

CHAPTER II

SOCIETY AND THE STATE

"Before Man made us citizens, great Nature made us men."

LOWELL.

Civics is that branch of ethics, or of the science of human duty, which treats of man's duty as a citizen, or member of the State. In order to understand our duties as citizens we must know what the State is, as well as why and how we came to be members of it. We all know in a general way that it is an association formed for the maintenance of that orderly regulation of human conduct and affairs which is called civil government, but we may not have sufficiently considered the nature and purpose of its authority to be fully alive to our individual responsibility for the exercise of its power.

Born into the already long-established State, we are prone to look upon its much-exploited power as having its existence in the nature of

things, and to utilise it as we do the forces of nature for any and every purpose to which it may seem adapted. Or, if we realise that it is human power contributed by and belonging to all the people in common, we may make the mistake of supposing that it may at least be used for any purpose to which the majority may choose to apply it.

It is true that in deciding what the action of an organised body of individuals shall be it is from the nature of things necessary for the will of the majority to prevail, but no majority can justly make use of any organisation for any other purpose than that for which it is formed and its power maintained. Even if the State were an association into which the people had all of them voluntarily entered and from which they could withdraw at will, its power could not be justly used for any other purpose than that for which it was contributed. Much less can civil power, attained and upheld as it is through that compulsory organisation which the State actually is and from which no member can withdraw, whatever the majority may do,—much less can power so acquired and maintained be justly used by any majority however great for any ultimate purpose

other than that which alone justifies the compulsion necessary to its support. Civil power is a sacred trust, one not voluntarily confided but arbitrarily assumed, and we can not be too scrupulous in the discharge of its obligations.

The first of civic duties is that of endeavouring to find out—each one for himself—in what they consist. To rely too confidently upon the opinion of others is to depend upon the accident of environment and association. Engaged as we are in what is called self-government but really in the government of one another, it is of the first importance, no less from altruistic than from self-regarding considerations, that each shall understand just what he is doing as well as by what warrant he does it. Nor is this primary duty of the citizen so difficult as may be supposed. If the principles of government were hard to understand, if they were indeed beyond the comprehension of people in general, there would be no just warrant for the maxim that every man is presumed to know the law, and little of promise would there be in government by the people.

Propositions hereinafter advanced are assumed to be statements of self-evident truth or of logical deduction therefrom, and are hence submitted for

the most part without argument or citation of authority. If a proposition seems to be untrue or unreasonable the reader will be slow to accept it on whatever authority, but before rejecting it he should be quite sure that he understands its meaning, which if at first obscure may become clear in the light of subsequent statement.

In order to understand what the State actually is, in what its authority consists, what its legitimate functions are, as well as what constitutes abuse of its power, we must know in what way, for what purpose, and by what just warrant it is established and maintained. The State is not to be confounded with Society. The two associations comprise the same individual membership and occupy one and the same territory, but they are not identical.

By Society is meant that natural, uncontrived association into which mankind are unconsciously brought and in which they are ever held by immutable conditions of a common existence upon the earth. Society as such has no organisation, no common will or concert of action, no legislatures nor courts of justice, no authority and no persons in authority over it, no duties and no laws other than those imposed upon all human beings

alike by reason of the relations which they naturally sustain to one another and to the earth. Its members as such act individually or in voluntarily associated groups, each enforcing as judge in his own case as best he may whatever judgment he wills. Society has no welfare other than that of the individuals composing it, and can not be wronged except as they wrong one another, which they may do as members of Society merely, or as members of the State and through its agency, that is, through government.

The State, on the other hand, is an artificial, organised association formed by the power and according to the will of man. The members of Society are by that power alone compelled to become and remain members also of the State, and to conform to its regulations. The State formulates, promulgates and enforces laws or rules for the guidance of its members in their conduct toward one another, and also performs all services of a public nature, that is, such as are necessary to an equitable public order and can not be performed without public, or civil, authority. The State does not subvert or supersede Society, but coexists with that pre-existent, indissoluble association of mankind, to whose irrevocable laws they are no

less subject as citizens or members of the State than as members of Society.

The State has to do with conduct. Its object is to control conduct. All its deliberations and acts are directed to that end. It prescribes this and prohibits that particular conduct, resorting to force when necessary to compel obedience to its commands. Moreover, since no act of the State can be more or other than that of individuals composing it, its will being but the will of man and its power but human, government itself, the action of the State, is always conduct, the conduct of man toward man.

It follows that conduct must constitute the subject-matter of a science of government, and that all questions regarding the State, whether they relate to its organisation and maintenance, to the nature, purpose and extent of its authority, or to exercise of its power, are to be considered and answered with reference to principles of human conduct.

The justice of any first step toward organisation of the State or the establishment of government, must of necessity depend upon principles existing at the time the step is taken, and no taking of such step or of the greatest number of sub-

sequent steps, can change those principles or create new ones. It is, therefore, upon principles existing in the nature of things, upon the natural laws of Society, that the State must depend for whatever warrant there may be for its existence or for exercise of its power. In other words, the relations which men by the nature of their being sustain to one another and to the earth and upon whose integrity they depend for the preservation and normal development of that being, precede any organisation of the State, and no action of the State, no government however long continued, can change those relations or relieve any human being from the obligations which they impose upon every member of Society. But for such obligations and the possibility of their disregard, there would be no criterion by which to judge the conduct of man toward man, no principles by which to be guided in any individual or collective attempt to control it; in short, no just warrant or authority for forcible interference with human conduct, whether by government or otherwise.

It follows that inquiry into the nature and functions of the State involves consideration of the principles by which men should be guided in their conduct toward one another as members of Society,

that natural, unorganised association, which, as already seen, precedes and must be distinguished from the artificial organisation comprising the same individual membership and known as the State.

Principles of conduct as between man and man are merely general rules of action which it is the duty of human beings to observe toward one another. A duty always implies something due or owed from or by one person to another, but it is evident that if one owes anything to another it is because the latter may demand it as a right, and that there can be no duty without a correlative right. It necessarily follows that principles of duty as between man and man, the natural laws of human conduct, depend upon certain no less natural rights of man.

The natural rights of man, which are indeed his only rights, are not, as they are sometimes slightly characterised, mere metaphysical conceptions, visionary conceits of the imagination, but actual, necessary physical conditions of normal human existence, as easily perceptible to the bodily senses as any most palpable entities. We take cognisance of them whenever we say of any man, as we often instinctively do, that he is "all

right," meaning thereby that the conditions in mind have not been impaired. To doubt the reality of such natural conditions, or to question the propriety of calling them rights, is the hyper-metaphysical illusion against which to guard, for they constitute the only demonstrable basis for a standard of right and wrong as between man and man. Without rights, men could not wrong one another.

Natural, human rights consist in the essential relations of man to the earth and to his fellow men, and have their sanction in the universal instinct of self-preservation. They are to a science of conduct, and hence to a science of government, what the axioms of mathematics are to a science of quantity. If man had no natural rights he could not have any rights whatever, for he would have no right to acquire or possess any. If he had no natural rights, he would have no right to establish the State, and whatever government he might maintain, being without natural, human right, would of necessity be either by supernatural, divine right, or without any right whatever.

A right, as commonly understood and defined, is that, whatever it may be, to which one is justly entitled, and if it exists in the nature of things

it may well be termed a natural right. The natural condition or physical relation of being alive would surely seem to be one which every human being is entitled to maintain as against the effort or intent of any other to deprive him of it. Certain it is that if the validity of any man's title to life is to be contested the burden devolves upon those who dispute it and who in order to prevail must show better title than his. But what title to the life of another shall they assert who, by denying the existence of natural rights, virtually disclaim any right or title to their own? The right to life is not only natural but inherent and inalienable, it being impossible to conceive of its transfer, or of any man's becoming possessed of or entitled to the life of another.

Moreover, since that would be a right in name only which did not involve and carry with it the right of enjoyment, it follows that if man has a right to life he must also have the right to enjoy whatever nature has established or provided for the support or happiness of life, that is, freedom from interference by any other man or men with his enjoyment of whatever has been so established or provided. Man's right to maintain his natural relation to the earth and to his fellow men, as

against the effort of any other to deprive him of such freedom, is called the right to liberty, which being essential to the inalienable right to life is therefore itself inalienable.

As the right to life involves the right to liberty, so does the latter right include among others certain relations of such importance as to be themselves also denominated rights although included in the right to liberty. The relation of ownership which naturally obtains between every human being and the direct or indirect product of his labour is called the right of property, that is, the right of proprietorship and control over such product, which is itself termed his property, or wealth. The relation which one naturally sustains to his fellow men with respect to the exchange of labour or property is called the right of contract, which includes the natural freedom of every human being to exchange his labour or property for the labour or labour-products of any and every other willing to make the exchange, in the natural market, a market consisting in the unrestricted competition of unprivileged natural persons only.

It is of course understood that the right to life includes security from bodily harm, and that the

right to liberty embraces not only freedom from physical restraint, from manacles, fetters and prison walls, but freedom of location and of locomotion, that is, the freedom of every human being to be and to go wherever he will, as well as freedom to embrace and enjoy whatever opportunities nature affords for the support and happiness of life, and to make whatever use of them seems to him best, provided always that he does not interfere with the equal freedom of any other human being; also freedom of thought, speech and action, from verbal abuse and from injury to reputation.

Clearer conception of what is meant by a natural right may perhaps be had by conceiving of a man alone upon the earth. He would depend for existence upon his ability to utilise natural opportunities for the support of life, but his natural freedom of action would hardly occur to him as a right, for there would be no one to question it or against whom to assert it. Upon the coming of never so many other men there would be no change in the first man's relation to the earth and no less necessity for freedom of action on his part, nor would their relation to the earth or their dependence upon individual freedom of action be different from his. And even then not until some

one or more of them interfered with the freedom of some other would it be conceived of as a right. The first conception would perhaps be that of an injury or wrong suffered by reason of such interference. It is not possible, however, to conceive of a wrong without a correlative right. One is wronged only when something to which he is justly entitled is as it were wrung from him. But for one to deprive another of life, or of any condition, relation or opportunity natural to its preservation or enjoyment, is to wrong the latter, that is, to wring from him that to which he is justly entitled as against effort of the former to deprive him of it, and which may therefore in the ordinary use of the word be termed a right, and, because existing in the nature of things, a natural right.

In the exercise and enjoyment of his natural rights, it is evident that every man is primarily dependent upon his own judgment. His physical powers are naturally the servitors of his own mind and not of the will of any other man. Alone upon the earth he must of necessity be guided by his own understanding, nor is there any reason in the nature of things why after the coming of another man either of them should abandon his own judgment or submit his conduct to control of the

other, so long as neither interferes with the natural autonomy of the other. Attempt by one forcibly to control conduct of the other, might show which was for the time the stronger or more crafty, but could in no event determine anything as to rightness of conduct.

It is therefore clear that the fundamental, universal principle of human conduct, the general rule by which mankind should be guided in all their actions affecting one another, is simply this:—that no human being should interfere with or infringe upon any natural right of another. It is also clear that so long as a man observes this rule his conduct can not justly be subjected to forcible control by any other man.

It is no less clear, however, that, whenever one man, disregarding this rule, attempts to interfere with another's enjoyment of any natural right, the latter may justly defend himself against such aggression, for the former has no right so to interfere and therefore is not wronged by being even forcibly prevented.

The right to defend one's self is natural, as all rights indeed are, but it is secondary or subsidiary in that it never arises or comes into play except when necessary to prevent infringement of some

one or more of the rights of life, liberty, property and contract, which may for distinction be termed primary natural rights. This subsidiary natural right, known as the right of self-defence, is called the first law of nature, and is indeed the first and only law or principle by virtue of which any one man can justly exercise forcible control over conduct of another.

Inquiry may next be made as to whether several or any greatest number of men acting collectively for forcible control of conduct are to be guided by the same principle as when acting individually and independently of one another, or whether with increase in the number of those undertaking such control there arise additional or modified principles or rules of action in that regard.

It has been seen that of two men, one, the second for instance, has no right to interfere with conduct of the first except in self-defence; nor can he have other or greater right simply by reason of the presence or co-operation of a third man. Since neither the second nor third has any right of control over the first except in self-defence, they can not both together have any except in defence of one or both of them. If the first infringes any right of either the second or third they may justly

anybody and perhaps not caring themselves to resist aggression, may be compelled to unite with others in support of government.

If the State were a wholly voluntary association which one might enter and leave at will, warrant for its existence would not be hard to find, for it is clear that all the members of Society would have the right voluntarily to unite and cooperate for the defence of each and all against the fraud or violence of any. Some such unanimous action is implied in the theory that government is founded on social contract, but no such action has ever been taken. Question as to whether they preferred to maintain or to do entirely without government was never yet submitted to all the people of any considerable territory, and there are those who contend that there ought not to be any government by force, and who have never voluntarily consented to any. The State is essentially a compulsory association of which all the people within the territory of its jurisdiction are forced to become and remain supporting members, however much against their inclination; and, as already seen, the question first to be answered is:—By what just warrant can any man be compelled by others to unite with

them in support of the State and in the exercise of its power?

If the ultimate object or moving purpose in organising the State were to protect individuals from the fraud or violence, the intentional aggressions of other individuals, no number of men, no majority however great, would have any right or authority to compel any man to co-operate with them to that end. Their only right to combine for such purpose would consist in the individual right of self-defence, a right, however, which belongs to him as well as to them, and by virtue of which he might well decline so to co-operate, on the ground that according to his judgment he could thereby best defend himself. In other words, any man in the exercise of his right of self-defence may justly decline aid in the defence of others. Even if one recognised the necessity of combination with others for purposes of self-defence, he might well prefer to unite with an organisation of his own choosing if not of his own forming. No man or number of men have any right to dictate to any man how he shall defend himself, so long as in so doing he does not infringe upon any natural right of any man.

On the other hand, however, if one man in de-

fending himself against another thereby interferes with any natural right of still another, the last may justly defend himself against such interference however unintentional; and it will be found upon further consideration that it is the necessity for providing efficient defence against such interference, against unintentional aggressions arising from individual self-defensive disturbance of public peace and order, that constitutes the primary and only just warrant for the compulsion essential to the establishment of the State and the maintenance of civil power.

In Society without government the settlement of differences between individuals would be left to those personally interested, nor, as already seen, would the mere fact that one or more were suffering wrong at the hands of others warrant any majority in compelling the smallest minority to aid in preventing such wrong. Sooner or later, however, it would be found that unrestrained, unregulated exercise of the right of self-defence by everybody is incompatible with permanent enjoyment of natural rights by anybody. Disputes between individuals would so multiply, continue and extend, involving neighbours and neighbourhoods in the resulting strife, that tu-

mult and riot would overwhelm even those who had no differences of their own and whom no one desired to molest or intended to disturb. Those so peaceably disposed and so averse to strife as to suffer wrong rather than disturb the peace of others, would find their own peace destroyed and their property and lives endangered by the heedless violence of contending factions in whose controversies they had no personal concern.

It is clear that any individual, if he had the power, might justly defend himself against such blind aggressions of public disorder by compelling all persons to refrain from peace-disturbing self-defence, provided they were afforded as sure and complete defence as they were compelled to forego making each for himself. Nor is it any less clear that any number of individuals would have the right voluntarily to unite and co-operate for the same self-defensive purpose, and to organise themselves into an association for the maintenance of a just peace, an equitable public order, an order in which the peaceable enjoyment of natural rights is secured to all persons subject to its jurisdiction. It is evident, however, that if there should be at the same time more than one organisation attempting forcibly to maintain

peace and order throughout the same territory, the best endeavours in that behalf would be frustrated by inevitable peace-disturbing conflicts of authority and power resulting in perpetual strife, and that nothing short of an organisation exercising exclusive authority over all persons within its territory can maintain permanent peace and an equitable public order therein.

Not only in justice to those who obey the command to forego peace-disturbing self-defence but also to insure obedience to it, the organisation issuing it must provide for all persons required to obey it as complete and reliable defence as they might otherwise have made each for himself; and since it would be impossible in any case to determine how complete defence might have been so made, it devolves upon the organisation in all cases to provide the most complete and reliable defence possible. This it can not do unless its power be at all times greater than any and all powers against which it may at any time have to contend. If any persons within the territory of its jurisdiction were permitted to stand aloof from and independent of the organisation, it would be so much the weaker, so much the less

able to enforce obedience to its commands, its power so much less than supreme.

It is for such reason only and upon such ground alone that all the members of Society may justly be compelled to become and remain members also of the organisation known as the State, whose primary object and only authorising purpose is, not to force any man to aid in the defence of any other, but rather to compel all persons to refrain from peace-disturbing self-defence. The warrant for such compulsion consists not in the will or power of any majority but in the natural right of every human being to defend himself against the aggressions of public disorder, and to unite with others in doing whatever may be necessary to that end, provided that they thereby interfere with no man's enjoyment of any primary right, and that all are allowed to participate equally in that collective, orderly exercise of the subsidiary right of self-defence, which is substituted for peace-disturbing individual exercise thereof; in other words, that the peace and order maintained be just and equitable.

There is, then, no warrant for the oft-repeated dictum that man on entering the State thereby

surrenders certain natural rights in exchange for the advantages of citizenship. Those rights are inalienable and can not be surrendered. The orthocratic, or rightly-governing, State restrains man from indulging in no longer necessary self-defensive disturbance of public peace and order, but deprives him of nothing to which he is entitled as a member of Society.

It will be observed that membership in the State, although compulsory, is nevertheless an equal membership. Members of the State are not only all entitled to unrestricted enjoyment of primary natural rights, but, since they all have the same inalienable although subsidiary natural right to defend themselves, they are also all entitled to equal voice and participation in that organised, civil exercise thereof which, for the sake of peace and order by virtue of that very right, the State substitutes in place of its prohibited individual exercise.

It follows that the jurisdiction of the State is limited to the territory inhabited by its members, and can justly be extended over additional territory only as the inhabitants thereof become citizens of the State so enlarged, with an equal voice in its government.

The State may be defined as that organised association into which the people of a definite territory are compulsorily incorporated for the solely self-defensive purpose of maintaining peace and an equitable public order therein, and through whose agency is effected that enforced regulation of human conduct and affairs which constitutes civil government.