

**Relation of the State and Liberty, according
to modern right.**

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Modern right, by introducing itself in the place of the ancient right, has done one new thing: it has put in the presence of one another, on the same line, two powers which until now had been in a relation of subordination. These two powers are the *State* and the *Individual*, in other words *Government* and *Liberty*.

The Revolution, indeed, has not suppressed that occult, mystical presence, that one called the sovereign, and that we name more willingly the State; it has not reduced society to lone individuals, compromising, contracting between them, and of their free transaction making for themselves a common law, as the *Social Contract* of J.-J. Rousseau gave us to understand.

No, Government, Power, State, as one wishes to call it, is found again, under the ruins of the *ancien régime*, complete, perfectly intact, and stronger than before. What is new since the Revolution, is Liberty, I mean the condition made of Liberty, its civil and political state.

Let us note, besides, that the State, as the Revolution conceived it, is not a purely abstract thing, as some, Rousseau among others, have supposed, a sort of legal fiction; it is a reality as positive as society itself, as the individual even. The State is the power of collectivity which results, in every agglomeration of human beings, from their mutual relations, from the solidarity of their interests, from their community of action, from the practice of their opinions and passions. The State does not exist without the citizens, doubtless; it is not prior nor superior to them; but it exists for the very reason that they exist, distinguishing itself from each and all by special faculties and attributes. And liberty is no longer a fictive power, consisting of a simple faculty to choose between doing and not doing; it is a positive faculty, *sui generis*, which is to the individual, assemblage of diverse passions and faculties, what the State is to the collectivity of citizens, the highest power of conception and of creation of being (D).

This is why the reason of the State is not the same thing as individual reason; why the interest of the State is not the same as private interest, even if that was identical in the majority or the totality of citizens; why the acts of government are of a different nature than the acts of the simple individual. The faculties, attributes, interests, differ between the citizen and the State as the individual and the collective differ between them: we have seen a beautiful example of it, when we have posed that principle that the law of exchange is not the same for the individual and for the State.

Under the regime of divine right, the reason of State being confused with the dynastic, aristocratic or clerical reason, could not always be in conformity with justice; that is what has caused the banishment, by modern right, of the abusive principle of the reason of State. Just so, the interest of the State, being confused with the interest of dynasty or of caste, was not in complete conformity with Justice; and it is that which makes every society transformed by the Revolution tend to republican government.

Under the new regime, on the contrary, the reason of State must in complete conformity with Justice, the true expression of right, reason essentially general and synthetic, distinct consequently from the reason of the citizen, always more or less specialized and individual (E). Similarly, the interest of the State is purged of all aristocratic and dynastic pretension; the interest of the State is above all an interest of noble right, which implies that its nature is other than that of individual interest.

The author of the *Social Contract* claimed, and those who follow him have repeated after him, that the true sovereign is the citizen; that the prince, organ of the State, is only the agent of the citizen; consequently that the State is the chose of the citizen: all that would be bon à dire while it was a question of claiming the rights of man and of the citizen and of inaugurating

liberty against despotism. Presently the Revolution no longer encounters obstacles, at least from the side of the *ancien régime*: it is a question of rightly knowing its thought and of putting it into execution. From this point of view the language of Rousseau has become incorrect, I would even say that it is false and dangerous.

Determination of the functions, attributes and prerogatives of the State, according to modern right.

The State, a power of collectivity, having its own and specific reason, its eminent interest, its outstanding functions, the State, as such, has *rights* too, rights that it is impossible to misunderstand without putting immediately in peril the right, the fortune and the liberty of the citizens themselves.

The State is the protector of the liberty and property of the citizens, not only of those who are born, but of those who are to be born. Its guardianship embraces the present and future, and extends to the future generations: thus the State has rights proportionate to its obligations; without that, what would its foresight serve?

The state oversees the execution of the laws; it is the guardian of the public faith and the guarantor of the observation of contracts. These attributions imply new rights in the State, as much over persons as things, that one could not deny it without destroying it, without breaking the social bond.

The State is the justice-bringer par excellence; it alone is charged with the execution of judgments. On this account as well, the State has its rights, without which its own guarantee, its justice, would become null.

All of that, you say, existed before in the State. The principle then and its corollaries, the theory and the application remain at base the same, nothing has changed? The Revolution has been a useless work.

This has changed between the ancient and the new regime, the in the past the State was incarnated in a man: “*L’État c’est moi*,” while today it finds its reality in itself, as a power of collectivity; — that in the past, that State made man, that State-King was absolute, while now it is subject to justice, and subject as a consequence to the control of the citizens; — that in the past the reason of the State was infected by aristocratic and princely reason, while today, exposed to all the critiques, to all the protests, it has strength only from Right and Truth; — that in the past, the interest of the State was confused with the interest of the princes, which distorted the administration and caused justice to stumble, which today a similar confusion of interests establishes the crime of misappropriation and prevarication; — that finally, in the past, the subject only appeared on its knees before its sovereign, as we saw it in the Estates General, while since the Revolution the citizen deals with the State as equal to equal, which is precisely what allows us to define tax as an exchange, and to consider the State, in the administration of the public funds, as a simple trader.

The State has preserved its power, its strength, which alone renders it respectable, constitutes its credit, creates awards and prerogatives for it, but it has lost its *authority*. It no longer has anything but Rights, guaranteed by the rights and interests of the citizens themselves. It is itself, if we can put it this way, a species of citizen; it is a civil person, like families, commercial societies,

corporations, and communes. Just as it is not sovereign, neither is it a servant. As has already been said, that would be to remake the tyrant: it is the first among his peers.

Thus liberty, which counts for nothing in the State, subordinated, absorbed was it was by the good pleasure of the sovereign, liberty has become a power equal in dignity to the State. Its definition with regard to the State is the same as with regard to the citizens: *Liberty, in the man, is the power to create, innovate, reform, modify, in a word to do everything that exceeds the power of nature and that of the State, and which does no harm to the rights of others*, whether that other is a simple citizen or the State. It is according to this principle that the State must abstain from everything that does not absolutely require its initiative, in order to leave a vaster field to individual liberty.

Ancient society, established on absolutism, thus tended to concentration and immobility.

The new society, established on the dualism of liberty and the State, tends to decentralization and movement. The idea of human perfectibility, or progress, has revealed itself in humanity at the same time as the new right.

Note D, Page 65.

Liberty and the State. — The antithesis of the State and of Liberty, presented here as the foundation and principle of modern society, by replacement of the supremacy of the State and the subordination of Liberty, which made the base of ancient society, that antithesis, eminently organic, will not be admitted by the publicists and partisans of the principle of authority, of the eminent domain of the State, of governmental initiative and of the subordination of the citizen or rather subject; it will not be understood by those who, formed by the lessons of the old scholasticism, are accustomed to see in the State and free will only abstractions. Those, just like the old partisans of divine right, are born enemies of *self-government*, invariable adversaries of true democracy, and condemned to the eternal arbitrariness of the reason of State and of taxation. For them the State is a mystical entity, before which every individuality must bow; Liberty is not a power, and taxation is not an exchange; principles are fictions of which the man of State makes what he wants, justice a convention and politics a bascule. These *doctrinaires*, as they are called, the skepticism and misanthropy of which today governs Europe, are as far beneath the ancient monarchists and feudalists, as arbitrary will is beneath faith, Machiavelli beneath the Bible. Europe owes to this school of pestilence the confusion of ideas and the dissolution of morals by which it is beset: the slack maxims Jesuits could produce nothing comparable.

This is not the place to open a discussion of the actuality of the State and of Liberty: I will content myself with referring provisionally to my work *Justice in the Revolution and in the Church*, Fourth and Eighth Studies of the Belgian edition.

Note E, Page 66.

Opposition of collective and individual reason. See, on this curious subject, the work indicated in the preceding note, Sixth Study of the Belgian edition.

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