other words, the Initiative is the right of a prescribed number of the citizens to propose the passing of an enactment by popular vote. As practised in the U.S.A. today, the Initiative provides that on a petition from a certain proportion of the voters, say one-twelfth, a measure which the legislature will not pass must be submitted to the voters at the next election.[1]

Referendum means the submission to popular vote of a constitutional amendment, or a law, passed by the legislature. In other words, the Referendum means the submission to popular vote, for approval or rejection, of a measure passed by the Legislature.

Both the Initiative and the Referendum are found widely used in Switzerland. Their relative importance has been very well expressed by Lord Bryce thus:— "As the Referendum protects the people against the legislative's sins of commission, so the Initiative is a

[1] For a detailed account, read Bryce, *op. cit.*, II. pp. 419-421. See also Ross, *op. cit.*, p. 389.

remedy for their omissions."[1] The Referendum gives to the citizen a negative right against a law on which he has had no chance of expressing his will; while the Initiative gives him a positive right of framing and placing before his fellows the law which expresses his will. Expressed in other words, the Initiative gives the people an opportunity to adopt what the legislature denies them; while the Referendum gives them an opportunity to reject what the Legislature offers them. The Swiss argue that only when these two rights are exercised can there be any real guarantee of individual liberty. There is no doubt that both the Referendum and the Initiative minimize the evils of the party system. Further, these two methods of direct legislation reduce sectionalism in a people, since they make different classes and parties vote together on fundamental questions of importance. When people give their unanimous judgment on a particular question, they are inclined to obey their own law better than they would a law passed by a legislative body. Finally, these two methods of direct legislation stimulate patriotism and responsibility in a people by confronting them with grave public questions which they have to solve. This gives them real political education and a true sense of citizenship.

But both the Initiative and the Referendum have disadvantages. The Initiative lessens the responsibility of the Legislature to the people, reduces the dignity and authority of that body, and may even induce it to pass measures tentatively, hoping that a voting by Referendum would reject them. Questions

[1] Bryce, *op. cit.*, I. p. 449.

which have been carefully discussed and considered are put up before ignorant and prejudiced people. In this sense the Initiative means "an appeal from responsibility to irresponsibility, from knowledge to ignorance." Further, since all questions are to be brought before the people, there will be no parliamentary or committee criticism of the same, which is a vital part of the legislative procedure. And, finally, the Initiative gives good scope to an unscrupulous leader or an excited section of the people to carry through a scheme whose dangerous nature may not be realized until after it has been passed.[1]

This last defect the Initiative shares with the Referendum, in which the voters might fall a prey to the eloquence and appeal of a demagogue, and might altogether miss the points at issue in the excitement of the moment. Secondly, the Referendum, like the Initiative, makes the Legislature irresponsible and indifferent, since that body may realize that the bills it has passed may be rejected by a Referendum. This possibility may create a feeling of disrespect for the Legislature which is dangerous to the civic life of a nation. Thirdly, the people as a whole are neither qualified nor trained to give any considered opinion on public questions. Fourthly, continual Referendum can only make the voters tired of political questions, induce them to be absent particularly on those occasions when their presence and their decisions are urgently needed. And, therefore, if the abstentious spirit is intensified, the political, social, and economic progress of a people may be handicapped.[2]

[1] Read Bryce, *op. cit.*, II. pp 470-471 for further remarks.
[2] For further remarks, read Bryce, *ibid.*, I. pp. 444-448.

We may conclude our remarks on these two methods of direct legislation by saying that they are best workable in small countries like Switzerland and in some of the smaller States of America; but that in countries which do not possess, on the whole, a civic sense so pervading as in Switzerland and with historical traditions so different to those in which the Swiss have been nurtured, these two methods of direct legislation, although they undoubtedly afford ready means of checking the Legislature in a representative democracy, may produce, especially in large countries with huge populations and complex problems, results which are quite different to those which have been the good fortune of the people of Switzerland to enjoy.[1]

9. GOOD GOVERNMENT, POPULAR GOVERNMENT, AND SELF-GOVERNMENT

(A) Definition of Good Government

It is true that no single form of government is adapted to all conditions and stages of society. A uniform type of government for all societies would be, as Prof. Garner aptly remarks, as unthinkable as a suit of clothes for all men. A study of Civics should enable us to distinguish between Good Government, Popular Government, and Self-Government. These three types of government are by no means identical.

[1] Bryce, *ibid.*, I. p. 453. In America there is also a device called the *direct primary*, which is a recent innovation. How much money is spent on these methods of legislation in some of the States of the U.S.A. is evident when we note that in 1923 a Committee of the Senate of California Legislature reported that on the seven most strenuously contested Initiative and Referendum measures, voted in the State elections of 1922, dollars 1,082,000 were spent; and that in every case that side won which had spent the most money! (Ross *op. cit.*, p. 369.)

In determining what are the characteristics of the best form of government for any particular society, according to some political thinkers, we must take into account the stage of the development attained by that society, the intelligence and political capacity of the people, their history and traditions, their race-characteristics, and a variety of other considerations.[1] Alexander Hamilton has declared that "the true test of a good government" is its "aptitude and tendency to produce a good administration."[2] According to modern writers, the main criterion of a good government is the degree to which it tends to increase the sum of good qualities in the governed, collectively and individually, rather than the efficiency of the government itself as an administrative body.[3]

(B) Good Government and Popular Government

Good government is not always guaranteed by Popular Government. The progress of Popular Government may be traced to the following causes—the influence of religious ideas; discontent with royal and oligarchical misgovernment, and the consequent efforts to reform it; social and economic conditions favouring equality; and abstract theories of human rights and sovereignty resting with the people. In most of the progressive countries, political power has been transferred from the Few to the Many, although, according to Lord Bryce, "Nowhere have the masses of the people shown a keen or abiding desire for political power."[4] If we are to profit by the experience of

[1] Garner, *op. cit.*, p. 235.
[2] Hamilton, *The Federalist*, No. 66.
[3] Cf. Garner, *ibid.*, p. 236.
[4] Bryce, *op. cit.*, I. p. 46.

people like the French, whose experiment in 1789 is a most glaring example of a Popular Government, we may agree with the view of Lord Bryce that "Popular Government has not yet been proved to guarantee, always and everywhere, good government."[1]

(C) Self-Government and Good Government

Free Self-government is the ultimate goal of all advanced people. Four requisites are essential in a people who wish to establish Self-government. These requisites are the following—Knowledge, Experience, Intelligence, and finally, the desire for self-government. The conditions and methods which give a people the best chance of success in attaining Self-government have been enumerated by Lord Bryce thus: Local facts, racial qualities, social structure, and education.[2]

Neither Good Government, as it is sometimes understood, nor Popular Government, as was understood in France in 1789 and in Germany in 1866-1870, can be a substitute for Free Self-government. Good Government in a subject people may mean, on the part of the rulers, efficient administration and the maintenance of law and order. But these can never be a substitute for Self-Government.

Neither can Popular Government always mean Self-Government. One has merely to follow the trend of events in France in 1789 and after, or in Germany from 1866 till 1870, or in Spain in 1873, in order to understand the difference between the two types of government. In all the three countries the mass of

[1] Bryce, *ibid.*, I. p. 47.
[2] Bryce, *op. cit.*, II. p. 548.

people resented the oppression of their rulers and overthrew them. In France and Spain the people set up a Republican Government, and in Germany, a Monarchy. But in all these three countries, there was merely a desire to be well-governed on the part of the masses rather than to govern themselves well.[1]

As for Free Self-Government as it has been worked out in some countries, we cannot do better than to note the following observations of Lord Bryce:— "Wherever Self-government has worked well, it is because men have fought for it and valued it as a thing they had won for themselves, feeling it to be the true remedy for mis-government."[2]

10. SOCIALISM

(A) Political Liberty in relation to Economic Liberty

We have seen that the State should further social good. This is not a simple affair, since it means not only the guaranteeing of rights but also the assurance by the State that its power will not be perverted to the use of some few; and that it will give to all citizens equal opportunities for developing their individuality. The State, therefore, has a double task to perform: it should ensure political equality and at the same time ensure economic liberty. The State should plan the principles of political action and it should likewise plan the principles of social action. Political action deals with political liberty, and social action, with industrial wealth. There can never be real political liberty without virtual economic equality accompanying it. And citizenship is essentially bound up with

[1] Read Bryce, *ibid.*, II. pp. 549, 659-660.
[2] Bryce, *ibid.*, II. p. 548.

this double-sided nature of the fundamental question of liberty.

(B) The Meaning of Economic Liberty

Modern political thinkers are generally agreed that the economic life in the greater part of the world today is defective. They maintain that modern industry does not further social good, because, firstly, economic authority exercises unconstitutional power; secondly, the few who are wealthy make possible inequality of status, with the result that power, which follows from status, becomes "unrelated to the interests of personality"; and, thirdly, they create a graded series of economic positions in which the workers are not represented, nad in which the latter cannot find any material and spiritual recompense.[1]

Modern industry, therefore, being defective, the worker is not given his due; and hence it has to be replaced by a better type of industry which will ensure economic freedom. This improved type of industrial life will not permit the owners of wealth to manipulate unfairly the mechanism of power, but will guarantee the workers against the perpetual hovering fear of insufficiency and unemployment. Only when sufficiency and employment are assured can the whole strength of the personality of every individual be given the fullest scope for development.

But economic liberty does not mean that "all wills are to be weighed equally," and that all men are entitled to give orders. On the other hand, it means that those who exercise authority in trade, like those who control political power, can be called to account for the orders they issue.[2] In other words, just as political

[1] *and* [2] Laski, *op. cit.*, p. 164.

liberty gives the right to a citizen to scrutinize the action of the government, or of those few into whose hands we have entrusted for the time being the task of administration, so economic freedom gives to the workers the right to scrutinize the action of the capitalists, or of the few who are economically powerful, not because of what they are or what they do, but because of what they possess.

Economic liberty, moreover, does not mean either that workers, irrespective of the nature of their work, should receive an identical remuneration, or that private enterprise should altogether be abolished. But it means that the difference in the rates of remuneration shall not be so great as to give by virtue of these differences a greater chance for the few always to command and exploit, and a smaller chance for the many continually to obey and suffer. It is only in this way that "an unequal pressure upon the fabric of institutions"[1] can be prevented and social good furthered.

To sum up, therefore, we may observe that economic liberty means, firstly, that those who possess economic power shall be subject to the rules of democratic government; secondly, that it should give equal opportunities to all citizens to secure an approximate equality of wealth; thirdly, that it should make the employers conduct their business and perform their functions in a manner not directed by their own private and irresponsible will, but in a way which will set their business and functions in a public context directed to the life and service of the whole community.[2]

[1] Laski, *op. cit.*, p. 161.
[2] Laski, *ibid.*, pp. 163-164.

(C) Economic Liberty and Socialism

What has proved fatal to the purpose of society, and, therefore, to that of the State, is the presence of private property. It is the concentration of property in the hands of a few that is responsible for the many social ills around us. Property has rightly been called "the only durable source of faction."[1] It is because property is in the hands of the few that competition for its possession and use ensues, and that the worse side of human nature as seen in malice, pride, and sloth is seen retarding the furtherance of social good.

Property concentrated in the hands of a few makes impossible the attainment of freedom by the many. This is because the former decide the physical and the mental circumstances of the latter; because the wealthy affect the educational system in their own interest; and because those who possess wealth will so permeate the Legislature, the Executive, and the Judiciary as to make the organs of government merely reflect their own irresponsible[2] will and not the will of the community.

Property to be a truly social institution must be "set in a public context." Those who possess it must use it to further social welfare. They must as much contribute to the richness of the community as those who work for their daily bread. The only social organization that can help the realization of this objective is the State. It is only when the State owns the capital which assists in production, and when it aims at the progressive materialization of industries with a

[1] Madison, *The Federalist*, No. 10.
[2] Laski, *ibid.*, pp. 161-162.

view to the progressive nationalization of income, that there is Socialism.[1]

(D) Socialism and Communism

Private property is an institution which is incompatible with Socialism and Communism. Socialism looks upon it as a great evil; Communism would either extinguish it or greatly restrict it.[2]

But there are some essential points of difference between Socialism and Communism: Socialism lays stress on the community of industry but only on the production and the distribution side; while Communism is for holding all things in common. Socialism believes in the extension of government control, not with a view to strengthen the power of the State, but with a view to give more freedom to the individual. But Communism would make the State supply all the intellectual, social, and economic wants of the citizens.

(E) Socialism and Anarchism

Anarchism views the State as an evil and extends individual liberty so widely as to get rid of laws altogether. In a sense, it is an extreme extension of the democratic principles. It agrees with Socialism in overthrowing existing institutions. But whereas Socialism overthrows existing institutions in order to rebuild, Anarchism does so in order to leave the site bare for men to disport themselves thereon.[3] Anarchism, it may be added, is closely bound up with the citizen's right to resist the State, which we have discussed in the Chapter on Rights.

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[1] Rae, *Contemporary Socialism*, p. 399.

[2] Bryce, *op. cit.*, II. p. 643; Garner, *op. cit.*, pp. 300-302.

[3] Bryce, *ibid.*, II. p. 626.

11. PUBLIC OPINION

(A) Meaning of the term

When a citizen gives his opinion about a law, a practice, or a custom, or about a man's conduct, we have private opinion; when opinions about a man's conduct, a law, a practice, or a custom, run together as a social force, we have collective opinion; and when such an opinion is given by the great majority of those who take interest in any matter,—apart from a sect, a class, or a section—we have public opinion. Lord Bryce defines public opinion as an aggregate of the views men hold regarding matters that affect or interest the community.[1] It is apparently confused and incoherent, "varying from day to day and week to week." But it becomes a guiding principle when it is held by an appreciable majority of citizens, and is discussed, clarified, consolidated, and "advocated in common by bodies of citizens." There may be different currents of public opinion in a country on a particular question; and that is called the most powerful public opinion which has the support of the largest number of the people.

(B) How Public Opinion can be ascertained

One of the most baffling questions which confronts statesmen today is that relating to the way in which public opinion can be elicited. There are four sources of error against which a citizen has to be on his guard, in this connection, *viz.*, the Press, Public meetings, stray elections, and artificially created opinion. Each one of these is defective. The Press is not a standard of measuring public opinion, since the circulation of a

[1] Bryce, *op. cit.*, I. p. 173.

journal does not necessarily measure the prevalence of the views it advocates. Newspapers usually give misleading or coloured accounts, "for every organ tends to exaggerate the support its views command."[1] Secondly, in the modern world, newspapers which thrive mostly on their advertisements, live for the sake of their owners, creditors, and advertisers. Thirdly, a newspaper can at best reflect the opinion of those who might read it. Since this circle of readers is very small when compared with the great mass of people who do not read it, a newspaper can hardly maintain that it adequately reflects the views and sentiments of the bulk of the people. Fourthly, newspapers may be indirectly subsidized by governments. Hence they cannot be expected to be a sure index of public opinion. In fine, the Press can only evoke and exaggerate the existing trends of opinion but it can never create or ascertain it.[2]

Neither can we take public meetings to be the guide of public opinion, because, firstly, "any energetic group can fill in a large hall with its adherents," and like a newspaper can doctor or kill public opinion. And, secondly, even where people holding many views assemble, a gifted demagogue or a clever clique may manufacture opinion on his or its own behalf.

Stray elections which follow the death or retirement of a legislator, and artificially created opinion are both defective in the sense that local sentiment and circumstances may decide the issue in regrad to the first, and skilful propaganda, which has been deve-

[1] Bryce, *ibid.*, I. p. 175.
[2] Cf. MacIver, *op. cit.*, p. 406.

loped to perfection in many centuries, may mislead the people in regard to any given question of importance.

Public opinion may best be ascertained by "moving freely about among all sorts and conditions of men and noting how they are affected by the news or the arguments brought from day to day to their knowledge." This is best done by unbiassed persons with good powers of observation and skilled in the art of finding out the attitudes and desires of their fellow men. Secondly, open forums, as in the U.S.A., "where the hearers look at the speaker and quiz him afterwards," give an excellent opportunity for finding out public opinion which is not related to coloured propaganda. And, thirdly, in the younger sections of the citizen world, as in the U.S.A., public debates between schools and colleges on vital questions may bring to light things which newspapers may hide or ignore.

(C) Public Opinion and Government

In the modern world public opinion is of unique importance in the sense that it is intimately related to government. We have seen that, according to modern political theory, all power comes ultimately from the People. The mind and the will of the People can best be expressed by voting, or "by counting heads instead of breaking them." But voting excepting in small political communities, where it is expressed by the Initiative and the Referendum, has not been everywhere satisfactory. This is because even in the most advanced countries elections record the preference of the voters for persons rather than for policies. In order to minimize this evil as well as to give the proper guidance to politicians, there should be clear and con-

solidated public opinion. Therefore, public opinion has a more continuous effect upon policies than voting, which might be said to have an intermittent action.[1]

From another point of view, public opinion is related to government. "If, as we have seen, the State is a fellowship of men aiming at the enriching of the common good, and the consent of its members is one of the bases upon which it rests, then, it is evident that it must acknowledge that the citizen has the right to scrutinize its actions. This cannot be done unless the citizen has access to information which is the raw material of public opinion. If government declines to give information, there cannot be any public opinion; and if government even partially withholds information, then, public opinion will possess little value.

12. POLITICAL PARTIES

(A) Public Opinion and Political Parties

(i) Definition of a Political Party

A political party is an association of voters organized in support of some principles or policy, by which it constitutionally tries to shape the policy of government, or to form government by itself.

(ii) Public Opinion and Political Parties

The party organization plays a vital part in modern political life. Before an election, it decides upon the candidates who are to be representatives of the people; it applies "the great engine of persuasion and denunciation" through its own press, when the candidates are elected; and it tends "to divert the chosen representatives from carrying out the will of those who returned them to power," and to turn them into a

[1] Ross, *op. cit.*, p. 368.

caste, when once they take office and form the government.[1]

(B) The Basis of the Party System

The party system has been characterized as a mechanism in the transformation of the class-state of the mediaeval times into the nation-state of the modern age.[2] Parties may be based upon the rivalry of commercial and urban interests and of the landed proprietors. The Whigs and Tories of England were originally based upon this distinction. Following this lead given by England, liberal parties have been formed of the middle classes, while the conservative parties have been formed of landed interests in Europe.

Wealth, birth, and privileges make for conservatism; while lack of opportunity, poverty, and humble origin make for liberalism. In the former there is a sense of superiority, in the latter, a sense of "potential superiority." The conservative strives for precedent, caution, and racial pride; the liberal does not believe in an established order, but in environment which can be altered, in speed, and in the unity of humanity. The conservative party is generally the party of the Right, appealing to its wealth and class; the liberal party is usually the party of the Left, appealing to its strength and its numbers. The alternatives of the name 'liberal' like 'radical,' etc., are only variable names. In England, for example, "men do not consistently reveal a single attitude in respect of all questions." Thus Gladstone, for example, was a Conservative in religion but a Liberal on constitutional issues.[3]

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[1] MacIver, *op. cit.*, pp. 195-196.
[2] MacIver, *ibid.*, p. 400.
[3] MacIver, *op. cit.*, pp. 406-407, 411.

Two features may be noted in this connection. Firstly, the conservatives, on the whole, have been supporting a losing cause; while the liberals have gone ahead in many political matters. Secondly, old parties adopt new fronts and new labels in order to meet new contingencies. They do this generally in order to make their appeals effective in the current state of public opinion.

(C) Kinds of Party Systems

(i) Single Party System

Three categories of the party system may be enumerated. These are the single party, the two-party, and the multiple party systems. The first is the single party system adopted by the Totalitarian States. The Communist Party in the U.S.S.R., the Fascist Party in Italy, and the Nazi Party in Germany—these have carried on functions different from those of political parties in other countries. The Communist Party, which, as Prof. Merriam remarks, "only by an indefensible stretch of ordinary terminology can be properly termed a party," is unique in the sense that its position is "midway between that of a religious order, a political party, and a higher level of civil service in countries like England and Germany." It controls effectively the operation of government and of industry. Its importance is specially seen in the development of civic training. Its millions of members receive an intensive education "as responsible citizens and as responsible governors of politics and administrators of industry." They are not merely governors in the political sense but also makers of social and intellectual issues; and their training and activities

are intimately related to the whole process of civic education. Unlike any other political party in Europe or in America, the Communist Party builds its way as it goes on, since it has at its back "neither hereditary origin, social prestige, wealth, nor professional prestige."[1]

(ii) The Two-Party System

The two-party system is seen in Great Britain and the U.S.A. For the success of this system the following are wanted:—Firstly, a more or less well-marked division of adherents on the conservative and liberal lines mentioned above. Secondly, there should be a dominant and a comprehensive issue of a permanent character capable of making a lasting appeal though in different ways to the whole people.

This cannot be done by parties based either on territorial or nationalistic grounds, nor by those based on religious or class distinctions. In the modern world, parties have been formed around constitutional issues, and in this century, they have centred round economic questions. But the constitutional and economic issues are so intertwined that they can hardly be separated from each other in the modern world. Further, since a modern party has come to be known by its identity of organization rather than of opinion, there is a chance of each party being split up into a right and a left wing, and forming distinct organizations of its own.[2]

(iii) The Multiple-Party System

What distinguishes a two-party system from a multiple party system is the maintenance of integrity.

[1] Merriam, *op. cit.*, p. 221.
[2] MacIver, *op. cit.*, p. 415.

The central question of the former is its integrity; while no such problem marks the multiple party system in which groups are freely organized, uniting and separating with every change of situation.

A two-party system results in an absolute majority of either of the two sides; but in a multiple party system, no party can have an absolute majority of its own. Hence in a two-party system there is a government by a party; while in a multiple party, there is a coalition of groups. In France there were nine parties in 1914, and eight in 1920; in Germany, there were five or six parties in 1914; and in the British House of Commons there were three well-organized parties to which two or three smaller groups were added in 1914.[1]

If party government of any kind is to fructify, it should depend upon the intelligence and culture of the community. The essential thing is that government should rest on as broad a basis of opinion as possible, maintaining, in spite of its party character, the unity of a whole people.[2]

(D) The Merits and Evils of the Party System

(i) The Advantages of the Party System

The party system as worked out in the Western countries with representative institutions, has merits and demerits. Its advantages are the following:— Firstly, parties are inevitable in the sense that no representative government can be worked out without them. Parties bring order out of chaos in modern countries, which have millions of voters; educate those

[1] Bryce, *op. cit.*, I. pp. 283, 299. In a later context Lord Bryce speaks of eleven or twelve parties in France in 1914. *Ibid.*, p. 380.

[2] MacIver, *op. cit.*, p. 420.

who are willing to be educated in matters both political and non-political; keep them always interested in great questions affecting the life of the whole nation, especially when the voters are busy with their own affairs, and thus remind the citizens of their duty to vote. Moreover, when a member always votes at his party's dictates, he subordinates his individual view to the general well-being of his party which, given other considerations, will work for the common good. Further, party discipline on the whole prevents the deterioration of character and corruption. Finally, the need to hold fast together as a political body drives into the background distinctions of social rank and even notions of wealth. Indeed, "money tends to become the sinews of politics as well as of war" in the modern State, since upon it depends publicity, or advertisement, in a direct or an indirect manner, which is so essential to success in the modern world.[1]

(ii) The Disadvantages of the Party System

But the disadvantages of the party system are equally noteworthy. In the first place, party spirit creates antagonism and discord in the internal life of a nation, and weakens its relations with foreign powers. Secondly, party government entrusts the work of administration into the hands of people, who may neither be able to administer nor be acquainted with the particular problems which face government from time to time. And men with the fullest knowledge of either domestic or foreign questions may be ignored, because they belong to minorities. Thirdly, party government is said to represent a majority, but this

[1] Read Bryce, *ibid.*, I. pp. 134-143 for further remarks.

majority may be nothing more than a bare majority, which can hardly be said to represent the whole people. Thus the party system means nothing more than a perpetual battle-field between those who allege that they represent the people, and who wish to retain and monopolize political power, and the others, who, forming the minorities, desire to oppose the former, hinder them in their work, and ultimately oust them from the seat of government to install themselves in it. Fifthly, party spirit spreads to local administration and corrupts it, when it ought to be left all by itself. And, finally, party spirit demoralizes a people, because it breeds insincerity, promotes hollowness, judges all questions from its own stunted outlook, creates the caucus system, and encourages and lives by jobbery and nepotism which induce it to give posts and favours only to those who belong to the party.[1]

While a two-party system is thus defective, it does not mean that a coalition government is desirable. A coalition government is at best an unnatural alliance between two natural antagonists. Rival parties make common cause only at elections, and bring into existence an unstable government. An administration formed by a coalition of parties is usually weak, not merely because the combination is usually unstable, but because men whose professed principles differ are likely to be entangled in inconsistencies or driven to unsatisfactory compromises. Whereas a single party in power inspires confidence, because it rests upon responsibility, a coalition may serve only to weaken

[1] Bryce, *op. cit.*, I. pp. 130-132.

confidence, because it rests only upon a persuasive argument.[1]

13. CIVIL SERVICE

(A) Needs for Civil Service

Party system no doubt furthers democratic tendencies in government, but it does not always mean that it helps a true democracy to come into existence. This is because, inspite of the fact of the elected representatives being, on the whole, men of some ability, political power is surrendered by the many to the few who form the political executive or the cabinet. The promise made by the leaders of a party or a group to give equality after the election victory vanishes after the successful fight is over, and they remain few and powerful (the average citizens being either indifferent to or ignorant of political questions), either because of their professional qualifications, or domestic concerns, or religious beliefs, or personal tastes and amusements, or, finally, because of their own sense of civic duty to the community.[2]

Under these circumstances, those to whom political power is surrendered, aim at efficiency of administration, especially in large countries which are faced with great and complex problems. It is in this way that a necessity is felt for a large body of officials who form what is called the Civil Service, and who are to carry on the day to day administration of the country, while the cabinet ministers continue to hold political power in their hands. The political executive may not always be in power, but the many officials of the Civil

[1] Bryce, *ibid.*, I. p. 137.

[2] Bryce, *op. cit.*, II. pp. 598-600.

Service are continuously in service. The former however give unity of command and make possible efficiency in administration by division, subordination, coordination, and the concentration of directing power.

(B) Nature of the Civil Service

Those officials who make up the Civil Service of a country are generally divided into the higher and the lower grades. The characteristics which mark Civil Service officials are the following:—They should be permanent in their office as long as they perform their duties efficiently and honestly; they should not be influenced by party politics; they should be selected to their office after passing through severe written and oral tests; they should undergo a term of apprenticeship in administration before they are placed in independent position as administrators; and they should be impartial, courteous, and honest.

Members of the Civil Service in some countries misuse their position and power for the purpose of patronage. This evil could be remedied to some extent if recruitment to the ranks of the Civil Service is made by a system of strict competitive examination. And, further, the Civil Service tends to degenerate into a bureaucracy by laying undue stress upon uniformity, by attaching itself to its settled habits, and by its dislike of the novelties and innovations which are needed by changed circumstances. It then assumes, as Lord Bryce has aptly remarked, "towards the private citizen a slightly superior air," retards progress, because it discourages experiments, and, finally, ceases to win the affection and respect of the people.

(C) Civil Service Officials in some Progressive Countries

In most of the advanced countries, like France, the U.S.A., England, Switzerland and even in Australia and New Zealand, the highest ranks of Civil Service, "maintain a good standard of honesty," though lower down, where salaries are small and the corporate tradition of purity is less strong, the seduction of wealth may sometimes prevail, especially where a secret commission is offered upon a naval or military contract."[1]

Special mention may be made of the Civil Service in two countries—Germany and England. The British Civil Service is noted for its ability in higher grades, and its loyalty for its chiefs, who might belong to any political party. The higher grades of the British Civil Service, drawn from the upper middle classes of England, occupy positions of trust at home and abroad, and have played an important part in the civic life of the community. They have, on the whole, maintained a high standard of integrity and fairness, and have been marked by flexibility and adaptiveness.[2]

The German Civil Service occupies a unique position in the history of administration. Although now the members of the German Civil Service are no more recruited, as they were before the establishment of the Republic in 1919, exclusively from the nobility, yet, as Prof. Merriam maintains, they continue to be the most highly educated and competent civil service in the world. The members of the German Civil Service are

[1] Bryce, *op. cit.*, II. p. 526.
[2] Bryce, *ibid.*, II. pp. 182, 395.

experts; and their intelligence, integrity, and dignity have been for generations a powerful factor in the development of civic interest and allegiance. "The German Civil Service, national, state, and local, has been highly efficient and highly regarded by the community."[1]

The most noteworthy features of the German Civil Service, which have placed it far above the Civil Service of any other country, are the following:— Firstly, the German Civil Service has been recruited from the most conspicuous talents of the community. Secondly, they have dealt with administrative problems in a way which has commanded the confidence of the bulk of the people, "not only in its intentions but also in its thoroughness and competence." Thirdly, instead of irritating and alienating the feelings of the people, it has won the affection of the nation by its competence and behaviour. Fourthly, the German Civil Service has helped to perpetuate in actual practice the German theory of the State (*der Staat*), "as the supreme human institution for the accomplishment of man's highest purposes." Fifthly, it has given a new vitality to the State on the constructive side, and has done incomparable work for the political community in general. And, finally, its members have set up the highest standards of courtesy, sympathy, and friendliness to the average citizen,[2] which good qualities are sadly lacking in some countries that boast of "the most efficient Civil Service in the world"!

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[1] Merriam, *op. cit.*, pp. 100, 200.

[2] For further particulars, read H. Finer, *Theory and Practice of Government.*

Prof. Merriam's judgment on the German Civil Service may be borne in mind. "There are indications that the integrity and competence of this service may not pass through the transition period to democratic responsibility without some impairment of its pristine qualities, but thus far the system stands. In recent times they alone face the reorganization of public administration in terms of business skills, and the development of modern technicians as well as the earlier legalism."[1]

We may not end our remarks on the Civil Service of progressive countries without referring to the Civil Service in the U.S.S.R. Before the establishment of the Soviet Republic, the governmental services were recruited almost entirely from the nobility. But the new Civil Service is recruited mostly from the workers, with survivals from the old order, but emphasis is placed upon mass participation in government. Since in Soviet Russia the party system, as understood in Western Europe and America, does not exist, there is only the Communist Party, which, together with the Red Army, make up the government. The Soviet Civil Service, like the Red Army, seeks wide support through democratic appeal and through the democratic practice of organizing industrial life in the factory and agricultural life in the rural Soviets.[2]

[1] Merriam, *ibid.*, pp. 200-201.
[2] Merriam, *op. cit.*, pp. 221-2.

CHAPTER V

LOCAL GOVERNMENT

Summary: 1. The Need for Local Government and Its Relation to Central Government. 2. The Importance of Local Government. 3. Functions of Local Government. 4. History of Local Government in India. 5. Local Boards: their organization, functions, sources of revenue, and government control. 6. Municipal Administration. 7. Village Administration.

1. THE NEED FOR LOCAL GOVERNMENT AND ITS RELATION TO CENTRAL GOVERNMENT

(A) The Need for Local Government

The modern State is a most complex institution which exists side by side with an equally complicated "array of local authorities." We cannot adequately understand the nature, functions, and the importance of the State without understanding the nature, functions, and the importance of the local units. The local authorities, together with the central government, constitute the vast machinery of the modern State.

Territorial and mechanical necessity have brought into existence the local government, or what Lord Bryce styles 'Local self-government,' of the modern times. Over the immense area of a modern State, the central government places subordinate officials who carry on its orders, and who administer relatively smaller areas. It is only by a Devolution of Powers by the central government that these officials carry on their administration over local units.[1] The growth in the size of the modern State, therefore, is one of the conditions which has brought into existence the local government of the present times.

[1] Laski, *op. cit.*, p. 61.

The second need is that relating to the functions of both the central and the local governments. There are certain functions, like war and peace, foreign affairs, tariff questions, and legislation, which are exclusively the affairs of the central government, and which, because they affect the whole country, are best undertaken only by the central government. And there are other functions of a lesser complexity, but not less important, which we shall enumerate presently, which relate to a particular locality or localities, and which are best tackled with the help of local conditions determined by the geographical nature, economic activities, population, and even historical antecedents of such a particular locality or localities. The genius that is required to solve these local problems arising out of local needs is not always the same as that which is required to meet the larger needs of the whole country. It is true that a sharp line of demarcation between these two types of functions cannot in all cases be drawn, because local interests may not only sometimes assume national importance, but may also merge into the larger interests of the whole country. Nevertheless it is most desirable that in matters which concern a locality most intimately, it should be given a wide control which, however, can never be absolute.

(B) Relation of Local Government to Central Government

How exactly the Central Government devolves power upon local authorities is a matter upon which there is no uniformity of opinion. That is to say, there is no definite answer to the question of the reality and

the responsibility of local government.[1] In modern France, Italy, Belgium, and Holland, the local units are controlled directly by the central government through their own officers like the Prefect in France, although, at the same time, locally elected councils are endowed with some real powers of their own. Germany offers a unique example in this respect: the Central Government in Germany appoints professional technicians over localities, but these officials are completely under the control of the local bodies! The practice in England, on the other hand, has been to give great freedom to the local bodies within the range of authority assigned to them by law. The Central Government in England does not meddle with the autonomy of the local bodies, as long as the latter are within their legal bounds.[2]

The intricate problem of the relationship of the central and the local governments, therefore, is largely a matter of adjustment, discretion, and apportioning of power. The sovereignty of the State is not questioned; but "When men look primarily at the interests to be served, not at abstract claims of rights and titles to power, the greatest obstacles to the articulation of power are removed, and in the relation of local to central government the obstinate and jealous traditions of sovereignty have in a measure lost their hold."[3]

2. THE IMPORTANCE OF LOCAL GOVERNMENT

The importance of local government in modern times can hardly be over-estimated. Local government,

1 MacIver, *op. cit.*, p. 393.
2 *and* 3 MacIver, *ibid.*, p. 394.

in the first place, makes possible creative citizenship. It evokes the community spirit in individuals; and creates a local pride in achievement as well as a local shame in failure. It raises the quality of local life to a higher plane. Secondly, local government impresses upon the individual the necessity of working for common interests in common affairs, and thus makes a citizen efficient and honest. Indeed, it is responsible for making an individual truly public-spirited. From this point of view, local government helps the development of common sense, reasonableness, judgment, sociability, and such other virtues as are of inestimable value to a citizen. Thirdly, local government by stimulating competition and co-operation among local units makes it possible for the central government to have access to materials and resources which otherwise would have remained inaccessible to the latter. Fourthly, the habit of local government "is the best training for democratic government in a nation." "The main thing is that everybody, peasant and workman as well as shopkeeper and farmer, should join in a common public activity, and feel that he has in his own neighbourhood a sphere in which he can exercise his own judgment and do something for the community." It is in this sense that local government may be considered to be the best training ground of democracy and the best guarantee of its success. In this "school of democracy," the citizen learns the habit of independent action, acquires a sense of duty to the community in which he lives, and imbibes the spirit of discharging it. Switzerland affords the most admirable example of a nation where

most of these advantages of local government are seen.[1]

3. FUNCTIONS OF LOCAL GOVERNMENT: THE PROBLEMS IT HAS TO SOLVE

The system of devolution which we have mentioned above, and upon which the successful working of the local government depends to a large extent, is best seen when we examine the functions which fall within the sphere of local government. We have seen above that there are certain functions which affect the whole country, and which, therefore, are to be assigned exclusively to the central government. There are other functions which, although likewise universal in character, can, however, be efficiently carried out only with the co-operation of local authorities. But in this case the local bodies must act within a system which is controlled by the central government. For instance, the administration of justice, sanitation, and public health, the care of the poor, etc., are questions which are solved by the local bodies which undertake to apply within their own areas the general regulations laid down by the central government. This is the principles of Devolution of Powers which lessens the cost of administration to the central government, relieves it of responsibility, localizes the services within specified areas, and adds to all-round efficiency. "Devolution saves the central government from the otherwise overwhelming task of detailed administration and liberates the State from the dangers of a rigid bureaucratic control."[2]

[1] Laski, *op. cit.*, pp. 426-427; Bryce, *op. cit.*, I. pp. 148-150, 360, 375; II. p. 49.

[2] MacIver, *op. cit.*, p. 392.

Besides the above functions of a universal nature, there are others which local authorities are best fitted to carry out, by virtue of their knowledge of local conditions and because of other reasons. These functions relate to the questions of water-supply, public utilities, like motor transport or tramways, elementary education, the upkeep of cattle, pasture lands, dispensaries, markets, slaughter-houses, registration of births and deaths, burial grounds, etc.,—all of which are best performed by local bodies themselves.[1]

4. HISTORY OF LOCAL GOVERNMENT IN INDIA

Local government in India, as it is known to us at present, is a product of the eighteenth century; but as it was known to India before that time, was in vogue for centuries before the days of the English East India Company. Since earliest times there existed an admirably efficient system of local government in India, especially in Western and Southern India, which, for some reasons that do not fall within the purview of this book, gave place to artificial units that became the basis of a bureaucratic administration in the eighteenth century.[2]

[1] In India a movement of late has been set up to create localities on a linguistic basis. This may be compared to the movement called Regionalism in France, by which that country was to have been divided into a number of large administrative areas on geographical lines, with their respective economic interests and historical traditions, with a fair measure of local autonomy which was to relieve the central government of many of its functions. This principle would, therefore, merge the larger areas for certain purposes within a common government. The movement, however, has not been very popular in France. For an exposition of its principles, read Cole, *The Future of Local Government.*

[2] For a complete account of local administration in southern and western India till the 18 century, read B. A. Saletore, *Social and Political Life in the Vijayanagara Empire,* II. pp. 328-358.

For our purpose we may note eight stages in the gradual development of local government in modern India. The first stage refers to the Act of 1793, which empowered the Governor-General to appoint Justices of the Peace in the towns of Calcutta, Bombay, and Madras. These officials were to perform not only judicial duties but to look after such matters as sanitation and the upkeep of streets. The second stage was reached in 1850 when municipalities were created in the districts and commissioners were appointed over them. The third stage commenced in 1870, in the days of Lord Mayo, when the nomination principle gave place to the elective principle, and the jurisdiction of the local bodies was enlarged so as to include education, medical relief, public charity, and public works. This Resolution of 1870 is noteworthy because, firstly, it gave the municipalities the power over their funds; and, secondly, because Indians, along with Europeans, were associated in the management of local affairs. The Central Provinces were the first to utilise the principle of election, while the other provinces adopted it gradually. We reach the next stage in 1882 when Lord Ripon's Resolution of that year laid it down that "the only reasonable plan open to the (Central) government is to induce the people themselves to undertake, as far as may be, the management of their own affairs." The fifth stage in the growth of local government occurred in 1883-4, when the constitution and powers of the municipalities were altered, and the proportion of elected representatives to the total number of members was fixed by law; and when municipalities were permitted to elect non-official chairmen. It was about this time that Local Boards were set up in various provinces, based upon the elective principle. But

on the plea that "the local bodies were ill-equipped with funds, and interest in local affairs and capacity to handle them were slow in developing," the official shadow came once again over the local bodies, and local government continued to be a handmaid of the official district rule. That the charge levelled against the local bodies, *viz.*, of incapacity to handle local affairs, was not true is proved by the Report of the Decentralisation Commission (1907) which explained that the failure of local bodies was due to the fact that they possessed no real powers and no adequate funds, and that they were controlled too much by the Central Government. The Decentralisation Commission, therefore, recommended greater freedom and wider powers to the local bodies.

The sixth stage is marked by the Montagu-Chelmsford Report of 1907, which laid it down as a principle that the goal of the British Government was the gradual development of self-governing institutions, and that the greatest measure of freedom was to be given to the local bodies. The seventh stage was reached in 1919 when local government was transferred to the charge of ministers responsible to the legislature.[1] The elective principle which, since the days of Lord Mayo, had come to be prominent, was now used as the basis of local bodies and municipalities and the eighth stage was reached in the Constitution of 1935, which made the local bodies completely elective.

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[1] The Village Panchayat Act of 1920, amended in 1933; the Local Boards Act of 1923; and the Municipal Boroughs Act of 1925—these are some of the local government Acts which have implemented the recommendations of the Montagu-Chelmsford Report.

5. LOCAL BOARDS

(A) Organization

The object of setting up District Boards or Local Boards, and Taluk Boards was to meet the needs of the rural or district areas. There is no uniformity in the matter of the nomenclature of the District, Local, and Taluk Boards in modern India, each province having its own system of self-governing rural institutions. Thus in Bengal, Bihar and Orissa, there are Union Boards comprising groups of villages; in Madras the District Boards have been replaced by Local Boards, the village panchayat being the unit of local government; in Bombay there are District Local Boards which have power over the village panchayats; while in Assam there are no District Boards but only Local Boards and Unions. The lack of uniformity in the organization and size of Local Boards in modern India is due to the divergence in areas, population, and standards of living; but there are some common features between them. Firstly, the number of elected members predominates, although the local units contain a large percentage of members nominated by Government. It must be admitted that the tendency in most of the provinces is to do away with nominated members. Secondly, the local bodies elect their own non-official Presidents. And, thirdly, all Local Boards have extended the franchise as widely as possible, making it possible for owners of houses, tenants of houses paying certain rents, landowners, and farmers paying a certain amount of land revenue, and voters for the Legislative assemblies to participate in the government of the localities.

Since 1938 the District Local Boards of Bombay have consisted mostly of elected members, who are divided into two constituencies—General and Muslim. The General Constituency includes representatives from women, particular communities (like the Scheduled or Depressed Classes), and others; while the Muslim Constituency represents exclusively the Muslims, who can by vote, abolish their own constituency. The District Local Boards in Bombay hold office for three years. They elect their own Presidents and Vice-Presidents, and appoint their Standing Committees of members ranging from five to seven, and may form Special Committees for particular purposes like health, schools, etc., and pay such officials whom they might entertain in their services.

(B) Functions

The functions of the Local Boards have already been enumerated above in connection with Local Government, *viz.*, public health, sanitation, water-supply, roads, bridges, markets, education, famine relief, census, burial grounds, etc. In modern times most of these duties are considered as *obligatory,* while a few are looked upon as discretionary, by the local bodies.

The Local Boards Act of 1923 of Bombay has given a long list of obligatory and discretionary duties of the Local Boards. These may be summed up as follows:—the obligatory duties comprise the maintenance in good order of roads and all means of communication, with a provision that trees should be planted and preserved on the roadsides, the construction and maintenance of dispensaries, hospitals, markets, travellers' rest houses, public tanks, wells,

and water-works, the construction and maintenance of primary schools, and all details relating to public sanitation and health; while the discretionary duties include the construction and maintenance of tramways and light railways, famine relief, model farms, etc., and such other duties as might promote the health and general well being of society.[1]

(C) Sources of Revenue

Whether obligatory or discretionary, the above duties of Local Boards can be carried out only with adequate funds. And the sources of revenue of the Local Boards are the following:—tax on land, income from public works, a share of the road cess, duties levied from markets, fairs, ferries, and an educational cess, if the last one is permitted by the Provincial Government. The Local Boards are permitted to raise loans for approved works of public utility; and their income is finally supplemented by grants made by Provincial Governments.

(D) Government Control over Local Boards

The Provincial Governments exercise effective control over Local Boards. Firstly, the accounts of the latter are liable to be periodically audited by Government officials. Secondly, the Provincial Government determines the number of persons to be elected by each constituency and the number of seats reserved for women. Thirdly, the Provincial Government may remove a President, or a Vice-President or even a member of a Local Board for negligence of duties or

[1] For further details, read R. P. Patwardhan, *Elements of Civics*, pp. 55-56. (2nd ed.)

for misconduct. Fourthly, the Provincial Government has the right to veto a measure of local taxation. And, finally, the Provincial Government can suspend the execution of any of the orders of a Local Board which, in its opinion, is likely to create a breach of the public peace or which is likely to aid illegal or unlawful activity. In all these cases the District Collector reports about the conduct of an erring local body to the Commissioner, who has to receive the sanction of the Provincial Government before punishing a local body. What the District Collector may do in the case of a Local Board, the latter may do in the case of the village panchayat but with the previous permission of the District Collector.

6. MUNICIPAL ADMINISTRATION

(A) Importance of Municipal Administration

Municipal administration has assumed huge proportions in the modern world. It presents more difficult problems than those of the rural areas, since the poorer people, who form the bulk of the population inhabit one part or parts of the city, while the richer sections live in the other parts or in the suburbs. Secondly, municipal administration has become more and more a technical matter, especially in such subjects as engineering, sanitation and public health, necessitating the appointment of an army of officials of all grades.[1]

(B) Organization

The growth of modern towns has been caused by various factors like the development of industries,

[1] Bryce, *op. cit.*, II. pp. 483-485.

military considerations, railways, and sometimes the establishment of great educational institutions like universities. With the shifting of population from the rural areas to the towns was felt the need for constituting municipal corporations in the Presidency towns of Madras (1687), Calcutta (1726), and Bombay (1726), (amended first in 1888, and amended subsequently from time to time).

Municipal corporations or municipalities or municipal boroughs, are constituted, on the whole, on lines similar to those upon which the local boards are organized. The administration of a municipality is vested in a body of municipal councillors, who are elected from their respective wards. The number of councillors varies from city to city. There are also nominated members in municipalities, although in Bombay and in Madras the principle of nomination was abolished since 1938.

The Bombay Municipality, created by the City of Bombay Municipal Act of 1888, vests the administration of the city of Bombay in the Bombay Municipal Corporation, assisted by the Standing Committee and the Municipal Commissioner. The Corporation governs the city of Bombay. The President of the Corporation, who is elected every year, is called the Mayor. The Corporation comprises 117 members representing the different wards, special bodies like Bombay Chamber of Commerce, the Indian Merchants' Chamber, the Millowners' Association, and the University of Bombay; and special Government officials, like the Commissioner of Police, the Chairman of the Port Trust, and the Executive Engineer of the Presidency Division.

The finances of the Corporation are in charge of the Standing Committee which consists of sixteen members, which scrutinizes the budget presented by the Commissioner, and which presents it to the Corporation. Two other Committees of the Corporation which may be noted are the Improvements Committee and the Schools Committee. There may be other committees as well. The chairmen of all these committees are elected by the committees. A peculiarity of the Bombay Corporation is that the Mayor and the Chairmen of the three Committees are elected in turn from the different communities.

The Municipal Commissioner, who is generally a member of the Indian Civil Service, is appointed by the Provincial Government for a period of three years. He is the Head of the Executive, but subject to the authority of the Corporation. He may be removed from office if sixty-four councillors vote for his removal.

(C) Functions of Municipalities

The functions of municipalities, as in the case of local boards, are obligatory or discretionary. To the former category belong the construction and maintenance of highways, etc., lighting of streets, waterworks, sanitation, schools, hospitals, markets, slaughter houses, washing-places, burial grounds, etc.; while among the discretionary duties are the upkeep of places of public amusements like parks, playgrounds, museums, social services, exhibitions, magisterial courts, etc. The functions of the Bombay Corporation do not differ in this respect from those of other corporations and municipalities.

(D) Sources of Revenue

The sources of revenue enumerated above in connection with the local boards hold good in regard to municipalities. Municipalities may levy taxes on all persons, professions and objects which yield an income. Thus, lands, buildings, and property within municipal limits are liable to be taxed by the municipality. Likewise, pilgrims, trades, occupations, entertainments, animals, vehicles, drainage, water-works, roads, ferries, bridges, and articles coming into the municipality may all be taxed. It may also raise loans, and its funds may be increased by grants from the Provincial Government.

(E) Government Control over Municipalities

Although there is a widespread feeling that official control over municipalities should be relaxed, yet Provincial Governments still exercise effective control over municipalities. Thus Government has the right to suspend a municipality for gross mismanagement, abuse of powers, and apathy to its duties. The president or vice-president, or a member of a district municipality is removable on the same counts. But the recommendation for removal must be supported by at least two-thirds of the entire number of members. Thirdly, Government must approve of the by-laws of the municipalities. Fourthly, the Government has the right of veto in the matter of taxation, as in the case of local boards. Fifthly, the expenditure of a municipality, like that of local boards, is controlled by Government, which may require a municipality to reduce its staff or the remuneration it gives to its servants. It must also approve of the rules of service

obtaining in the municipalities. And, sixthly, the funds of municipalities are liable to be audited by Government officials, as in the case of local boards.

7. VILLAGE ADMINISTRATION

(A) Origin

The village in India is an institution of considerable antiquity, and since the earliest times has been the unit of local administration. The detailed regulations concerning the formation of villages and village organizations given by the great Kautalya must be read along with the mass of details available in historical records of the Gupta period, in order to be convinced about the antiquity, efficiency, and universality of the village organization in ancient India.[1] It must be said to the credit of Indian monarchs, both Hindu and Muslim, that they never tampered with the autonomous village administrations of ancient and mediaeval India.

(B) Organization—The Village Panchayat

The modern Indian village has been the creation of modern conditions. It is being adapted to the new environment which confronts it. The wise words of Sir John Lawrence, a former Viceroy of India, that "the village communities, each of which is a little republic, are the most abiding of Indian institutions," refer to the ancient village organization, in which service was voluntary and was looked upon as an honour, and which paid its officials in kind at the time of harvest. But with the modern exigencies, a competitive examination for the village posts has been introduced,

[1] Read R. N. Saletore, *Life in the Gupta Age*, pp. 294-304.

and the village officials have become a part of the Government machinery, receiving their pay in cash from the Government treasury.

The old names of officials continue in most instances. They are not uniform in all instances. Thus, the village headman is called the Patil (or Patel), Lambardar, or Reddi; the village accountant Kulkarni, or Karnam, or Shanubhog, or Patwari; the village watchman, Talavari (or Talayari), or Chowkidar; but the village assembly is called everywhere Panchayat.

The village headman collects revenue, rents, and other dues, and is responsible to the Government for practically all the things that happen in the village. He is the connecting link between the village people and the Government, whose orders he executes throughout the village. His assistant is the village watchman, who is a servant of the village community, but receives orders from the village headman. He maintains peace and order and keeps a register of births and deaths in the village. The village accountant surveys the lands and maintains all the records of the village. He prepares the electoral rolls for the village panchayat, and the district and local boards electoral rolls.

The Village Panchayat is a body of elected representatives of the villagers who pay at least Rs. 15 as yearly land revenue. One of them is elected every year as President of the Panchayat. The Panchayat is empowered to try all petty cases, civil and criminal, impose fines, construct and maintain roads, bridges, etc., tanks, cattle-pounds, etc., and may be called upon to perform other functions. These obligatory duties

are distinct from the discretionary duties, such as the maintenance of fairs, dispensaries, cottage industries, co-operative societies, and village libraries. The Decentralisation Commission rightly recommended the revival of the ancient village panchayats, which were the most characteristic feature of the local administration of ancient and mediaeval India.

(C) Revenue

The sources of revenue of the village panchayats are the rates and cesses levied on land and ferries, fines imposed on petty offenders, fees for trials of small cases, fines from cattle-pounds, duties from market fairs, voluntary contributions from the villagers, and, finally, grants from the district and local boards.

In Bombay, where the Village Panchayat Act of 1933 has been amended in 1939, the sources as laid down by law are as follows:—taxs on houses and lands upon which no agricultural assessment is levied, a tax on pilgrims, a tax on festivals and fairs, on the sale of goods, on marriages and adoptions, and octroi duties, and other taxes permitted by the district and local boards have the right of enhancing the taxations of a village panchayat, if thereby the welfare of the village can be furthered.

(D) Government Control over Villages

Government exercises the same control over villages as over other local boards and municipalities. In Bombay the right of removal of the President of a Village Panchayat rests with the District Board, but it can be exercised only with the previous permission of the District Collector. In regard to the control by

the District and Local Boards of the expenditure of the Village Panchayats, the latter can appeal to the Commissioner whose decision is final. The District and Local Boards can supervise and inspect the finances of the Village Panchayats, but with the previous sanction of the District Collector.

It has been argued that, although the control by Government of local bodies is very great, yet in actual practice Government gives as much freedom to local bodies as possible; and that, as the Indian Statutory Commission says, the control by Government over local bodies in India is not so severe as the control by the Central Government of Britain over the local bodies in that country.

(E) The Future of the Indian Village

Whatever may be the justification put forward in support of the hold which the Government has on the village administration, the fact remains that the Indian village today is a sadly neglected unit, with its officials paid incomparably little (the village watchman receiving Rs. 3 as his pay, and the village accountant, about Rs. 15), its Panchayat monopolized by the few rich, its revenues practically nil, and its many vital problems left almost unsolved. To make the villager solely responsible for this sad state of affairs is for the critic to invite condemnation on himself. Not till the village issues become national issues, and both Government and the city-people take a greater interest in village affairs, and endow the village panchayats with real freedom, can the vital question of village be solved to any appreciable extent.

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