

POLITICS

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THIRD BOOK
CONSTITUTION OF THE STATE

XIII

FORMS OF CONSTITUTION

WE have in this chapter to investigate the various forms which the constitution of a State may assume. We must, in the first instance, eliminate that false theory of the powers of the State which has long exercised a confusing influence on the science of government.

Aristotle says that in every State there is a triple source of authority : τὸ βουλευόμενον περὶ τῶν κοινῶν, τὸ περὶ τὰς ἀρχάς, and τὸ δίκαιον.

This scheme, called the “ triaspolitica ” of the Stagirite, was elaborated in the course of succeeding centuries, and has been more particularly adopted and distorted by modern political philosophers. After the Revolution of 1688 Locke evolved the doctrine of the division of powers. Following in Locke’s footsteps, Montesquieu distinguished three separate authorities in the State—the legislative, the judicial, and a third called by Locke the federative.

Montesquieu describes it as that power which deals with matters inseparable from the law of nations : immediately afterwards he calls it outright the executive authority. Now the essence

of liberty is said to consist in the separation of these three authorities, which must never be united in a single grasp. This ideal was realized for Montesquieu in the England of his day, which in his eyes "reflected freedom as in a mirror." Rarely has a more stupendous error been enunciated; beyond all question it is precisely in England that this division was not to be found. It is indeed true that the judicial authority was in that country comparatively independent, and this caused Montesquieu's mistake. He was a scion of the old French *noblesse de robe*, or hereditary magistracy, which was able to display a certain stubbornness towards the Crown just because it was hereditary. Animated by this spirit, Montesquieu lays special stress upon the fact that the regular course of justice in England could not, as in France, be arbitrarily disturbed by means of *lettres de cachet*. The power of the Crown had, however, faded to a shadow: the House of Commons both made the laws and controlled the policy of the nation so completely that whoever had its confidence necessarily became the inspirer of England's foreign policy. In England, therefore, the exact contrary of this much-prized division was discernible; and if we contemplate modern constitutional monarchies we perceive that, wherever the Kingship is vigorous, as in Prussia, there also the division of authority is lacking. All authority in the state is centred in the King. Without his assent no law is valid; in his name justice is administered; his instructions direct foreign policy and internal government. And

yet how capricious is this division. How is it possible to speak of a purely executive office? Every administration not only executes but co-operates in the further development of legislation. As this fact came to be more and more realized a variety of further *pouvoirs* were evolved, primarily by French thinkers: a *pouvoir électif* alleged to be inherent with the electorate, a *pouvoir modérateur* with which Benjamin Constant endows the King for the purpose of reconciling the Chambers, etc. All this is merely the idle sport of ingenuity. This whole doctrine of the three authorities in the State and their division is the toy of theory and playful fancy. The essence of the State is its unity, and that State is the best organized in which these three powers are united in one supreme and independent hand.

Thus this separation is equally untenable both in theory and in practice. Far more satisfactory than this ancient doctrine is that which divides power into the constitutional and administrative categories. By constitution we understand the totality of institutions by which the unified will of the State is consolidated and expressed; the juridical character of the State, the division of classes, distribution of offices, and appointments, etc. Administration, on the other hand, is the aggregate of institutions by means of which the will of the State thus embodied manifests itself in the diverse relations of life. At first sight this is a purely theoretical distinction. As in the realm of thought in general, so here too we have to deal with elastic

conceptions. Many departments of State belong to its constitutional as well as to its administrative side. Whether the State is supported by universal military service, or a mercenary army, or a feudal army, is a constitutional question of the first rank, for upon its solution depends the character of the State, whereas the particular technical questions of the military organization are administrative matters. Again, in finance a sharp division would be found impossible. Is there a general liability to taxation? Are taxes imposed by the sole authority of the State, or in virtue of the taxpayer's vote? Is any person exempt from taxation? These are all weighty constitutional questions. The classifying of a tax as direct or indirect, however, falls within the range of administration. The essence of each separate institution must be sought: by this process it will become apparent that the country's army and finance belong to the administrative half of the State.

If we take a rapid survey of the different forms of constitution, the decisive point to determine is where the sovereignty resides, and in whom is the supreme and final authority vested? To this question also Aristotle has supplied an answer which has been adhered to through successive centuries. His simple teaching is that authority may rest either with one or several or many, and according to this distinction he builds up the difference between monarchy, oligarchy, and democracy. Instead of democracy he uses the word *πολιτεία*. These three ideal forms of government (*ὄρθοι τρόποι*), each of which

aims at the common good, may however degenerate, if the welfare of all be not sought and if power be selfishly exercised in the interests of those who wield it. When the *summa voluntas regis* is directly described as such; when it becomes absolute, then a tyranny or despotism has arisen. If the aristocracy governs in the interests of its separate aspirations, so that the rule of the best is transformed into the domination of a clique, an oligarchy has been established. If the sovereign people rules only in order to procure transient advantages for itself, then democracy becomes corrupted into an "ochlocracy." This word was not introduced until a later date: Aristotle himself describes the degeneration of his *πολιτεία* as "*δημοκρατία*."

This triple arrangement of Aristotle's was further elaborated in the course of centuries. To later generations it appeared superficial to distinguish between the forms of government only by the number of those who held power. In the search for principles Aristotle came to be amplified by Montesquieu. But Montesquieu's comments on the methods of differentiation between the three forms of constitution are, after all, only brilliant aphorisms which do not go below the surface nor penetrate to the core of the subject. He lays down that the principle of monarchy is honour, that of aristocracy is moderation, and of democracy, virtue. But why should honour be the governing principle of monarchy only? It might more accurately be asserted to be part of the essence of aristocracy which must cling to certain positive notions of

chivalry and honour. Similarly it is inexplicable why moderation should be the distinguishing mark of aristocracy ; this could be said with far more truth of democracy, which must perish if it is not handled with cautious perspicacity. In short, at the risk of irreverence we must openly declare that no satisfactory result can be obtained by attempting to define the nature of a given form of government. If we search for the fundamental principle underlying these forms, we must approach the task in a political spirit. We shall here describe as the principle of a constitution that political idea, through the realization of which it has been created. If we consider monarchy in this spirit we shall perceive that its nature is unity. Monarchy arises when this idea emerges in tangible political form. When it is overstrained, that is to say when the ruler sets his individual will above that of the State, tyranny has supplanted monarchy. In the same way the basis of aristocracy is division into classes. The existence of different estates with different rights is assumed, and herein lies the nature of pure aristocracy. If the aristocratic conception remains vigorous and is carried into practice with skill it may conduce to the stability of the State : if it is carried too far, and the gulf between the classes becomes too wide, aristocracy degenerates and founders. The principle of democracy is equality. The ideals and illusions of democracy alike depend on the notion of the equality of all that bears human form. Nothing, however, is achieved by this ancient trinitarian division derived from Aristotle. It brings home

to us once more that his outlook on the universe was a narrow one and is no longer adequate for the study of the multifarious aspects of modern political life. One form of constitution of immense power which has determined the history of several continents through many centuries is absent from his schedule—Theocracy. Aristotle in his Hellenic pride of race disregarded its existence. To him the Persian monarchy as displayed before him in Europe was a mere corruption of Kingship. This was a radical error. With the double exception of Phoenicia and Carthage all Asiatic and North African states had a constitutional form, peculiar to themselves, alien to the free, open, and secular spirit of the West. Oriental states as distinguished from European can only be understood if it be remembered that in the East the revealed word is at the same time law and doctrine. We therefore must place theocracy, which for centuries has dominated Asiatic nations and many aboriginal states of Africa and America, in a category quite distinct from those already mentioned.

If, however, we examine these a little more closely it would appear that the great Stagirite is guilty even of a logical mistake. Are, then, the three categories—monarchy, aristocracy, and democracy—really co-ordinated? After all, it is clear that two of them are subordinate to a third and wider notion. Monarchy stands out in sharp contrast to democracy as well as to aristocracy, but these two latter have something in common and are comprehended in the jointly

applicable term of Republic. This distinction is not like one drawn by Aristotle—an external one; it is not based on the number only of the ruling class. Consider England in the days of the Commonwealth. Oliver Cromwell was the greatest and most powerful master she has ever had, and yet under his rule she was undoubtedly a republic.

The nature of monarchy is not summed up in the single fact that authority is concentrated in one person. Contrasted with a republic, authority rests on personal, not on delegated right. In the course of history this or that dynasty has risen to power and ruled by right of conquest. In true monarchy the monarch being actually sovereign can never subject his authority to any other, while in a republic power is delegated. It is delegated either by popular assemblies or aristocratic bodies, and the chief magistrate is then both ruler and subject. The true distinction between the monarchical and the republican form lies not in the fact that the former is ruled by a sole individual, but that in a republic the chief magistrate is both ruler and subject with no self-derived power.

Aristotle knew few monarchies, and those not of the most exemplary kind, while we have a very ample experience. It may in fact be said that Aristotle and Hellenes in general misunderstood monarchy. They start with the notion that monarchy consists in the rule of a single individual: then, naturally inquiring how one man can be placed so far above his fellows, they arrive at the conclusion that since only a semi-divine being can be

superior to all other men, a republic is a more reasonable form of government. This is Aristotle's view. It is simply a fundamental error. Why, we should be no better than Byzantine flatterers were we to say that our royal family is superior to all other families in this country. Neither personal excellence nor mental capacity lies at the root of the position of the house of Hohenzollern, but their distinguishing mark is that they are our Kings and stand on their own right and exercise a power which is undisputed.

Thus we discern three main types of constitutional form—Theocracies, Monarchies, and Republics. A glance over any considerable period or area will prove that this division of the subject is full of promise. Classical antiquity was republican in spirit, modern times have been monarchical. Theocracy has flourished chiefly in Asia; in Europe this type was only represented by the Papal States, which are an anomaly amongst us. It will further be perceived that in recent times the daughter states of Europe have uniformly become republics for the reason that their political tradition has been broken. Modern America is in all essentials republican. We see, then, whole periods of history, nay whole continents ranging themselves in accordance with these categories; the division, therefore, must be fundamental and essential. Unfortunately most of our constitutional text-books treat very casually of theocracies: they must be more deeply studied as an expression of the contrast between Western and Oriental genius.

If we compare our three chief constitutional

divisions we find that monarchy, by sharing some characteristics of the other two forms, takes a position between them. In common with theocracy its power is not derived but original. Theocracy rests its claim on an immediate and divine commission. Similarly, while discarding the mystical claim, monarchy appeals to the hereditary and historical right of a dynasty, which, once established, admits of no question. Thus these two types are placed in opposition to the Republic. From another point of view theocracy is at variance with the republican and monarchical form. The pious formula "By the grace of God" in no wise implies that the monarchy is the direct mouthpiece of God's will. It bears no mystico-theocratic meaning, but is intended only to convey that the authority of the monarch stands above all earthly power. Monarchies and republics alike embody the secular conception of the State.

Clearly it is impossible to formulate any ethical classification of these three types of government. No more can be said than that theocracy belongs to a period when men's minds were enslaved by authority. A people cannot become free and enlightened until the inspired word is not held to confer at the same time the right of compulsion. Theocracy can only flourish in the dreary chaos which such a belief brings into religious and political ideas, and therefore it may fairly be described as the most immature of all forms of government. This appears clearly when it attempts to assert itself amongst a free people: the grotesque nature of its claims is then obvious.

Of this the history of the Papacy is sufficient proof. We must, however, guard against attempting to establish an order of precedence based on merit as between monarchical and republican forms of government. To set out in search of a good constitutional form is from a scientific point of view a confusion of thought. The historian must be content merely to inquire what form is most appropriate to a given people at a given period. He will accordingly acknowledge a republic to be ethically justifiable where it satisfies the ethical requirements of a nation. Historians cannot without presumption say more, even of the best constitutions, than that, since the State is primarily power, that State which gathers authority most completely into the hand of one and there leaves it most independent, approaches most nearly to the ideal. On the other hand, one may say of the Church with equal force that her ideal is republican. Her power is rooted in the conscience of the faithful; therefore a republican constitution, which in some way or other leaves to the individual conscience a certain scope, while remaining itself the living voice of faith, conforms more closely than any other to the ecclesiastical ideal; whereas the Church, which is based on a monarchical pattern, deviates furthest from it.

All this can be laid down *in abstracto*, but a little reflection shows that the weal of nations rests but slightly on their form of constitution. It must be left to journalists to glorify the freedom of modern France.¹ Let us turn our

¹ Lecture delivered January 1898.

