

THE FUNDAMENTAL CONCEPTS OF PUBLIC LAW

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**THE
FUNDAMENTAL CONCEPTS
OF PUBLIC LAW**

By
WESTEL W. WILLOUGHBY

SOCIAL JUSTICE
EXAMINATION OF THE NATURE
OF THE STATE

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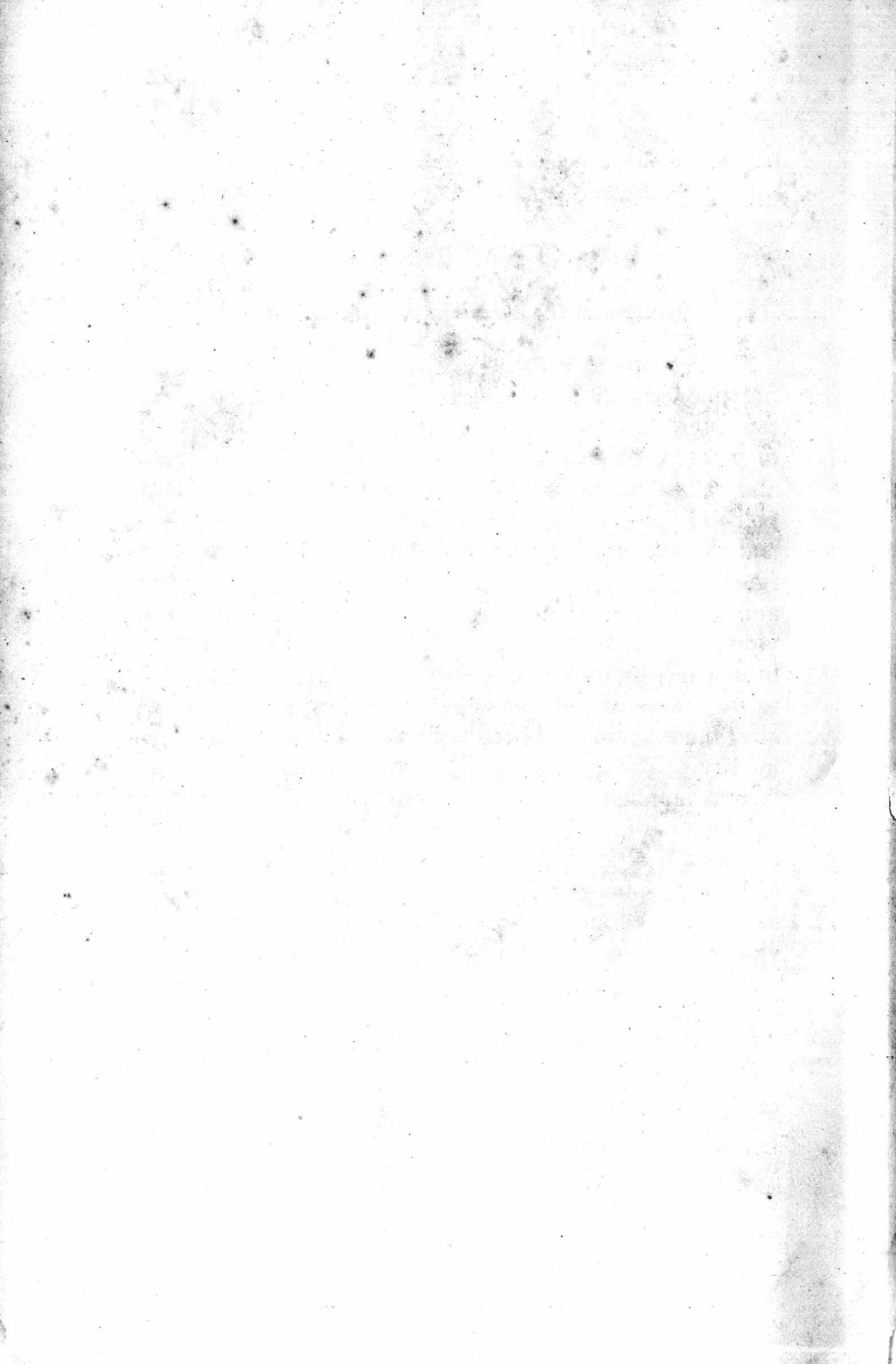
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PART ONE
FUNDAMENTAL CONCEPTS



CHAPTER I

THE PROVINCE OF POLITICAL PHILOSOPHY

The Province of Political Science. Political Science, using the term in its broadest sense, has for its purpose the ascertainment of political facts and the arrangement of them in systematic order as determined by the logical and causal relations which exist between them. These political facts, which include both objective phenomena and the subjective forces which create them or fix their functional activities, are those which relate to the State; and by a State is understood a group of human individuals viewed as an organized corporate community over which exists a ruling authority which is recognized as the source of commands legally and, in general, ethically, binding upon the individuals composing the community.¹ The qualifying adjective, political, may, therefore, be applied to all matters which relate to the origin and history of the State, to its governmental organization, its activities, its aims, its administrative methods, its legitimate sphere of authority, and to its very right to exist. Furthermore, inasmuch as the State may be viewed as comprehending within itself all types of organizations legally subordinate to itself, Political Science is concerned with political authority in all its forms of manifestation,—with inferior as well as with sovereign bodies politic, and with primitive and undeveloped types of public life as well as with those of the modern

¹ This, of course, is a merely provisional or general definition of a State. Its more precise definition will be the outcome of the discussions contained in this volume.

civilized world. These phenomena it deals with descriptively, historically and comparatively, and with regard to all the circumstances, objective and subjective, which condition their existence or activities.

State and Society Distinguished. An aggregate of human individuals, (united by a mutuality of interests) and by what has been termed a "consciousness of kind" is termed a Society. Such a group thus has a certain psychological unity, and possesses, in a measure at least, to use Rousseau's terminology, a *volonté générale* as distinguished from a *volonté de tous*. When, for the realization of its common interests through the united efforts of its members, this group comes to have a more or less definitely (organized existence) and possesses definite organs for the (expression of its corporate will) and when there is a (recognition by the individual members) of the group of a general obligation upon their part, moral and legal, to obey the expressions of this will as thus disclosed, and, therefore, an admission of the right of the ruling authority to enforce its commands by physical or other sanctions, the group takes on a political character. The social body becomes a body-politic and, as such, is brought within the purview of Political Science.

Whether or not the term "State" should be employed only as designating political entities possessing supreme legal authority or sovereignty is a question later to be discussed. For the present it is sufficient to say that a political group is one which (is itself a State) (an integral part of a State,) or (a group the members of which) are united by some common purpose which directly relates to the conduct or administration of a State. Integral parts of a State include all corporate groups of individuals or instrumentalities created by a State for the government or administration of its territorial divisions, such as colonies and dependencies, member commonwealths