

The Law and the State

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WE live in a world of definition. The modern man is unhappy, unless his ideas are frozen into definitions. The learned man is dissatisfied, unless he can dazzle the lay man with beautiful definitions. The lay man is unimpressed, unless he cannot understand. Every branch of human knowledge has its own code of terms lovingly defined by its savants in a language hardly understandable to the confused lay man. Law, as a branch of human knowledge, is no exception. It is not immune to the temptation to define. It is delimited and circumscribed by definitions of legal terms, which give birth to the modern phenomena of legal fictions so numerous and intricate that someone felt called upon to say that our world is made up of legal fictions. The state is one of these legal fictions.

Bluntschli defines the state as "the politically organized personified people of a certain land" I am sure that not a few scholars have lost themselves in ecstasy over the beauty of this definition, which has captured in very few words the concept of the state. Labelled the "state", this dehydrated definition fits into a rainbow-colored capsule. To give it life and make it breathe with the spirit that is latent in it we need only to refer to Dean Pound. He wrote: "juristically we must consider the state in two aspects. First, we look in it as the immediate practical source of legal precepts and sanctions—as logically the condition precedent of law, whether as legal

order or as a body of authoritative grounds of or guides to determination of controversies. It sets up and maintains tribunals and its organs promulgate or give the stamp of its authority to the precepts recognized and given effect in the judicial and administrative processes. Second, we have to look on it as a juristic person, in that certain interests are secured by attributing private rights to the state, so that for some public interests it is vested as a private owner or a private contractor." Here we have in the state a phenomenon known in psychology as a split personality, a dual character without which the state is an impossibility, an absolute legal fiction without reality, at best, an ideal without realistic substance.

So far so good. Bluntschli and Dean Pound are on safe grounds. They have not as yet said anything which will disturb the repose of Rousseau, Kant, and Hegel—the original triumvirate of the fascistic school of legal thought. Neither has Duguit reason to explode. They seem to be in happy agreement—so far. But when we come to the classical question of sovereignty as an attribute of the state, we light the fuse of the super-charged bomb. Now we resurrect Rousseau and company and re-excite Duguit. Let us sit back and enjoy the battle royal.

Rousseau and his friends started from the hypothesis that the state is sovereign and concluded with a denial of the existence of a jural principle superior to the state and limiting

its action. They spent their expendable energies in maintaining that there is an irreconcilable contradiction between the concept of the sovereign state and the concept of a jural principle. Faced with a sixty-four-dollar question, they tossed a coin—and that was that: the state must be sovereign, and, if it must be sovereign, then there cannot be a jural principle. Quite a feat of philosophical magic, a breath-taking jump from one thing to another which leaves a thinking man seemingly without moorings, but not really so. It is as simple as turning a picture over, inverting a hypothesis and discovering what lies behind it—a simple matter of uncompromising loyalty to one's major premise, of rationalizing rather than of reasoning, one might say. It proves that one can safely justify a theory one way or another and appear convincing. With a mastery of sophistry and jargon,—inspired by the devil, one is led to speculate—they preached their doctrine that the individual finds fulfillment only by and through subordination to a deity—the state; that the individual is a glorified tool of the state. Theirs was a religion, a religion of state worship. Hitler and Mussolini were not original thinkers after all. They were plain copy boys, disciples of Kant and Hegel and Rousseau. And yet we would not be quite fair to Rousseau if we did not say that this much we owe him: he recognized the intrinsic worth of the individual as a human being. He was a shining light in a dark age.

Kant, Hegel, and Rousseau, immortal in spirit, were mortal in flesh. Time swept them

away. Empires and governments that were founded on their philosophies were swept away too. They came and went with the coming and the going of the tide of time, with the even swing of the inevitable pendulum. And a new man emerged—Duguit. Duguit—sensitive soul that he was—took the cares and the sores of the world seriously. He was shocked by the frightful spectre into which the state had been shaped. The Kaiser then was parading up and down continental Europe with dream of world conquest—an ailment which is not uncommon to mortal man who suddenly finds himself possessed with vast powers over his fellowmen to be sure. Duguit revived the problem of limitations upon the state. In his own words, "it resolves itself into the determination of the question whether there is a jural principle which is imposed upon the state, which controls its actions, creates obligations for it, and delimits its power". He refused to take a conciliatory attitude towards Rousseau and his kind. To Duguit the metaphysical conception of the state, which stands as a monument to his adversaries, is no less than fantastic. If he were without manners, he would have said—and meant it, too—that it was all bunk. He argued that the doctrine of the sovereign will of the state is a metaphysical hypothesis without any scientific value. For him, the expression "will of the state" is purely and simply a figure of speech—a metaphor, concocted to avoid embarrassment and to impress upon the supposed instruments of this will a character of au-

dividual who acts ostensibly for the state, not the will of the state, the so-called collective will being just another fantasy. He rang the death knell for the concept of the sovereign state and welcomed the coming of age of his theory of the state as an instrumentality of social service and of government not as a force from without but as service from within the society. His gift to the world he puts in the following words: "Those who in fact hold the power do not have a subjective right of public power; but they are under the obligation to employ their power to organize public service, to assure and to control its development. None of their acts are of binding force or of political value except when they tend toward this end. Public law is no longer a collection of principles to be applied to subjects of rights of different kinds—the one superior, the other subordinate; the one having the right to command, the other the right to obey. All wills are individual wills; all are equivalent in their value; there is no hierarchy of wills. All wills are equal if one considers the subject only. Their value can be determined only by the end which they pursue. The will of those who govern has no force as such; it has value and force only to the extent that it makes for the organization and the functioning of a public service. Thus, the notion of public service comes to replace that of sovereignty. The state is no longer a sovereign power which commands; it is a group of individuals having in their control forces which they must employ to create and to manage public service. The notion of public

service becomes, therefore, the fundamental notion of modern public law." It seems clear that, while Rousseau, Kant and Hegel earned for themselves the uneasy recognition of a confused world by tagging the individual as a glorified servant of a glorified and deified state, Duguit comes as a God-sent reaction by considering the state as a glorified servant of the glorified and deified citizen and by placing the government official necessarily lower in classification than the state. From a practical viewpoint it would seem that Philippine democracy, or whatever masquerades under that name, would greatly profit from the words of Duguit. Subservience to government officials can undermine a democratic system. It will be a sun-kissed day when a humble citizen can say, with confident righteousness, that Manuel Acuña Roxas is his servant in the presence of that august institution. Then we might be able to say with easy conscience that Philippine democracy has at last come of age, but right now it would seem that this is an idle dream—like the dream of a millennium.

Representing the middle course, Dean Pound comes as a breath of solid reality. In giving expression to the American experience in the art of government, he said that the "sovereign is incapable of legal limitation but the separate organs through which the sovereign acts may be held legally to certain spheres or modes of action". The American formula is the system of separation of powers, a system which maintains a balance between the general security of the individual life

through a balance of the legislative, executive, and judicial authority. This is the American concept of legal order—a concept also Philippine by adoption. Whether in the Philippines we are profiting as much as we should from that American formula of separation of powers is purely in the realm of conjecture and speculation. It would be enough to say that no system can possibly work, unless the men who work it and the men upon which it works are prepared for it.

Whatever it is, with the victory of the United Nations a new trend has crystallized in the field of political thought. From Rousseau to this trend is a long march, a march which symbolizes man's capacity for progress. It might have been slow and bloody at times, but it proves a point—that mankind is moving towards an ideal. The fact alone that the problem of the law and the state is never considered as a closed question is in itself sufficient to hearten even the hardest of cynics and pessimists. More and more, in the conflict between the state and the individual, the latter is winning ground. The search for a formula, for a system, for a balancing of conflicting interests is directed towards securing to man the greatest possible opportunity for happiness and self-fulfillment with the least possible restraint and coercion from the state. The state is indispensable, but that indispensability should not destroy the human being as a sacrifice to expediency. As Dean Pound puts it, "the social unit in the modern world is the individual human being. Recognition of his moral worth was the great achieve-

ment of the 18th and 19th century juristic and political philosophy. Appreciation of the social interest in the individual life is the significant achievement of the present generation. It is not likely that any economic order which may supervene in such time as we can foresee will bring about a legal order which can succeed in ignoring him". This certainly is a ray of hope. Nevertheless, we must accept the possibility of relapses. It is true, that state worship has become a political heresy. No longer is the individual looked down upon by the rulers that be as a mere instrumentality of the state; quite the contrary, it is becoming the political fashion to regard the existence of the state as justifiable only in so far as it is the instrument of human progress, the means to the self-fulfillment of man. True... but no system, however theoretically perfect, can work if it is founded upon quicksand. No system, however theoretically perfect, can work in a vacuum. No system, however perfect, is an immunity against men of the breed of a Hitler. Life—energetic and vigorous—must be breathed into that system. We must prepare and have, not only rulers, who will run the machinery of that system—we must prepare and have a citizenry which will form the flesh and blood of that system. Political education is indispensable. We must grow into that system, lest it crumbles around us. Political and social equality is indispensable. But still more important than all these is economic equality. That is the core of any system of political organization which claims to secure to man liberty, justice,

equality and freedom. What ails the democratic system today, what renders it a misty fantasy, what makes it unreal is the myth of economic equality, be it in opportunity. We can theorize along legal lines, but

we can never convince the man on the street that he is our economic equal, and therefore, as worthy as those of us, who by accident of birth, are blessed with economic means.



Government and Civil Rights

GOVERNMENT of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealousy of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in preference of officially disciplined uniformity for which history indicates a disappointing and disastrous end.—*MR. JUSTICE JACKSON.*