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THE ELEMENTS OF MODERN POLITICS

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THE ELEMENTS OF MODERN POLITICS

An Introduction to Political Science

BY

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The University of Washington

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Meo parvulo Roberto Raudono matrique
eius hic liber cum amore dedicatus est.

PREFACE

This book attempts the consideration of some of the major problems of political theory. Admittedly, it is a series of discussions in political fundamentals, and most of the problems presented are, in general, those of principle rather than those of factual organization. Most of the elementary books in political science have leaned too far, either toward the presentation of facts or toward emphasis on specific problems. It may be in the end simply a matter of the temperament of the college teacher of politics; and while few of us wish to engage in byzantine discussions, it is suggested that teaching to stimulate thought on political problems is successful neither with the pure problem method nor with the presentation of organized factual information. The underlying political values must be brought to the attention of the student if he is to become conscious of them. The intelligent appreciation of the facts can be greatly advanced by an introductory course in principles.

Yet there are reasons, other than purely pedagogical, which lead to an approval of the type of treatment contemplated. We are living in an era in which the objective study of the state is difficult. The political atmosphere is something like that of England during the conservative reaction to the French Revolution, only we are reacting to the challenge of the Russian Revolution and political authoritarianism. Political science, as a study, is in danger of ceasing to be a science in any sense of the word, as was the case during the period of Louis XIV and of continental absolutism; it is in danger of becoming the art by which Western countries maintain themselves somewhat as they were before the Russian Revolution and the twentieth century reaction. The very prominence of the issue demands a closer attention to the leading principles of our republican political life. It would seem that a critical citizenship must be founded upon an appreciation of the more or less unconscious assumptions of national politics. A scientific method which devotes itself entirely to the technique of fact getting

can hardly serve as a balance wheel against either extreme radicalism or conservatism. The dangers, if any, of the postwar reaction are to be found in the assessment of principles, not in the gathering of facts. On the other hand, the criticism of political principles is a kind of mechanical and intellectual governor against evangelistic radicalism. In general, it is the conservatives who gain most in the long run from the careful analysis of political values.

The path of the liberal today is something more than difficult. As one with a program of reform, he sees many of his dearest theories being tried; as a defender of the right of the masses to make "democratic" blunders he can demand little more, at least on the side of mistakes by inaction. As a defender of liberty he must be tolerant of different types of rule, and he can now choose between the Anglo-American, the Gallic, the Italian, and the German theories of liberty. But among the things which the liberal should not forget in these changing, uncertain days, when political science is at the crossroads, is the value of free discussion in the liberation of the mind, of the solvent power of open-mindedness and of the scientific attitude, when scientific method in the social sciences is as yet a scholar's dream. If the liberal holds himself somewhat aloof from specific controversies, except where they involve a defense of freedom of speech and political democracy, he is yet a genuine liberal if he insists that there is a difference, a fundamental difference, between the defense of political principles and their interpretation.

At the conclusion of each chapter a list of selected references is given which the author believes may be of value to the instructor or to students for additional reading. In any case, the organization of instruction is a thoroughly personal matter, and no list given could possibly be satisfactory to all teachers.

A number of persons have been of material assistance to the author in the completion of this book. The manuscript itself was begun seven years ago on the suggestion of Professor C. P. Patterson of the University of Texas. Mr. Frank H. Jonas has very kindly read all the proof, and parts have been read by Mr. Cyril D. Hill, and my colleagues Professors C. E. Martin, Linden A. Mander, Kenneth C. Cole, E. F. Spellacy, Maxim von Brevern, and Mr. Jesse Epstein. Assistance on particular aspects of the work has been given also by Professors Jean C. W. Chessex, J. H. Groth, Erna Gunther, and William M. Read. The author wishes likewise to express his deep appreciation of the

permission given by numerous publishers to quote from works the copyright of which they hold. In the course of preparing this book many suggestions have been rejected and many have been accepted, but the author wishes to express his appreciation of all criticisms whether or not they have been accepted. Naturally, the author wants to make it clear that he assumes full responsibility for whatever inaccuracies or mistakes may appear in this volume.

The author hopes that he has presented more of interpretation than defense, and more of critical than conservative or radical attitude.

F. G. W.

SEATTLE, WASHINGTON,
April, 1936.

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PART I

THE APPROACH TO POLITICS

CHAPTER I

POLITICAL PRINCIPLES AND THE STATE

Le phénomène le plus significatif de notre époque, c'est que des peuples entiers s'enthousiasment (ou paraissent s'enthousiasmer) pour la servitude.—Joseph Barthélemy.[1]

The Scope of the Present Treatment. The history of ideas is not an unimportant part of history in general. Within the closely woven texture of the chronicle of human doings there are subsidiary accounts which show unity and continuous development. Man's ideas for centuries have played over common subjects, and scholars have been trying to unravel the various threads of human ideas. Philosophy was first in the field, and the study of the history of philosophy is now a clearly recognized discipline. Ideas on art, religion, morals, and science have likewise been organized into stories more consistent and connected than these fields themselves.

The history of the state is the hallmark of orthodox history writing, but the study of political principles has been recognized widely in recent years. This study has taken several forms. It has been organized around particular problems; periods of change and crystallization in political thinking have also been treated; and general works covering the whole field have been written with some success. Our purpose is not to survey the history of political theory; rather it is to consider some of the basic problems of our own generation. It is to introduce the student to the methods of political study, to the fundamental problems which are ever present in the philosophy of the state, to the problems which are the chief distress of democracy, and to show briefly, on occasion, how ideas on these subjects have developed.

[1] "The most significant phenomenon of our era is that whole peoples show or seem to show enthusiasm for slavery." Before the solemn meeting of the five academies, October 25, 1933. *Journal des Débats*, éd-Hebdo., 40e Année, No. 2071, p. 733.

The Function of Political Facts and Ideas. Intelligence has been defined as the ability to do abstract thinking, and abstract thinking must be in terms of ideas. Ideas can be held on the most ordinary objects of everyday life. We are all philosophers in some sense of the word. We are all creatures of bread and butter and ideas; and we all have, it seems, the desire to let the ideas dominate the material side of life. In most human affairs, however, the role of ideas is somewhat unanalyzed, though it is nevertheless an effective one. The interpretation of the world about us was the first function of ideas, and it is still the predominant one. Broadly speaking, we like to feel that there is a clear distinction between opinions and facts, between subjective belief and objective phenomenon. That distinction is not always available, since our very opinions, beliefs, or customs are themselves observable phenomena and subject to scientific classification. Belief rises to the region of theory when it is supported by argumentation, by interpretation, by reason, and by scientific testing; the theorist always gives reasons for his opinions before or as he acts on them, which in fact is a less theoretical way of doing things than by action on theories without any reasons at all.

But we seldom know just what is a fact. The universe, the world, the United States are facts, but so is one's finger or necktie; a rock is a fact and so is an idea; so is a theory. For purposes of systematic treatment we may say that facts are situations or circumstances concerning the nature of which there does not seem to be valid room for disagreement. We must rely on our senses for facts, and there is the vital danger that our minds are contributing to our understanding of the facts something that is not objectively present. The scientist must work on the assumption that his perception can, perhaps with the aid of scientific instruments, tell him the objective nature of the facts he wishes to observe. If the cumulative testimony of the senses of many people tells us that there is an object before us, we must assume there is such an object, that we face a fact, a truth, though it may be humble and insignificant. We must deny the possibility of differences of opinion as to the existence of the object, though as to questions of its nature, interior composition, etc., we may rely on hypotheses which, if not proved, may yet have probability.[1]

Giving reasons offers still further difficulties. If we wish to sustain an idea, we may rely on the phenomena that we observe, or we may give still other abstract ideas which tend to show, according to the

[1] In most situations there are invisible influences which are not subject to statistical measurement, but which are, nevertheless, subject to intellectual and emotional appreciation.

science of logic, that the first idea is true. But in order to base truth on such a process, we must assert that there is a region in which views based on assumptions have a proper place, in which the eye and the instrument of the scientist cannot successfully grope toward the verity. We must assert, not necessarily that such ideas are always the truth, but that they perform a valid and vital function in the life of man. This service is the causation and direction of conduct, the moulding of human relations, and the provision of standards for judging conduct. Ideas, opinions, and theories are part of the mental environment of each individual which to some extent determines conduct. Values are different from conduct, and, while we may say that externally directed behavior influences ideas, we must also say that values or theories control action. From another standpoint we may say that the very perception of something objective as to the mind creates, by that perception, an idea in the mind. A value is thus organized as a fact, which is disparate from the fact. This value, if properly formed, should be accurate; our opinion about the object or the fact should be a true opinion.[1]

The Spirit of Science in Politics. In modern times the spirit of science has been slowly gaining headway. Today the practical application of science is accepted without surprise. An attitude has developed finally that science should produce new things for the convenience and comfort of human beings. But science itself is the tool of only a few individuals. The ordinary person who uses the productions of the technological age in which we live creates none of them himself. He uses them, and expects them, but the spirit behind such scientific advance means little. Behind science there is a total attitude toward the world. Such an attitude would reduce everything to classification and formulation, and, once it is so reduced, human life would become a science of prediction all-comprehensive in its scope. With the advance of science, hypotheses become laws, suppositions as to the objective world become facts, and the margin of doubt narrows. Opinions on many subjects have vanished into thin air as the world of correlated fact has emerged. So in the relations of men there have been attempts

[1] See G. D. H. Cole, introduction to J. J. Rousseau, *Social Contract*, Everyman's Library, p. xv. "There are, broadly speaking, two schools of political theorists, if we set aside the psychologists. One school, by collecting facts, aims at reaching broad generalizations about what actually happens in human societies; the other tries to penetrate the universal principle at the root of all human combination. For the latter purpose facts may be useful, but in themselves they prove nothing. The question is not one of fact, but one of right." By permission of E. P. Dutton & Co.

at classification, prediction, and control, which constitute the achievement of science in the natural fields. The new organon of scientific method has loomed before the historically free mind, the mind of fancy, foolishness, prudence, and sublime reasoning powers and wisdom.

Yet in the field of human relations, where the problems of politics unfold, the science of method in politics has not ousted values and theories, though the scientific spirit has made some progress.[1] Science itself has always retained some assumptions, the notion that scientific method can reach the truth being itself an assumption of major proportions.[2] Human experience is a fact; it may be recounted in history, and to this extent it is scientific. But experience has not the stability and immobility of sticks and stones, and it will not wait or repeat itself for the benefit of scientific observation. Ideas may be drawn from or read into written history, but to chronicle events requires the utmost care and discrimination. The interpretation of the ideas and actions of men in the past may be accurate, but the chances are that strict and complete accuracy cannot be attained. However, even if classification in the history of human relations is attained, prediction and control may not be. History cannot become a final science of prediction in human affairs, nor is it possible for it to perform a function of control in and of itself.

Politics is scientific in that the classification of facts is possible. Prediction by statistical analysis is also possible, but control—in the scientific sense of testing by results the ends sought—is not, and it is not likely soon to be part of the ordinary program of social science. Science in politics is usually associated with methods of studying political life, and it is an important problem whether politics should formally include anything more than what can be observed, summarized, and interpreted by the student of politics. For the present, let us say that in a practical sense politics must include more than this compass, which is narrow and somewhat unfruitful at the present time. Historically, politics has been concerned with the purposes, ideals, or objectives of political life and the ends that are embodied in a theory

[1] "Science is materially bankrupt in the midst of its material triumph; for science lends her services to the war-monger, the racketeer, the concocter of fiendish drugs, as serenely as to the humanitarian." Albert Guérard, "The Challenge of the New Paganism," *Scribners Magazine*, March, 1931, pp. 312 *ff.* C. E. Ayres, in "The Irony of Science," *Forum*, September, 1931, p. 163, said: "It is true that man-measuring turns out excellent anatomy and even psychology. But the farther psychology, for instance, proceeds in that direction, the more like anatomy and physiology it becomes and the less like psychology."

[2] E. A. Burtt, *The Metaphysical Foundations of Modern Physical Science* (New York, 1925); A. N. Whitehead, *Science and the Modern World* (New York, 1927).

of the state.[1] To say that politics must treat political organization, *i.e.*, the state, as an agent of ends which are outside the scope of the study of politics, ignores the broad tendencies of history. It is equivalent to thrashing against an impregnable purpose which has been characteristic of social organization at all times, whether within the state or unconnected with political society.

The Nature of Political Principles. The philosophy of politics asks: What are the ends of the state? It tends to emphasize with Ihering the purposive character of human association, while admitting that many purposes are evolved in the course of history and change their form radically with the passage of time. It seeks to bring emerging presuppositions into the range of rational analysis. It both narrows and broadens the field of theory; it narrows it by insisting that assumptions where possible must be viewed in the light of facts, of objective reality; it broadens the field of theory by showing that there is a field where values and ends must be admitted. It distinguishes between theory and fact, and insists that theory properly used cannot really be an enemy of scientific research. It insists that some persons at least are rational enough to reason properly in the light of political experience. Political philosophy uses the data of science to clarify the perceptions of men as to the ends of political life. It throws the question of means, as distinguished from ends and values, to the scientist, and is willing to accept the finding of the researcher after truth.[2]

Logic is the oldest weapon of man in the struggle against moral uncertainty and self-delusion. Logic and observation are the two great instruments of the political scientist in explaining the life of the state. The political theorist uses logic and reasoning more than observation, but this must not be construed to mean that political philosophy works in a vacuum in isolation from the facts. The best use of logic results in the best interpretations of life, and the life to be

[1] The order of ideas has been ethics first and then politics; the order of history is politics first and ethics next. B. Jowett, *The Dialogues of Plato* (Oxford, 1892), Vol. III, p. xxi.

[2] While we go to Greek thought for the distinction between means and ends, it must be admitted that one of the central theses of modern pragmatism, as developed in the writing of John Dewey, is the *continuity of means and ends.* To the pragmatist who is thoroughgoing, there is no meaning in a distinction between means and ends which considers ends in any degree apart from the means employed for their attainment. Likewise, as a part of this general position, the pragmatist denies the value of the distinction between theory and practice. It has been suggested by Professor Albert Guérard of Stanford University that all great fallacies go back to the Greeks.

interpreted is the life of objective reality, which, of course, includes the mental as well as the physical environment. The final results of observation produce interpretations and explanations, and these explanations are values; they are theories in the best sense of the word. They are theories because further information may be gathered which will show the error of the assumptions that reason has produced from a given body of experience. Utopia is ever near, yet infinitely far from realization. Utopian philosophy admits that it is disconnected from reality, but it is only one type of political theory. It can never be considered a great force in a practical sense because it ignores the results of science. Political philosophy in the full sense of the word is in full accord with the finding of science, when those findings are in themselves scientific philosophy.[1]

The Functions of Political Theory. a. To Explain the Past. What are the functions of political theory? In the first place, political theory attempts to explain the past. Political philosophy alone can attempt to interpret political development, to read meaning into the political transformations of the ages. The philosophy of history is much more ambitious. History in the Hegelian sense becomes the grand unfolding of Idea, and the Idea is directive and causational. When political theory explains the past of political life, it need not assume that ideas themselves have played an important part; it shows merely that a given development had definite meaning for an era or for the present. It does not assume, as do customary philosophies of history, that history must attain or will attain a given end! It may investigate the function of ideas in the experience of men under political control; it may write the history of political ideas, showing their development and continuity, their beginning or their termination. It may analyze the values of a civilization, and it may recreate by the printed word the atmosphere of the past or the philosophies of politics which once flourished. Instead of being a philosophy of history, it is a philosophy of a given time and place. When we consider the functions of political philosophy in explaining the past, the field is divided between the political historian and the student of politics. At present it seems that the student of politics is surrendering to history this function, inas-

[1] J. W. Allen, *A History of Political Thought in the Sixteenth Century* (New York, 1928), p. 516, makes the following statement: "It may be that as man advances in phenomenal knowledge he loses belief in values and even the possibility of knowing. May we look forward to a time when man will be able to do what he will and have no rational motive for doing anything? . . . For complete skepticism must needs destroy the basis of even the crudest utilitarianism. It may be that in the long run even desire will fail." By permission of the Dial Press, Inc.

much as political philosophy is grappling with the problem of values in the machine age.

b. To Direct the Course of Politics. While the political philosopher may assert that ideas have a definite place in the scheme of things, which science cannot destroy, and that philosophy may be used in understanding the past, he must of necessity also assert that ideas have been a causative force in political conduct. To say merely that there is a field in which ideas are valid, in that science has to deal with measurable things in the objective world, does not say that these ideas are in themselves forces and causative factors in the state. Insofar as theory is causative, it should be observed and studied; it should be made the subject of scientific research, but this research does not destroy the force of values. Thus, in the second place, it is the function of ideas or theories to direct in part the course of human events.

How can the influence of ideas in human history be detected? Perhaps the most apparent source of this control is found in institutions which involve, in addition to types of structure, certain evaluations or ends. The survival of an institution means the survival of an idea or a theory of morals. If we insist that the pictures in our minds or our habitual perceptions are part of the environment of the individual, and if we also insist that the environment directs in part the conduct of individuals, we are in reality suggesting that ideas have a share in the direction of life. It has been said that we must all live by some philosophy, whether or not it is articulate. This is particularly true in the history of the state. With certain purposes in view, one form of government has succeeded another. The philosophy of human rights has been undoubtedly a reason for the development of constitutional government, which holds essentially that the governmental agents of the people must act according to a rule of law. The growth of democracy has been stimulated by the belief that the common man has something to contribute to the political organization under which he lives. The results of judicial review in the United States are now regarded as its justification in the constitutional life of America; but it was first propounded in a clear form by Marshall as a theory of government, and while it was resisted by interested groups their arguments were in the form of a competing theory of the function of the judiciary. Surely many of the absurdities of politics have existed because of the determined faith of people in ideas, regardless of the value of those conceptions in a complicated world. In fact, any period of civilization can be shown to have been influenced by the ideas prevalently held by the leaders of society. The life of the Middle Ages, the Renaissance, the first emergence of democratic theory, and

the modern theory of social democracy all involve presuppositions and values of the greatest magnitude.[1]

c. To Explain the Present. We are living in a mechanical and industrial age which seemingly has little kindness for long discussions of social and political philosophy. Our contemporary rejection of political theory means nothing more than a determination not to inquire into the *status quo*, even though that *status quo* feeds on the existence of philosophy tenaciously held. A third function of the principles of politics is thus handicapped, namely, the explanation of the present situation. Once a theory of a political character has been fixed in the *consensus gentium*, it is passed from father to son, from generation to generation, to be sure with modifications, but essentially as the same theory. It becomes part of the mores of man as a political animal, and the last thing desired is the clear, systematic, and rational examination of the theory and its implications.

The present-day man accepts all the technical inventions of the scientific age with gratitude, but with a feeling also that science is to produce an infinite succession of improvements. An invention brings with it a train of social readjustments which require alterations in philosophy, but because the man of the technological age has little patience, rationally speaking, the slow and relatively imperceptible changes in his views are almost unconscious. If the man of the present age were philosophy conscious, it might mean that inventions would be handled more intelligently and the social evils of mechanical change avoided. Yet those who have the mind to do so want to explain the present, for this has always been one of the great functions of the political philosopher, and it is no less necessary today merely because changes often come more rapidly than philosophy can be formulated. But this is true only of a small area or system of values. These changes do not involve immediately the philosophy by which men guide their lives, and there is the constant possibility that there will be a great conflict between the permanent elements of social and political philosophy and the implications of industrial and political evolution.

[1] Concerning the influence of ideas see R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V, pp. 446–447, for a discussion of the influence of the idea of equality. The real question is whether there are force ideas; this is discussed in Ch. X. If history is cause and effect, it might be urged as by communist apologists that the material forces of civilization are largely directive. But to reject the materialistic interpretation of history and yet to retain cause and effect necessarily implies that ideas can be and are forces. Hallis has assured us that human purposes are also "psychological facts"; they are the "stuff" of social life. Frederick Hallis, *Corporate Personality* (London, 1930), p. 46.

In any case, however, the present situation demands philosophical treatment. We all admit that human values are more important than the profits from human exploitation, but it is the duty of philosophy to inquire into the rational nature of human values and to attempt a determination of the standards that should be preserved. Certain aspects of present-day difficulties, therefore, belong particularly to the field of political philosophy. This study must, of course, inquire as to the nature of community life and the relation between the community and the individual. More than this, political philosophy must determine the values to be protected by political society; it must determine the function of the state in a rapidly moving and immensely complicated world. Beyond this, politics must also determine the means to be adopted by the state to achieve its admitted ends.

Philosophy begins to recede from its important place at this point, and the science of administration and the practical art of politics as practiced by the member of the legislature and the political leader become paramount. But even in the field of pure means, certain secondary and intermediate values of a philosophical character present themselves. Democracy, more than any other form of government, is committed to the task of thinking through its problems, and democracy must deal with these questions more fundamentally than they have ever been dealt with in the life history of politics. Democracy is in part a philosophy of means. It is a philosophical assumption which asserts that the ordinary man has, in general, the right to be consulted about the solution of political problems. The acceptance of political participation, which is important in democratic theory, is a philosophy of means, and the scientist dealing with problems of administration in a narrow sense must take into account the theory of the community as to the proper means to be adopted in political life.

There is such a thing as the continuity of history; there are few breaks in the continuity of social environment. There is change, but each development begins from a present situation. Through all the development and change in political organization there has been a continuity of ideas, and this continuity of ideas is as close as the integration of the material environment. Insofar as men live by philosophy, insofar as they are guided by ideas, the present is in the fullest sense a continuation of the past, as the future will be a continuation of the present. The history of ideas, therefore, explains much. It gives the historical development of the basic assumptions of the community—the tenets of Western individualism which still seem strong and virile despite an overmastering social necessity for collective action. These ideas as applied to the present must be

correlated by reason, and when they are so correlated they shed a bright illumination. We know in part, then, why we think as we do and why we act as we do.

A person never acts in a void without a motive; no theory of free will can successfully maintain an arbitrary freedom that forgets the past and ignores the present. Deliberation is prophetic of the future course, but deliberation, as a reflective process which is so characteristic of man and which gives him a claim to a position as a rational being, cannot ignore the past. The finest deliberation is frequently a clear interpretation of the past as it impinges on the present. So political philosophy, which has had its share in making the past history of the state, stands ever on the constantly changing spot between the past and the future that we know as the present to give directions. The experience of the race is cumulative, and, though the same road may not be traveled again in precisely the same way, the philosophy and experience of the past are a guide and a mentor to those whose problem is of the present.[1]

d. To Develop Individual Judgment. A fourth function of political philosophy applies solely to the individual. Cultural education is greatly stimulated by the examination of political principles. As cultural education has developed, it is largely a knowledge of the civilization of man, and the student is considered more broadly trained as his intellectual appreciation runs deep into the present by knowing the history of the mental development of the race. This is certainly true of Western civilization, though scholars are coming to feel that, in order to understand Western ideas, one must have a comparative knowledge of oriental civilizations. While the political life of the West has not been intimately connected or interrelated with the East, the history of political philosophy as a part of cultural training has been extended effectively over Chinese, Japanese, and Indian ideas. The same is true of Moslem civilization, and here the connections in the intellectual development of the West are fundamental. For practical purposes, however, the study of Anglo-Saxon ideas has been deemed most important for English-speaking peoples. To the extent that different civilizations have different fundamental points of emphasis, such a point of view is justified. But the community of Western life is constantly recognized in spite of the insistence on differences, and the cultured individual must know the taproots of his civilization.

Not only is the mind of the individual developed by cultural studies, of which politics is one, and not only is his power of reasoning

[1] See L. T. Hobhouse, *The Metaphysical Theory of the State* (London, 1918), Lecture 1, for a general discussion of the function of values.

thereby developed as well as the understanding of the situation in which he lives, but his own attitudes toward life, toward citizenship, toward the getting of a livelihood, are deeply rooted in the past. Many of our opinions on political questions are the result of the quiet transmission of social heritage from parents to children in the family, from teacher to student in the school, from priest or pastor in the pulpit to the congregation, from the newspaper corporation to its readers, and from the employer to his employees. Few persons stop in the business of life, whether serious or dilatory, to inquire just why they hold certain opinions. They live by moral and political philosophy which has crept into their thinking by authority and not by reasoning or by rational reflections.[1] Not that life is less effective because of the unconscious acceptance of ideas and values; not that men are less happy or make less money or become less great in the sphere of leadership; they live more intelligently when they have a knowledge of civilization. Man thereby becomes conscious of his attitudes, of his permanent opinions about life, and his mind becomes more supple and critical—indeed more scientific while becoming more philosophical. The criticism of attitudes and ideas breeds progress, for theories that will be ineffective in the present are relegated to their proper status as elements in the development of culture; they will cease to be controlling factors.

Material civilization may indeed progress rapidly without consulting ideas, but, so far as ideas control conduct, and this is particularly true in political life, progress can be halted for long periods by a failure to know why we hold certain views, as well as by a failure to realize the implications of these ideas. The reconstruction of the thinking process must in part be based on the knowledge of what has been involved in the ordinary thinking of man in the past, so that we can more intelligently say what we think and why we think it in the present. Such a position does not mean that we become mere antiquarians removed from the struggles of the world. It means that our participation in contemporary opinion will be better led and more adequately organized. We shall understand more fully the thinking of our fellow creatures as well as have a better appreciation of ourselves.[2]

Politics a Universal Problem. Every civilized individual sees as a part of his culture the ever-present political organization of society

[1] See G. C. Lewis, *The Influence of Authority in Matters of Opinion* (London, 1849).

[2] Hobhouse, *op. cit.*, p. 136, remarks: "But the progress of political thought lies in the cultivation of the imaginative power. It insists on going back of the large generality, the sounding abstraction, the imposing institution, to the human factor which it covers." By permission of George Allen and Unwin, Ltd.

protecting and fostering human institutions. Without the sixty-odd states of the world it is hard to imagine the improvement or even the continuation of what human achievement we now have. The number of states makes little difference in reality, for the fact of political control is one of the most ordinary and universal facts of human life and the relationship of human wills. The state is an institution of control, and as such we shall investigate it further and more minutely as this study progresses. As more problems are raised, we shall see the close connection between government, whether viewed as art, science, or philosophy, and political principles, and indeed we may say that political philosophy is only a part of the broad field of politics. The individual who would know the nature of his citizenship must know the nature of the philosophy of the state under which he lives and by which he is controlled.

Politics is perhaps one of the most practical of arts, for, while we may insist that government is corrupt and always will be, we must yet depend on government for many of the essential conditions of life. In fact, we might say that the science of politics is the science of the conditions of social existence. Yet politics is, and has always been, one of the most theoretical of interests. From the dawn of history the sages of Egypt, China, India, Greece, and Rome have included in their observations on life their conclusions on politics. Some, it is true, were pessimists, as certain Indian and Chinese writings indicate, but others even then had formed high notions of the functions of the state. They were reaching for a standard of politics beyond individual caprice, for a common judgment as to what ought to be; the haunting idea that the state can be a great moral person expressing the universal self of the individual was taking shape. Realism and idealism have met in political discussion from the beginning speculation on the place of man in the world.

In the immense undertaking of community life there must be policy; there must be an attitude as to purpose and end. A man may fail in business, but one of the most persistent beliefs of mankind has been that, if the state should fail, all must fail, at least until another political system is established. The state is permanent as far as the individual can see, and the long perspective which community demands requires the formulation of ends. Thus, as Professor Hocking says, "politics needs a science of human nature, that is, a psychology; a science of right, that is, an ethics; and a view of man's place in the world, that is, a metaphysics. At some point or other, whoever touches politics, however practically, touches these concerns which in their ensemble we call philosophy. If he escapes considering them

it is only because he assumes that an intuitive judgment is better than a reasoned judgment in these matters."[1]

If the above view is correct, the investigation of politics in the light of principles is no mere luxury of modern civilization, for political ideas constitute a force in political life, and their study is a part of the science of politics. In the continuity of certain ideals or values, in their survival and ultimate realization, we see ideas as one of the forces directing the development of political society.[2] History cannot be mere accident or blind obedience to economic forces, if we once admit that human ideas shape conduct. Philosophy is in large measure the analysis and interpretation of causes, and as such it takes its place in the science of politics. Political theory may be viewed narrowly as the thought of an individual, but every political system, as a body of institutions, exhibits its character in the principles established in its statehood.[3]

The Scope of Politics. What is politics? What is political life? It is possible for a person who has no conflicts of a serious character with his fellow beings, a person who lives withdrawn from the active manifestations of the community, to know the state or political life only as a name. Can we go to the experiences of such an individual and find a test of the nature of the political community? Shall we compare political structures to find the essence of the state, to develop a concept of the political community, or shall we assert as Dewey that the "only constant is the function of caring for and regulating the interests which accrue as the result of the complex indirect expansion and radiation of conjoint behavior?"[4] The state as an historic entity exists in the minds of its members as an idea. Perception cannot cover political life in its totality; only a concept can create the state in the mind of the individual citizen. The citizen may come in contact with the individual agent of the state, but never with *the* state or *a* state.

The primary concepts of politics which are used by the agents of the state, such as the judges, are often alien or esoteric to the common

[1] William E. Hocking, *Man and the State* (New Haven, 1926), preface. By permission of the Yale University Press.

[2] Georg Jellinek, *Allgemeine Staatslehre*, dritte auflage (Berlin, 1929), p. 179, declares that the unity of the state is fundamentally teleological, for a number of human beings are united through constant, inwardly coherent purposes. The importance of ends may be illustrated by the church in the Middle Ages, for in every way except purpose it closely resembled the state. *Ibid.*, pp. 235–236.

[3] R. G. Gettell, *History of Political Thought* (New York, 1924), Ch. I, discusses the value of the study of political thought.

[4] John Dewey, *The Public and Its Problems* (New York, 1927), p. 47.

man.[1] They are beyond the experience of the average citizen. It may be said that, for the citizen immersed in the activities of everyday life, theorizing about the state or his relation to it is wasted energy. It is a kind of theurgy engaged in by professors and judges for the purpose of explaining something very simple—the relationship of wills in particular situations. The soul of practical politics is the contact of wills, wills which are seeking to attain given ends or to secure specific interests. In economic life men in contact with other men want economic advantage, and in politics the contact of wills implies that each man desires his will to prevail over that of another, a situation in which it is impossible to satisfy everyone at all times. This contact of wills is realistic, but it does not explain the motivation of conduct, for we cannot conceive of wills as being stubborn without a motive, *i.e.*, without something to be stubborn about.

Politics as Political Measurement and Observation. Two concepts of the nature of politics arise from the above considerations. One is that the field of ethics is outside that of politics, and the other is that ethics and philosophy are a part of politics. Let us take the first. In this connection politics becomes a science of observation and determination of relations in an exact sense. The Greek concept of politics as embracing ethics in the full connotation of the word is ignored. This view is essentially a product of the modern emphasis on method in the study of politics, for, if one excludes values, method is about the only aspect of political life left for the student. The ethical connotation is separated from politics, perhaps as Machiavelli might insist should be done if he were commenting on politics in the twentieth century.

"Politics," says Catlin, "as a theoretical study, is concerned with the relation of men, in association and competition, submission and control, insofar as they seek, not the production and consumption of some article, but to have their way with their fellows. This conflict is not with a reluctant Nature and, indirectly, with those induced to submit to organized toil for its mastery, but directly with the obduracy of man and in order to secure co-operators or servants, even although for no tangible end."[2] Politics is concerned with civilization and culture as expressed in institutions and conventions or rules of conduct. It is for the student of ethics to decide, under the above view, whether the conventions and institutions are good or bad, while the student of

[1] In relation to this idea it may be observed that political theory is not interested primarily in institutions and their operations. This is the field of politics in the narrow sense. Each age has a dominant political thought; political theory narrowly is an individual effort, though more broadly it includes the explanation of institutions.

[2] G. E. G. Catlin, *The Science and Method of Politics* (New York, 1927), pp. 210–211. By permission of the Author.

politics will consider the strength of conventions and institutions and their efficiency in establishing and preserving a smoothly operating society. Politics will be interested in the relations of man with man, of adjustments in society, not with the technique of economic organization itself. "Politics is concerned with things immaterial but considered as ethically neutral. It is not concerned with the goodness of conventions or legislative measures any more than is Economics with the ethics of luxury; it is only concerned with the problem of the feasibility of the realization of actual individual wills under the given social conventions."[1] The ultimate conclusion to be drawn from this discussion is that politics is only the science of the method of social organization. It views the methods used as neither good nor bad, and the ends also are taken as neither good nor bad. The practical tasks of politics are considered as no more ethical than the tasks of engineering.

The above position does violence to the history of man in relation with his fellows. Man, at least, likes to think he acts with a purpose, and this sense of purpose has been made by Ihering the essential basis of society. The engineer is concerned with cause and effect, as is the student of economics. But politics is always investigating and weighing the problems of the relations of men, and if anything is ethical in society it is the relation of will and will. The practical means for the realization of will is power, as the practical means in capitalistic economics is selling at a profit. Power as a fundamental in politics is after all only a means; it is not a purpose. If we conceive of man as outside the clutches of a mechanistic universe, purpose is the rational explanation of action. Berolzheimer may well show that the results attained are not always the purposes as originally conceived, but that is due to objective factors with which we must reckon but to which we must not surrender.[2] Purposes likewise may be immediate and selfish as far as the individual is concerned, but often it is not too much to think of the good of society in terms of what proves beneficial to individuals. The stones on the ground obey the law of cause and effect, but man obeys it in a much more complicated way. To the extent that human relations are willed, they *can* be rational, and because mental freedom involves human relations the problem of morality arises. A morality attuned to the needs of this world is essentially a morality of relations and purpose.

Moreover, if politics is merely a method of study excluding all philosophy, it implies, by indifference, a justification of things as they

[1] *Ibid.*, pp. 248–249. By permission of the Author.

[2] Fritz Berolzheimer, *The World's Legal Philosophies*, tr. from the German by R. S. Jastrow (New York, 1929), p. xliii.

are. A system of politics which insists on development and change in the direction of human desires must be normative, or it becomes a realism that thinks in terms of means alone. Such a realism gives up the problem of ends without attempting to solve it. Politics is at least one-half philosophy, if the other half is method and means; and this first and perhaps more ultimate half is ignored or consciously surrendered to other fields. This realistic conception of politics, however, is not realistic in fact since the democratic state involves the attitudes of men. We must remain near the Greeks in their concept of politics, for the force of the state must be rightful force, and this ascendancy of the political over the nonpolitical is the embodiment of purpose in the state. When we say that we act by purpose, we imply that it is rational insofar as it is possible for us to be rational. "The will, in brief," says Hocking, "promotes action—not unreasonably, not by reason—but in view of a future reason: it establishes facts and statuses, not blindly, but subject to a supervening judgment. To discover the purpose of the state is thus to discover the reasonableness of all functions, including force-using, which can be derived from this purpose: and to determine this purpose is the main problem of political philosophy."[1]

Politics as the Evaluation of Purpose. The burden of the argument has been to show that philosophy or political theory must remain as a legitimate part of politics. Politics considers the process of life in the state, but the concept of "process" must not be taken too narrowly. It must not be limited to the technique of vote getting employed by a political leader, and it must not be restricted to the manner in which the electorate functions, either in terms of organization in the case of the political party or in terms of motives that tend to control the voter's decision. The problem of the nature of man's political conduct is much deeper, and the deeper problems are the field of the philosophy of politics. This process of abstraction involved in the political theory of a generation leads to the formation of concepts. The trend away from the logical method in politics toward the historical and the factual has hampered the development of concepts, and it may be said that in modern political science there has been too little systematic abstraction rather than too much.[2] Politics in its broadest sense is a process,

[1] Hocking, *op. cit.*, pp. 77–78. By permission of the Yale University Press.

[2] The studies in systematic politics edited by Professor Carl J. Friedrich of Harvard University are an indication of a salutary technique possible in the study of government. The principle followed by Professor Friedrich results in the scientific development of concepts on the basis of a careful investigation of political situations.

but that process has two aspects, the formal, abstract, conceptual, and ethical on the one hand, and on the other the scientific or objective, in which is included history. There is a philosophy of politics and an art or means of politics. These two aspects do not conflict with each other, but must be considered as the two sides of the same shield. The growth or clarification of one means the growth or clarification of the other. The scientific and objective fields of politics include the study of applied government, the analysis of its structure, and the system of public administration. It includes the composition, the organization, and the functioning of the electorate. These subjects involved in the science of politics are interrelated with the philosophical, yet for practical reasons the separation between political philosophy and the more concrete treatment of the processes of state life must be accepted. In this study, political processes and political theory will be associated and their relations considered in some detail. Political theory stands by itself for certain purposes, particularly the consideration of the ends of the state, but it must be viewed finally with the means available in the organization and functioning of the community.

The Fields of Politics. a. Method. The scope of politics will become clearer if the fields of political science are stated more fully.[1] In the first place, method falls within the field of political speculation. Any method of study involves assumptions. Modern science operates on the assumption that a knowledge of a few integrated facts will give truth, even if the relation of those facts to the totality of phenomena is not known. In the social sciences the adoption of any method must finally be defended on speculative grounds, or on an *interpretation* or *generalization* (*i.e.*, abstraction) of the observable things of politics. This division of the field of politics is to be further subdivided, first, into a field where valuations can be tested against the facts and where theory or philosophy have only a pragmatic value, *i.e.*, a value based on a knowledge of the consequences of that theory. Here the scientific method can take the theory and find whether or not it has any significance in the world of experience. Many exponents of the scientific method believe that all evaluations can be placed in this category. The second subdivision consists of valuations which are not to be tested by consequences, either because they cannot be or because we feel them to be so valuable that they must not be. There are, indeed, uncertainties in nature, especially when we consider the psychological make-up of human beings. Many observable things in nature are not yet explained, as, for instance, electricity and life. Certain hypotheses are formed which partially explain the facts as they are

[1] For a good discussion of this problem see Catlin, *op. cit.*

observed, but this process, even in natural or physical science, can be carried only a certain distance.

The most significant of these fields is that of political ethics. It makes little difference if the pragmatist asserts that all we need to know is consequences, for persons insist on being judged by rational conclusions, and the pragmatist faces the proposition that even consequences must be interpreted on the basis of some sort of presuppositions, *i.e.*, norms. Values in conduct are to a great extent beyond the measurement of science. Facts gathered and correlated shed light only insofar as the presumptions and theories relative to the facts are known and understood. In the political community applied morality is one of the lasting problems, and it is the peculiar function of political philosophy first of all to investigate the nature of the state from the standpoint of coercion and the duty of obedience or submission. Beyond this, political philosophy must investigate and evaluate the functions that the state assumes in order to carry out its purposes. The controversy to which we have already adverted is most acute here. Must the student of politics also be a moral philosopher? Or must he be merely an observer of consequences and leave the judgment of those consequences to others skilled in the interpretation of the end of political society? If politics has any connection with political theory, which it has in historical fact and in the demands of human nature so far as it is rational, the evaluation of consequences cannot be left exclusively to the moralist. Catlin argues that, since the economist has no concern with luxury and the ethics of profit, neither should the political scientist have any concern with ethics.[1] We may agree, however, with Catlin that one of the functions of political science is the critical examination of "the fragmentary character and uncertain assumptions of much current political theory."[2]

[1] *Ibid.*, pp. 274–275.

[2] *Ibid.*, p. 276. Some additional light may be thrown on this problem if we contrast the Machiavellian attitude with that view which would subject political conduct to the same ethical standards as private life. While it is difficult to impose the same duties on the state as on the individual, *e.g.*, the duty to sacrifice one's life under given conditions, and while morality is relative to conditions even in private life, the state must justify itself morally in order to foster the morality that may be assumed as the legitimate right of each individual. *Cf.* Paul Janet, *Histoire de la science politique*, 5th ed., Vol. I, pp. 586 *ff.* Various schemes for the division of political science have been suggested. Professor W. Y. Elliott divides "politics" into two fields—"political science" and "political philosophy." See S. A. Rice, *Quantitative Methods in Politics* (New York, 1928), p. 6, n. 2. Rice cites, *loc. cit.*, the view of A. Gordon Dewey, "On Methods in the Study of Politics," *Political Science Quarterly*, XXXVIII, 636–637, that political science may be

b. The Nature of the State. The second field of political study is the examination of the nature of the state, which may be called the formal side of politics as against its content. The formal inquiry seeks to develop concepts, *i.e.*, generalizations, in which are stated all the essential things that occur as characteristic of political life. Its method is comparative, but at the same time it is logical. This field offers a definition of the state in terms of law primarily, but other considerations are involved, such as the existence of purpose in the state. It seeks to define and characterize government. But the subject most discussed by formal political philosophy is the state as a law-making and law-enforcing body. The further question of the ethical basis of authority or the use of coercion is, accordingly, raised. It develops the moral nature of the political community, if any, and, with this development completed, the functions of the state become more obvious. The great need of clear thinking about the problem of the nature of the state is evidenced by the fact that every function undertaken by the state must be justified in the minds of political leaders on some valuation or some philosophy of the function of the state. The functions of the state are comprehended in its purpose; all the functions of the state might be viewed merely as manifestations of a unitary purpose existing in the state as the highest political community.[1]

c. The Organization of Community Life. The third field of politics involves the specific content of organized community life. The use of the distinction between content and form, *i.e.*, concept, has been attacked by Dewey as a futile sort of procedure,[2] but it is one of the oldest types of human thinking. The essence of a thing is that which is common to all things of a class, and this type of comparative deductive study has been of value in political science. It is not so necessary when we think merely of the community in which we live and when we are considering only the consequences, direct or indirect, of such community life. The state, the embodiment and organization of many communities, is a distant and uncontrollable illusion, and if the state is large its functioning contradicts the impulses born of the small but vital community. The study of the state, therefore, involves

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divided into public law, political philosophy, politics, and administration. Incidentally, the catalogues of various universities show considerable variation in the organization of the study of politics.

[1] See Norman Wilde, *The Ethical Basis of the State* (Princeton, 1924); A. R. Lord, *The Principles of Politics* (Oxford, 1926); Hocking, *op. cit.*; W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930).

[2] Dewey, *op. cit.*

principles, concepts, and interpretations. To this extent it is a part of theory, but it extends beyond to the organization of means, which are to be studied by observing results. An interpretation of the processes of political life is demanded more and more as life in the state becomes complex, and as life itself becomes more complex the state becomes less real in the life of the individual. To realize the significance of the state in these circumstances requires a knowledge of history and a careful analysis and observation of its operation. It has become much easier for the citizen to forget the state and its meaning to him than it was in an agricultural economy when the processes of politics could be observed by the average person. But if the state has escaped the citizen, the vital citizenship remains to be recovered for the individual.

Professor Hocking has observed that there are two fundamental types of activity in the process of state life, the history-making or the commotive type and the term-making or arbitrational type. In the history-making type of endeavor we do not find the old situation exactly repeated or even desired. Individual personality is expressing itself in bringing or moving together dispersed individuals with dispersed trends of action. This is the counteractivity to the tendency of cooperative effort to decline in its force, or in other words the predilection of human beings to disagreement. Leadership performs its highest function in getting individuals to move together, and this type of activity is common, not only to the state, but to all other forms of joint enterprise. This cooperative process is not purely rational, for emotion may lead people to think and act together, such as the fear of a common danger.

The commotive process comes first, it would seem, and the term-making process, which seeks to adjust in a consistent way the conflicting interests of persons, comes later. It culminates in the judicial life of the modern state which builds upon the past and gives to men an assurance or a prediction of what the decision will be in specific cases. The art of the lawyer, said Mr. Justice Holmes, is the capacity to predict for the client what the decision of the court will be in the specific case that is presented for his attention.[1] But the commotive and arbitrational processes are intermingled, the term-making being a part of the commotive process and essential to the organization of life in the more civilized communities.

These two activities belong together in the political group as in other groups; and in the greater personalities they come to a natural fusion. Napo-

[1] O. W. Holmes, "The Path of the Law," *Harvard Law Review*, X, 457–478.

leon the warrior contains implicitly Napoleon the code-maker: Peter the reformer contains Peter the head of the state. History-making includes term-making, especially the external term-making of statesmen and diplomats but also the internal term-making of legislatures and courts. And term-making, in turn, will always be imperfect unless it considers the public policies of the community.[1]

The term-making process has not remained limited to the judiciary, for the modern state grants to its administrative agents a multitude of functions which involve subordinate decisions in carrying out a wider policy laid down by the legislature or the Constitution. Modern administration also includes the rule-making function which once was considered to be the exclusive function of the legislature. Such administrative legislation tends to bring the two broad types of conduct involved in the process of government closer to the individual or the group and to take away from government the unreality of its functioning introduced by the more rigid concept of the separation of powers embodied in our constitutional law. The principles of public administration become increasingly important as the management of government becomes more difficult and complex, and the tendency of modern political practice seems to be to place greater responsibility with individual administrators in matters of detail and to retain broad questions for legislative treatment.

The confusion, however necessary it may be, between the commotive and the arbitrational activities, is pronounced in the case of the executive. The executive in the strict sense seems to be drawing away from the administrative and taking a greater share in the policy-making aspect of government. The British executive, for instance, is primarily the leader of the legislative body, the House of Commons and, indirectly, the House of Lords. As a part of the executive we find the administration, but the administration in fact is largely removed from the vicissitudes of political fortune by permanency of tenure and irresponsibility for public policy or for the history making of the British government. Likewise, in the United States the President is judged primarily by his leadership of the legislature, and his control of the bureaucracy comes through his appointees. Each government in modern states shows this intermingling of the fundamental aspects of politics, whether or not there is a theory of the separation of powers, as is found in the governments of the United States and France.

[1] Hocking, *op. cit.*, pp. 14 *ff.*, 19–20. By permission of the Yale University Press.

The Organization of Government in Politics. The principles of the organization of government have played an important part in politics. To a certain extent they fall within the third field of political science, but to a similar degree they come within the organization and testing of means to achieve ends. Let us consider this statement in relation to democracy. Democracy may be examined either as a form of government, as in the case of Bryce and Maine, or it may be regarded as a social philosophy. Both points of view are valid but partial, and the interpretation of democracy as a form of government is likely to exclude the treatment of the philosophy of democracy and to fail to see that democracy as a form of government is only the organization of government for attaining ends. The same might be said of aristocracy and monarchy. Each is a form of government and a way of life. Both aspects are essential in the full consideration of politics, but to the passing student it is probably more important in the long run that he know the spirit and the principles of each of these forms rather than the various means that have been adopted to attain the social end they involve. Most pointedly, democracy is an evaluation of human personality, and this is why a theory of rights, as well as a theory of majority rule, is important to it. The fundamental principles of democracy remain relatively stable, but the means of attaining democratic citizenship have been in constant evolution. As each new device in democratic reform has shown its inherent weakness, a new series of political reforms has been demanded. The mechanics or the means employed to attain democracy present no problems essentially different from those involved in aristocracy or monarchy. Both of the latter forms have presented definite philosophies of the political community, and both have tried in various ways the path of realization. But the spirit of monarchy has been intimate with the spirit of aristocracy, and the means of aristocracy have been similar to those used by monarchy.

The organization of political society has implications as to the functions it is to undertake. The problem is also raised as to how these functions should be performed. The expert state, which is exemplified in part in Germany and in Italy, and in Russia under the dictatorship of the Communist party representing only the proletariat, implies both a means and a series of ends. One of the fundamental questions today is the extension of democratic principles developed in political life to economic life. The conservative leaders of business resent the extension of the field of politics to cover their enterprises, and the struggle between individualism and collectivism must be fought out on the field of principle, as well as by the maneuvers

of politics. Socialism, or any form of collectivism, entrenches itself behind a theory just as does individualism, and it then appeals to facts as they can be found to support both the theory and the method they wish to employ. The emphasis on experts supports the belief that policy can be determined by experts, though it is sometimes said that true experts come to their task with the problem assigned and that when they complete it they attempt no formulation of policy.[1]

Conclusion. The field of politics includes philosophy as well as the means of politics, and the ends of politics may stand out as separate in the educated mind from the means that may be used to attain them. On the other hand, the practical fields of political science merge, and in everyday treatment they are considered to be *the* field of politics. Thus we can associate politics and political theory, including in politics the actual formulation of policy and the administration of policy, broadly speaking, as the field of means in the life of the state, while we may think of political principles in estimating the nature and ends of the state. But the difference is only a matter of emphasis, for political theory must present reasoned treatments of the field of method and at times a critical evaluation of the means employed.

The field of politics is the state considered as embodying purpose, and also the state organized as an agency or means to attain its purpose. Policy or function leads directly to administration. The organization of government reflects the experience of men with the organization of political life, while the functions it undertakes indicate their experience with implicit or explicit philosophy. The functions of the state are products of man's attempt to claim the birthright of the rational creature. The rationality of politics appears in the functions that the state undertakes, for we know the state by what it does. If basic functions were not undertaken by the state, there would be no state and the field of politics could be no more than a utopian conception. The field of politics is the relation of human will with human will, but the purpose of the state is an interpretation of that relation so that justice may arise and so that just conduct may be significant in terms of the power of the state, even to the extent of using force to preserve justice.[2]

[1] See Walter Lippmann, *Public Opinion* (New York, 1922), and John Dickinson, "Democratic Realities and Democratic Dogma," *The American Political Science Review*, XXIV (1930), 283 *ff.*, for discussions of this question.

[2] In his brilliant and incisive way, Professor Corwin has concluded: "That the primary task of political science is today one of popular education, and that therefore it must still retain its character as a 'normative,' a 'telic' science, is, then, my thesis. Why, indeed, should there be another natural science anyway?

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The general obtuseness of the laboratory sciences to social values is boasted by their would-be imitators, and is as notorious as it is infantile. With modern physics and chemistry brandishing sticks of dynamite with the insouciance of a four year old, what could be more preposterous than to induct political science into the same nursery of urchins?" E. S. Corwin, *The Democratic Dogma and the Future of Political Science* (Shanghai, 1930), pp. 28–29. By permission of the Author.

Chapter II

THE PROBLEM OF METHOD IN POLITICS

> The various processes which are directed toward the realization of values are themselves subject to value judgments in terms of their own intrinsic excellence. This observation suggests that a distinction deserves to be drawn between final and intermediate values and standards of value.—C. J. Friedrich and Taylor Cole.[1]

Citizenship in the Scientific Age. We live in the Great Society, but some doubt whether we live in the Great Community. On every hand the cry is heard that democratic citizenship is a failure. It is contended that people no longer care to vote, that politics is uninteresting, uninspiring, and futile. The reformers have had their way and nearly every device to make citizenship vital in the lives of individuals has been tried; the state seems to be too satisfying to the individual and therefore he must be aroused. Such a position is necessarily predicated on the idea that the citizen does not know what is good for him. On the other hand, it is felt that society is complex and unresponsive to the individual, or for that matter to the average group of individuals who have an interest at stake. Most men seem to feel the impossibility of moving the state toward their wishes.

The recovery of citizenship may be centered on the problem of method. The intellectuals and students of special social disciplines are not ready to admit that nothing can be done about it. It is true that the consequences of making machines, of applying steam, electricity, and water power to the ordinary needs of life were not foreseen by those who first became conscious of the industrial revolution. But the tough habits of thought, the traditions and the customs produced in the matrix of civilization, change little. It is charged that the individualism of natural rights and natural law, which first called attention to the needs of the individual, along with the rationalistic philosophy which has been associated with the individualism of the laissez-faire economists, such as Adam Smith, Ricardo, J. S. Mill, and others, cannot be of value in the world produced by the industrial

[1] *Responsible Bureaucracy* (Cambridge, Mass., 1932), p. 9. By permission of the Harvard University Press.

and economic changes of the eighteenth and nineteenth centuries. These changes continue, and those who think they see deepest feel that the industrial revolution has only begun. Changes have come in social structure seemingly without the intervention of theory, for the old theories have remained and are, it is said, something less than half-truths and more than half-errors.

Many thinkers have sensed the conflict and change resulting from industrialism, but we have not materially altered our concepts of constitutional ethics. The only generalization which springs readily from the pen is that the functions of the state have increased enormously and that these functions are becoming increasingly technical, requiring the use of experts or scientists. But if we do not understand the state, it also causes distress if it is said that the old theories are inapplicable to the present situation. The ordinary individual performs the traditional and customary duties of the citizen from political habit and a love of tradition rather than from a rational appreciation of his citizenship. Gradually, however, even the citizen is coming to see that much of political life is futile and that he has really only a moderate interest in the state. In fact, the citizen may be coming to feel that we live in an incomprehensible psychotechnical democracy.

But the state cannot forget the citizen, and the answer is that either something is wrong with the citizen, which can hardly be maintained, or that something is wrong with the state. The mere idea of association carries with it the idea of the interest of the associates. There is no alternative between democratic ethics and any other, for if the interests of the individuals are ignored, if they are exploited, it is not a community, though it may be a society or a system of collective action and control. Again, the failures of the modern political community are oppressive. The state protects industry and credit, but it also protects slums; it permits the conditions for the organization of crime, and under its aegis the sum of human failure and disillusionment is immeasurable. Progress means the development of means to secure the expression of the best in every individual, and such would indeed be the democratic community. Yet how can this be obtained? We recognize widespread evils, but when the remedy is sought there is none forthcoming. The insistent demand of the present is that the state, which is responsible for our prosperity and the good things of life, must also be made responsible for misery. Perhaps the contention is unfair. Perhaps it is not possible for human political association as we know it to attain the Great Community, but few deny that, if possible, the state should correct the evils that so

far have been associated with the state. Such men as John Dewey[1] have the feeling that, if the lost and disintegrated mass of citizenry could be made to realize its needs, the direction of human destiny might be achieved rather than left to the fortuitous coincidence of thousands of unappreciated events. It is in this atmosphere that modern social science has developed, and the first stage in the evolution of social *science* is the attainment of method.

The Nature of Method. A method is for a purpose, and in politics method is for the best realization of the ends of the political association. Later we shall consider the nature and the ends of the state, but here we must investigate method itself. Democracy must always consider what should be done, but it is often true that we do not know how to reach goals upon which there is general agreement. The struggle between information and evaluation is not yet done. The evaluations or the philosophy of a time look to the future, to the situations and the consequences that are yet to be, while those persons who stress information think of what has been and is. Information in the human sense of the word can never catch up completely with the tide of events. It must always lag. Nor is the future always far away; it is also infinitely close to the present. We must live and act in the present as well as know what has occurred in the past in order to anticipate the future. Information itself is not prophecy, for forecasting is a peculiarly rational activity; true prophecy and prediction or control of the future are, politically, perhaps the best expressions of our rationality. Into this situation comes method as an artifact of the human mind and as a systematic critique of human perception and evaluation. And above all things else, method in politics must prove itself by attaining results. No method yet devised has given certainty in controlling the future; it can never give knowledge of the present in the present; and, as to the past, a fact is never vital without the context in which it came to be, for there must always be an interpretation of the fact, and method as yet gives little certainty as to that interpretation.[2]

The Social Sciences and Politics. The social studies all struggle with the complexity of society. Let us consider them in relation to political science for the light they may cast on the problem of method. Politics does not stand alone. The tendency of the present is to emphasize the interrelations of social studies rather than their differences. The day is past when the exponents of one discipline contend

[1] *The Public and Its Problems* (New York, 1927), *passim.*

[2] See Georg Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), Chs. II and IV.

for the supremacy of their own field; they now contend only for the right to make a contribution to the general expansion of human knowledge. For instance, it has long been the habit of lawyers to ignore the contributions of other studies dealing with human relations, but the trend of modern times, especially with the development of sociological jurisprudence, is to integrate the social studies, law and jurisprudence being among them. The jurist has much in common with other social scientists. Perhaps this is one of the chief differences between the jurist and the lawyer who may be interested merely in the practice of the law. Defenders of one discipline are not supported by the results of their research, it may be asserted; but the genuine contention should be that no one social study should preempt the field for itself.

Antagonisms may likewise arise within a field, and often the political scientist interested in the historical development of his subject may have little regard for the field research in practical problems, which has become so significant in recent years.[1] After all, it is fundamentally a matter of emphasis and approach. The contributions of each social science constitute data of a background character for other social studies which embark from a different point of view. It can hardly be said that any fundamental conflict can exist between different social investigations. All are interested in the assembled data, but the conflict as to method, which is related to the problem of approach to society, is sometimes acute between two or more social sciences and within particular ones.[2]

The Relation of Political Science and Sociology. Sociology is a very comprehensive attempt to organize social science. It is the science of society, but in its approach it considers the individual as associated with others, as a member of a group and as involved in social relations. The state, of course, is sociological as well as purely political, but during

[1] The objection that those interested in political principles make to the observational studies in politics is that they all too frequently show practically no interpretation, analysis, or evaluation of their findings. It may be that studies in applied government constitute a transition stage in which an immense body of information is being collected but not thoroughly interpreted. For the various aspects by which political ideas may be approached, see Merriam, Barnes, and others, *History of Political Theories; Recent Times* (New York, 1924).

[2] The contemporary tendency toward the integration of social sciences is illustrated by the development of joint research projects supported by all the social sciences. It must be remembered that this discussion of method concerns primarily advanced research rather than the teaching of the social sciences. For classroom exercises the fundamental methods are the philosophical (Socratic and logical) and the historical.

its early development the distinction is difficult to make. The state has become distinct by withdrawing itself from older types of associations and functions. But the political is embedded in the social, and they cannot be separated by distinct boundaries except for the purpose of investigation.[1] Political science is interested in men as organized in the state, and the study of historical sociology and anthropology, which trace the development of social organization, merely provides data for the conclusions of the political scientist or for the study of politics. Sociology deals with all forms of human association, but politics deals with only one in its primary manifestations. Both political science and sociology attempt to give explanations as to why man is a political being, and they must rely to a great extent on philosophy and psychology for data.

"In political science," says Garner, "the unit of study is the state as distinct from the nation, the tribe, the clan, or the family, though not unconnected with them; that is, its primary subject is a definite portion of society which manifests in a comparatively high degree, a political self-consciousness which has become organized politically. While their respective fields are largely separate and distinct, political science and sociology are mutually contributory, the one to the other."[2] Professor Barnes, by a broad interpretation of sociology, has contended that the recent developments of political theory have been along the lines indicated by sociological study. It must be admitted, of course, that it is often difficult to determine whether a particular writer should be considered a sociologist, a political theorist, or a philosopher. It might also be true that persons who are primarily students of public law and the state have indicated tendencies for sociology to follow.[3] In any case it is not a profitable discussion which lays claims to the dominance of one discipline over others in the study of society. Sociologists have often in the past been inclined as with Comte to assert a hegemony of the social studies, but the students of other emphases are not willing to accept the results of sociological research as conclusive on this point. Political scientists, for instance, have not felt that the handling of the manifold problems of politics by sociologists has been as comprehensive and enlightened as its treatment by

[1] See E. A. Ross, *Foundations of Sociology* (New York, 1920), p. 22; F. H. Giddings, *Principles of Sociology* (New York, 1896), p. 35; H. E. Barnes, *Sociology and Political Theory* (New York, 1924); G. E. G. Catlin, *The Principles of Politics* (New York, 1930), p. 70.

[2] Garner, J. W., *Political Science and Government* (New York, 1928), p. 31. By permission of the American Book Co.

[3] Barnes, H. E., "Some Contributions of Sociology to Modern Political Theory," in Merriam, Barnes, and others, *op. cit.*, Ch. IX.

specialists in politics. As we have already noted, the work of the specialist at the present day is immensely important, and it is hardly possible that one social science can ever embody the whole field of social investigation.[1]

The Science of Politics and History. Politics as a separate study is new, yet extremely old. To the Greek mind politics and ethics were the master studies, and history was a subsidiary branch of knowledge. It must be observed that politics and history have ever been closely associated, since history has often been devoted almost entirely to the chronicling of doings in political society. Both history and politics have, in recent years, veered away from too much emphasis on men. In this shift of emphasis the possible overlapping of history and politics has not been diminished. Public law, public administration, the study of the structure of government, international relations, the process of politics, and the study of political and social theory are all involved in history. There are some indications that the idea of social history will take the historian into the field of economic structure and cultural development. Neither the historian nor the political scientist can ignore sociology and psychology; and they cannot ignore one another. The sociologist resents the claim that the fundamental approach to politics is through history, and the historian is apt to feel that a thorough knowledge of history includes all that is valuable in political science. But it is again a problem of specialization. If history were expanded to include all the aspects of associated life that it touches, there would be no need for other social sciences. For the political scientist, history is data to be used in sounding the depths of his problems; for the historian the data of politics is part of the development and treatment of historical issues.

Not all of history, as Freeman once said, is past politics. Art, science, literature, and the content of any social relation, such as manners and fashions, include history, but the ordinary historian leaves most of it to the specialists of different fields, particularly in art, science, and literature. However, the historian is unwilling to surrender the state to the political scientist. The historian cannot surrender the state and the nation in all its phases to politics as he has abandoned cultural study. Should the process of farming out the

[1] See Catlin, *op. cit.*, p. 13: "In the mind of the writer, Politics and Sociology are inseparable and, indeed, identical subjects. . . . The writer sees no objection to calling the science of social interrelations by the Aristotelian name of Politics, and even confesses to a perhaps unhappy prejudice against such hybrids as Sociology, Sexology, Penology, and the like." See R. M. MacIver, *Community*, 3d ed. (New York, 1924), Ch. III, for a discussion of the place of sociology among the sciences. By permission of George Allen and Unwin, Ltd.

facts of history continue, the whole subject would be swallowed up. Politics and history must, however, remain poised against each other to a certain extent because of the necessity of the one to the other. As Professor Seeley has said: "History without political science has no fruit; political science without history has no root." Political science is a new discipline only in the sense that it is separated from the others.[1] The older studies, such as philosophy and history, are not fully prepared to give it an equal status in the halls of learning; the newer disciplines, such as sociology and psychology, often view it as a superficial borrower of data.

The fact remains that there is the state, and the study of the state in all its various aspects is the field of political science. Such specialized treatment as is now given the state by the political scientist is a product of the growth of knowledge and experience in social study. The development of methods of research has facilitated the expansion of the separate study of politics. To repeat, it is merely the divergent emphasis that produces the different social sciences. We must not forget that in the realm of human experience the separation of the political from other social studies has few consequences; a division of subjects in a university curriculum produces consequences primarily for the university. The practical application of experience to the present and the future can recognize no such differentiation as we are here discussing. For that reason, if a social science can contribute to human knowledge, its immortality is assured no matter where the artificial boundaries of scholarly discipline may fall. There is no conflict between history and political science, yet there may be between historians and political scientists.[2]

Political Science and Economics. The historical relations between economics and political science have been peculiarly close. The modern science of economics developed in large measure out of the earlier study of how to provide revenue for the state. "Political economy" as a term was used to cover economics and politics in their formative stages before any separation had taken place. It may be said that the eighteenth century study of what are now philosophy, economics, and political science as one general subject under one

[1] We must not be misunderstood. Political science is new only from the standpoint of recent university organization. As a study it began with philosophy, science, and literature in Hellenic society, and it may be said that much in the Greek treatment suggests that other studies are merely subdivisions of political science. In Western civilization, therefore, political science is one of the oldest and most venerable of speculative or scientific studies.

[2] See "The Relation of History and Political Science," *Annual Report*, American Historical Association (1896), Vol. I, pp. 203 *ff.*

general teacher or writer has much in its favor. But economics has gone far beyond the mercantilist notion of economics as the science of making a state rich and powerful, and it is no longer merely a study of how the rulers can raise revenue. Likewise, the development of political science required a separation from the older method of treatment. While both modern economics and political science have sprung from the parent study of political economy, the modern separation of the two is not so distinct as some are inclined to believe. Politics has been called *applied economics*, and it is generally admitted that the government and the economic life of a country must become more closely integrated if much human wastage and misery are to be avoided. The modern German writers are also inclined to view law and economics as intimately related; however, the European use of the term "law" in jurisprudential writings is almost equivalent to "political science."[1] The physiocrats in eighteenth century France, the first modern economists,[2] regarded political economy as a branch of statesmanship, and they treated it more as a study of government than as a study of wealth. Writers of the present no longer hold the older conception that political economy is a part of the general science of the state, yet they do not deny the need for close association between the social sciences.

The struggle today over the proper function of the state consists largely in disputes as to its economic activities. The social individualist and the "orthodox economist" stand together in denying to the state the right to interfere freely in the course of economic life. The collectivists of various types agree that government is the proper and competent agent to solve the economic difficulties that we face. It is customary for political parties to blame each other for economic disturbances, but when in power they are seldom willing to under-

[1] *Cf.* Fritz Berolzheimer, *The World's Legal Philosophies* (New York, 1929), introductory chapter, pp. 3–5. "The philosophy of law stands in intimate relation to political science—to governmental, social, punitive, commercial, agricultural, and tariff regulations. Politics considers how new legislative situations . . . may be met; it faces such problems as measures of immediate regulation—*de lege ferenda.* The philosophy of law is concerned with the *ratio legis*, with the general aspects of the end in view, and of the ideal conception of legislation. The two, however, are not sharply differentiated. . . . Law and economics are here presented in close affiliation, as form and content, as shell and kernel; yet, thus viewed, economics must not be confined to the study of the production, exchange, and consumption of human products, but should be extended to a general economics of cultural relations, comprising alike material and intellectual interests." By permission of The Macmillan Company, publishers.

[2] See Charles Gide and Charles Rist, *A History of Economic Doctrines*, tr. from the French by Richards (Boston, 1915).

take economic reconstruction by means of governmental authority. Indeed, under the American constitutional system it would be difficult, owing to the limitations that are imposed on the government. Even so, the major attempts at legislation are economic. The tariff, the control of public utilities and corporate enterprise, the relation of capital and labor, the redistribution of wealth by means of progressive taxation, and social legislation which seeks to ameliorate the conditions of the unfortunate are all issues that have to be fought out in economic and political theory as well as in the halls of the legislature and in the chambers of administrative bodies.

The Rise of Statistics as Method. Statistics is important in most forms of investigation. It is only in recent years that statistical theory and method have reached a state that makes them essential in all social sciences. The pioneering—and let us hope it will be genuinely fruitful—of today in political science and social science in general uses statistics as a preponderating method of study. The individual situation is related to a total number of situations by the use of mathematics and a statistical result emerges. While statistics has been described as a branch of political science, it has become a separate field of investigation in itself, requiring experts to make applications of the method. The modern tendency toward quantitative measurements in social situations is based on the development of statistics. The operation of cause and effect has been clarified in many instances by the use of statistics when the ordinary process of individual observation and speculation has failed to give a true picture. While a statistical result does not provide an ethic or a norm to be embodied in policy, once the policy has been supported by rational conclusions as to what men desire of political society, statistics is invaluable in attaining the result. Modern governments are indefatigable collectors of statistics, and much of the scientific work of government in administration is centered around the statistical result. Legislation must be guided by statistics, and the interpretation of information dealing with finance, trade, natural resources, unemployment, social conditions in general, vice, crime, illiteracy, birth, death, marriage, and divorce must be left largely in the hands of the statistician.[1]

[1] Among others, see C. E. Merriam, *New Aspects of Politics* (Chicago, 1925); Richmond Mayo-Smith, *Science and Statistics*, 2 vols. (New York, 1896–1899); S. A. Rice, *Quantitative Methods in Politics* (New York, 1928); H. W. Odum and Katherine Jocher, *An Introduction to Social Research* (New York, 1929); R. E. Park and others, *Research in the Social Sciences* (New York, 1929); C. E. Merriam and H. F. Gosnell *Non-voting, Causes and Methods of Control* (Chicago, 1924); H. F. Gosnell, *Getting Out the Vote* (Chicago, 1927); P. S. Florence, *The Statistical*

It is too early to state whether or not the use of statistics has been overemphasized in the study of politics. The present tendency of the researcher engaged in field and observational studies or using the statistical method is to assert that other types of investigation are essentially futile. The use of statistics shades imperceptibly into insistence upon and identification with scientific method. The use of statistics has not yet produced laws of politics. But the use of statistics is new, and it has not had time to demonstrate whether, with the aid of various methods of studying human relations, the picture of society and its treatment by government can be made more objective.

The natural sciences have not avoided the use of assumptions, and it may be asserted that, whatever accuracy statistics may have, we must always inquire as to the person who formulates the statistical result and the method used to attain it. The interrelation of facts cannot solve the issue of human purpose involved in political society. Statistics may show the failure of a given legislative project, but to show the futility of the policy does not mean that the end sought is unattainable or that it is irrational. In any case, statistical studies have not progressed to an extent which warrants putting all our faith in the compilated result.

The Impact of Psychology. We shall frequently insist on the importance of the human will in the study of politics, but we shall also insist that the will does not act in a vacuum. It is responsive to the external world, as in the case of economic forces and the life of men in association, but it is also responsive to internal forces. These internal forces constitute the fields of psychology and biology. The study of mental processes has developed in a most striking manner through scientific method, *i.e.*, primarily in the case of experimental psychology. When the impact of Darwinism on human thought came in the nineteenth century, a close alliance between biology, sociology, and political economy developed. Yet today the appeal of psychology to the political scientist is more general and fundamental than that of biology.[1] We are not content to extend by analogy the so-called laws

Method in Economics and Political Science (New York, 1929); L. L. Thurstone and E. J. Chave, *The Measurement of Attitude* (Chicago, 1929); H. C. Beyle, *Identification and Analysis of Attribute-Cluster-Blocs* (Chicago, 1931); H. C. Beyle, "A Scale of Measurement of Attitude toward Candidates for Elective Governmental Office," *The American Political Science Review*, XXVI (1932), 527 *ff.*; C. H. Titus, *Voting Behavior in the United States*, Publications of the University of California at Los Angeles in Social Sciences, Vol. V, No. 1 (1935).

[1] It may be said, for instance, that, while physics is tending to regard the physical universe as other than merely matter, cause, and effect, as in the case of Sir James Jeans and others, psychology is deserting introspective approaches to

of the animal kingdom to the field of social relations. While psychology investigates the mental life of all forms of animals, the primary interest of this discipline is the mental life of man. It may be said without hesitation that practically all the findings of psychology on human mental life will sooner or later influence the thinking of political students. As in the case of other social sciences, psychology will provide a basis for the further examination of the problems of the state; it will be, in relation to other social sciences, a matter of disciplinary emphasis.[1]

Among the writers whose works have received the most attention with regard to the application of psychology to general social problems, may be mentioned Tarde, Durkheim, and LeBon in France; McDougall, Trotter, and Wallas in England; and Baldwin, Ellwood, Ross, and others in America. Under the fire of continual discussion, political science has turned to social psychology for data on many of the ancient problems of the state. The growth of democracy has stimulated this inclination to lean on psychology, for the psychologist may be able to evaluate scientifically the functioning of electorates. While we may agree that, if the social psychologist studies the individual, it is psychology simply, and that, if he studies the actions of men in groups, the subject matter should be in the field of sociology, in fact such "jurisdictional" disputes should be disregarded where there is the possibility of a contribution from the application of psychological principles to the phenomena of group life.

If we go beyond the state as a concrete organization of government and a jurisdiction that involves the concepts of public law, it is clear that many of the most significant facts about the state are psychical rather than physical; they are subjective rather than objective in character. Psychology tells us of the instincts, emotions, and habits of individuals; it reveals to us the manner in which the mind generally works; and it qualifies the older historic conclusions as to the rationality of man. While psychology may stress the abnormal and the subnormal, while it may ignore the thousand occasions in the life of the individual where judgment is exercised and determinations are reached on the basis of perfectly clear human experience, eventually the psychologist must give to all the social sciences materials

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mental life and is trailing biology in an effort to get an objective picture of the human mind.

[1] See F. H. Giddings, *Democracy and Empire* (New York, 1900), p. 29; Ernest Barker, *Political Thought in England from Herbert Spencer to the Present* (New York, 1915), p. 148; Graham Wallas, *Human Nature in Politics*, 3d ed. (New York, 1921); *The Great Society* (New York, 1915); C. E. Merriam, *op. cit.*

on the average and ordinary activity of individuals. The psychologist, knowing the force of instinct and emotion, knowing the origin and course of habits, and knowing also the conditions under which judgment is exercised, may be able to tell us why people vote in given ways; he may be able to tell us much of the limits of obedience; he may be able to tell something about the conditions of securing honesty in public office; and more than anything else he should be able to tell us whether there is the possibility of improvement in the type of political appeals to which individuals respond and whether we can have an educated democracy in which the utmost use is made of human intelligence and the powers of reason.

But even assuming that we may learn none of these things from psychology, it has called to our attention in the most forceful way the play of instinct, emotion, habit, and reason in the conduct of men. We have, on the basis of psychological findings, taken a more realistic attitude toward human nature. We do not chide the citizens if they respond to emotion, for we have been taught something of the nature and the strength of emotion in political conduct. We have suffered also, for those who have exploited the prejudice and the ignorance of the voter have employed the findings of the science of psychology. Undoubtedly the modern development of the art of propaganda has profited much by the revelation of the mental process of men. Those who created "morale" in the World War were men who understood to the greatest possible degree some of the motivations of conduct. Unfortunately they understood too well the force of emotion, and they knew how shadowy is the borderland between a cold and reasonable position based on the *use* of information and the tremendous and ungoverned force of the aroused emotion.

However much psychology may develop, the indications are, so far, that man will not become the creature of emotions and instincts alone, but will remain rational in part. Even if psychology should paint a completely black picture, it might still be necessary in the interests of progress and the alleviation of misery to consider him an intelligent creature as a venture of political faith, for if there is no rationality in man neither the rulers nor the ruled can hope that the lights of reason and science will direct the policy of government. Emotions and instincts can be used in the interests of advancement, as pictured by the ethic of a people, as well as in sustaining a system as it is. Habits that are conducive to the happiness and orderly existence of man can be formed as well as habits that negate this order and happiness. By knowing the internal conditions that restrict the operations of reason, as well as the external forces that in fact

control conduct and the possibilities of human effort, the efficiency of reason in the course of political life can be immeasurably increased.

Interrelations with Natural Science. Psychology is generally considered to be a social science, but there is good ground for insisting that it is equally well classified as a part of biological science. In considering the contribution of psychological data to political science, we are in fact beginning the partial consideration of natural-science data in the social sciences. There is controversy as to whether political science should look to other social sciences or to natural science for guidance in method and material.[1] The attraction of natural science consists largely in its purity of method, and the attraction of the social sciences consists in the possible use of the information furnished by them. The natural sciences have developed the process of mathematical observation and experimentation to a high degree of refinement, and all admit that natural-science conclusions should be reliable. The social sciences have no laboratory for controlled experiment, but this is also true of some natural sciences such as astronomy, and laboratory observation is more effective in some than in others, as in chemistry.

The natural sciences attain the high ground of stating laws, while the social sciences for the most part content themselves with making generalizations on the process of social relations. Every law is a generalization, but a generalization may be only a statement of an observed uniformity with a touch of hope or prophecy that it will be valid in the future. In the case of laws of science, if there is an exception, it is preferable to establish a secondary law rather than to recast the law itself. Political principles and political laws are for the most part merely generalizations; they are true of the past, granting a certain interpretation of history and available records of the past, but there is no guarantee that they will be true of the future. A scientific law is so fundamentally grounded in scientific observation that there is no doubt as to its future operation. However, a dogmatic position is dangerous even with regard to the most obvious laws of science. The exceptions to the law of gravitation which have been observed by physicists for a long time have been made by Einstein the basis of the formulation of a new law in the theory of relativity. It is, after all, a curious thing to see the scientists demolishing by mathematical and astronomical observation what would seem to be an

[1] W. B. Munro, "Physics and Politics, An Old Analogy Revived," *The American Political Science Review*, XXII (1928), 1 *ff.*

absolutely valid statement of the facts of the observable physical world.[1]

Some persons hope that in the future we shall have laws of public opinion and that the effectiveness of government will be so well investigated that we can also have established laws as to the functioning of the state. The laws of public opinion would constitute a social psychology, however much the pure method of the natural sciences is insisted upon. The sociologists, particularly Spencer, Giddings, Ross, and others, have ventured into the formulation of the laws of society, but this ambitious attempt does not seem to have been received as a great contribution by those outside the ranks of sociologists or even by many within the ranks.

The question may be raised: why seek to establish laws at all? Can we not deal with particular situations as they arise? If each situation is treated as objectively as possible as a single conjuncture, the formulation of the laws of society, were it possible to formulate them, would be merely a routine matter because of the enormous mass of scientific information and social experiment upon which one may draw. This disparate treatment of the facts of society may be suggested as one of the finest implications of the pragmatic movement in politics as far as social method is concerned. It may be true that changes in social needs will discount the value of past experience, but if this is true it is only a further and insurmountable argument against attempts at the formulation of the laws of society. Laws of society likewise tend to be a priori laws, *i.e.*, they are not based on sufficient information and observation; they are often brilliant generalizations of a partial character. The pragmatist tells us the important thing in the state is to *act* as intelligently as possible in particular situations. Our attitude should be one of experimental action rather than the formulation of laws that require constant and energetic defense. The less we have to defend, the greater is the possibility that intelligence will be used in the solution of social problems. Political science should keep itself attuned to social rather than natural science.

The Contribution of Natural Science. Natural science has its contribution to make, and it arises in connection with the investigation of certain specific questions. The physical or natural sciences are concerned with the world of involuntary things, and some of these involuntary things, such as heredity as the basis of unequal capacities, have direct bearings on politics. Heredity is a limiting condition, but there are others of great importance to the student of politics.

[1] See Catlin, *op. cit.*, p. 100; A. S. Eddington, *The Nature of the Physical World* (New York, 1927).

"The will, as the Stoics taught, is only autonomous in the realm of thought. When the wish is translated into action, it comes under the heteronomy of authority, since, although the individual will may use authority, it cannot avoid being limited by it."[1] One of the fundamental issues of practical politics is the evaluation of the circumstances under which two men are not equal, biologically or socially. Such differences center on differences in intelligence or native ability and the unequal distribution of wealth.

Psychology may tell us that the mind of one individual is inferior to that of another, but biology may tell us, as far as heredity is concerned, why this difference exists. When the proved claims of biology have been recognized, the ultimate function of government remains in the effort to improve each individual to his utmost potentiality. Democracy treats most persons alike when participation in government is concerned, but, if men are not equally capable of solving the problems of state, biology may assist in determining the conditions under which such men can be excluded with assurance. If men may overcome their heredity, or if the human stock can be improved by legitimate means, biology can tell us what can be done and what cannot be done. The state must inquire as to the relative claims of heredity and environment before it can take up with confidence the tasks involved in attaining the ends of the state.

Biology has also been significant in political philosophy. One of the chief results of the Darwinian hypothesis has been the application of the concept of evolution to social organization. While all through history the analogy between the animal body and the social organization has been drawn, the influence of Darwinism enabled writers to refine and reapply this very ancient idea. The organic theory of the state took a new lease on life, and the evolutionary character of the animal and plant worlds was believed to be true of the evolution of the state. If evolution is realized by the survival of the fittest, by natural selection, why is not the life of the state determined in the same way? The relation of this idea and the defense of war is obvious. It has been asserted that the state has a natural as well as a political history.[2] According to this theory, the development of the state as an association

[1] Catlin, *op. cit.*, p. 158. By permission of George Allen and Unwin, Ltd., publishers. In the influence of heredity on social relations we have one of the relatively few instances in which the laws of standards or values cross and are interrelated with the organic in the strict sense of the word. Even here, however, the difference in the planes of generalization, *i.e.*, the difference between the possible laws of social and organic situations, is clear.

[2] H. J. Ford, *The Natural History of the State* (Princeton, 1915); F. W. Coker, *Organismic Theories of the State* (Columbia Studies, Vol. XXXVIII, 1910).

is merely a phase of the development of association among animals, and therefore it is included in natural history. Herbert Spencer presents one of the most thoroughgoing examples of the application of biology to the state, but modern writers generally have used this approach with more moderation. Walter Bagehot's *Physics and Politics* (1873) also shows the influence of natural selection.[1]

Spencer maintained that in structure and function the state is closely analogous to the biological organism, that it has organs analogous to those of animals, and that the functions of these organs are analogous also. While Spencer is generally considered to have failed in uniting biology and the study of society, other and more recent writers have attempted to apply in some detail the findings of biology and psychology to state life. Recent investigations, of course, show that the analogy of social organization to the biological organism is of little value.[2]

The Significance of External Forces. If we turn to the external forces shaping the action of human wills constituting a political organization, natural science has further significance for political science through geography and anthropology, together with their related sciences. Emphasis on external forces acting upon man tends toward an insistence upon some form of determinism. Drawing upon the natural-science method of describing uniform behavior and the action of cause and effect, the study of geography has aided in the development of theories of climatic, soil, resource, and location determinism. These forces or conditions are by their nature largely objective as to human desires, and if they exercise any influence on man they do it regardless of the action of the will. Whether or not we want to be influenced by climate makes little difference, if climate and the nature of the soil do in fact limit and condition our behavior. Such deterministic theory can be admitted in part without denying man an essential freedom of will in dealing with the world. To state the proposition in another way, none of these external forces can explain completely any given social or political situation; the forces may be instrumental, but without the action of human desire and

[1] The use of the organismic theory of the state in this connection should be distinguished from its use by idealists or absolutists who would say with Bluntschli that the state is a moral and legal person, or with Rousseau that the state is a moral and corporate body. The state viewed as a moral and legal personality shows the influence of philosophy and law; it is a metaphysical theory of the state rather than a biological interpretation.

[2] For the literature of the subject see H. E. Barnes, *Sociology and Political Theory*, pp. 61–62; Garner, *op. cit.*, p. 40. See R. M. MacIver, "Social Causation," *Publications of the American Sociological Society*, XXVI (1932), 28–36.

determination the situation could not itself exist. It becomes a matter of rather heated debate as to whether the human will or the external conditions are the more significant.

From ancient times writers have devoted themselves to the influence of climate and geographic conditions on culture.[1] These theories have been closely associated with ideas of political greatness, and the Greeks, the Arabs, the Romans, the French, the Germans, and the English-speaking peoples have attributed much of their importance and success to their fortunate location on the face of the earth. Bodin was the first of the moderns to treat this aspect of national life in any detail. Rousseau believed that there was a relationship between climatic conditions and the form of government, and particularly that warm climates stimulated despotism, cold climates, barbarism, and moderate climates a good form of government. In these ideas he was influenced by Baron de Montesquieu's *The Spirit of the Laws* (1748) which attempts for the first time to work out systematically the relation between the factors of geography and the factors of political life. But all these writers were merely continuing in more elaborate form the integration of the Greeks between geographical self-congratulation and political power. Montesquieu, unlike earlier writers, laid less emphasis on mere latitude and longitude and more upon temperature, moisture, and the fertility of the soil.

However, Buckle in his *History of Civilization* (1857) was the first to sense the fundamental conflict between such determinism and the historic ideas of free will. Geographical influences were considered the dominant cause of the character and institutions of a people. The differences between nations, according to Buckle, are to be explained in terms of climate, food, and soil; and he attempted the explanation of civilizations of world significance in geographical terms. While modern writers believe the influence of geographic circumstances was much overemphasized by Buckle, it is after all a conflict destined to continue in human thinking. The study of geographical conditions has produced the field of "political geography" which attempts to explain individual character, political institutions, and policies in terms of physical and geographical factors.[2]

[1] See Franklin Thomas, *The Environmental Basis of Society* (New York, 1925), for summaries of these ideas.

[2] See Franklin Thomas, "Some Representative Contributions of Anthropogeography," in Merriam, Barnes, and others, *op. cit.*, Ch. XII; Isaiah Bowman, *The New World*, 4th ed. (New York, 1928); Ellsworth Huntington, *The Character of Races* (New York, 1924); *Civilization and Climate* (New Haven, 1922); *Climate Changes, Their Nature and Causes* (New Haven, 1922); E. C. Semple, *American History and Its Geographic Conditions*, rev. ed. (New York, 1934); *Influences of Geographic Environment* (New York, 1911).

The geographical argument has been of value in supporting strong political policies. Treitschke attributed the federal government of Switzerland to the geographical conditions of that country. German writers have based a defense of developed military power on the situation of Germany, since that country lies in the center of Europe and has no natural boundaries.[1] The individualism of Anglo-Saxon peoples has likewise been attributed to climatic and geographical factors.[2]

Modern research into the social forms of primitive peoples and cultural studies of a comparative nature has made anthropology of considerable importance to the political scientist. The conclusions of anthropology must be accepted with regard to the early form of social organization and the beginnings of the state which, according to Lowie, coincide remarkably with speculative ideas. Such study has also thrown light on the beginnings of nationality.[3]

The Methods of Political Science. While there is no method which is uniquely applicable to politics, anyone who studies political science must use a method or methods. The emphasis now is increasingly on method because it is realized that the type and value of conclusions reached must be equated with the method adopted. The adoption of any method implies the acceptance of certain presuppositions as to the nature and means of getting at the truth. Scientific writers who condemn philosophy as sterile and insist on science are themselves relying on a philosophy of knowledge, for different types of information are gathered in different ways; finally, the evaluation of a method is merely, from a philosophical standpoint, the assertion that a certain type of knowledge is superior and should be controlling. Emphasis on scientific method rests on the belief that real knowledge is objective with regard to human will and that, by knowing only a part of the total field of human experience, we can get accurate conclusions without knowing about the rest. Whatever may be the ultimate contributions of scientific method in the social sciences, a fundamental contribution has been the stimulation of unparalleled interest among social scientists in the whole problem of methodology. For the political scientist, the problem of method must be viewed in the light of the contributions of other sciences combined with a comparison of the results of the older

[1] Hintze, "Germany and the World Powers," *Modern Germany in Relation to the Great War*, tr. by W. Whitelock (New York, 1916).

[2] E. R. A. Seligman, *Principles of Economics* (New York, 1909), pp. 36–40.

[3] See Merriam, Barnes, and others, *op. cit.;* R. H. Lowie, *The Origin of the State* (New York, 1927); Barnes, *Sociology and Political Theory;* F. Oppenheimer, *The State* (Indianapolis, 1914); James G. Frazer, *The Golden Bough*, 12 vols. (New York, 1935).

historical and philosophical methods. We may wait for the contributions of the different social sciences or we may assert that there are some things which must always remain a priori and fundamentally philosophical in treatment.

The Traditional Methods. The older methods of studying politics are the philosophical, the historical, and the juridical; the newer methods may be listed as the comparative, the observational, the experimental, and the analogical, which includes the emphases of sociology, biology, and psychology. The scientific method is essentially a composite of the new methods mentioned above. Yet it is scarcely fair to put the philosophical method by itself, for practically all the writers on politics have used the data gathered by the older methods to illustrate and even to suggest their philosophical conclusions. It should also be borne in mind that no method, however scientific, is entirely free of metaphysics. The philosophical method flaunts its assumptions and uses logic to support them, but the assumptions of the scientist are not so carefully recognized and are, therefore, much more dangerous than those made by philosophers. The assumption is always just around the corner.

Political theory, declares Ernest Barker, is the speculation of individual minds, while political thought may be viewed as the thought of a whole society.[1] Political theory merits our attention insofar as it has in it the germs of science, just as an hypothesis of physics or chemistry, but it also merits our attention when it gives explanations or purposes where science has no contribution to make. What are the fields in which science can make no contribution? It would indeed be dogmatic to assert that science in dealing with facts and their explanation has a rigid and immutably limited scope, and that, on the other hand, political ethics or modern "constitutional morality" has an equally rigid and immutable range. It is undoubtedly true that the area of pure philosophy has been contracted by the growth of science, but it is likewise true that the growth of science has not destroyed the utility of inquiring into and reasoning about the purpose of the political community. The growth of science has made it possible to criticize the achievements of philosophy in the realm of political morality, and it is generally conceded that philosophical evaluations created, often merely in the mind of the philosopher, by reasoning have not fared badly in the light of science. The great creations of modern rationalism, particularly of the eighteenth century, when many modern ideas on government took shape, are still to be realized, and with the aid of science their realization or futility is a

[1] "Greek Political Thought," *Cambridge Classical History*, Vol. VI, p. 507.

proximate achievement. The field of political theory is the field of political morality, and, as T. H. Green said, the function of government is "to maintain a condition of life in which morality is possible, morality consisting in the disinterested performance of self-imposed duties."[1] Political philosophy is concerned with ethics, with the world as idea, while politics in the narrower sense is concerned with the world as will, as the process of attaining the objectives of philosophy.

While political theory may merit our attention, political thought demands it. None can deny that ideas have played their part in human history, that in many circumstances and especially over long periods of time ideas condition and direct the course of events. The history of successful reform, though uninspiring and spotted in many cases, is a history of the realization of ideas. This realization may be merely the reapplication of old ideas to new circumstances and the development of new methods of dealing with old problems; but whatever it is, the conditioning force of organized thinking is an essential part of history. The claim to originality of ideas need not be pressed too far, for all changes involve the ideas of more than one man and of more than one period of history, as well as the slow accumulation of material changes producing interaction between ideas and the objective environment. Attempted proof of a thesis is often nothing more than the support given by a priori considerations, and one of the long-sustained illusions of human thought is that soon the methods of proof will become so scientific that mere theory will be unnecessary. But the force of the dominant ideas of political thought does not need proof of truth; it only needs proof of being a force. We can point to revolutions sustained by philosophy, however erroneous; we can trace movements for reform likewise sustained by inspiration or the rational challenge of idea; and we can also see the conservators of society fighting for things as they know them in terms of the ideas that justify the old order.

Out of the welter of conflicts in philosophy, out of the struggle over the value of "abstractions" or generalizations, and out of the struggle over the nature of the state as a moral organism best suited for realizing the moral ends of man, the modern philosophy of pragmatism, which stresses the relativity of truth and the testing of truth by the consequences produced by behavior, seems to be taking its place as the handmaid of the scientific method. Pragmatism seems to rely on the findings of science for the interpretation of consequences, and it

[1] T. H. Green, *Lectures on the Principles of Political Obligation*, Sec. 15, from *Works of Thomas Hill Green*, R. L. Nettleship ed., 3 vols. (London, 1885–1888), Vol. II.

seems to have also a great hunger for sociological data. The pragmatist inclines to purely observational methods; he would test the presuppositions of the political theorist and of political thought by what has been produced by them. The wiser the pragmatist, the more positive he is in insisting on a clear interpretation of consequences and the more cautious he is in declaring an old theory unsuited to the present needs.[1]

The pragmatist must go somewhere for values, for he cannot go to the scientific method alone. In this we find his greatest weakness. He can examine the values of others in the light of experience, but he has difficulty in building his own norms to replace those that he would destroy. The pragmatist above all others insists on the necessity of action, and, when no basis of action is at hand, action by experimentation is admitted. Pragmatism is performing a valuable service of criticizing institutions and philosophies, and the immediate result of the pragmatic movement is the more precise and scientific defense of ideas which are subject to attack on the part of the student of consequences. The sure field of pragmatism is in the study of the process of politics, but whether it can drive other and more abstract interpretations of the state from their historic vantage points remains to be seen.[2]

The historical method is closely associated with the comparative treatment of political institutions. The political scientist uses the data of history to trace political theory, the forms and development of government, and the course of political movements. By historical and comparative study the general movement of political life is discovered. The methods of logic are used to interpret the data assembled.[3] The necessity of historical study in understanding the development of institutions is generally admitted, and it is particularly emphasized in the study of politics.[4] It is essentially the doctrine of

[1] Amos Pinchot, in criticizing Walter Lippmann in *The Nation*, August 2, 1933, p. 126, declared a pragmatist to be one who avoids being right at the wrong moment.

[2] See W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928); William James, *Pragmatism* (New York, 1907); H. J. Laski, *A Grammar of Politics* (New Haven, 1925); Léon Duguit, "Law and the State," *Harvard Law Review*, XXXI (1917), 1 *ff.*; G. H. Sabine, "The Pragmatic Approach to Political Science," *The American Political Science Review*, XXIV (1930), 865–885; C. W. Morris, *Pragmatism and the Crisis of Democracy* (Chicago, 1934).

[3] See J. S. Mill, *System of Logic;* J. K. Bluntschli, *The Theory of the State*, tr. from the German (Oxford, 1892), Ch. II; James Bryce, *Modern Democracies* (New York, 1921).

[4] Sir Frederick Pollock, *An Introduction to the History of the Science of Politics* (London, 1890), p. 11.

evolution applied in the study of the state. While there are dangers in the historical method in that historical parallels are easy to discover and are often misleading, the historical method has performed a valuable service in separating the treatment of the state as it is from what it ought to be. The organization of the material about the state as it is and has been must be through the comparative method, which has one of its essential applications in the historical method.

The juridical method is a specialization in the treatment of the state. It is usually comparative and it is fundamentally historical, since the roots of a legal system are to be discovered only by the investigations of the legal historian. The continental jurists have developed comparative legal study to a far higher degree than Anglo-Saxons, who have been satisfied quite generally with a study of English law. The juridical method involves the interpretation of the state in terms of law, and the most important product of this method has been the rise of public law, the doctrine of the legal personality of the state, and the theory of sovereignty. Yet it is true that the public lawyer cannot develop his field without comparative legal study and investigations into legal history.[1]

Aspects of Scientific Method. President Lowell has declared that "politics is an observational and not an experimental science." The observational approach to political science does not admit that a study of books is sufficient. The research student must go into the field to observe the working of political institutions and the immediate process of politics. The data collected in this way approaches the test of scientific information.[2] The difficulties of experimentation are almost insurmountable simply because governmental arrangements involve tradition, habit, and evaluations. It is not always possible to determine whether a given social measure was tried in an atmosphere that gave it an adequate chance to work. It is possible to say that any change in government or social polity is an experiment, but this is not experimentation in the same sense in which the word is used in the laboratory. Moreover, not all natural sciences can rely on the experimental method, for, while the chemist and the biologist may to a degree, the astronomer and the geologist get their results by careful and understanding observation. Modern studies of observational

[1] See W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924); Georg Jellinek, *op. cit.;* H. Krabbe, *The Modern Idea of the State*, tr. with introduction by Sabine and Shepard (New York, 1922); Johannes Mattern, *State, Sovereignty and International Law* (Baltimore, 1928). The reader interested in this subject should consult the Modern Legal Philosophy Series.

[2] A. L. Lowell, "The Physiology of Politics," *The American Political Science Review*, IV (1910), 1–16.

character are giving a clearer picture of the internals of politics, and it is probable that scientific observation will enable us to judge fairly the social values we have embodied in public policy.[1]

The analogical system has already been adverted to in our consideration of sociology and biology. The organic theory of the state is a product largely of emphasis on the analogy between animal and social organization. It is generally conceded that few scientific results have been attained by this method.

Most of the methods used in the study of political science must embody to a greater or less degree scientific method, for it would appear that the most promising results can be attained, at least for the present, by observational and factual research. But the opportunity of political and social theory was never greater than at the present. It should be emphasized again that there is no inherent conflict between a proper use of theory and science. The technique of theory, by virtue of its long history, is more developed than the technique of social science, and the next step is undoubtedly the development of technique in "practical" research. The experimental attitude in social relations is fundamentally necessary for the progress of scientific method, and it is the duty of the democratic leaders of today to prepare the masses of the people for the acceptance of the experimental technique in social relations.

This preparation is hindered by the presence of various forms of "absolutist logic" which necessarily deny the validity of social experimentation. "What we have termed the absolutist logic ends," says Dewey, "as far as method in social matters is concerned, in a substitution of discussion of concepts and their logical relations to one another for inquiry. Whatever form it assumes, it results in strengthening the reign of dogma. Their contents may vary, but dogma persists."[2] The suggestion of natural science is that events should be observed and correlated. This detection of correlation is the proper approach to cause and effect, and insofar as possible it should be applied to problems of the relations of men in political society. Whether this can ever be achieved is certainly not indicated by history, for the historical sequence of events has never been free for the experimentalist hand of the student of social science. It is the hope of future developments, however, that science will be

[1] For a good example of the observational method see Joseph P. Harris, *The Registration of Voters in the United States* (Washington, 1929). The publications of the Institute of Government Research, Washington, D. C. are excellent examples of the observational method of political study.

[2] Dewey, *op. cit.*, p. 201. By permission of Henry Holt & Company, publishers.

permitted to contribute to its fullness in dealing with the maladjustments of society, and that the constructive formulation of social purposes, of public and private morality, will be free from the binding force of customary prejudices which prevent the application of freely formed and rational conclusions. But the science of political and social relations and the philosophy of these relations have not been able to render a full account of their potentialities. Science and philosophy are valuable tools for the use of man, but man, so far, has not been willing to trust fully his destiny to either science or philosophy that does not accord with the system of relations with which he is acquainted.

Such a development of political method demands, in the first place, that the necessary philosophical conceptions shall be treated as instruments of inquiry. It is not necessary to assert that any conception of political relations, such as democracy or constitutional government, shall be established with a fixed and unchangeable content. They are primarily values of the human mind which serve to arrange common action in connection with community life. In the second place, it is necessary to view any concrete proposals that seek to carry out the evaluations of men as hypotheses that are to be tried under the most favorable circumstances. Such programs should, of course, be deserted if they do not attain the ends sought by those who formulated them. Any proposal is to be tested and tried, not rigidly adhered to. In such an atmosphere the various contributions to method of different social sciences will find a place. Certainly, it is not for the student of politics to say that there is an indigenous method of political science, distinct and different from all others, which is the exclusive property of the political scientist.

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PART II

GENERAL PRINCIPLES OF THE STATE

CHAPTER III

THE STATE AND ITS SOVEREIGNTY

No other process in human history has been so slow and none is still so far from finality as that whereby community and state have grown not separate but distinct.—R. M. MacIver.[1]

Für eine postivistische Betrachtung, die das Recht nicht im Naturrecht verabsolutiert, ist der Staat ein König Midas, dem alles, was er ergreift, zu Recht wird.—Hans Kelsen.[2]

Can the State Be Defined? It may be said that definitions really serve little in social studies and that most of the definitions formulated are not agreed to by many others than the formulator. The concept or the form of an object is a statement of its general characteristics which are present, presumably, in all circumstances. A definition is a statement of essential characteristics; it is a generalization or an abstraction. Definitions in political science have been no exception to the rule, and most periods in the development of the state have been characterized by varying interpretations of state, government, law, nation, and citizenship.

In modern times the problem of stating what is political and what is not has been closely associated with the differentiation of the state from other *groups*, for state life or political life involves the problem of specific loyalties. Such loyalties raise the question of the authority of the state group over other groups, which we will consider primarily under the head of political pluralism. The state group is larger than other groups, and it has the right to exercise force in order to attain its ends. Externally, at least, the use of force by the state sets it off from other groups, though it is true that its control of force is only a near monopoly. Broadly speaking, that is political which concerns the state, government, or law.

[1] *Community*, 3d ed. (New York, 1924), pp. 232–233. By permission of The Macmillan Company, publishers.

[2] "In a positivistic approach which does not reduce law to natural right, the state is like a King Midas for whom everything that he touches becomes law." *Allgemeine Staatslehre* (Berlin, 1925), p. 44.

Historic Definitions of the State. The Greeks used the term *polis* or city to express their concept of the state. Their state was in fact a city-state and the term was true enough, but the development of the country-state, as Sidgwick calls it,[1] demands a more comprehensive term. The Romans used *civitas*, but they spoke also of *status rei publicae* and *res publica*, which carried with it the idea of public welfare. The modern term "state" was probably derived from *status* through the adoption of the term by Teutonic peoples. Machiavelli in *Il Principe* (1523) is credited with introducing the term into modern political science, and during the sixteenth and seventeenth centuries the term found its way in different forms into the languages of modern Europe.[2]

Definitions of the state are almost as numerous as the writers on political science, and only a few of the more significant definitions can be given here. Aristotle, the first systematic student of politics, the "father of political science" defined the state in the following terms: "the union of families and villages having for an end a perfect and self-sufficing life, by which we mean a happy and honorable life."[3] In Aristotle's mind, the state as the highest type of community aimed at the highest good, embracing other forms of associations within itself as well as their good purposes. Cicero thought of the state (*res publica*) as "a numerous society united by a common sense of right and a mutual participation in advantages."[4] The general emphasis of this definition was followed by Grotius, Vattel, and Wheaton.[5] Bodin who wrote in 1576 the *Six Books of the Republic* presents a legal view of the state in which is found the beginning of the modern theory of sovereignty. Holland, a modern English analytical jurist, defines the state as a "numerous assemblage of human beings, generally occupying a certain territory, amongst whom

[1] Henry Sidgwick, *The Development of European Polity* (London, 1893), pp. 186–187.

[2] See Georg Jellinek, *Allgemeine Staatslehre, dritte Auflage*, (Berlin, 1929), Ch. IV. See Edward Jenks, *Law and Politics in the Middle Ages* (New York, 1905), p. 71: "But even to a Roman, the word *status* alone had no such meaning as that which we now attribute to the term 'state.' The phrase *status rei publicae* would indeed have conveyed to a Roman of the fifth century after Christ a meaning very similar to our modern notion of a State; and the fact that the Teuton borrowed only a fragment of the phrase may seem to show that, even when he borrowed from it, he had no very clear understanding of its meaning." See J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 23 *ff.*, for a note on the origin of the term. As Jellinek so pointedly remarks (p. 132): "Mit dem Auftauchen der modernen Staatsidee ist auch das entsprechende Wort gefunden."

[3] *Politics* (Jowett), p. 120.

[4] *De republica* (Keyes), Bk. I, p. 25.

[5] J. W. Garner, *Political Science and Government* (New York, 1932), p. 51.

the will of the majority or of an ascertainable class of persons is by the strength of such a majority or class made to prevail against any of their number who oppose it."[1] John W. Burgess, one of the late outstanding writers on political science in the United States, declares that the state is a "particular portion of mankind viewed as an organized unit."[2] This is substantially the same definition as is given by Bluntschli, who has been credited with writing in 1852 the first systematic treatise on political science since Aristotle.[3]

Shortly after the Civil War the Supreme Court of the United States in the case of Texas *v.* White[4] defined the state as a "political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution and established by the consent of the governed." Léon Duguit, a leading authority in French public law and political theory, viewed the state as based on political differentiation of "un groupe d'hommes qui paraissent commander aux autres et qui peuvent imposer l'exécution de leurs ordres apparents par l'emploi de la force matérielle lorsque besoin est."[5] Phillimore, an authority on international law, considered the state to be, for his purposes, "a people permanently occupying a fixed territory, bound together by common laws, habits, and customs into one body politic, exercising through the medium of an organized government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and of entering into all international relations with the communities of the globe."[6] With some hesitancy Garner adds another definition of the state in the following terms: "The state, as a concept of political science and public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control, and possessing an organized government to which the great body of inhabitants render habital obedience."[7] W. W. Willoughby, the outstanding exponent at the present time of the juristic approach to the state, considers it to be "a group of human individuals viewed as an

[1] T. E. Holland, *The Elements of Jurisprudence*, 13th ed., (Oxford, 1924), p. 46.

[2] J. W. Burgess, *Political Science and Comparative Constitutional Law* (Boston, 1898), Vol. I, p. 50.

[3] G. E. G. Catlin, *The Science and Method of Politics* (New York, 1927), p. 345.

[4] 74 U.S. 700 (1869).

[5] Léon Duguit, *Traité de droit constitutionnel*, 3d ed. (Paris, 1927), Vol. I, p. 535. See also *L'État, le droit objectif et la loi positive* (Paris, 1901), Vol. I, p. 9.

[6] Robert Phillimore, *International Law*, 2d. ed. (London, 1871), Vol. I, p. 81.

[7] Garner, *op. cit.*, p. 52. By permission of the American Book Company, publishers.

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] Later in the same volume he presents the essence of his concept of the state as a juristic person *i.e.*, corporation in the public-law sense, when he says that the state is "the political person or entity which possesses the law-making right."[2]

The State and the Community. With the development of the modern political community, various elements and attributes of the state have been clearly stated and often criticized. Agreement has been reached for the most part that the term "political" may be applied to all matters that involve the origin and history of the state, the organization, activity, and aims of government, its administrative methods, its sphere of authority, and, indeed, its very right to exist. The distinction between society and the state, or the distinction between social and political organization, has been very difficult. Those writers who tend to exalt the function of the state think of state and society as synonymous, while students who minimize the function of the state view it merely as one form of social organization, the form in which the machinery of physical control is developed to its highest point. To identify the social with the political would bar any clear understanding of the state or of society.[3] There are forms of association with neither origin nor inspiration due to the state, and there are social forces like custom or competition which the state cannot and does not create, but which it may modify or direct within certain limits. There are motives of friendship and affection to which the vast system of relationships known as the state must be an alien force. "The state," says MacIver, "exists within society, but it is not even the *form* of society. We see it best in what it does. Its achievement is a system of order and control. The state in a word regulates the outstanding external relationships of men in society. It supports or exploits, curbs or liberates, fulfills or even destroys, the social life over which it is invested with control—but the instrument is not the life."[4]

[1] W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924), p. 3. By permission of The Macmillan Company, publishers.

[2] *Ibid.*, p. 49. See Jellinek, *op. cit.*, p. 183, for a further definition representing an essentially German point of view.

[3] *Cf.* L. T. Hobhouse, *The Metaphysical Theory of the State*, (London, 1918), pp. 75–76, 102, for a criticism of the modern philosophical theory of the state on the ground of its identification of state and society.

[4] R. M. MacIver, *The Modern State* (Oxford, 1926), p. 5. By permission of the Clarendon Press. See also MacIver, *Community*, 3d ed. (New York, 1924), p. 5,

On the other hand, there are simple and primitive peoples living in the world today to whom the state means nothing, and who in their own life have no political organization such as is found in the modern state. The more civilized states have never included all social existence within their power, for many things pertaining to the integrity of the individual and the groups in which his interests lie have been withdrawn during the course of history from the function of the state. But is the state an institutional system or is it an association? MacIver contends there is no third possibility. An association consists of individuals associated and organized into a "unity of will for a common end."[1] An institution refers not to persons, but to the form of order by which activities are directed. The family is the association, while marriage is the institution; the church is an association, while communion is an institution.

Not only must we deny that the state is a community or a form of community, we must definitely declare it to be an association belonging to the same category as the family or the church. Like these it consists essentially of a group of members organized in a definite way and *therefore* for limited ends. The organization of the state is not all social organization; the ends for which the state stands are not all the ends which humanity seeks; and quite obviously, the ways in which the state pursues its objects are only some of the ways in which within society men strive for the objects of their desire.[2]

The Distinction between State and Government. It must be admitted that society as a generic term includes all the purposes of man that can be expressed by relationships with other men. If the state is an association embodying some specific common purposes as other associations, and if this association is to be distinguished from institutions that refer to forms of order or control for the achievement of purposes, we must draw a distinction between state and government. Political society is the state viewed as an association which expresses a community of will directed to common purposes. Political organization or government is the state viewed in the institutional sense, in the sense of mechanics and organization of control. The institution in general community existence is therefore merely the agent of the association. The government, both sociologically and legally, is to

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where it is said that "wherever living beings enter into, or maintain, willed relations with one another there society exists." *Ibid.* p. 34. As to the relation of state and society, Norman Wilde, *The Ethical Basis of the State* (Princeton, 1924), p. 138, remarks: "They are one in membership, distinguishable in purpose, related in interests."

[1] MacIver, *The Modern State*, p. 6. By permission of the Clarendon Press.

[2] *Ibid.*, p. 7. By permission of the Clarendon Press.

be viewed as the agent of the state. Agency involves the problems of organization and efficiency; it involves the question of processes and motives in harmony and conflict, in the areas of high purpose and in the realm of sordid self-interest. This concept of the state as an association working through its agent, the government, is true through history; it is a generalization from the political experience of man. We will inquire later as to the purpose of the state; it is sufficient here to state the concept of state and government in relation to society.[1]

It is the analytical school, led by W. W. Willoughby in recent years, which has formulated the distinction between state and government most clearly. The sociological treatment has often led away from the distinction, which however is valid even from a sociological point of view. Government in juristic writings is the organization through which the will of the state is expressed and executed. It is analogous, according to Willoughby, to the distinction between a given individual as a moral and intellectual being and as having a physical body.[2] The government acts as the machinery of the state; it is its lever of social control, and its officers act as agents of the state. The possession of sovereignty inheres in the state as a legal person,[3] or as a community or association from a sociological point of view, but it is exercised by its agents. The state, juristically, is wholly organized in its government and can speak only through the government. Government is used here as a comprehensive term, including all the agents of the state, whether acting in a high or low capacity. This distinction has been sustained by the Supreme Court of the United States. In Poindexter *v.* Greenhow[4] the court insisted on the importance of the distinction between state and government, and observed: "The state itself is an ideal person, intangible, invisible, immutable. The government is an agent, and within the sphere of the agency, a perfect representative; but outside of that it is a lawless usurpation." On this basis of distinction, the state can act, in the strict sense, only through its government, and, if the acts of the government are

[1] *Cf.* Fritz Berolzheimer, *The World's Legal Philosophies*, (New York, 1929), pp. 435 *ff.*, for a treatment of Georg Jellinek's theory as to the relation of society and the state. See also *passim*. Bluntschli, *op. cit.*, p. 109; R. A. Duff, *Spinoza's Political and Ethical Philosophy* (Glasgow, 1903), pp. 281–282; Catlin, *The Principles of Politics* (New York, 1930), pp. 409–410; John Dewey, *German Philosophy and Politics* (New York, 1915), p. 64.

[2] Willoughby, *The Fundamental Concepts of Public Law*, p. 49.

[3] *Cf.* Catlin, *op. cit*, p. 393, who says that the moral ultimacy of the nation has been recognized, and that the state is the juridical personification of the nation. He cites A. Esmein, *Éléments de droit constitutionnel* (Paris, 1921), Vol. I, 1 *ff.*

[4] 114 U.S. 270 (1885).

beyond the limitations imposed by the Constitution on government officials, the acts of the government are illegal and in no sense acts of the state. It is only "a perfect representative" when its acts are lawful.

The Pluralists Reject This Distinction. The distinction between state and government has been criticized in recent years by the political pluralists, *i.e.*, those who accept the state but deny its sovereignty.[1] The pluralist insists on realistic political science, and, since he believes the distinction made between state and government is an artificial product of legal reasoning and logical refinement, he rejects it. Among the outstanding realistic political writers is Léon Duguit, who before his death in 1928 taught in the University of Bordeaux. The state and the government are the same to him; from the standpoint of our experience we know only the government, and therefore they must in fact be the same. He objects particularly to the principle of the legal personality of the state founded on a theory of the subjective right of the state to govern. Juristic entities, being legal fictions, have no place in realistic, as distinguished from metaphysical, political discussion. He observes that the state is not above limitations, for social solidarity limits the state and in fact dictates that it shall be an organization for the service of the community. We know the state by what it does; it does not command in essence, but in concept and in fact it is a public service organization. Since social solidarity is objectively true, it has the earmarks of law; therefore, this higher law robs the state of its right to command. Command is not the essence of the statute; it is the organization of public services.[2]

Duguit has been followed by H. J. Laski in England. Laski views the state as an association among other associations, and he denies the right of the state to claim the final loyalty of the individual. Society is federal in its nature; it is the association of groups, and therefore the state cannot claim to be the one high and necessary authority in the lives of individuals. Laski also speaks of the state as the government, and he rejects, likewise, the legalistic theory of the personality of the state. There are other pluralistic thinkers who carry the doctrine of personality quite in the other direction, insisting on the "real personality" or real group will of corporations and associations, thereby giving them just as inherent a right of existence as has the

[1] See F. W. Coker, "Pluralistic Theories and the Attack upon State Sovereignty," in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. III. But *cf.* Willoughby, *The Ethical Basis of Political Authority* (New York, 1930), p. 427, for a widely different definition of pluralism.

[2] See *infra*, Ch. XXII, for citations to the literature on political pluralism.

state. We shall examine these various theories later. They are mentioned now only to show the controversy over the nature of state and government and to lead to the next question for examination. What are the characteristics of the state, usually agreed upon, which distinguish it from other forms of associations?

The State Group and Other Groups. Through the history of the state there have been times when the real focus of political life has been in a group; the individual did not come directly in contact, face to face, with the state.[1] The connection of the state with ancient kinship groups was one such emphasis; the rising cities, crafts and guilds, and feudal relationships engulfing the individual were dominant group interests in the Middle Ages. But at no time in history have so many groups been formed as in modern times, and at no time has the freedom of association been so real. Such a freedom of association, perhaps a product of modern, diversified, mobile civilization, as well as of the theory of individual liberty, is taken by some to be the most prominent aspect of state life at present. Countless associations have sprung up and are taking with them some of the loyalty and allegiance that the citizen gave to the state or to religion in the seventeenth and eighteenth centuries. There are churches, labor unions, political parties, professional associations of all kinds, occupational interest groups, scientific and learned associations, associations of technicians in and out of the public service, community organizations such as improvement clubs and social-service groups, and the "service" clubs of the modern business man. Some of these groups make little demand on the loyalty of the individual; others make great demands. Some of these groups are limited to the territorial boundaries of the state; but many of them have a tendency to reach out as far as there are individuals who have the same interests.

Naturally, the professional and interest groups make the strongest demands on individual loyalty in the economic sphere, as the church does in the religious. Loyalty to these groups is a fact that the state must recognize. It may also be a fact that in normal times the individual is so immersed in his various interests that loyalty to the state, patriotism, and nationalism take a back seat. These groups often have a definite territorial basis; they have common purposes; they have institutional developments for the attainment of group ends; they even have some sanctions over their members, and, as the vitality of the group becomes greater, the sanction of exclusion of members becomes impressive, at least to the individual. Does not the state have all these characteristics? What is the difference, if any, of a

[1] See H. J. Ford, *The Natural History of the State* (Princeton, 1915).

fundamental character between the state as a group and other associations as groups?

The Character of the State as a Group. There are fundamental differences between these group organizations and the state. In the first place, membership in the state is not a voluntary affair as is membership in the ordinary group. The individual is born under the control of some sovereign authority, by which we mean some governmental organization that claims the right to make laws binding on the individual and the group. In recent years, by the process of expatriation, or voluntary change of citizenship, the individual has been given a right to withdraw from the state. But this development came only in the latter part of the nineteenth century. Moreover, membership in the state is usually considered to be exclusive of other state memberships though, of course, we can observe double and multiple citizenship at times.

Secondly, there is some significance in the fact that the state has a definite territorial basis. The boundaries of the state may not in fact be precisely determined, and in immature political societies the relationship to a particular portion of land may not be entirely certain. But the territorial extent of the state is the limit, in most cases, of the authority of the laws enacted by the government.[1]

Associations of less authority than the state do not stop, necessarily, at a formal boundary line. Group expansion may become an important threat to political authority in the modern development of international cooperation, which places emphasis on the methods and organization of cooperation. International law is an expression of this world community, and political science has developed, from the juristic standpoint, the concept of the state in international law with its essential characteristic in independence; in municipal law the state is recognized in its power to make laws, *i.e.*, in its sovereignty.[2] But the legal phase of this development does not exhaust the possibilities, for the pluralist sees in international government a denial of the supremacy of the state. The League of Nations, the World Court, the International Labor Organization, the postwar conferences on all

[1] There is, however, some extraterritorial effect of citizenship in the application of national laws to citizens resident abroad. *Cf.* Willoughby, *Fundamental Concepts of Public Law*, Ch. XXII.

[2] *Ibid.*, pp. 282–284. But *cf.* E. M. Borchard, "*Political Theory and International Law*," in Merriam, Barnes, and others, *op. cit.*, Ch. IV; C. G. Fenwick, *International Law*, rev. ed. (New York, 1934); W. E. Hall, *Treatise on International Law*, 3d ed. (Oxford, 1890); A. S. Hershey, *The Essentials of International Public Law and Organization*, rev. ed. (New York, 1927); H. Lauterpacht, *The Function of Law in the International Community* (Oxford, 1933).

possible phases of international life indicate at least that the state, as an association of human beings for certain purposes (which we will examine later), is sharing those purposes with other associations, associations of states particularly, and also associations of individuals. Whether this international development is a denial of the sovereignty of the state is one of the fundamental questions of modern political theory.

In the third place, the state embodies more purposes than other associations. The private and voluntary association has the most limited purpose. Certainly, the state does have more functions and interests than any single association, whether private or public, but the question seriously asked at the present time is whether all the purposes of nonstate associations viewed as a totality are less significant than those of the state. The increase in the function of government in the last few decades might indicate that the totality of state functions and interests is greater than the totality of all private associations, but it is also true that the interests of the state are not differentiated clearly from other interests. However, if we view the state as one association and any other single association as contrasted with it, we can say that the state differs from it in the extent of its interests and activities.

Most associations by their very existence presume permanence, but, in the fourth place, we may say that the state is permanent while associations may not be. The permanence of the state guarantees the continuity of other associations and also their expansion. Freedom of association is, in a real sense, dependent on the permanence of the state. Thus, in both space and time the state preserves other associations. The state, in seeking to maintain order, takes permanence as one of its characteristics, while other associations which may seek to maintain *an order* of a specific nature admit that their permanence is on a different level.[1] Human experience would indicate that the continuity of the state in history is more fundamental than other forms of association, though, of course, association itself as a principle of human life is not less continuous. The church is its only competitor in this respect, and from a practical standpoint the Catholic Church has a longer continuity than any of the present Western states. The claim of religious bodies to permanence must set them off against the state in human life, and the possibility of perpetual conflict between associations claiming permanence must be recognized. In any case, the state is more permanent than most associations and is thus differentiated from them.

[1] MacIver, *The Modern State*, p. 179.

In the fifth place, the state is unique in that it has in fact a legal supremacy over associations and in practice a supremacy over them by its near monopoly of force. Rules and policies adopted by voluntary associations do not enjoy the coercive sanction of force as it is customarily applied by the public power. The right to command in terms of law and to use organized force constitutes the final uniqueness of the state among associations. The advisability or necessity of giving the state a monopoly of legal command and coercion is not involved here; it is merely stated as a fact by which the state is clearly distinguished from other forms of association. In specific aims the state association may not differ materially from other specific associations; but when we consider institutional or governmental differences, the state is certainly more comprehensive than the multitude of other associations.[1]

It is clear, therefore, that all voluntary associations are subject to some control by the state, and that the state must adopt policies toward associations. It may legally recognize them as it has political parties and business corporations; it may be legally neutral as in the case of private associations such as churches and fraternal societies; it may regulate them as it does political parties, corporations, labor unions, lobbies, and others; and it may seek to suppress them entirely, as in the case of the Communist party in certain American states and associations having for their purpose the organized resistance to government, law, or specific standards of morality. Each policy adopted by the state involves fundamental questions of social purposes, *i.e.*, the ends of organized community life, and the means that are most suitable for the attainment of the policy adopted. Further than this, however, an ultimate question is raised as to the capability of the state to carry out certain policies, owing to its lack of social inventiveness as to political machinery, even if the policy has been agreed to by the greater number of the members of the state.

Constituent Elements of the State. Population and Territory. The state as an association, then, is to be distinguished from other associations. What are the constituent elements and the attributes of the state? Public law is inclined to view the state as a juristic person, while concretely and in fact the state is an association without reference to any question of legal or moral personality. The constituent ele-

[1] The Abbé J. Leclercq in his *L'État ou la politique* (Bruxelles, 1929), p. 18, has significantly pointed out that the force of the state should consist in its being stronger than any other particular group.

For a discussion of the differences between the state and other groups, see Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, pp. 44 *ff.* This author remarks, (*ibid.*, p. 42), "An idea dear to the sociologists is to refuse to see in the state a form of human society that is truly specific."

ments of the state are concerned primarily with the state as an association; public law, seeing in the state an abstract person, thinks in terms of attributes. Let us consider first the constituent elements necessary to the existence of a state.

Population is necessary, of course. The state springs from the relationship of human wills and interests; it is a system of relationships of human wills and interests; it is a system of relationships between individuals. How many human beings are necessary to the formation of a state is largely an academic question, since all known states have a relatively large number of citizens or subjects. It is, of course, important to inquire whether the family or the individual is the starting point of political society, as this raises the problem of groups in relation to the state. The ideal size of the state has been discussed at various times. The Greek thinkers believed in the city-state, and naturally they viewed with alarm a large increase in the number of citizens. The modern acceptance of the country-state has changed our thinking on this subject. Recent theories of the integrated community have revived in a sense the importance of limiting the functioning group, but there has been little or no insistence on the idea that the state must be small.[1] It is agreed that the number necessary to form a state must be more than a single family. Duguit suggests the population must be sufficient to provide for a differentiation between the governed and the governors.[2]

The next constituent element in the state is territory. It is only in modern times that definitions of the state have included the requirement of territory, but, because of the importance of jurisdiction in state activity, it is now generally accepted. "As the state has its personal basis in the people, so it has its material basis in the land," said Bluntschli.[3] "The people do not become a state until they have acquired a territory." While other associations may claim a jurisdiction over territory, this jurisdiction is in no sense embodied in public law. The territory of a state is in fact merely the area in which the jurisdiction of the state is exercised. Territory represents the extent of the state spatially, though the state commands men and in no sense the land.

Early writers on political science did not stress the territorial jurisdiction of the state. The association of territorial control and

[1] See John Dewey, *The Public and Its Problems;* M. P. Follett, *The New State* (New York, 1920); Seba Eldridge, *The New Citizenship* (New York, 1929); consult also the literature on guild socialism and syndicalism as exemplary of their point of view.

[2] Duguit, *Droit constitutionnel*, 3d ed. (Paris, 1927), Vol. I, p. 536.

[3] Bluntschli, *op. cit.*, p. 231.

political jurisdiction as a part of the theory of public law comes from the influence of feudalism. During the decline of the Roman Empire the unity of law on a territorial basis was broken and different peoples lived side by side under different laws; political authority was personal and not involved merely in the control of the land.[1] With the rise of the modern national state, however, and the incidental overthrow of the feudal legal system, the jurisdiction of the central government became territorial as well as personal. This situation continues today in public law, for the jurisdiction of the state is both personal and territorial.[2]

The jurisdiction of the state over a given territory is, however, subject to exceptions. Servitudes which are recognized in international law may limit the control of the state. Such restrictions exist when a foreign state has acquired by treaty, custom, or prescription a permanent right to use the territory, ports, or waterways of another state. On the other hand, general jurisdiction of a state over its territory is not to be confused with ownership of the land. In early modern times the king was often viewed as having *dominium* over the land that was involved in his *imperium*.[3] Though the Romans actually kept the two ideas distinct, Grotius approved the doctrine, stating that the king might have a proprietary right by which he might alienate the land to another ruler. Under the early modern patrimonial theory it was assumed that the monarch's right to rule implied a proprietary right over the national domain.[4] At the present time, owing to the rejection of patrimonial theories of rulership, the domain of royal households is limited to certain specified lands, and in republics, such as the United States, areas of land are held as public domain for the general welfare of the people. The general principle however, is that this land, if suitable for settlement, should be given over in time to individual ownership, unless there is some reason of public interest for its retention by the state. Owing to the theory of the conservation of natural resources, the reservation of forest, oil

[1] Munroe Smith, *The Development of European Law* (New York, 1928); J. C. Carter, *Law, Its Origin, Growth and Function* (New York, 1907).

[2] Jellinek points out that Kluber in 1817 was the first writer to define the state as a society of citizens "having a determinate territory." See Garner, *op. cit.*, p. 80, n. 3.

[3] See the Carnegie Classics in International Law which include translations of the work of Pufendorf and Grotius, who both held that ownership of the land by the sovereign was a basis of rulership. For further discussions of the patrimonial theory of sovereignty, see C. E. Merriam, *A History of the Theory of Sovereignty since Rousseau* (Columbia Studies, 1900), and Willoughby, *The Ethical Basis of Political Authority* (New York, 1930).

[4] Duguit, *op. cit.*, Vol. I, pp. 595 *ff.*

and mineral land and water-power sites has become a definite public policy.

The amount of land that should be held by a state has been a matter of long historical controversy. The earlier theory was that free states should be small.[1] Republicanism was thought suitable only to limited areas, but with the experience of the United States in establishing free government in a large area the older theories have been abandoned.[2] Another question of historical interpretation is the cultural value of the small state. While the difficulty of governing large countries has been generally conceded,[3] the cultural value of the large state has been emphasized. Heinrich von Treitschke in his *Politik* made a biting attack on the cultural limitations of the small states, arguing that their contributions to civilization and progress have been slight.[4] For Treitschke the state is moralized power, and the small state lacks this very essential attribute of successful political organization. Fundamentally, however, the small state is lacking in a capacity for justice, which is clearly shown in the larger political units. The economic superiority of the large state is clear, and the maturation of culture comes more quickly in it also.

In milder terms, Lord Acton, a great English student of history and politics of the last century, criticized small states because

> . . . their tendency is to isolate and shut off their inhabitants, to narrow the horizon of their views, and to dwarf in some degree the proportions of their ideas. Public opinion cannot maintain its liberty and purity in such small dimensions, and the currents that come from larger communities sweep over a contracted territory. . . . These states, like the minuter communities of the Middle Ages, serve a purpose, by constituting partitions and securities of self-government in the larger state; but they are impediments to the process of society, which depends on a mixture of races under the same government.[5]

The defense of the small state, however, has been vigorous. Its cultural contributions have been great in art, science, literature, and the general progress of the world. The ancient city-state made particularly notable contributions. We must remember that Athens and Florence were small states at the time of their greatest cultural

[1] This was, in general, the theory of Plato, Aristotle, Montesquieu, Rousseau, and others. *Cf.* Garner, *op. cit.*, p. 95.

[2] See *The Federalist*, No. 14.

[3] See J. S. Mill, *Representative Government*, (1861), Ch. 17.

[4] *Politics*, tr. by Dugdale and de Bille, (London, 1916), Vol. I, pp. 32–41.

[5] *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence, (London, 1909), p. 295. By permission of The Macmillan Company, publishers.

development and that Rome was small when the germinal ideas of her legal system were formed; and we must also remember that the Hebrew state which gave the West its religion was neither large nor permanent.[1]

The Necessity of Government and the Lawmaking Power. A third constituent element in the state is government. A people and a territory do not make a state. While no particular form of government is necessary, some government is required in order to bring system out of chaos and peace from the struggle of conflicting interests. The history of governments shows that only a few forms actually have been invented, and the writings of Aristotle, Plato, Polybius, and others have a modern ring when they discuss the forms that governments may take. There has been a tendency among Western states to reach approximate agreement as to the form of government. This is clearly exemplified in the movement toward political democracy which was comparatively unchecked until the Russian Revolution, Fascism in Italy, National Socialism in Germany, and the other less philosophical dictatorships of postwar Europe. Government carries with it the implication of permanence, which has already been discussed, and this quality is without exception included in the elements that go to make up a state.

The essential attribute of the state is sovereignty. The word became prominent in modern political literature with the work of Bodin published in France in 1576.[2] There is an apostolic succession of writers who defend sovereignty, chief among whom are Hobbes, who wrote in the middle of the seventeenth century, Bentham in the latter part of the eighteenth, John Austin in the nineteenth, and W. W. Willoughby in the twentieth. Different writers have not agreed as to the meaning of sovereignty, and this disagreement has opened its defenders to the extensive criticism expressed in the modern pluralistic writings. This disagreement has occurred on the essential nature of sovereignty. Definitions have wavered between sovereignty as

[1] See Bluntschli, *op. cit.*, p. 237; H. A. L. Fisher, "The Value of Small States," *Oxford Pamphlets* (1914), reprinted in his *Studies in History and Politics* (New York, 1920), pp. 161 *ff.* See also R. L. Buell, *International Relations* (New York, 1925), pp. 21–22; G. de Reynold, *La démocratie et la Suisse* (Berne, 1929), p. 9, for the belief that the role of Switzerland as a small state has been regulative as between cultures rather than creative in itself.

[2] Professor Haines has stated: "The philosophy of Bodin, Hobbes, and Spinoza tended to discredit the old natural law ideas and to make the state the sole source of law. . . . They were formulating a basis of state omnipotence which was eventually to become one of the dominant dogmas of modern political thought." C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930), p. 21. By permission of the Harvard University Press.

physical power vested in the state and sovereignty as the power or capacity to make laws, *i.e.*, the supreme legal will inherent in the state. As a result of German public-law theories,[1] the state, from the juristic standpoint, came in the nineteenth century to be regarded as a legal person.[2] A legal person has what has been called a *will*, which is not a will in the sense applied to human beings, but which is part of the legal theory of corporations. The monist, or the defender of the theory of sovereignty, does not say that the state can do anything it wants to do in a physical sense; he says that the characteristic expression of the will of the political community is law and that by virtue of its being law it takes precedence over other rules of human conduct. Law is a final human decision or rule as to the way in which human beings should deport themselves, at least as far as the political community is concerned.[3]

One of the classic statements of this power to make rules of conduct is found in Blackstone. He describes the omnipotence of Parliament in the following words:

> The power and jurisdiction of Parliament, says Sir Edward Coke, is so transcendent and absolute, that it cannot be confined, either for causes or persons, within any bounds. . . . It hath sovereign and uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, reviving and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil, military, maritime, or criminal: this being the place where that absolute despotic power, which must in all governments reside somewhere, is entrusted by the constitution of these

[1] See Merriam, *op. cit., passim;* R. Emerson, *State and Sovereignty in Modern Germany* (New Haven, 1928). Georg Jellinek, *op. cit.*, pp. 164 *ff.*, analyzes different possible juristic conceptions of the state; he regards the state finally as a subject of right, rather than either an object of right or a legal relation. See also *ibid.*, pp. 174–183.

[2] Of course, there were earlier references to the state as a person, but in the nineteenth century the refined conception of the state a *legal* person was developed. Bosanquet notes that Hobbes begins the modern idea of the state as a person. *The Philosophical Theory of the State*, 4th ed. (London, 1923), p. 97. Rousseau spoke of the state as "a moral and collective body." *Contrat social*, Bk. I, Ch. VI. Duguit attributes to Gerber, a nineteenth century German writer, the first clear statement of state personality. Léon Duguit, "The Law and the State," *Harvard Law Review*, XXXI (1917), 119–120. See P. W. Ward, *Sovereignty* (London, 1928), p. 40: "After the concept of partnership as a contractual relation had been exploited so widely by modern political thinkers in doctrines of social contract, it was to be expected that the concept of the corporation would be hit upon."

[3] For a defense of the legal personality of the state against the criticisms of Duguit, see Esmein, *op. cit.*, Vol. I, pp. 46 *ff.* Admitting that the personality of the state is a fiction, it is nevertheless an important reality, just as are such fictions as the country or the nation.

kingdoms. All mischiefs and grievances, operations and remedies, that transcend the ordinary course of the laws, are within the reach of this extraordinary tribunal. It can regulate or new model the succession to the Crown; as was done in the reign of Henry VIII and William III. It can alter the established religion of the land; as was done in a variety of instances in the reigns of king Henry VIII and his three children. It can change and create afresh even the constitution of the kingdom and of parliaments themselves; as was done by the act of union, and the several statutes for triennial and septennial elections. It can, in short, do everything that is not *naturally impossible;*[1] and therefore some have not scrupled to call its power, by a figure rather too bold, the omnipotence of Parliament.[2]

Dicey calls our attention also to "the grotesque expression" of de Lolme that "it is a fundamental principle with English lawyers, that Parliament can do everything but make a woman a man, and a man a woman."[3]

It should be observed that this statement of the fact and theory of English sovereignty is not the same as the modern and refined statement of sovereignty as a legal idea which one finds in Willoughby's *The Fundamental Concepts of Public Law.*[4] The emphasis in Blackstone includes physical power as well as legal power, and it also regards Parliament as superior to the constitution of Britain. In our development of constitutional government, "a government of laws and not of men," we cannot admit that any governmental agent, except the constitutional convention or the process of amendment itself, is beyond the limitation of the Constitution as the supreme law of the land. Moreover, within the Constitution itself there are a large number of limitations on the national government and the state governments which remove from legislative bodies the power of making certain laws. But aside from these considerations, the modern monist thinks of law and not of natural power. Human experience has shown in the evolution of political society the need, they say, for some source of decision which is final, which takes precedence over other decisions, and this capacity, being established in the state, is known as its *sovereignty.*[5]

[1] Italics are mine.

[2] Sir William Blackstone, *Commentaries on the Laws of England*, Vol. I, pp. 160–161. Cited by A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (London, 1924), pp. 39–40.

[3] Dicey, *op. cit.*, p. 41.

[4] See also Johannes Mattern, *State, Sovereignty and International Law* (Baltimore, 1928).

[5] A. D. Lindsay has developed a theory of sovereignty, which is not unlike the prevailing view of the United States Supreme Court, which he calls the sovereignty of the Constitution. "Sovereignty," *Proceedings of the Aristotelian Society,*

These ideas, the monists say, have nothing at all to do with two questions: Is it physically possible for the law to be enforced? Should individuals obey the law? Or, in other words, is the law right and just? Professor Willoughby makes this perfectly clear by writing a second work, *The Ethical Basis of Political Authority*, in which he considers the problem of justifying the power and activity of the state. Critics of the monists often forget that sovereignty as a modern theory does not include the question of whether or not a law will be obeyed or whether it is physically possible to enforce it.[1] John Austin, a distinguished British writer on jurisprudence during the second quarter of the nineteenth century, has suffered from this criticism perhaps more than any other defender of sovereignty. Austin was a firm believer in moral and divine law as one of the great and compelling forces, and he was not foolish enough to think that sovereignty is the power in the state to do anything the government might want to do; yet his critics seem to think this is what he meant by his idea of supreme political power. Austin was rather close to Blackstone in his interpretation of sovereignty, for British thinkers on sovereignty have, from the structure of their government, tended to think of it as vested in an organ of government, the highest organ of the government, rather than as an attribute of the state.

However, it was the German theorists who were to add during the nineteenth century the idea of the legal and moral personality of the state.[2] Austin did not need the idea of the state as a legal person and the government as its agent, for the agent, the British Parliament, embodied the power of the state. Disturbances in the continuity of government on the Continent during the nineteenth century brought scholars to think about the state more deeply than before. In continental European theories of sovereignty the "sovereign" had been associated with the state, but, if the state could have sovereignty attributed to it alone, the ruler would become merely its agent or representative. Among the German leaders in this tendency in political thought, the legal personality of the state was associated with the so-called organic theory. But in any case, it was asserted that the state was in public law a legal person with the attribute of sovereignty,

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new series, XXIV (1924) 235–254. See also Lewis Rockow, "The Doctrine of the Sovereignty of the Constitution," *The American Political Science Review*, XXV (1931), 573 *ff.*

[1] Jellinek emphatically asserts that the power of the state is not purely physical; it is also determined by ethical-historical considerations. *Op. cit.*, p. 361.

[2] Bluntschli, *op. cit.*, Bk. VII, and pp. 500–501; Duguit, *op. cit.*; Merriam, *op. cit.*

and that the form of government made little difference in the continuity of the life of the state. This personality signified only the power vested in the state to acquire, possess, and create rights; it signified its competence to determine its own competence. The true sovereignty was vested in the state as a person. In this way, the highest organ in the state was distinguished from the question of the supremacy of the state.[1]

The German development in the theory of sovereignty fits any system of government, not merely the British type with its parliamentary supremacy.[2] For this reason, political theorists and public lawyers have, in recent years, been inclined to assume the legal personality of the state, its legal will, and its sovereignty, rather than governmental sovereignty, which was fundamentally the theory of Bodin, Hobbes, and Austin.[3] Willoughby applies the German theory to American conditions, and in this he follows somewhat in the footsteps of John W. Burgess. The Supreme Court of the United States has, however, for some purposes used the concept of the state as a person, an "ideal person," as we have already seen.[4]

[1] Jellinek, *op. cit.*, pp. 45 *ff.*

[2] It might be noted that, while the tendency in Germany and America (owing to the federal system of government) has been to distinguish state and government, making the state an abstract legal person, the tendency in England, because of the supremacy of Parliamant, has been to ignore the distinction between state as a person and government as an agent and to distinguish between political or popular sovereignty and legal or parliamentary sovereignty. See D. G. Ritchie "On the Conception of Sovereignty," *The Annals of the American Academy of Political and Social Science* (January, 1891).

[3] It must be recognized that most writers, like these, have explained sovereignty in the light of the principles of their own constitutional law. Perhaps this fundamental historical predilection in the examination of sovereignty indicates the futility of trying to elaborate a theory which is valid in time as well as in all world territorial entities. According to Jellinek, Bodin makes the mistake of identifying the power of the state with its sovereignty. *Op. cit.*, p. 461.

[4] It may be indicated that there have been a number of modern theories of sovereignty. There is the older theory of the sovereignty of the monarch (Bodin, Hobbes); the sovereignty of the government, *e.g.*, parliament (Austin); the sovereignty of the state as a legal person (the German theory); and the American theory of federalistic sovereignty, *i.e.*, divided sovereignty. In the history of sovereignty the attributes of this principle were discussed in reality before the concept was clearly formulated. In the American discussion of sovereignty before the Civil War there was little argument about the conceptual attributes of sovereignty, though there was in fact disagreement. Apparently, neither the North nor the South believed in the inalienability of sovereignty, though the North accepted and the South rejected the divisibility of sovereignty. The modern Japanese theory of the sovereignty of the emperor as a descendant of the Sun Goddess is much like other oriental theories. See Kenneth Colegrove, "The

But whatever the ramifications of different theories of sovereignty, all writers and judges agree that it has to do with the law, the supremacy of the law, and the right of lawmaking vested in the state and exercised by the government. All would agree that the power of making laws to deal with human conduct does not imply the power to repeal the law of gravitation. The abrogation of this principle must be left to the modern physicists. Nor would it be denied that laws or positive regulations may be unjust and inexpedient; it would be agreed in such cases that there is in fact a separation of ethics as a field of values from government as a field of political machinery. To the mind of the monist, it does not refute his stand to say that there are things that governments cannot do. The monist would say that there are two such fields, one is the physically impossible and the other is the field of the mores or community morality. Thus the modern monist is generally a strong defender of democratic and representative government, and he need not be at all a defender of a "mission" of the state in advancing a certain type of civilization.[1] Individual liberty and rights are perfectly compatible with the theory of sovereignty, at least according to the monist, and in fact sovereignty is probably the only sure guarantee of a system of rights and individual liberty.[2]

Does the idea of sovereignty clash with the American tradition of popular sovereignty? It must be admitted at once that the doctrine of popular sovereignty far antedates the idea of the state as a juristic person.[3] Popular sovereignty finds its germinal development in the ancient world, and insofar as it means the consent of the governed and not simply a mixed form of government in which the democratic is one phase, it was an active political theory in the Middle Ages.[4]

Japanese Emperor," *The American Political Science Review*, XXVI (1932), 642 *ff.*; H. S. Quigley, *Japanese Government and Politics* (New York, 1932), Ch. V; Francis G. Wilson, "A Relativistic View of Sovereignty," *Political Science Quarterly*, XLIX (1934), 386–410.

[1] But *cf.* John Dickinson, "A Working Theory of Sovereignty," *Political Science Quarterly*, XLII (1927), 524 *ff.*; XLII (1928), 32 *ff.*; Dickinson objects to the conventional monistic views because of the dangers of political absolutism found in them. Duguit in "Law and the State," *Harvard Law Review*, XXXI (1917), goes even further and argues that the idea of sovereignty is inherently a part of the theory of the absolute state.

[2] Burgess, *op. cit.*, Vol. I, p. 55; Hocking, *Man and the State* (New Haven, 1926), Ch. XXVI.

[3] But *cf.* Willoughby, *Political Theories of the Ancient World* (New York, 1903), for an attempt to show that the Romans, along with their notion of popular sovereignty, accepted the idea of the state as a juristic person.

[4] See R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West*, 5 vols. (Edinburgh and London, 1903–1928), *passim;* J. A. Ryan and

It was made the basis of modern democracy in connection with theories of natural rights, which as political-theory values were developed to their highest point in the eighteenth century. But the association of the consent of the governed with natural rights, an equally ancient doctrine, gives the clew leading to an answer. Natural rights are ethical values, and the monist sees no conflict between them and the idea of sovereignty.[1] Both the theory of government on the basis of the consent of the governed and natural rights are ethical doctrines, while sovereignty is a legal doctrine. Popular sovereignty means that the ideas of the people, or those legally entitled to participate in political affairs, should be given weight in the decision of matters of policy. The theory of sovereignty is a statement of the characteristics of law and of the state in connection with law. Public opinion is admitted to be a controlling force in democratic countries, and some, notably Hume, have maintained that all governments rest on opinion, because a small body of rulers could not maintain themselves against the mass of the population.[2] Public opinion embodies the attitudes of those who have the legal right of participation; at least this is true of democratic governments, and no body of governors would hope for long to resist a determined stand on the part of the people. Many modern writers do not like to call the servile acquiescence of people in despotically ruled countries a product of opinion; it is not real opinion.[3] But the question at hand is whether this fact is a denial of sovereignty. This leads to the question of limitations on sovereignty in general.[4]

Can Sovereignty Be Limited?

Lawyers are apt to speak as though the legislature were omnipotent [said Leslie Stephen] as they do not require to go beyond its decisions. It is, of

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M. F. X. Millar, *The State and the Church* (New York, 1922), pp. 68 *ff.* and 99 *ff.*; Otto von Gierke, *Political Theories of the Middle Age*, tr. by F. W. Maitland (London, 1900).

[1] Duguit, however, finds that, as natural rights limit the state and sovereignty asserts that it is unlimited, there is a fundamental contradiction between the two ideas. *Op. cit.*

[2] Norman Angell in *The Public Mind* (New York, 1927) takes the same position with regard to the postwar dictatorship as a substitute for political democracy.

[3] See A. L. Lowell, *Public Opinion and Popular Government* (New York, 1913); A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923), Ch. I; C. L. King, "Public Opinion in Government," introduction to W. B. Graves, *Readings in Public Opinion* (New York, 1928).

[4] The French theory of national sovereignty has been both identified and separated from the principle of popular sovereignty. The American mind is likely to see our popular sovereignty as French national sovereignty and vice

course, omnipotent in the sense that it can make whatever laws it pleases, inasmuch as a law means any rule which has been made by the legislature. But from the scientific point of view, the power of the legislature is of course strictly limited.[1] It is limited, so to speak, both from within and from without; from within, because the legislature is the product of a certain social condition, and determined by whatever determines society; and from without, because the power of imposing laws is dependent upon the instinct of subordination, which is itself limited. If a legislature decided that all blue-eyed babies should be murdered, the preservation of blue-eyed babies would be illegal; but legislators must go mad before they could pass such a law, and subjects be idiotic before they could submit to it.[2]

The modern theories of sovereignty take these limitations as external to sovereignty; public law is a separate, distinct and *formal* field. If there are situations in which the state denies to itself the right of action in a formal sense, *i.e.*, by constitutional or customary limitation, it is a self-limitation. The limitations found in the law itself are imposed by the will of the state; their legal sanction is from the state.

It is here that the dispute between the defenders and the opponents of sovereignty begins to fill the air. The attackers, asserting that sovereignty is merely governmental power, find that it is limited in fact by many things, as was pointed out above, both externally and internally. The power of government has never been above limitation. When we consider the pluralistic case in detail, these various claims will be more fully stated. Here we must point out that the argument finally converges on the proposition of self-limitation. This argument is also important in the question of rights. Are rights preserved in law only as a self-imposed limitation on the will of the state? The monist contends that organized political society must have some point of reference for final decisions; that without this the possibility of social conflict would be unlimited; and that it is the function of law as enacted by the state to provide this point of concentrated decision. Law is defined as the command of the sovereign, as the expression of the will of the state, to which is given the power of decision of some conflicts that may arise in society. The state can best guarantee rights if it has the legal right to define and protect,

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versa. Both, in any case, rest finally upon the principle of a constituent power in the hands of those who compose the state.

[1] Bluntschli, *op. cit.*, pp. 494 and 509, sees clearly the actual limitations on sovereignty. At the same time, because of his theory of state personality, he was among the first to see that sovereignty was an attribute of the state and not of the government.

[2] Leslie Stephen, *The Science of Ethics* (London, 1882), p. 143. Cited by Dicey, *op. cit.*, pp. 78–79.

within limits, such rights. The content of law, however, is in constant processes of determination. To say the state is limited in a legal sense would mean merely that some other agency has the right to impose the limitation. But if the state is legally unlimited, it serves a purpose, and for the carrying out of that purpose the limitations that the government shall observe are stated in terms of law.

The distinction between state and government is important at this point, and one of the values of the distinction in connection with the theory of sovereignty is that government can be forced to serve purposes under legal limitation. Constitutional government implies limitation of government, and that implication is developed in the distinction between the ordinary legislative and the constituent powers that we consider the state to have. Any statement of the limitations on political function must carry some means of determining the limitation. While we have in fact imposed limitations on the amending power in the Constitution of the United States, *i.e.*, that no state shall be deprived of its equal representation in the Senate without its consent, the occasion has not arisen in which the capacity of the United States to destroy that limitation has been tested.

Dicey and Ritchie have developed a distinction between the legal and the political sovereign.[1] The political sovereign acts through the electorate in expressing public opinion; the legal sovereign is a formal conception meaning simply that there is a power of lawmaking without legal restriction, which power may be delegated to subordinate bodies, such as state legislatures, but which can be taken back by the sovereign authority delegating it. No one can deny the ultimate force of the necessities of community life or the persistent values men hold about their relations with one another. But the question is asked whether we should speak of a political sovereign when the only legal expression of the desires of those who compose the political sovereign must be through the agency of the state—the government. The word "sovereign" used in the sense implied by the term "political sovereign" connotes power in a purely physical sense, and the modern tendency is to consider sovereignty as a legal term, as a term covering the lawmaking capacity of the state. This means using sovereignty in two distinct senses, one term being embodied in the principles of public law and the other in the political theory of democracy.

The Nature of Law. A number of references have been made to law. The definition of law is another of those historic controversies as to the nature of a fundamental idea in community life. The realization of justice has been considered since Plato as one of the great aims of

[1] Dicey, *op. cit.*, p. 70; Ritchie, *loc. cit.*

the organized state, but justice has always been associated also with law. Law has been a means of attaining justice, but there have been different ideas of the nature of both law and justice. Two broad concepts of law are prominent in political literature, that of natural law and that of positive law. The concept of a law of nature is very old, running back into Greek political philosophy, particularly that of the Stoics. From the Stoic philosophy it found its way into Roman legal ideas and Christian thinking as exemplified in St. Paul. From the writings of the Roman jurists, such as Ulpian and the *Institutes* of Justinian, it passed into medieval canon and civil law, and from there into modern legal discussion and judicial opinion. It is especially prominent in those sources of law to which Americans have gone, such as Blackstone's *Commentaries.* In modern times, perhaps beginning with Hooker and Grotius,[1] the emphasis of natural law was turned to natural rights and natural law as the law of reason. It is in this form that English political writings carried the concept into early or Revolutionary American political theory.[2]

Just what "nature" is has generally been vague in these pontifical theories of natural law. Often nature has meant a golden age in the past when there was a state of human perfection. Pagan thinkers in Greece and Rome explained the end of the golden age in various ways; Seneca for instance attributed it to the rise of greed. But Christian theology connected this idea with the Garden of Eden, and therefore the entry of sin into the world was said to have destroyed the age of natural perfection.[3] The state-of-nature idea was continued into modern times when Hobbes, Spinoza, Pufendorf, Locke, Rousseau, and others discussed it as the state or condition of men before the organization of political society. The difficulties of the state of nature in Locke's theory were merely inconveniences in enforcing the law of nature, which led men to consent to the formation of the state by a social contract. But even though a state was formed, they carried into it their natural rights from the state of nature.[4] Hobbes thought of the state of nature as one of warfare and fear which made the civil state, no matter how absolute and despotic, much better than the state

[1] See Roscoe Pound, *The Spirit of the Common Law* (Boston, 1921), *passim.*

[2] See R. G. Gettell, *History of American Political Thought* (New York, 1924), Ch. XVIII.

[3] But see Robert Bellarmine, *De laicis*, tr. by Murphy (Fordham, 1925); R. H. Murray, *A History of Political Science from Plato to the Present* (New York, 1925), Ch. V.

[4] See Thomas Paine, *The Rights of Man* (1790–1791); Theophilus Parsons and others, *The Essex Result* (1778). For the *Essex Result*, see B. F. Wright, *A Source Book of American Political Theory* (New York, 1929), pp. 127 *ff.*

of nature could possibly be. Rousseau varied in his own thinking about the state of nature, but in any case it was one of emotional perfection rather than one of rational achievement.

We no longer consider the state of nature or the social contract essential to the concept of natural law and rights; in fact, few persons today defend natural rights except in terms of psychological needs or the dogma of revealed religion.[1] More recent developments present the necessary conditions of community life at a given time as the basis of a natural law with a changing content.[2] In general, however, the historic thinkers on natural law have viewed man as having a moral nature, implanted by divine will;[3] out of this grew his moral rights and duties. The chief function of the state was to recognize these natural rights based on or deduced from the law of nature; as man discovered these rights by the use of reason, at least in the age of so-called rational enlightenment, the consent of the governed was a necessary corollary of the belief in natural law as the basis of rights.

The use of nature by the natural scientist is, of course, very different from its use by philosophers and political theorists. Natural law was a statement of what ought to be and what forever would continue to be right. There was little idea of change in the theories of natural law and rights in the seventeenth and eighteenth centuries, and as a result the philosophy of natural law fitted into the modern theory of individualism associated with the utilitarian economics of the industrial revolution. The physiocrats and Adam Smith were the intellectual leaders in this view. In the popular mind the theory of natural law in the historic sense means the same thing as economic individualism, which has been so generally accepted in the United States.[4] Nineteenth century individualism based on these two sources found a legal synthesis in the writings of Sir Henry Maine, who postulated that the progress of society had, to his day at least, been a transition from status to contract. Contract, of course, meant freedom of contract.[5]

[1] See J. A. Smith, *Growth and Decadence of Constitutional Government* (New York, 1929); H. J. Laski, *A Grammar of Politics* (New Haven, 1925).

[2] See Rudolph Stammler, *The Theory of Justice*, tr. by Husik (New York, 1925). Duguit's law of social solidarity is in fact a kind of natural-law concept with a changing content.

[3] See The Declaration of Independence.

[4] The above statement concerning the immutability of natural-law concepts is not inconsistent with the French eighteenth century ideas of progress, for the latter were based on the theory of man's attaining the development of his innate capacities.

[5] See Pound, *Interpretations of Legal History* (New York, 1923), and *The Spirit of the Common Law* (Boston, 1921); D. G. Ritchie, *Natural Rights* (London, 1895);

The other historic theory of law is what Dean Pound has called the Byzantine conception. It is more generally spoken of, however, as *positive law*, law that is made by man through political organization.[1] We have said that one of the characteristics of the state is that it makes law. The monists hold that there is only one definition of law, and that definition is, broadly, that law is an expression of the will of the state through the government, commanding individuals to refrain from certain types of conduct or that they shall be bound by certain obligations. One of the first clear statements of this theory is found in the *Institutes* of Justinian. "The will of the emperor has the force of law," says the *Institutes*, because the people by the *lex regia* have delegated to him this power.[2] But, curiously enough, in the same book of the *Institutes* the theory of natural law as a law common to men and animals, as laid down by Ulpian, is also approved, and this law is both distinguished from and confused with the law of the nations, the law common to all people.[3]

There is a clear conflict between law made by man as supreme and the law of nature as supreme, but this conflict did not trouble thinkers greatly until we have Hobbes asserting in his *Leviathan* (1651) that the test of justice is the will of the absolute ruler.[4] This theory of law is essential in theories of sovereignty, especially in modern times since the state has formed the legislation habit. A distinction has been made between what is just according to the law, *i.e.*, the will of the state, whether laid down expressly by statutes or interpreted by judges, and justice from the standpoint of the customs or sense of right of individuals. Law and morals have been thought of as occupying different yet overlapping fields. In case of conflict, the defenders of sovereignty will always hold that the will of the state must be sustained

B. F. Wright, "American Interpretations of Natural Law," *The American Political Science Review*, XX (1926), 524 *ff.*; C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930); B. F. Wright, *American Interpretations of Natural Law* (Cambridge, Mass., 1932).

[1] See Pound, *An Introduction to the Philosophy of Law* (New Haven, 1922), p. 110.

[2] See Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), pp. 166, n. 39; p. 167, n. 41.

[3] See *Institutes of Justinian*, tr. and ed. by J. B. Moyle (1896), I, 1 and 2; C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), p. 120.

[4] While Machiavelli may be credited with separating, or attempting to separate, ethics or moral justice from politics in the sixteenth century, Hobbes's analysis of the problem in the seventeenth is far more systematic. Hobbes's use of natural law is really simply to provide a basis for community life and not to regulate the processes of community life. Spinoza's use of natural law is much the same.

at least by the government, even if in some instances there is injustice. Society must act according to rules, and one of the great values of the theory of sovereignty is that it insists on a positive law basis of community action.

The conflict between the monists and the pluralists becomes acute again in the definition of law. The pluralists, notably Duguit, insist that law, *i.e.*, statutes, is not a command, but that it is the means of organizing the public services. He views the theory of law as a command as a relic of the days of absolute monarchy and as having no place in the modern state devoted to serving the needs of individuals and groups. We shall examine Duguit's theories further, but we may state here that his contention carries with it the theory of "social solidarity" as a jural principle, as objective, anterior law. Other critics also contend that the content of law as actually enforced is not drawn from enactment by the state but from the evolution of custom as interpreted by the judges.[1] The monists reply that law is in fact a command, and that, if the judges do make the law at times, they do it by the consent of the state or the sovereign. Those who follow Austin think of the sovereign as a determinate body to which is given the habitual obedience of the largest number of the members of the state and to which is also given the right to command in terms of law.[2] But other monists think of law as the will of the state as a juristic person. This law is, of course, declared by the agent of the state, which is the government. Sovereignty and the right to make law are vested in the state and not in the government or in any determinate body. The determinate body is only the agent.

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[1] See Sir Henry Maine, *Ancient Law* and *Early Institutions;* Pound, *Interpretations of Legal History;* Sir Paul Vinogradoff, *Outlines of Historical Jurisprudence* (Oxford, 1920–1922); C. P. Patterson, "Recent Political Theory Developed in Jurisprudence," in Merriam, Barnes, and others, *op. cit.*, Ch. V.

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Chapter IV

THE ORGANIZATION OF POLITICAL AUTHORITY

> The State, completely in its genesis, essentially and almost completely during the first stages of its existence, is a social institution, forced by a victorious group of men on a defeated group, with the sole purpose of regulating the dominion of the victorious group over the vanquished, and securing itself against revolt from within and attacks from abroad. Teleologically, this dominion had no other purpose than the economic exploitation of the vanquished by the victors.—Franz Oppenheimer.[1]

The Historical Origin of the State. The concrete origin of the state must be presumed rather than asserted. The first forms of political control did not exist in an atmosphere of erudition, and no records were left to puzzle future generations. Anthropologists, geographers, ethnologists, and others have, however, made their contribution to the study of the origin of the state. Certainly, the beginnings of political authority did not know the theory of the separation of powers, the idea of the written constitution, the modern theory of legislation, or the science of public administration. They were not troubled profoundly by territorial areas of government, except as the control of one group was threatened by the invasion and destructive warfare of others. But this fact is certainly true, that man, as far back as we know or can guess with a degree of probability, lived with his fellows and that social organization existed as part of his conjoint behavior. The forms of early authority varied, it seems, among a few fundamental types, but it was generally associated with real or fictitious theories of kinship. The primitive community was small and highly integrated through the consanguinity of individuals, the customs and religious ideas of the group, and economic life. Among primitive peoples custom was made of tougher fibre than now,[2] and

[1] *The State* (Indianapolis, 1914), p. 15. Published by the Viking Press, Inc., New York.

[2] See W. G. Sumner, *Folkways* (Boston, 1907); W. G. Sumner and A. G. Keller, *The Science of Society*, 4 vols. (New Haven, 1927–), Vol. 1 (1927), Ch. XVI; Walter Bagehot, *Physics and Politics* (1872); Sir Henry Maine, *Ancient Law* (1861), and *Early Institutions* (1875); Franz Oppenheimer, *The State* (Indianapolis, 1914); R. H. Lowie, *The Origin of the State* (New York, 1927); R. H. Lowie, *Primitive Society* (New York, 1920); G. H. Murdock, *Our Primitive Contemporaries* (New York, 1935).

the influence of environment on economic activities was more definite and precise. The latter was due to the ineffective control of primitive man over nature, and the former was due to ignorance of physical causation. Sometimes the relation of the group was traced through the mother (matriarchy) and sometimes the group was headed by the male relative (patriarchy); often the group insisted on marriage outside the immediate group and on occasion it was forbidden.[1]

Whatever the particular social structure, it was generally highly integrated. The individual was thought of less than the group, and this is clearly shown in the supremacy of custom. Custom to be custom must be a group appreciation, and it must, furthermore, be binding on the individual. The vagaries of individual conduct were considered dangerous, and the question may logically arise whether the unrelenting social control to support customs of the group may not be, after all, political control. The submergence of personality in the group was manifested in large measure by the absolute government of opinion in time of peace and the established leadership in war. As Berolzheimer has suggested, the history of law can be traced in terms of various emancipations, and one of the first was the recognition in one form or another of individuality by breaking the bonds of custom.[2]

The early forms of the state were hopelessly interwoven with other forms of social control. When leaders in war are also the high priests of the group, the religious system and the political system are one. When membership in the state is dependent on membership in a family, the state is theoretically merely a group of families.[3] The early Roman state was primarily a system of family relationships, though the prominence of adoption in Roman law indicates that very early the blood basis of the state was practically overthrown. The reign of custom prevents the individual from knowing what might be, and the art of revolution is, therefore, limited to those who have

[1] Paul Vinogradoff, *Outlines of Historical Jurisprudence* (London, 1920), Vol. I, pp. 163 *ff.*

[2] See H. J. Ford, *The Natural History of the State* (Princeton, 1915); Bagehot, *loc. cit.*

[3] Ernest Renan, *Histoire du peuple d'Israël*, Vol. I, traces the rise of political conscientiousness among the Hebrews from a roving, patriarchal existence to the Kingdom of David and Solomon. He speaks of a movement from patriarchal to national society among the oriental peoples about 1300 to 1200 B. C. (pp. 235–236). On p. 153 he says "Israël n'est plus une tribu, c'est déjà une nation. Hélas! depuis le commencement du monde, on n'a pas encore vu une aimable nation." Further, on p. 390: "La royauté devenait une nécessité absolue pour Israël. Toutes les tribus sémitiques en passant de l'état nomade à l'état sédentaire, avaient adopté cette institution."

known better.[1] As we trace the separation of the general control organization from other forms of control, we trace the rise of the modern notion of the impersonal state and impersonal citizenship. The Greek state as we know it had separated citizenship as a fact from the primary membership in the family, and the breakdown of the feudal system in the beginning of the modern era separated the fact of citizenship from a relationship to the land. The state to exist in the modern sense could depend on neither the family nor custom, and it could not rely alone on religious leadership. Political authority to be purely political had to become impersonal as to these other bonds of control.

The Development of State Functions. The performance of certain social functions tended to bring to maturity the incipient political organization of primitive man. Leadership in war was undoubtedly one of the first functions that differentiated the state from other forms of social control. The chief aim in war was success, and, while the wartime leaders might not continue to be the leaders of peace, this tended to become the general practice. The tribe, as distinguished from the clan or the family, is thus viewed as the natural beginning of the state, since the authority of the tribe over the individual is essentially political. It is probable that the very first subjection of men to authority contained something of the political in it, but it is difficult to say just what the authority was or how primitive man viewed it.[2]

The authority of the tribe was impersonal in that its object was primarily defense and aggression; its leadership became impersonal in that the leader in war was required to gain success; it was impersonal in that religious and family authority tended to be excluded. The impersonal authority of the tribe did not grow out of the control of the family. The authority of the tribe is different in nature from the family authority, although even in modern times we find some relics of the patriarchal theory in the divine right of kings, which taught that God had selected a particular family to rule over the state. Friendship, which, indeed, might not be very strong, was sufficient for the existence of the tribe. It is probably true that, at the same time that the tribe with its offensive and defensive functions was developing, the family was enlarging its sphere of authority. But it is

[1] R. H. Murray, *The History of Political Science* (New York, 1926), p. 341. Adoption was not very important, however, in primitive society. When adoption took place it was the acceptance of an individual more as a member of a social order than as a subject of political authority.

[2] Primitive political unity through war was fluid and in no sense as permanent as social coherence, for instance, that was based on language.

generally conceded that the tribe did not succeed the family as the chief agent of social control.[1]

As civilization became significant in the lives of primitive man, two developments probably took place. In the first place, it is thought that the tribe gradually increased the scope and permanence of its authority; in the second place, it is thought that the family also increased its authority so that patriarchal control became of considerable importance in social organization.

"The historical relation of the clan, gens, or sept to the family upon the one side, and to the tribe or nation upon the other side, has been a point even more disputed than that of the family to the tribe," says Willoughby.[2] According to an earlier theory the clans were originally formed from families, *i.e.*, several families united to form a clan, or single families ultimately became so large as to constitute clans in themselves. Modern scholars, however, are now disposed to deny that this was the course of development. Morgan bases this denial upon the view that, in primitive societies, exogamy is the general rule.[3] It is probably true that sometimes clans united to form tribes, but it may often have happened that the rise of the clan was a later development. Both the clan and the tribe were ruled over by men who held authority because of their personal qualifications, and both were composed of individuals as members. The tribe, however, was a larger type of organization and included more functions. The clan system emphasized common blood relationship more than the tribe. While the tribe had its common religious system, this was the outward symbol of the unity of the tribe rather than its basis, as was the case with the clan. The cardinal aim of the clan was to maintain a system of worship while the initial purpose of the tribe was to provide security for its members against their enemies.

The tribal authority is said to be the beginning of political authority because it is more like modern political authority than other forms of control existing in primitive or ancient social organization. The prime

[1] See W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924), Ch. XI; J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 112–113. The study of primitive peoples shows, however, that they are not always precise in their conception of the tribe. To certain primitive peoples the village and the language group are the primary points of loyalty.

[2] Willoughby, *op. cit.*, pp. 153–54. By permission of The Macmillan Company, publishers. The clan is constituted through unilateral relationship to the mother; the gens is a group constituted through unilateral relationship to the father. No one really knows what a sept is.

[3] L. H. Morgan, *Ancient Society* (London, 1877). *Cf.* R. H. Lowie, *Primitive Society* (New York, 1920).

difficulty with this statement is not with regard to the clans or other forms of society, but with regard to the family. By the expansion of its authority, the family has been held by some, from Aristotle to Woodrow Wilson, to be the historical origin of the state. No doubt the family has been a serious rival of the state, and many state functions have been in the hands of noble or privileged families until recent times. But the family relation, autocratic as it may have been in the rude *patria potestas* of the Roman father, was private in character, and the development of the state coincides with a breakdown of public familial authority.

This situation is seen in the development of the significant function that indicates the presence of genuine and permanent political authority. That function is the settlement of disputes, which in later times is known as the judicial authority of the state. War was the first function of the tribe,[1] but private law was a system whereby individuals were assisted in gaining private vengeance. It was a long and slow process by which the social interest in peace and security, as Dean Pound calls it, was protected by the state.[2] The beginning of judicial authority is twofold. It is found in the gradual development of the settlement of disputes in time of peace and in the limitation of private vengeance. The two processes, however, go hand in hand. Certain disputes peculiarly public in character, such as those concerning the distribution of land and the ownership of important forms of property, could not be left to private contest if the peace of the tribe was to be maintained. Injuries and insults by one person against another, however, were not at first considered public issues. The slow development of criminal law as public law is evidence of this. In Roman law there was a complex system for aiding individuals to recover for theft and personal injury long before there was any concept of the crime as an injury to the public. The first step of political authority was to limit the process of private vengeance by providing scales of compensation, and the next was the gradual insistence that individuals take the

[1] In this connection see Oppenheimer, *op. cit.*, p. 15. Renan cogently observes that order is frequently created by a brigand's becoming a gendarme. He notes that monogamy is necessary for the founding of long dynasties, and that the short-lived oriental house may be explained by the existence of polygamy which increased inordinately rivalry for the throne. The Assyrian power, according to Renan, was the first real development of ruthless military authority; with the rise of this power in the beginning of the eighth century B. C., the mercenary soldier became the ruler of the world. Ernest Renan, *op. cit.*, Vol. II, pp. 16, 72, 454.

[2] See Roscoe Pound and T. F. T. Plucknett, *Readings in the History and System of the Common Law*, 3d ed. (Rochester, 1927), Ch. II; Munroe Smith, *The Development of European Law* (New York, 1928).

compensation rather than private reprisal. It was only after the development of rather strong forms of political authority that crimes and torts were separated and the state undertook the punishment of individuals. The close connection between the two remained until late in Roman law, as seen in the choice offered the individual between civil and criminal remedies.

We may take as a general conclusion that modern political authority and the modern state developed, in general, from the tribe, and that tribal authority, being political, is not developed from the clan, the family, or other forms of social organization.[1] The authority of the tribe is from the beginning political, and its development into the mature form of political organization, the state, takes three broad forms: (1) the increasing complexity of the governmental authority of the tribe, *i.e.*, the development of separate and distinct governmental or quasi-political organization for different functions; (2) the spread of its authority by natural increase and conquest until the beginnings of the modern cultural-political units appear; and (3) the increase of governmental function, finally becoming tax collecting and lawmaking. These three tendencies in development bring about a clear differentiation between the ruling class and the ruled, a differentiation of function between different political agents, and the differentiation of governmental function itself. The legislative function springs from the executive council, the judicial function from the executive, and the administrative officer branches from the council, though remaining in the executive authority that dominates the early centralized state or political unit. The development of the state is a process of differentiation and stabilization of political authority in relation to other forms of authority and of differentiation within that authority itself. We are back to the original proposition that the presence of political power must be detected in the existence of the impersonal political organization and the performance of what we know today to be the political function. However, when they exist together, we find the state, immature as it may be.[2]

Political Function as Residual Function. The process of differentiation of political authority has been in large measure a separation from other forms of control; the state has surrendered much and it has

[1] The clan is a social organization; the tribe is a political system. A series of clans may constitute part of a tribe.

[2] *Cf.* Sir Charles Petrie, *The Story of Government* (Boston, 1929), Ch. I.; Woodrow Wilson, *The State*, rev. ed. (New York, 1918), Ch. I. Generalizations as to early social organization, however, must be regarded very critically. The wider the range of anthropological data the less certain are the conclusions.

expanded the residual nature of its control. As Professor Hocking observes:[1]

When all the major social relationships were merged in the tight-knit unity of patriarchal society, each several bond since distinguished seemed to enjoy a higher vitality. Conversely, as the several group interests found their autonomy each tie has seemed to lose in strength. And if there were any one of the original amalgam of interests which behaved as a residual interest, *i.e.*, which threw off group after group as special interests defined themselves, that residual association would ultimately appear to have the slightest bond of all. The state, through a portion of its history, has behaved as such a residual group; it has parted company with kinship groups, with occupational groups; and the process has been less as if fellow-travellers were taking divergent routes than as if the elder were granting independence to a younger. The state bond has become tenuous as if by its own free act.

The severance of the state from the kinship group may be traced in the history of Greece and Rome.[2] But the expansion of political organization, as we have indicated, was too strong a force for the older system. Almost coincident with the breakdown of the kinship influence in politics, the feudal system asserted the tie to the land and coresidence in the domain of a particular authority as the basis of allegiance and citizenship. The influence of blood remained attenuated in the coherence of the ruling class, but the tie of the mass was

[1] W. E. Hocking, *Man and the State* (New Haven, 1926), p. 125. By permission of the Yale University Press.

[2] Lowie has noted that there is a remarkable agreement between theory and reason and the facts as to the primitive state. Lowie, *op. cit.*, p. 3. Lowie is particularly interested in attenuating the sharp distinction that has been made between the kinship and the territorial bases of social organization. It might even be argued that the blood tie is a derivative of the territorial bond (which is diametrically opposed to the theory of Maine and Morgan). *Op. cit.*, p. 62. "What the older writers overlooked was the subtle texture of the territorial bond in ancient law, which of course in essence was not different from the generally accepted ethical postulates underlying our own legal institutions as their ultimate sanction and guaranteeing their smooth functioning." *Op. cit.*, p. 113. "That local contiguity is a real basis for union on primitive levels may thus be taken as an established fact." *Op. cit.*, p. 115. "A coercive force, then, whether vested in a person or a group seems to be the short cut to intensifying and bringing into consciousness the incipient feeling of neighborliness that has been found a universal trait of human society." *Op. cit.*, pp. 116–117. By permission of Harcourt, Brace & Company, publishers. See also W. C. McLeod, *The Origin of the State* (Philadelphia, 1924); R. M. MacIver, *The Modern State* (Oxford, 1926), Bk I, Ch. I. H. S. Maine, *Early History of Institutions*, Lecture XIII, cited by T. H. Green, *Works*, Vol. II, p. 405, points out that the great despotic empires of the ancient world, excluding the Roman, and modern empires in the East were in the main tax-collecting (*i.e.*, plunderbund) institutions.

primarily coresidence. The rise of the great monarchies of the modern period brought the individual into direct contact with government and the strength of the feudal tie was broken. Coresidence and birth were the bases of the tie to the state, and they seemed weak enough. But the seemingly impotent relation to the state is not devoid of meaning. The state is permanent in time and expansive territorially, and it includes in its citizenship those who are born and live within its territorial jurisdiction. These very conditions of impersonality, so important in the early development of political authority, are still the most significant elements in providing an atmosphere in which the strong bonds of lesser groups can function fully in the lives of individuals. The state, by monopolizing force, by being direct but impersonal in its control, demands the best of their rational capacities, and, by the natural evolution of its specific functions, has also favored the development of forms of associated life. The state in fact provides the permanent and secure atmosphere in which the individual can develop. Here we have, it is true, an ethical interpretation of the nature of political authority and organization, but it is nevertheless significant as an explanation of the historical development of what is called the "political" aspect of social organization.[1]

The Forms of Political Organization. Can the State Be Classified? Having attempted a brief analysis of the development of political authority, and having insisted that the keynote of political control must be found in organization and function, we must now formulate a more definite statement of the forms of the organization of such authority. It is not our purpose here to trace the history of the state chronologically. It is rather to state some of the outstanding and permanent characteristics of state organization. The problem presents itself most clearly through the various attempts to classify the forms of state and the forms of government. The first question to arise is whether a classification of the state can be made. The ancient writers on political science did not distinguish between the state and the government. Plato and Aristotle provide a system of classifying states, and in partial agreement with them are the representatives of pluralism, such as Laski and Duguit, who also deny the distinction between state and government.[2] But there is an essential difference, for the ancient writers were interested in classifying states and the modern pluralist is not interested greatly in classification at all. If he is interested, he assimilates state in government (the reverse of

[1] See Hocking, *op. cit.*, Ch. X.

[2] It is interesting to note that Bluntschli, *op. cit.*, p. 67, states that absolutists do not distinguish between state and government in their theory of the state.

the Greek procedure), and then classifies states by classifying governments. The ancients classified governments by classifying states.

Various attempts to classify states have been made in modern times.[1] States may be classified as large and small in territory and population; as agricultural, commercial or industrial; as great powers and weak ones; as maritime or landlocked states; or as insular or continental. Such classifications are of more interest to the economist or the political historian than to the student of government. Holcombe has suggested a modern test of classification by vital statistics.[2] He suggests that the best single criterion might be the death rate, as this shows the health and general-welfare conditions of the population. This is the reverse of the early modern interest in increase in population, since the progress and wealth of states were viewed ultimately as an increase in population. Such classifications do have a direct bearing on the science of politics, but as data they are primarily important in other social studies.

Modern writers have, however, insisted on the possibility of a classification of states. Burgess has defended Aristotle's classification of states if the term "sovereignty" rather than "rule" is used.[3] Thus instead of speaking of monarchy as the rule of one, aristocracy as a rule of a few, and democracy as the rule of the many, Burgess would grant the validity of the classification of states if monarchy is defined as the sovereignty of one, etc. The criticism that Aristotle spoke merely of quantitative differences and not of the organic differentiation of states is not just, in Burgess's view, since such relations as are discussed indicate the extent of the spread of consciousness of the state and the degree of intensity that it has developed. The number of persons having state consciousness and demanding a right to share in government is one essential in the character of a state that differentiates it from other states. But even granting the view of Burgess, it is difficult to apply the broad ideas behind such a classification to the varied political institutions of the present day.

The search for essential differentiating marks between states has led in several directions. One form of state that has been given

[1] See Cicero, *On the Commonwealth* tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), p. 131, for a full citation to the classification of states in antiquity. See C. G. Haines and B. M. Haines, *Principles and Problems of Government*, 3d ed. (New York, 1934), pp. 173 *ff.*; MacIver, *op. cit.*, p. 363.

[2] A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923) pp. 68, 77; J. W. Garner, *Political Science and Government* (New York, 1932), p. 245.

[3] J. W. Burgess, *Political Science and Comparative Constitutional Law* (Boston, 1898), Vol. I, p. 72.

considerable attention in political literature is *theocracy*, a word contributed by Josephus, a Jewish historian of the first century of our era.[1] Theocracy, it is said, is a form of state in which the ruler is either a direct representative of God's power or is limited by the will of God expressed other than through the ruler.[2] There have been states, for instance, in which the ruler was believed to be a god directly ruling the state. Such forms of government (or state) were largely a product of oriental social structure in which the tradition of the divinity of the ruler was preserved.[3] However, the oriental idea of the emperor as divine had great influence in Roman history during the later stages of the empire and before the dominance of Christianity.[4] Bluntschli believed that Ethiopia, ancient Egypt, Persia, and the kingdom of the Jews were forms of theocracy in which God was thought to rule directly rather than in the dualistic limited form in which a vice-gerent of divinity held the reigns of authority.[5] Treitschke states that all the powerful oriental states, with the exception of Phoenicia, were theocracies.[6] During the Middle Ages when the power of the church overshadowed for a time the claims of temporal authority, there existed either in theory or fact a close approach to a theocratic form of political control, *i.e.*, if we define a theocracy as an essential blending of religious authority with impersonal political control. The Mohammedan theory of government is also interwoven with the rulership of God, the caliph being the head of both the church and the state. The caliphate in its day represented a combination of spiritual and temporal authority without any attempt at systematic differentiation, as was the case between the Holy Roman Empire and the western church.[7]

[1] Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), p. 289.

[2] Jellinek, *loc. cit.* Consider here, for instance, Renaissance Rome.

[3] This is true of ancient India and modern Japan, but it would be difficult to assert that the latter is a theocracy. The idea of the divinity of the ruler in ancient China was much more diluted. See D. C. Holtom, *The Political Philosophy of Modern Shinto* (Chicago, 1922); Christopher Dawson, *The Age of the Gods* (London, 1933).

[4] See Ernest Barker, "The Conception of Empire," *Legacy of Rome*, ed. by Cyril Bailey (Oxford, 1923), pp. 45 *ff.*

[5] Bluntschli, *op. cit.*, Bk. VI, Ch. VI. It may be observed that Bluntschli classifies states by the form of government (see p. 340). There is some similarity between classifying states by forms of government and the Aristotelian view that changing the constitution or the government changes the state. However, Bluntschli's separation between state and government denies any theoretical effect of classifying states by the form of government, such as admitting a change in the personality of the state with a change in the government.

[6] *Politics*, tr. by Dugdale and de Bille (London, 1916), Vol. II, Ch. XIV.

[7] See Willoughby, *The Nature of the State* (New York, 1896), pp. 42–53.

Theocracy is hardly a problem for the student of the modern state; yet a statement of the contention that theocracy is a *form* of state is significant in the discussion of the question as to whether there can be a classification of states. If our previous contention is correct, *i.e.*, that the state is to be discovered in the historical rise of *political* authority which by nature is distinct from religious and kinship authority, then the mere correlation of religious and political authority would not establish the theocracy as a form of state. If the state existed at all, there would be political control, however interwoven with religious or other forces. Neither can the mere claim of the oriental or latter Roman emperors to divinity cause us to grant the existence of a theocracy. It would be better to insist that there might be a theocratic government, *i.e.*, a government dominated by religious institutions, rather than admit that such a correlation of types of authority produces a distinct form of state.

Bluntschli, Jellinek, and Burgess deserve chief consideration among the writers who defend the classification of states. To consider these three, it is necessary to state briefly Aristotle's classification. His three forms were monarchy, aristocracy, and democracy, but the classification was further developed by distinguishing them according to the end they served, the good forms being states serving the common interests of all, and the perverted forms being governed in the selfish interest of special groups. The rule of one in the general interest is *monarchy*, but in the interest of the ruler it becomes the perverted form called *tyranny; aristocracy* is the rule of the few in the interest of the many, but the rule of the few in the interest of the few is *oligarchy;* the rule of many in the interest of all is *polity*, but the rule of the many for their own selfish interests becomes the perverted form of government called *democracy.*[1] Bluntschli in his *Theory of the State*[2] adopted Aristotle's classification, but he added *theocracy* with its perverted form as *ideocracy.* These were the fundamental forms, but the secondary forms which he believed necessary to a complete classification were free, half-free, and unfree states. Other classes were also added by this writer, but the whole scheme is based on a confusion of state and government with no clear designation of the types of political organization that have the characteristics of states.

Jellinek, one of the greatest of modern German political scientists, rejected the classification of Bluntschli and the writers who had preceded him on the ground that such classifications had been arbitrary and unscientific and not based on any consistent legal principle.

[1] *Politics*, Bk. III, 7, Bk. IV, 1.

[2] Bk. VI, Chs. IV–VI.

The consistent principle was to be found in the manner in which the will of the state is formed and expressed. This principle was the basis in part of the Aristotelian classification, but Jellinek arrived at the conclusion that there are only two forms of the state—monarchy (where the state is guided by one supreme will in a physical sense) and republic. There were various forms of monarchy, however, and the monarch might be regarded as God or his representative, as owner of the state (the patrimonial theory), or merely as the representative of the state (the modern conception). Monarchies might be limited or absolute, and elective or hereditary, but to surrender the supremacy of the monarch destroyed it as a form of state. The republic, on the other hand, is a form of state in which the state will is expressed by more than one person. The difference between aristocracy and democracy is merely quantitative and not fundamental.[1] One value found in Jellinek's classification is that the principle of classification is not social, but legal or juridical. Yet the question remains whether such a principle as applied to the state is anything more than a means of classifying governments in fact.

Burgess concludes, as we have noted, that the Aristotelian classification is satisfactory if Aristotle's emphasis on rulership and government is omitted and sovereignty inserted in its stead. The three forms, monarchy, aristocracy, and democracy, are exhaustive, and any combinations of these forms or variations that might seem fundamental are forms of government only and not of the state. However, the principle adopted by Burgess, that of the number of persons in whom sovereignty is vested, is scarcely to be separated from the treatment of government.[2]

The state is the embodiment of final political power; it is the organization of government over people and territory for the purpose of independent political control. The definition of the state is, therefore, peculiarly narrow; it is determined solely by the presence of certain circumstances. These circumstances are general and do not lend themselves to classification so much as to enumeration. On the other hand, government itself, while equally universal and general in its aspects, is viewed in a concrete sense, and the wide variations and similarities between forms of government lend themselves readily to classification. Yet even the classification of government is a profoundly difficult problem, and many students of government are

[1] *Cf.* Baron de Montesquieu, *The Spirit of the Laws* (1748), Bk. II, for a somewhat similar position in classifying governments. Jellinek, *op. cit.*, Ch. XX; pp. 665–666.

[2] Burgess, *op. cit.*, Vol. I, Bk. II, Ch. III

coming to the conclusion that, since the development of constitutional government and political democracy is greatly advanced in most of the political world, the classification of government is not a significant problem.

The Classification of Governments. While there may be comprehensive overlapping between forms and institutions of government, an attempt at classification is valuable, at least as a device for making clear the fundamental structures of modern governments.[1] Furthermore, even with overlapping in actual forms, some distinction seems to be essential owing to differences in political principles. The first type of governmental classification is that based on the number of persons who participate in government. This was one of Aristotle's principles. We have the idea of monarchy in which one person, the monarch, concentrates all authority in himself; the idea of aristocracy in which less than a majority of the whole people, or a selected group, have the directive power of government; and finally the idea of democracy, in which the right of participation is widely extended.

A second type of classification rests on the relation of the executive and legislative branches of the government, under which principle we may say there are primarily parliamentary, presidential, and dictatorial governments.

A third principle of classification is based on the concentration or distribution of governmental powers, the application of which results in distinguishing unitary and federal governments. Strictly speaking, the confederation cannot be listed among the forms of government based on the distribution or concentration of power since the members of a confederacy retain their sovereignty while the units in a federal government do not. In a confederacy, for example, the units might have unitary or federal governments, or they might have parliamentary, presidential, or dictatorial forms.

A fourth principle of classification really deals with the functions undertaken by the state, *i.e.*, the fundamental social policy carried out by government. Under this fourth principle governments may be classified as individualistic or collectivistic.[2]

[1] *Cf.* C. F. Strong, *Modern Political Constitutions* (New York, 1930), Ch. III.

[2] Burgess, *op. cit.*, Part II, Bk. III, Vol. II, Ch. I, pp. 1 *ff.*, gives four principles of government classification as follows: (1) the identity or nonidentity of the state with its government; (2) the concentration or distribution of governmental power; (3) the nature of official tenure, including the method of constituting the official relation; and (4) the relation of the legislature to the executive.

The first principle involves Burgess's idea of the distinction between state and government, and consists primarily in separating the organs for the formation of

No single principle of classification can be applied to a government to the exclusion of all other principles. Take the government of the United Kingdom, for example. The government is headed in form at least by a monarchy, but the government is also parliamentary, and in relation to the dominions there is a wide decentralization of power. Yet the United Kingdom itself is a unitary state with a strong tradition of local self-government. The above discussion tells us nothing of the recent tendency in Great Britain toward socialism as demonstrated in the rise of the British Labor Party. If we take the Fascist regime in Italy as another example, we find a unitary government, a monarchy, a constitution providing for parliamentary government, but a dictatorship in fact. Furthermore, the ancient classification based on the number of individuals who participate in government has little value, for most of the countries of the world have a much more liberal system of participation than was thought of when the classification first came into existence in Greek political thinking. The dictatorship must be thought of as the dominance (generally speaking infra-constitutional) of the executive over the legislative branch, yet in Italy and Germany the strength of the Fascist and National Socialist regimes is, apparently, the enthusiastic support of the electorate. It is doubtful whether any government in a Western country could continue long in existence if it undertook to exclude the masses from participation. It is not that the mass of citizens always does participate, but that it would resent, perhaps to the point of revolution, any serious and open policy of exclusion from the formal right.

The First Principle. The Number Admitted to Political Participation. The first principle of classification is the oldest and in fact the least valuable at the present day. It divides governments into monarchy, aristocracy, and democracy, *i.e.*, government of the one, of the few, and of the many. There are a few states in which the system of participation is so narrow that virtually only an absolute ruler and his personally chosen advisers rule, such as Abyssinia and some of the Indian states, but all the governments springing from European civilization accept as a basic principle the rule of the many, though,

the constitution, *i.e.*, the state, from the government. The Constitution in the United States is behind the government, and the state is behind the Constitution. Without such a constitutional system, *e.g.*, Great Britain, the government and the state tend to be assimilated in theory. Willoughby rejects Burgess's distinction by arguing that the power to make the constitution is part of the government. *The Fundamental Concepts of Public Law*, pp. 55 *ff.* See Burgess, *op. cit.*, Vol. I, pp. 142 *ff.*

as may be indicated, there never has been anything but the government of the few in fact.[1]

Despite the Fascists' declarations of contempt for representative government, political democracy, and the Western theories of liberty, they have not attempted to exclude by law the votes of the masses; rather they seek to control the masses. The dictatorship in Spain no doubt culminated in the republican revolution of 1931 because of the actual exclusion of participation of the masses by the suppression of representative institutions, as contrasted with the control of the masses in Italy. The principle of the Communist government in Russia, with its soviet system of representation, is officially opposed to political democracy, yet in reality there may be more people voting in proportion to its population than is the case in the United States. The dictatorship of (or rather for) the proletariat does not mean that the proletariat itself, the most numerous group in the state, is to be excluded. Participation is limited to those who formally approve of the dictatorship, and ultimately, granting the final success of the Communist regime, it will be a dictatorship only to those who deny the right of the proletariat and their leaders, the Communist party, to control the state. It may be suggested that the antagonism of Russian leaders to the principles of Western constitutionalism is fundamentally the feeling that these principles serve to bolster the influence of bourgeois attitudes. The soviet system itself is a system of representative government by group interests; the industrial workers, however, get the lion's share and the agricultural interests are lumped together without reasonable differentiation.[2]

Since the American and French revolutions the Western principle has been to assimilate the rulers and the ruled by the concept of popular sovereignty. In any case, the idea of classifying governments according to the number of persons permitted to participate is not so significant as it used to be; while contemporary democracy is being subjected to severe criticism, there is little likelihood that any steps will be taken to exclude large numbers of persons who now have the right to vote. The general difficulty of separating aristocracy from democracy makes

[1] W. B. Munro, *The Government of American Cities*, 4th ed. (New York, 1926), p. 220. In speaking of the six types of government suggested by Aristotle, he remarks: "The world has never seen six forms of government, or even three forms. It has never seen but one form of government—the Rule of the Few." This statement follows the idea of James Bryce. See *The American Political Science Review*, III (1909), 18.

[2] See S. N. Harper, *Civic Training in Soviet Russia* (Chicago, 1929); W. E. Batsell, *Soviet Rule in Russia* (New York, 1929); B. W. Maxwell, *The Soviet State* (Topeka, 1934).

the distinction between those two forms unprofitable. The contention is generally made at the present time that it does not make a great deal of difference as far as aristocracy is concerned how many people vote, since only the aristocracy and oligarchy have so far mastered the art of manufacturing public opinion. As Baron de Montesquieu has long since pointed out, the ultimate fact of significance is the spirit of a civilization which is in turn reflected in the laws.

The Second Principle. The Relation of the Executive and the Legislature. The second principle of classification presents the fundamental problems of modern government. Dictatorships are not generally classified as a normal form of government, but the prevalence or revival of that form of executive leadership in postwar Europe indicates that, if it is a passing phase in the return to democratic and parliamentary institutions, the phase itself will not be short. The dictatorship, furthermore, is not a new form of organization. It was a widely approved institutional device in ancient republican constitutions and was perhaps the bridge over which the states passed from republicanism to the strong monarchy. Such a political evolution is particularly emphatic in the Renaissance where we find the despotic states, duchies, and monarchies rising out of decadent republics. Cicero in his *Republic* felt that provision should be made in the constitution for dictatorship in times of public emergency. The dictatorship, or the executive dominant over the representative branch of the government, was characteristic of modern national monarchies before the rise of constitutionalism, and in modern times before the World War there were innumerable dictators in Latin America. As has been indicated, the dictatorship is now showing itself to be a form of relation between the executive and the legislative branch applicable to the more advanced countries of Western culture.[1]

[1] The political theory of Fascism constitutes an able justification of the dictatorship on pragmatic grounds. Behind the Fascist regime is the concept of the authoritarian state, inspired by the tradition of the Roman Empire and based upon the dominance, thoroughly organic, of the community over the individual. See W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York 1928); F. W. Coker, *Recent Political Thought* (New York, 1934). See also Carl Schmitt, *Die Diktatur* (München, 1928); Adolf Hitler, *Mein Kampf* (München, 1925–1927), should be consulted, as well as G. P. Gooch, *Dictatorship in Theory and Practice* (London, 1935), and Guy S. Ford (ed.), *Dictatorship in the Modern World* (Minneapolis, Minn., 1935).

There are two conceptions of dictatorship. The juristic notion presented by Carl Schmitt is that the dictator is merely exercising extraordinary powers. A permanent regime of an arbitrary character is more like an autocracy or a tyranny than a dictatorship. The other general view regards the dictatorship as the type of arbitrary government that may replace a constitutional system.

A larger proportion of the peoples of the world, past and present, has been governed by the dictatorial executive than the exponents of constitutionalism and democracy wish to admit. The dictatorship is probably the oldest form of active governmental control, and through most of the political history of civilization the chief enemy of the dictatorial ruler has been custom (a form of mass opinion) rather than any clearly defined principles of limited government. The dictatorship represents a concentration of authority in the executive; it may be either sovereign or clothed with the character of agency having complete discretion in certain matters. Since legislative dominance in government has been historically associated with responsiveness to group interests in the state, and since it does not represent an effective concentration of authority, it is inaccurate to speak of legislative dictatorships.[1]

The chief objection to the dictatorship is that its relation to public opinion is uncertain and informal, while representative political institutions guarantee responsiveness to certain interests or groups. A further element in the unresponsiveness of the dictatorship is found in the often too heavy reliance of the dictator on military force and arbitrary social pressure for the suppression of dissentient voices. While the state is supposed to have a monopoly of force, the more permanent and effective state organizations make little use of it. After all, policy must be determined in such a way as to find support from the units of will or personality that make up the state if the state is to be reflective of genuine *community*. The dictatorial determination of policy does not have the guarantee of support that is inherent in the rational use of representative institutions of government. The real test of the usefulness of the dictatorial executive lies in the future rather than in the past. The experience of Italy, Germany, and Russia bears upon the issue, and the successful use of the dictatorship and oligarchy under modern conditions in these countries particularly might tend to bring this form of executive into general acceptability again. It is barely possible that public opinion and democratic institutions devised to the present may be incapable of solving many of the pressing questions of industrial society and that

[1] Thus we cannot accept Thomas Jefferson's statement in his *Notes on Virginia*, Ch. XIII, that "173 despots would surely be as oppressive as one." From one point of view the modern dictatorship may be regarded as a kind of return to the nineteenth century theory in Germany of the *Rechtsstaat* in which the function of the representatives of the people is merely to criticize and to offer a degree of control but not to rule. See Guido de Ruggiero, *The History of European Liberalism*, tr. by R. G. Collingwood (London, 1927), pp. 232–233.

it is really the dictatorship which can preserve harmony and present workable solutions.[1]

Conservative opinion as to forms of government is not ready to admit the failure of the political devices of the late eighteenth and nineteenth centuries. The two outstanding forms of executive relationship with the legislative branch are the presidential and the parliamentary systems. Both systems developed at approximately the same time; both systems are, it seems, more or less historical accidents. The development of the British Parliament produced the parliamentary form of government, and the development of the American Constitution produced the presidential form. At about the time the framers of the American Constitution were attempting to construct our executive relationship with the legislature, the beginnings of the modern parliamentary system appeared in England. It is probably true that British political leaders did not realize what was happening, and it is certainly true that the framers of the American Constitution did not anticipate the path of British development.[2] The Declaration of Independence complains that the British monarch had conspired to submit himself to the legislative leadership of Parliament; it complains of the strengthening of Parliament and the weakening of the direct relation of the king with his subjects. The framers of the subsequent American Constitution were looking for strength in the executive, since American experience had shown the futility of government without sufficient executive leadership.[3]

The creation of parliamentary government is the work of a particular stage in the development of the British Parliament and in the struggle to establish limitations on the crown. It has not tended

[1] See Bluntschli, *op. cit.*, p. 280; Cicero, *On the Commonwealth, op. cit.*, pp. 146–147. See E. McC. Sait, *Democracy* (New York, 1929), p. 27, for Shaw's definition of a dictator. Also E. L. Godkin, *Unforeseen Tendencies of Democracy* (Boston, 1898), p. 138. Godkin, in 1898, predicted that the world would not see another dictator.

[2] See A. L. Lowell, *The Government of England*, 2 vols. (New York, 1909); F. A. Ogg, *English Government and Politics* (New York, 1929); A. V. Dicey, *Introduction to the Law of the Constitution.*

[3] See Max Farrand, *The Records of the Federal Convention of* 1787, 3 vols. (New Haven, 1911); *The Federalist.* What the framers of the constitution wanted in the executive was independent virility. Roger Sherman in one of his addresses to the convention remarked that the function of the executive is to carry out what the legislative body determines and, therefore, that there was no necessity of having an independent executive leadership. Sherman's ideas were, of course, contrary to the theory of separation of powers and in accordance with parliamentary government, but it is doubtful whether he had anything like a concept of modern parliamentary government.

toward the destruction of the monarchy, though it did rob the king of his historic claim to a concentration of power. Parliament took over much of the executive authority and the control of the prerogative, but it could not exercise these powers as a body. The exercise of powers once belonging to the monarch was delegated, through the gradual evolution of constitutional practice, to the leaders of Parliament. But these leaders of Parliament were controlled by the majority group in the House of Commons, and with the growth of political parties this control over the ministers became party control.

Several distinct lines of evolution converged in the formation of parliamentary government. The first to be noted is, of course, the control of the monarchy by parliament;[1] the second may be seen in the control of Parliament by the House of Commons and in the decline of the power of the House of Lords, finally culminating in the Reform Bill of 1911; the third may be noted as the development of party control in the House of Commons, and particularly the two-party system of a majority and minority party; a fourth may be seen in the control of the personnel of the ministry by the House of Commons and the tendency for the ministry to be composed of members of the majority party; a fifth line of development is seen in the separation of the cabinet, composed of the leaders of the majority party, from the ministry; and a sixth development is found in cabinet and ministry tenure of office at the pleasure of the majority of the House of Commons.

The last principle is the most important, for the essence of parliamentary government is that the executive is chosen by the majority party in the stronger branch of the legislative body with a tenure lasting as long as the pleasure of the majority. The monarchy, the existence or nonexistence of an upper house, such as the House of Lords, the two-party system, the separation of the ministry from the cabinet are not essentials of parliamentary government. Neither is the recent practice of the British constitution of "going to the

[1] This fact—the early attained limited monarchy—made the British monarchy during the last of the eighteenth and during the nineteenth centuries the model of constitutional or limited monarchy for the rest of the West. The change in sentiment concerning monarchy is clearly indicated by the Abbé Leclercq, who notes that in 1830 the new states were forced to accept the monarchical form, as in Belgium, while in 1918–1919 the new states were practically forced by the powers to accept the republican form. *L'État ou la politique* (Bruxelles, 1929), pp. 441–442. For a statement of the nature of monarchy, see Georg Jellinek, *op. cit.*, p. 684: "Der wesentlichste Merkmal des also festgestellten Typus der Monarchie besteht aber darin, das keine Änderung der Verfassungsmässigen Ordnung des Staates anders als mit Willen des Monarchen erfolgen kann."

country" by a dissolution of the House of Commons for decisions on significant matters of policy. The essence of the system is found in the relation of the executive to the legislative, by which the executive acts and holds office because of the selection of the majority in the lower branch of the legislature.[1]

While the lower, or more popular house, has attained control in all parliamentary countries, the bicameral legislature is not needed. The French practice with parliamentary government does not include the more or less regular dissolution of the Chamber of Deputies as in the United Kingdom. The weak executives of England and France, *i.e.*, the formal king and president, are not essential, since the presidents of Germany and Czechoslovakia have been, at times, stronger in political control than the English king or the French president. The two-party system, which existed in England before the rise of the British Labor Party to plague Liberals and Conservatives, is not found on the Continent, for in Italy (before Fascism rose to power), France, Czechoslovakia, and other countries, a multi-party system is found. Cabinets on the Continent are, therefore, coalition "governments," while until recently in the United Kingdom the "government" was composed of one party with a tenure assured for several years, or the life of Parliament between elections. The French and other cabinets are notoriously unstable, and undoubtedly one of the chief reasons for the advent of Fascism was the weakness of the Italian parliamentary system.[2]

Parliamentary government is strong in that it is responsive to the will of the people; elections are held in England, sometimes at least, by issue and not by calendar; perhaps more important than all, there is a union of authority and responsibility that the majority party cannot escape in the two-party system. Government is responsive to the fluid strength of public opinion, and the check-and-balance system is unknown to the parliamentary system.[3] Furthermore, the

[1] But *cf.* Godkin, *op. cit.*, p. 103, for the argument that the essence of British parliamentary government is in the dominance of the executive over the legislature. This most important feature, says Godkin, was not transplanted to the Continent when the parliamentary system was adopted.

[2] See Sait, *The Government and Politics of France* (New York, 1921); M. W. Graham, *New Governments of Central Europe* (New York, 1924); *New Governments of Eastern Europe* (New York, 1927); H. L. McBain and L. Rogers, *The New Constitutions of Europe* (New York, 1922); Robert Redslob, *Le régime parlementaire* (Paris, 1924).

[3] The check-and-balance system must be distinguished from the separation of powers. The check-and-balance system is merely the American device for maintaining the separation of powers; the French have the separation of powers embedded in their public law, but no check-and-balance system. The separation of

short ballot is employed, and the people elect, for the national or central government, only one or a few (with proportional representation in many countries) representatives from each constituency. But the orderly working of the parliamentary system depends finally on intelligent public opinion expressing itself through the two-party system, and the tendency of the present day in most parliamentary countries indicates that the two-party system is a thing of the past. Whether we consider the situation in England, in France, in the other nondictatorial European countries, or in the various British Dominions, the minority parties are coming to have an increasing power in the government. The British Labor Party is not a majority party; it can disclaim responsibility for its failures and it can claim the merits of its successes. A situation is developing, therefore, which is little different from the uncertain party responsibility under the check-and-balance system of the American Constitution. The use of proportional representation on the Continent has assisted in keeping alive small parties, but to abolish proportional representation would not destroy the multi-party system which robs parliamentary executives of needed stability. The postwar political and economic questions have demanded stable executives, and parliamentary government has been so uncertain in its leadership on the Continent that it has been in serious danger of repudiation in some instances where it has not actually been repudiated and dictatorships established.

While the dictatorship, as a form of governmental relation between the executive and legislative branches, has stability, it is not in accord with the nineteenth century tradition of democratic and representative government; and, while parliamentary government is democratic and representative, it does not seem to have within it any guarantee of stability in time of crisis. In fact, parliamentary government was superseded in all European countries during the war and virtual dictatorships were established. The fate of the dictatorship and parliamentary government hangs in the balance.

What of the presidential form of relationship between the executive and legislative branches? It must be said at the outset that presidential government in the United States stood the test of war crises

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powers means something entirely different to the French mind than to the American. For an excellent account of the development of parliamentary government in France, see A. Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, pp. 239 *ff.* It is Esmein's opinion, *ibid.*, p. 289, that parliamentary government is the form toward which representative government tends to evolve. Jellinek, *op. cit.*, pp. 701 *ff.*, discusses the rise of parliamentary government in England, but he takes the position that genuine ministerial responsibility was not recognized until 1839–1841.

during both the Civil and the World Wars. It has the stability of the dictatorship and some of the responsiveness and popular leadership of parliamentary government.[1]

The presidential system is an historical accident, as is parliamentary government. The strength of American presidents, the broad interpretation of the Constitution by the Supreme Court of the United States, and precedents and practices have all tended toward the establishment of the presidential government as a definite type.[2] The presidential executive is not chosen by the legislative branch; he is elected by the voters of the state, directly or indirectly. The president, as the chief executive, has a definite and independent tenure of office. He chooses his own ministers or cabinet members, and they are responsible to him rather than to the legislative body as under the parliamentary system. This independence of the executive of the legislature in the American system leads to conflicts, and, under the terms of the written constitution that established such an executive, each has certain powers by which the conduct of the other is influenced. But the possibility of governmental deadlock as far as legislation is concerned is always present in the presidential system.[3] American writers have referred more and more in recent years to the "unwritten constitution" which constitutes the customary working bases of the government as distinguished from the formal terms of the Constitution. The rise of the political party, by which the president has become the leader of his party in addition to assuming legislative leadership in certain matters, the practice of judicial review, the president's own theory as to the nature of his powers, the working practices between the president as an appointing agent and the legislative branch (the Senate in the United States) as a confirming agency, the free development of the veto power, and the working concentration of administrative power in the president all tend toward the establishment of the presidential system as a part of the unwritten constitution, a constitution which in itself may be no less important for practical politics than the written instrument itself.[4]

[1] In this connection see C. A. Berdahl, *The War Powers of the Executive in the United States* (University of Illinois Studies, Vol. IX, 1920).

[2] See C. P. Patterson, *American Government* (New York, 1929); C. E. Martin and W. H. George, *American Government and Citizenship* (New York, 1927).

[3] Presidential government is also spoken of as "Congressional government," in which the constitutional leadership must arise in the legislative body rather than come from the executive. Congressional government has been spoken of as the "government of committees." See Woodrow Wilson, *Congressional Government* (Boston, 1885); Godkin, *op. cit.*, pp. 105–106.

[4] See H. W. Horwill, *The Usages of the American Constitution* (London, 1925); C. A. Beard, *American Government and Politics*, 5th ed. (New York, 1928); H. L.

The parliamentary executive is not stable unless there is the two-party system, and the dictatorship is likely to be destroyed by the same means by which it is established, since its greatest difficulty is the succession of dictators. The great advantage of the presidential system in the modern world is its stability. While it is not fully responsive to popular will, it is reasonably so, particularly in the United States when, during an election period, the presidential campaign may become a conflict focus of the most deep-seated trends of public sentiment. The unwritten constitution has established parliamentary government in the United Kingdom; to a large extent, the presidential system of government as we know it in the United States is also a part of the unwritten constitution. Thus the check-and-balance system, so necessary to a vital separation of powers as is defended in the United States, is emasculated, which results in a greater popular responsibility on the part of the presidential executive.

While the parliamentary system was founded on a fusion of powers, particularly a welding between the legislature and the executive functions of government,[1] the presidential system was founded on the separation of powers, with a minute constitutional check-and-balance system to preserve the separation. The powers were blended to a degree, however, to assure (1) cooperation between them, and (2) the capacity of self-preservation in each.[2] From the time of Aristotle different functions of government have been recognized,[3] but with the ancients the blending of *classes* (not powers) made a "mixed government," which is, historically, another form under the present principle of classification. The framers of the American Constitution were not attempting to establish a "mixed" form of government. The British and conservative American view was that the mixed form was a blending of *orders* and that a separation of the natural powers of the orders was necessary to preserve liberty and the balance of the constitution. The separation of powers no longer stands as the expression of mixed government (*i.e.*, a balance between monarchy, aristocracy, and democracy) but as a device to secure responsibility in government and political liberty or the rule of law.[4]

McBain, *The Living Constitution* (New York, 1927); C. G. Tiedeman, *The Unwritten Constitution of the United States* (New York, 1890).

[1] Garner, *op. cit.*, p. 324.

[2] See *Ex parte* Grossman, 267 U. S. 87 (1925). *The Federalist*, Nos. 47, 48, and 51, shows the necessity of cooperation between the powers of the government. A complete separation is not a part of the American theory.

[3] *Politics*, Bk. IV, Ch. XIV.

[4] The germinal discussion of the separation of powers as illustrated, or thought so, in the British constitution, is in Baron de Montesquieu's *The Spirit of the Laws*

The idea of mixed government has a long and honored history. Polybius, approaching more of a political than a class mixture in government, saw in the balance of the Roman constitution the secret of its greatness. The Christian theologians took the idea of the mixed form of government as the solution of certain political difficulties.[1] In modern times the theory of the mixed form gradually became the starting point for the development of the idea of the separation of powers, and we find its practical consummation in the presidential system of the United States (including the type used in the forty-eight states and numerous Latin-American states, at least as far as constitutional provision is concerned). The worship of "balance" in government, so characteristic of the England of the reaction from the French Revolution, is a contemporary and parallel development of the American phase of the doctrine of Polybius and Montesquieu. It must be observed, however, that many writers have denied that the mixed or balanced constitution is possible, for they assert that some organ or branch of the government in case of conflict must give orders to the rest.[2] Bluntschli denies the possibility of mixed government, and in his discussion of the separation of powers he makes no mention of this form. Bluntschli's separation of powers, however, involves no check-and-balance system.[3]

(1748), Bk. XI, Ch. VI. John Adams defended the separation of powers as reflecting the three orders in governments; John Taylor of Carolina rejected this interpretation of the check-and-balance system. See B. F. Wright, *A Source Book of American Political Theory* (New York, 1929) pp. 282 *ff.*, 343 *ff.* Esmein insists that all the constitutional monarchies of modern times are mixed states. *Op. cit.*, Vol. I, p. 5.

There has been no agreement that there are only three powers in government. Certain writers have insisted there are only two (Thomas Paine) and others that there are as many as five (Sun Yat Sen). For late eighteenth and early nineteenth century views leading to the expansion of the number of powers, see Georg Jellinek, *op. cit.*, p. 599; A. Saint Girons, *Essai sur la séparation des pouvoirs* (Paris, 1881), pp. 135 *ff.*, *passim.* See also F. G. Wilson, "The Mixed Constitution and the Separation of Powers," *The Southwestern Social Science Quarterly*, XV (1934), 14 *ff.*

[1] St. Thomas Aquinas, for instance, approved the mixed form of government. R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V, p. 94; *Summa theologica*, I, 2, 105, 1. But see C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), p. 331, *n.* 1.

[2] Bluntschli, *op. cit.*, pp. 332, 515–525.

[3] Lord Acton, *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence (London, 1909), pp. 19–20, says the "mixed constitution" was developed by the Greeks to check democracy, while the modern constitution was to limit the monarch. He points out that the practical difficulties of the form were

From the mother of parliaments at Westminster and from the mother of presidencies at Washington, the presidential and parliamentary executive spread over most of the civilized West during the nineteenth century. The European powers, with the exception of Switzerland, borrowed the English parliamentary system; it has been grafted on older monarchical institutions and newly formed republican governments. The presidents of France, Germany, and Czechoslovakia, for instance, and the Baltic and Slavic monarchs have been the formal heads of the parliamentary system which was accepted as a result of the liberal movement of the nineteenth century. But the parliamentary system has appeared in recent years to be an exotic plant if we consider the group of postwar dictatorships which have been imposed on the shallow-rooted parliamentary type of executive. The presidential system has spread over Latin America almost to the exclusion of the parliamentary type, and in the United States has demonstrated its stability and its unusual flexibility in meeting crises (in which it resembles the Roman dictatorship in republican days). Nevertheless, dictatorship has not disappeared from presidential countries. In certain situations, and perhaps with certain racial or national historic temperaments, the dictatorship is inherently appealing. In any case, the story of the forms of relationship between the executive and the legislative branches is not complete.

The Swiss executive, chosen for a term of years by a legislative body of a collegial type, seems to have the stability of the presidential form, but it does not have the capacity for leadership in policy which is inherent in both the presidential and parliamentary systems.[1] The

recognized early. See A. R. Lord, *The Principles of Politics* (Oxford, 1926), Ch. IV, for an excellent discussion of the theory of the balanced constitution. For a splendid discussion of the problem of the separation of powers, see A. Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, pp. 493 *ff.* *Cf.* Paul Janet, *Histoire de la science politique*, 5th ed. (Paris), Vol. II, pp. 644–645, for the argument of Mercier de la Rivière, who showed the impossibility of separating legislative and executive powers and from whom came the idea of legal despotism. Saint Girons, *op. cit.*, p. 108, notes that the economists of the eighteenth century favored absolute monarchy to achieve reforms—an argument not unlike the present argument for a concentration of power in dictatorship. The story of the separation of powers may be viewed in origin as a theory of the functions of the state. *Cf.* Jellinek, *op. cit.*, Ch. XVIII.

[1] On certain occasions federal councilors have been overruled by popular votes on their policy, but since 1848 only one has ever resigned because of this. The socialists in Switzerland sometimes use this type of argument against a federal councilor whom they do not like, but it has little effect on the personnel of the council. See *Journal de Genève*, June 6, 1933. Students have generally traced the prototype of the Swiss executive-legislative relation back to the French

executive should be more than merely the chief administrator; he should also be a leader of policy, as history shows. The executive problem in Russia is simple, as is the case where the dictatorial theory takes root. By the gradual thinning out of representatives from the various soviets, the small group of commissars, the leaders also of the Communist party, finally stand as the effective head of the state, in both an executive and legislative sense. The leaders of the Russian government admit that the rigidity of the present system is temporary and that with the stabilization of the communistic program the stern dictatorship will pass.[1]

The Third Principle. The Federal and Unitary Types. The third principle of governmental classification relates to the territorial concentration or distribution of power. The three forms of government under this heading are the unitary, federal, and confederate. The unitary type of government is illustrated by the governments of England, France, and Italy. The federal form is found, among others, in the United States, Switzerland, Canada, Australia, Mexico and other Latin-American states. Confederations have been short-lived and have generally broken up or become federal. The British Commonwealth of Nations and the League of Nations system may be considered the most significant political organizations in the world today which show confederate characteristics. Various confederations of German states finally resulted in the formation of the federal German Empire, and the Confederate States of America lasted, of course, only for the duration of the American Civil War.[2]

The unitary state (this term may be used in view of the long historic application of the term, though unitary government is meant) has some distribution of power, and there are local units of government as in the federal system. But the differences are significant. The degree of local autonomy in the federal state in practice is much greater than that in the unitary state, and the basis of this distribution is found, not as in the case of the unitary state in the acts of the national legislative body, but in the terms of a written constitution that limits the legislative activity of the national parliament. In the United States, where the Constitution is law in the truest sense of the word, and is, in

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revolutionary constitutions. Jellinek, *op. cit.*, p. 33; Esmein, *op. cit.*, 8th ed. (Paris, 1927), Vol. I, p. 536.

[1] Chinese writers regard the five-power constitution proposed by Sun Yat Sen as distinct from those which exist in the West. Thus Kong Chin Tsong remarks that the Chinese constitution is not parliamentary, presidential, Fascist, or sovietic. *La constitution des cinq pouvoirs* (Paris, 1932), p. 18.

[2] See Garner, *op. cit.*, pp. 273–280, for data on confederacies.

addition, fundamental law guarded by the power of judicial review vested in both state and federal courts, Congress and the state legislatures are strictly limited and may not alter materially the distribution of power between the forty-eight states and the national government. The constitution of Germany of 1919 provided for such a concentration of authority in the *Reich*, both as to legislation and the power of amending the constitution, that publicists differed as to whether Germany was a unitary or a federal state.[1]

Whatever authority local units exercise in the unitary state is exercised at the will of the national legislative authority. It does not make any difference, in theory, how much or how little decentralization of governmental power is found in the state, for it is the source of the distribution of power that indicates whether there exists a federal or a unitary form of government. It is not true, however, that the distribution itself is unimportant, for the great advantages cited for the federal form of government are the benefits that come from decentralization of legislative powers and administrative authority. The unitary form is centralized in both legislative and administrative power, but the federal form may be centralized as to either or both. In the United States the national government maintains its own administrative machinery, while continental federalism, as exemplified in Germany and Switzerland, used to a far greater degree the administrative machinery of the *Länder* and the cantons to secure the enforcement of national law. In the federal form there must be some legislative decentralization by virtue of the constitution (which must be written, of course), but there need not be administrative decentralization since the national government may enforce its own laws. In the unitary form of government there is some legislative decentralization (at the pleasure of the national legislative body), but local administrative agencies have less independence and are, of course, required to act as agents of the national government.

An historical tendency of federal governments to absorb the powers of the local units, either by constitutional change or by the practical workings of the constitution, has often been noticed. In federal governments there seems to be continual agitation for an increase of the functions of the national government,[2] and in unitary

[1] Johannes Mattern, *Principles of the Constitutional Jurisprudence of the German National Republic* (Baltimore, 1928). Under the National Socialist party this question has been set at rest by the final unification of Germany.

[2] See Acton, *op. cit.*, p. 98, who declares that the most effective and congenial check on democracy is federalism, but he notes that federalism is falling into disrepute and is giving way to centralization. "It (federalism) is the only method of curbing not only the majority but the power of the whole people, and it affords the

states there is evidence of a persistent effort to break down the monopoly of the central government. The movement for regionalism in France and the support of devolution in the United Kingdom must be contrasted with the growth of federal centralization in the United States by means of implied powers, constitutional change, and federal subsidies carrying with them administrative supervision.[1] The fundamental tendency toward the concentration of governmental power over economic life, which is due to improvement in means of communication and in large-scale industry, monopolies, and "chains," need not carry with it an implication that federalism in social policy is to be destroyed. The problems of government in dealing with economic life are more objective and the ends are more or less agreed upon, but such homogeneity is not necessarily found when government deals with the problems of social and moral standards.

The Fourth Principle. The Functions of the State. The fourth principle of classification, relevant to the general social policy adopted by the government, will be dealt with in connection with state functions. It is not, strictly speaking, a differentiation in the form of government; however, it is probably true that a highly centralized government may more easily undertake functions that would offer difficulties to the more decentralized federal government.

Is the Form of Government Important? In view of the above discussion of the nature of political authority that is characteristic of the state, and the forms of organization by which that political authority expresses itself, it is natural to ask: "Is the form of government important?" We have not succeeded in keeping government so honest, perhaps, as in other countries where aristocrats are the natural office-holders and where social position attaches very definitely to the man who lives from the public revenue. Some critics have expressed doubt as to whether our long-continued experimentation with forms of political organization, particularly in the forty-eight states and in our cities, has brought about material improvement. Can the water rise higher than the source? the critic asks. Broadly speaking, the governmental form is important. It is not possible to make government responsive to dominant currents in public opinion without some political machinery for assuring this. It is not always possible to assure the best of administration, the best financial practice, the most

strongest basis for a second chamber, which has been found the essential security for freedom in every genuine democracy."

[1] See Walter Thompson, *Federal Centralization* (New York, 1923); Garner, *op. cit.*, pp. 67 *ff.*; F. W. Coker, "Pluralistic Theories and the Attack upon State Sovereignty," in Merriam, Barnes, and others, *op. cit.*, Ch. III.

effective responsibility of subordinate agents of the state, without making some provision for it. It is possible to simplify complex and unworkable forms of government; it is possible to make administration more efficient; it is possible to attract good men to public office by giving them something of importance to do when they are elected; it is possible to make the operations of government relatively public; and it is possible to weed out the inefficient civil servant and the spoilsman. Many of these goals can be attained in part by the proper reorganization of government. But, of course, it is true that the major forms of government which we have been discussing, the parliamentary as against the presidential, the federal as against the unitary, are more matters of national political tradition than of contemporary choice. The more civilized and stable countries of the West have established to a considerable extent governmental efficiency, but within each form of government we have mentioned there is room for improvement, and the largest fields for amelioration undoubtedly lie in the education of public opinion and in the direct application to government of the best principles of public administration.[1]

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[1] See H. J. Ford, *Representative Government* (New York, 1924), *passim;* J. S. Mill, *Representative Government* (1861).

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Chapter V

SOME THEORIES OF THE NATURE OF THE STATE

> Man is born free; and everywhere he is in chains. One thinks himself the master of others and still remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.—J. J. Rousseau.[1]

The Origin of the State as Its Justification. Some form of organized control, either political or semipolitical, is universal, for the modern state now includes all land, with a few exceptions in the antipodal regions of the arctic and anarctic; and all people, whether or not they are conscious of it, are presumably under the sovereign will of the state. Nor is this peculiar to modern times only, for the more primitive types of social organization, such as the tribe, the fraternal groups, and the clan, are to be observed from the beginnings of history. Until quite recently also there were unclaimed areas of the world in which the only form of social organization was primitive. Our emphasis here is on the more developed types of speculation about the nature and origin of the state. These theories of the nature of the state are often attempts to justify political authority, and incidentally they are generally theories of the origin of the state.

It should be observed, of course, that these theories of the nature and origin of the state are not to be viewed entirely as historical accounts of the beginnings of government. It is one of the ironies of the history of politics that theories which served the greatest purpose in justifying to men political control have been divorced from the actual history of the rise of government. Nor will the distinction between state and government be of any assistance; we must frankly admit that, while it is necessary to justify the state so that men may obey it and follow their conscience and reason at the same time, this justification in the history of political literature has been legendary and often fantastic in the extreme. Only recent theories of the origin of the state are compatible with historical findings.

The Philosophical Explanation of the State. a. The Hellenic View. The first type of theory as to the nature of the state which we shall consider is the moral or the philosophical. There have been many

[1] *Social Contract*, Bk. I, Ch. I.

forms of such theories, but they begin with Greek speculation on politics and have continued down to the present with apparently little diminished vigor. Plato's *Republic*, *Statesman*, and *Laws* and Aristotle's *Politics* and *Ethics* are among the outstanding works on the moral theory of the state. Plato viewed the state in its perfect form as the embodiment of justice, and, as the state was the agency for attaining justice in the relations of men and classes, its control over men was justified. Justice was not merely what men *agreed* it should be, as Plato's Sophists believed; it was something discovered by the highest use of reason, possible only to the thoroughly trained philosopher-statesmen.

Justice is described in the Platonic dialogues by an analogy between the individual and the community, the qualities of the one being the qualities of the other. It is pictured as the harmony of the various parts of the community, which is to be attained by each individual's filling a station and doing that for which he is best qualified. The cobbler must continue at his last, the pilot must attend to the safety of mariners, the warrior must assure the continuity of the state, the agriculturalist must, to be just, till the soil, and those who are superior *must* attend to the government of the *polis*, *i.e.*, the city-state, or else they must submit, immorally, to government by inferiors. Neither Plato nor Aristotle, in expressing the acme of Greek political speculation, had any illusions about the equality of men, and it was plainly the duty of those who were superior to govern the city. Plato represents the beginning of a great and continuous stream of what is called *political idealism* or *absolutism*. Such a principle does not mean primarily that ideals, as we often express them today, should be the end of the state, but that the perfect and rational *idea*, essence, or entelechy of the state is the real state; the form of the state, rather than a particular set of political institutions, is its reality.

To attain this perfection in civic organization Plato developed his much-criticized scheme of the communism of rulers. Communism was not to extend beyond the guardians and warriors; ordinary men engaged in economic pursuits were not capable of such discipline. The communism of the rulers was essentially a moral communism rather than economic communism. They were to have nothing in terms of wealth or family connections so that they might devote their entire remaining life (for they were getting old before they were admitted to the ruling class) to perfecting the state.[1] This benevolent despotism

[1] Janet observes that few communists of modern times ask for a community of women—only two monks have done this, Deschamps and Campanella. P. Janet, *Histoire de la science politique*, 5th ed. (Paris), Vol. II, p. 668.

of philosophers was to be reserved for persons who showed the greatest physical and intellectual capacity after long years of trial and testing. But the function of the philosophers was clear enough—it was the attainment of justice. Plato is not disturbed by ideas of limited government, for in his scheme there is no need of limiting the rulers finally selected and perpetuated among themselves. They are to make the state the ultimate teacher of the good life, of the just life. The prime function of the state is therefore pedagogic; it is to provide an organization motivated by the highest of philosophical truth and practical skill, which will assure each individual the best that is possible for him in life. Perhaps no one was ever more acutely sensitive of the possibilities of education than Plato, and yet there is probably no greater failure among the bright dreams of political reformers. Plato resigns himself to the inevitable in the end of his discussion, admitting that the perfect city is after all only to be found in heaven. This utopian point of view, however, has not been lost, and the ideas of Plato influence the thought of men in each generation as they face their own particular problems.[1]

Aristotle was the first systematic writer on political science; he is often called the father of political science. The assertion is sometimes made that Aristotle separated ethics and politics, but more careful students reserve this distinction for Machiavelli, the genial and realistic Florentine of the Renaissance. Aristotle combines an analytical, comparative, and observational study of government, as embodied in actual constitutions of his day, with a keen appreciation of the close relation of ethics and politics. In fact, Aristotle considers politics the master science with ethics as one of its parts.

To present the nature of the state, Aristotle gives some observations on its historical development. First comes the family, which is based on the natural process of procreation and the economic advantages to be gained by close association; in addition to the mere biological and economic functions of the family, it serves the ethical interests and needs of its members. The family in isolation is deprived of the economic services of the larger social unit. As families become grouped together, the village is created; village life continues to serve over and above its contributions to the security and economic well-being of particular families. In the course of time the village is merged

[1] See Roger Chance, *Until Philosophers Are Kings* (New York, 1929); Ernest Barker, *Greek Political Theory: Plato and his Predecessors* (London, 1918) and *The Political Thought of Plato and Aristotle* (New York, 1906); A. E. Zimmern, *The Greek Commonwealth*, 4th ed. (Oxford, 1924); W. W. Fowler, *The City State of the Greeks and Romans* (London, 1904). For a good general survey of Greek civilization, see *The Legacy of Greece* (Oxford, 1921).

with a larger unit, the city. Men seek in the city, the *polis*, security against enemies and all the economic advantages that the smaller and ineffective village cannot give. While realizing the great necessity of a division of labor, also recognized by Plato and probably borrowed as an idea from the Egyptian caste system, Aristotle believed the city (and he had in mind, of course, the Greek city-state) to be the finest product of human intelligence. It was only in the city-state that the individual could attain the full moral design of his nature.

Aristotle stated that man is a political or social animal, and that the state is prior to the individual. What he meant by this was that the whole is greater than the part. The city is the whole and man is the part. But the part could not be considered by itself; it must be considered in relation to the whole. The state is logically and morally prior to the individual because the individual becomes an individual in the full and complete sense of the word only in the city. In the good state we find the good man who is also the good citizen, and the good man is not to be successfully separated from the good citizen. Historically, of course, man existed before the state, but a man living outside the state is in no sense a completed and developed individual; he is either a beast or a god. Man is destined to live in the state, and the state is the rational and ethical agent enabling him to attain the purposes of life, to attain the good and just life.

Like Plato's state, the state of Aristotle had important educational functions. Man owed it his best loyalty, which made of him a rational creature. But Aristotle did not believe that communism was in any sense a practicable and useful program. He did not believe that it would serve the best interests of the state, for Aristotle emphasized the value of private ownership of property and the influence of family affection in life. Justice for Plato was the harmony of the elements of the state, a harmony attained by each individual doing that for which he was best suited, but Aristotle developed this concept further and clarified it. His clarification arises in connection with the insistence on the inequality of men. The inequality of men, inherent in human nature, justified slavery. But the Greeks were a noble race unsuited to servitude, as contrasted with the uncivilized barbarians. The Greek was the natural master; the barbarian the natural slave. It could not be justice to treat with equality such unequal types of men, but, if we treat the slave as a slave and the free man as free, they are both given that which they can best use. We thus arrive at Aristotle's conception of proportionate equality. To treat persons equally in the just sense meant that they should be treated according to their nature and capacity.

Aristotle likewise believed that the citizen was the person capable of engaging in political life; the citizen was by definition one who participated in the city democracy. A person incapable of appreciating political life should not be a citizen, and it was just treatment and proportional equality, not actual equality, that those engaged in tilling the soil, those manufacturing the necessary commodities of trade, and those engaged in trade should be excluded from the privileges of citizenship. In their own way they would be attaining their best station in life, for to give each individual the proper functions, *i.e.*, the functions for which he was best suited, was the best and the necessary way of attaining justice, and the only way of realizing the good life.

In his treatment of justice Aristotle did not achieve scientific distinction, for he did not give any sure tests for ascertaining the functions for which the individual was suited. Naturally for Aristotle there was no concept of equality of opportunity, nor was there any belief in what may be called the *modern theory of democracy*—the equal participation of all individuals of maturity in the political life of the community. Aristotle knew of larger political units than the city, but his faith in the city-state of about 10,000 citizens did not falter. Today we doubt whether the national state itself is sufficiently integrated with the world to assure the individual the good life.[1]

b. Roman Political Conceptions. The Roman adopted the Greek conception of the state but with a fundamental difference. The Roman was more legal than ethical, and Roman political theory marks a fundamental break in the continuity of ideas, for in Cicero (106–43 B.C.), who copied from the Stoics, we find the idea of the moral equality of men presented. The Greek world made the theory of inequality possible, and the Roman world, including the known world under one political control, made the theory of moral equality possible and perhaps necessary. The idea of equality is found in New Testament ethics, and, broadly speaking, the fundamental ethical idea of man and his moral relation to the world was that of human equality until the slave trade was revived.[2]

Somewhere between the time of Aristotle and of Cicero occurs this grave breach in continuity, this one supreme change in the political conceptions of the European races . . . And it was due to the breakdown of the city-states, the universalizing of Hellenism, and the absorption of all Western civilization

[1] See Charles Petrie, *The Story of Government* (Boston, 1929), Ch. II.

[2] R. H. Murray, *The History of Political Science from Plato to the Present* (New York, 1926), pp. 33–35. By permission of W. Heffer and Sons, Ltd., publishers.

by the Roman Empire. In essence the "Liberty, Equality, and Fraternity" of the French Revolution have found the beginning of which the end is not yet.[1]

c. The Middle Ages. Some have doubted whether there was a state in the Middle Ages and Figgis has asserted that if there was a state it was the church.[2] But if there were no state, that much misunderstood period in human history had a plethora of political authorities and authority. The idea of the state during the Middle Ages was the idea entertained by the Christian church. While the church insisted on the dignity and equality of human souls, it also insisted on the sinfulness of man, to prove which was cited the account of the paradise in *Genesis* and the eviction of man therefrom. The "golden age" was the age of perfection in self-government and innocence; the sinfulness of man, as the See of Peter has said, makes government necessary. It is thus divine sanction, for the apostles tell us that the "powers" of the earth are worthy of obedience and that they are established by God for the reward of the good and the punishment of the wicked.

But obedience did not mean that rulers were subject to no law, for the New Testament clearly supports the theory of natural law, and St. Paul may have been influenced by Stoic philosophy, one of the centers of which was at Tarsus. It was certainly no idea of the Middle Ages that the state was the only creator of law. Whether we turn to the reviving civil law, wherein is found the mark of the *Institutes* of Justinian regarding the law of nature and the law of nations (along with the theory of positive law), or to canon law, springing in part from certain Roman law ideas, the Christian tradition, and the legislation of the church, the inferiority of civil authority to a law superior is found. In the vast treatise of St. Thomas Aquinas, the

[1] There is considerable debate as to whether man enjoyed liberty in the ancient state. Fustel de Coulanges has remarked: "It is a singular error among all human errors to believe that in the Ancient Cities man enjoyed liberty. He did not think that there could exist rights as against the city and as against his gods. To have political rights to vote . . . that is what they called liberty. But man was none the less enslaved to the state." *La cité antique*, new edition, p. 267, cited by Léon Duguit, "The Law and the State," *Harvard Law Review*, XXXI (1917), 37. *Cf.* G. Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), pp. 294 *ff.*, 301, 316, for a different point of view. Also Max Radin, *Handbook of Roman Law* (St. Paul, 1927), pp. 467–468. It may be observed that the freedom Jesus had in his preaching must indicate the existence of considerable freedom of speech under Roman rule.

[2] J. N. Figgis, *From Gerson to Grotius* (Cambridge, 1907), pp. 4, 11.

Summa theologica, with its eternal law, divine law, natural law, and the human law which was valid in the least extensive field, the same idea prevails. Not only did the political theory of the time limit government, but the practice of rulership indicates this also. Legislation was not considered, as today, the fiat of the state; and the rulers, though perhaps as a gesture only, admitted their duty to the superior commands of the higher law. The coronation oaths of the medieval kings are to be seen in part from the standpoint of a governmental contract between the rulers and the ruled, a contract which limited the power and rights of the rulers.[1] The higher law is the beginning, uncertain enough, of constitutional government, *i.e.*, of limited and responsible government. The heavenly justice of St. Augustine's *Civitas dei* culminates in the eternal, divine, and natural law of St. Thomas, and in the practice of kings of accepting, in form at least, the duty of responsible government. Limited government is justified and defended by the theory of the governmental contract, founded in part on the Old Testament example of the "covenant," and also on the theory that people have a right to consent to government to make it legitimate.[2]

Whatever one may say of the Middle Ages as far as science and secular literature are concerned, it was a period of progress in ideas with regard to the state. There is continuity from the Greek democracy to the national democratic state of today, and undoubtedly one of the forces in that continuity of the moral theory of the state, which is so fundamental and characteristic of the Middle Ages, was the sheer strength of the ideas which ancient civilization contributed to the middle period and which that period used to some advantage despite the lack of political machinery. The modern machinery of government was developed in connection with the vigorous continuity of Greek, Roman, and Christian political theory. True, there were perversions, such as the stubborn modern theory of the divine right of kings, which properly includes only the theory that a particular man has a divine and indefeasible right to sit on a throne and that his subjects have a divine duty to obey his commands. But the solemn defenses of absolutism by divine right did not stand a moment without the equally stubborn opposition of those who were asserting the ancient and medieval principle of the right of the community to

[1] See R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V, *passim;* C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), *passim.*

[2] Carlyle and Carlyle, *loc. cit.;* Otto von Gierke, *Political Theories of the Middle Age*, tr. by F. W. Maitland (London, 1900).

determine the form of its government.[1] Even in seventeenth century democratic theory the moral function of political society was not lost from sight; Christianity was too great a force in human thinking for that to take place.[2]

d. The Modern Philosophical Theory of the State. While modern moral theories of the state return to Greek ideas, their tendency is to support the claims of political nationalism. As the Greeks saw in the city-state the final moral significance of social life, so the nineteenth century thinkers saw in the nation-state (to be distinguished sharply from the country-state) the type of political society most capable of giving the citizen his full moral stature. The enigmatic Rousseau stands both as an exponent of modern consent theories and as the reviver of secular and idealistic or moral theories of the state. In his *Contrat social* published in 1762 he idealized the small state founded on the consent of individual citizens, but this consent, expressed by being a party to the social contract, resulted in the formation of the "general will" as contrasted with the "will of all." By virtue of the existence of the general will there was established a moral and corporate person known as the state. Only in the state did the individual become morally and truly free; if the state applied coercion to the individual, it was merely forcing him to be free, because his *real* will was the general will which, paradoxically enough, was to be expressed by the majority in answer to the question: what is the general will on this particular issue?

Rousseau's theory of the general will and the moral significance of the social contract was developed into the metaphysical theory of the contract in the work of Immanuel Kant. The individual has

[1] See Bellarmine, *De laicis*, or *Treatise on Civil Government*, tr. by K. E. Murphy (Fordham, 1925), p. 128; G. P. Gooch, *The History of English Democratic Ideas in the Seventeenth Century*, 2d ed. (Cambridge, 1927); T. C. Pease, *The Leveller Movement* (Baltimore, 1916); J. N. Figgis, *The Divine Right of Kings* (Cambridge, 1914); J. W. Allen, *A History of Political Thought in the Sixteenth Century* (New York, 1928).

[2] For a brilliant analysis of the chief types of states, see Georg Jellinek, *op. cit.*, Ch. X. He believes (pp. 322–323) that the modern state was born in the Italian Renaissance because at that time the medieval dualism between church and state was repudiated. The modern state began with the emergence of the Machiavellian position, yet its character is essentially that of unity through the constitution.

C. N. S. Woolf has significantly shown the preparation for the modern idea of the state in the jurists' writings of the late Middle Ages. "It is very important to observe that the State, in the modern sense of the word, has two independent origins: that it is both the empire on a reduced scale and the older, self-sufficient, nonuniversal *polis*. Clearly the way was now open to a great advance in political thought." *Bartolus of Sassoferrato* (Cambridge, 1913), pp. 267, 290.

an absolute duty of obedience to the state, because only in the state does the individual truly become himself. However, the moral import of the social contract in Kant is not its historical occurrence but the necessity of the *idea* of the contract as a basis of the state. Kant did not believe that an individual really had the right to inquire into the origin of his state. In Hegel's theory of the state, idealism reached its highest development. The state is the objectification of the rational purpose of man, which is the evolution of the idea of freedom through the dialectic of history; the idea of the state is, in fact, the perfected rationality of man. While Hegel has been accused of attempting an abstruse and philosophical justification of the eighteenth and nineteenth century Prussian state, his theory has a universal appeal to all who see in political institutions a reflection or partial realization of the moral accomplishment which men fail to attain individually. His theory fits all states. It is especially valuable to democracies which wish to engage in the moral regulation of the individual, and many ideas of American puritanism are in consonance with the more abstract views of Hegel.[1]

The nineteenth century democratic followers of Hegel are called neo-Hegelians, *i.e.*, the new Hegelians. Their chief effort was to adapt to democratic institutions the essential principles of state life which were advanced by Hegel. The Victorian reaction to utilitarianism produced the English idealists. T. H. Green's *Lectures on the Principles of Political Obligation* (1879–1880) express most clearly the implications of the Kantian-Hegelian theory for democracy. At the beginning of this century in England, however, we find a strong defender of the general-will theory and the Hegelian concept of the state in Bernard Bosanquet whose classic work, *The Philosophical Theory of the State*, must, in a sense, be regarded as a definitive statement of Hegelianism for English-speaking peoples. Bradley in his *Ethical Studies*, however, returns more to the Platonic theory of justice in which each individual accepts and fills his station.

The greatest difficulty with this theory of the state is its identification of state and society, though Green's emphasis on rights provides the individual with an ultimate defense against social and political authority. Hobhouse notes that this theory of the state rests on three questionable or false (depending on one's point of view) hypotheses:

[1] For a brief account of German idealism, see W. A. Dunning "The Political Theories of the German Idealists," *Political Science Quarterly*, XXVIII (1913), 193, 480. The works of Kant, Fichte, and Hegel should be consulted, but the translations of their political works are sometimes difficult to get. See Victor Basch, *Les doctrines politiques des philosophes classiques de l'Allemagne* (Paris, 1927).

first, the actual will of the individual is often contrary to his real will; second, his real will is in fact the general will of society; and third, the general will is the will of the state, which involves the identification of state and society noted above. Such a theory of the state has resulted in fact in the exaltation of the nation-state as the common or universal self of each individual. It is not at all certain that the nation-state can integrate the moral functions of the individual; perhaps both larger and smaller areas of a federalized world are necessary to provide the conditions of the good life. Other critics, such as Laski, for instance, contend that the state is morally neutral in its acts and that we find the true moral qualities in the conscience of the individual. The separation of moral values from the individual conscience and will is a dangerous proposition, especially in democracies that exist for the satisfaction of individuals.[1]

The Consent Theory of the State. a. The General Nature of Consent. While the moral or idealistic theory seems much too rigorous for modern and realistic or positivistic interpretations of the state, the consent theory has much to support it from the standpoints of realism and of those interested in the moral development of the individual. The idea that government rests on consent or "recognition"[2] by the governed is a very ancient theory (we find Plato refuting the social contract principle), but it is only in modern times that any adequate machinery was developed to give vitality to the theory of consent. Modern democracy is, in fact, primarily the development of technique for the application of old ideas. The fundamental principle of democratic machinery is representative government, but the concept of representative government took centuries to develop into anything like its modern form.[3] It is probably true that, if the Greeks or Romans had conceived of democratic government in terms of machinery, democracy would have appeared much earlier on the political scene.

The consent theory of the state is fundamentally simple: the state is an organized political society controlled by the ruled for the benefit

[1] W. E. Hocking, *Man and the State* (New Haven, 1926), pp. 48 *ff.*; L. T. Hobhouse, *The Metaphysical Theory of the State* (London, 1918), *passim;* Norman Wilde, *The Ethical Basis of the State* (Princeton, 1924).

[2] See E. D. Thomas, *Chinese Political Thought* (New York, 1927), p. 109; J. W. Allen, *op. cit.* Part II, Ch. VI, emphasizes this idea in connection with the political theory of Richard Hooker.

[3] Even with the democratic machinery consent is still a moral idea; the machinery itself can never completely express the meaning of consent. It may be that consent can never mean anything more than consent with reservations. *Cf.* J. A. Ryan and M. F. X. Millar, *The State and the Church* (New York, 1922), pp. 100–101.

of the subjects. Since it is for the ruled, they have the right to determine the form the government shall take, what functions it shall undertake, and how it shall perform them. The ruled must determine the ends and purposes of the state; they have the right to say what shall be the content of the law; and they have the right to "cashier" rulers who insist on following policies contrary to the subjects' ideas of general welfare. Justice consists primarily in what the people think is just, and the people obey the state because they have consented to it in some definite and concrete sense. It is easy to see how intimately the consent theory of the state is connected with the idea of the right of revolution. Until the Russian Revolution, the basis of revolutionary activity was the consent of the governed.

b. Historical Development of Consent Theories. We find definite traces of the consent theory of the state in ancient and medieval works,[1] but it is only with the post-Reformation period that it begins to have an effect on the course of politics. The *Vindiciae contra tyrannos* of du Plessis-Mornay, published in the latter part of the sixteenth century, gives one of the earliest versions of the contract theory; this was based largely on the analogy of the Old Testament, feudal covenants, and Roman law. The king and the people covenant separately with God to maintain his worship, and, secondly, the king covenants to rule justly as the people covenant to obey. The work is a product of antimonarchic theory of the sixteenth century, but, like all early democratic theory, the actual machinery of democracy is hardly considered. The contract theory of government was the tool of resistance used by the Scottish Presbyterians and was transferred to England as a justification of religious resistance to the crown. At the same time the counter-Reformation theory of the Jesuits enlarged upon the right of the people to select their own rulers and the form of government.[2]

However, the great consent thinkers, or social-contract theorists, are Hobbes, Locke, and Rousseau.[3] Hobbes' *Leviathan* was an

[1] See J. Leclercq, *L'État ou la politique* (Bruxelles, 1929), pp. 22 *ff.* For a good examination of the development of the contract theory, see Georg Jellinek, *op. cit.*, pp. 201 *ff.*

[2] See W. A. Dunning, *Political Theories from Luther to Montesquieu* (New York, 1905); R. G. Gettell, *History of Political Thought* (New York, 1924), Ch. IX; J. W. Allen, *op. cit.;* Ryan and Millar, *op. cit.;* Bellarmine, *op. cit.*

[3] A clear distinction must be made between the governmental and the social contract. The governmental contract idea is medieval and it is simply a basis for legitimate rulership; the social contract, on the other hand, is an explanation of the *origin of political society* by contract or covenant, and the establishment of government is generally an incidental product of the social contract. Since the Middle

attempt to found absolute government on the basis of consent. Following the ancient models, man lived once in a prepolitical state; this state of nature was one of fear and misery, and in it man's life was short, nasty, and brutish. Out of this fear and warfare of the state of nature came an agreement to be subject to the rulership of a monarch, or perhaps an assembly. But the ruler was not a party to the contract; there was only one contract, the social contract. Differing from the older Christian theology, Hobbes made the will of the monarch the source of law and the actual fountain of justice. Natural law is not entirely rejected; it serves only as a basis for the organization of the community and not as a basis of individual right. In the state of nature there was no justice since there was no law; it was not until the state was formed that justice could be conceived. We do not accept the pessimistic psychology of Hobbes, nor do we relish the fact that, while his theory begins with consent, it ends in a government of force. His theory was accepted neither by democrats nor by the defenders of absolute monarchy, for the latter were not ready to found government on craven human nature and force; they still desired for government the divine stamp of approval and held, generally speaking, the theory of the divine right of kings.

While Hobbes, the philosopher of fear, defended in fact the absolute government of the Stuarts and of Cromwell, John Locke supported the Glorious Revolution of 1688 in his *Two Treatises of Civil Government* (1690). Locke's philosophical theories attracted many admirers from the Continent, such as Voltaire, and he was considered the exponent of eighteenth century common-sense rationalism. But his sensationalist psychology and his realistic treatment of human experience were not extended to government, for Locke based the state on natural law and on a condition of nature from which men emerged by means of the social contract. The state of nature was a state of inconvenience, not one of war and fear. All in it were governed by the law of nature which gave every individual the right to life, liberty, and estate, which altogether was called "property" by Locke. But since the continuance of these rights in the state of nature was uncertain, government was created by a social contract and the civil state emerged.

Ages conceived of society as produced by divine will because of the entrance of sin into the world, or as a natural growth, according to Aquinas and Bellarmine, a social contract was irrelevant. In an age of rationalism, in which the historic categories of Christianity were under question, it was possible and necessary, however, to give an explanation of the foundation of society. The weaknesses of the social-contract theories and the divine-right theories make it very questionable whether the substitute for the medieval conception of the origin of the state was an improvement.

Each individual, however, retains certain essential rights invested in him by the law of nature, for no government has a right to take these away.

There is considerable dispute among the students of Locke as to whether he has a second or governmental contract; in any case, a second contract is only to be implied, if it is assumed that he believed it was necessary. What is more important is that Locke insisted that governments as well as individuals are limited by the fundamental law of nature. Government is an agent or trustee of the rights of the people, and if the government violates the law of nature it is the right, even the duty, of subjects to revolt and establish another government which accords to them their natural rights. Locke, however, did not believe that men were prone to revolt, for he laments the fact that, once men become habituated to the evils of a traditional government, it is almost impossible to alter public opinion, all of which the American Declaration of Independence faithfully repeats.

The theory of Locke had a profound influence on American political thought. While Jefferson read the works of the great Cardinal Bellarmine, he read more intensely the English political thinkers, notably Locke. The philosophy of the Declaration of Independence is that of Locke, so that the philosophy of our revolution is in fact the philosophy of the Revolution of 1688 in England. When we recall the fact that the Supreme Court of the United States still refers occasionally to the "social compact" and that it still thinks of "fundamental rights" and "the principles of free government," it is not difficult to grasp the tremendous historical significance of the political ideas of Locke. We must not forget, however, that neither Locke nor his follower Jefferson were democrats in the modern sense of the word, for neither believed in either universal or manhood suffrage. Also the natural-law philosophy of the eighteenth century was individualistic, and government was conceived of as doing nothing more than protecting the rights of individuals. The writings of Thomas Paine, his *Common Sense* and his *Rights of Man* especially, illustrate the extremity of the Lockian philosophy of government. For Paine society is natural, but government is a product of evil, and the less we have of it the better. In general, the defenders of the social contract as interpreted by Locke felt that one of the surest steps toward tyranny was to increase unnecessarily the functions of government.

The background of the French Revolution is in part a background of philosophy. Anyone who seeks to create a revolution must appeal to reason or sophistry to induce men to leave their customary ways of looking at life. There is much discussion as to the influence of

Rousseau in France. Some contend that the French Revolution made no application of his theories, but others see in the broad principle of consent, as a basis of government and the revolutionary enthusiasm for liberty, the influence of the citizen of Geneva. Rousseau's state of nature was neither one of war nor one of reason as was true of Locke's theory; it was one of innocent emotional perfection. Man was corrupted, according to one stage of Rousseau's thinking, by the creation of private property in land. But in any case, we must not associate the finished theory of the *Contrat social* too closely with his earlier and youthful adulation of the state of nature.

Rousseau admits that man is born free, but is everywhere in chains; he proposes to explain how this can be justified. The justification is the consent of each individual as a party to the social contract by which a small democratic state is formed. Each person surrenders to all his total sovereignty; he surrenders his rights; and he receives them back as a member of the state. But the sovereignty of the people cannot be delegated or alienated; government is not a party to the contract, for it is only an inferior agent for carrying out the general will of the participating group of citizens who are at the same time subjects of the state.[1] For all practical purposes, government is absolute, yet in fact we must suppose that he did not think of government as preforming a large number of services or as interfering unduly with the private conduct of individuals.

Both Hobbes and Rousseau had only one contract, the social contract; Locke is sometimes alleged to have urged a governmental or secondary contract; the American thinkers varied between the two types and often confused them; and it remained for a German thinker of the late seventeenth century, Samuel Pufendorf, to insist on the necessity of both a social and a governmental contract.[2]

c. The Evaluation of the Contract Theory. Did the great social contractualists believe that the contract was an historical fact? Those who are kind toward them in the present generation insist that they did not assert the historical fact of the contract, but an older generation found great delight in showing the historical absurdity of the theory. It was not until modern research into the social structures of primitive man that we could definitely say that an historic social contract was

[1] It is probably true that Rousseau saw no second contract, *i.e.*, governmental contract, in Locke.

[2] Gettell, *op. cit.*, Ch. XIII; Samuel Pufendorf, *Of the Duty of Man and the Citizen* (1673). The edition of this work of 1682 has been translated by H. F. Wright and reprinted in *The Classics of International Law*, J. B. Scott, ed. (New York, 1927).

impossible. It may be said also that, while there were no social contracts before the great triumvirate, there were attempts at social compacts afterward. Perhaps it was the belief in the historic soundness of the Bible which enabled people to take the theory seriously, for the seventeenth and eighteenth centuries on the whole saw in it no absurdity. It was more or less axiomatic with democratic thinkers that a social contract or governmental contract was the proper foundation of the state. We now say that government evolved, and that no single theoretical explanation is sufficient. At the present time students of the social-contract thinkers realize that they were dealing primarily with the justification of political authority, and that they believed the consent of man backed by his promise would justify political authority.[1]

The historical school has taken the social-contract theory too literally in its criticism; the social-contract theory needed the support of precedent, and the mythical history it used gave it that legalistic, historic flavor so necessary for it to attain popular support. While the organic theory of the nature of the state, as shown in idealistic and sociological concepts, has largely taken the place of the contract theory, those who are ruling a state cannot forget for long that they need support, and that consent is absolutely essential in political activity. It is undoubtedly true that the social contract is not an historical fact, but that does not do away with the consent basis of political life; there may be inescapable reasons for being willing to obey the state, yet we do and we must consent to the continuance of government day by day. The social contract is reordained with each rising sun. It is not an historical problem with an artificial state of nature and an a priori natural law; it is a problem of the present and the future.[2]

The social-contract theory has been criticized as bad history, bad logic, and bad ethics. All essential criticisms of it are true in a large measure, but the continued acceptance of a consent theory of government, while in part unsound, must also be in part based upon political realities. David Hume, whose chief political writings appeared near the middle of the eighteenth century, the century of English political

[1] G. E. G. Catlin, *Principles of Politics*, pp. 166 *ff.* The actual formation of states, *e.g.*, Iceland and California, is discussed in J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 262 *ff.* Bluntschli states that in the historical formation of states the unity of people is presumed and that the majority simply takes action.

[2] The state, in order to accomplish its ends, must be permanent as well as based on consent. The idea of permanence in the state is really in conflict with the idea of the state as based on consent.

complacency, is vitally associated with the attack on the social-contract theory.[1] He showed that the intelligence of primitive man was not equal to formulating a contract, that even if formulated it would not bind successive generations, and that the chief factors in man's consent to the state are custom and habit. When men are born into the state, they give little attention to its origin or cause. The trouble with the contract theory is that it proves too much, for men are not free to withdraw from the state, as Hume indicated, and this lack of freedom is not satisfactorily explained by the mythical consent of forbears.

Hume went further. He attempted to show that the state was founded on utility rather than on consent. While habits of opinion control the government, these habits of opinion are governed by the interests of man, for man is essentially selfish. Law is necessary to prevent the encroachment of the strong upon the weak. The state is thus justified because it is necessary and men are bound to obey, not because of consent but because it is the basis of the social order. This utilitarian interpretation of government, combined with the fact that the social contract was based on no history at all, has led to its general rejection.[2] Hundreds of writers have pointed out that man is born a member of a family and a member of a political society and that he can withdraw from neither.

One of the most difficult problems of the social-contract theory has to do with its logic and its ethics. The social contract is for the purpose of establishing authority, but on what authority can this authority itself be set up? And if on no authority, why should persons obey? The need for an authority behind the contract itself was felt by Hobbes who urged that men should, by natural law, keep their word. By virtue of this ethical obligation to keep one's word, the state is justified in using coercion to make men stay within the bounds of the defined justice of natural law and the positive law enacted by the government. But this does not hold for those born after the original contract. The solution here is that men, by continuing to live in the state, by owning property there, and by accepting the protection of its laws, have given a tacit, yet perfectly tangible, consent. The doctrine of tacit consent has been worked to the limit, for, indeed, that is the only form of consent that the social-contract theories have left for the ordinary individual. If consent is founded

[1] See Hume, *A Treatise on Human Nature* (1739–1740), Bk. III, Part II, especially Sec. 8. See also *Essays*, edited by T. H. Green and T H. Grose (London, 1875), Vol. I Part II, Essay XII, "Of the Original Contract."

[2] See H. S. Maine, *Popular Government* (London, 1885), pp. 154–159.

upon such an attenuated line of ethical sanction, and if persons are not at liberty to depart from the state, it is idle to urge that consent is really the basis of authority. The realists have not been slow to indicate this, but, to be fair to the earlier thinkers, it must be said that all of them realized the great danger of social disorder. In other words, they did not completely avoid the utilitarian doctrine of Hume in regard to the state, that the latter was socially necessary for the continued existence of ordered life. In the process of refinement, it might also be said that modern consent to the government of particular men and measures is not consent to the formation or the continued existence of the state.

The Utilitarian Explanation of the State. While the social-contract theory is now of historical and casual interest only, the modern tendency of consent theory is toward a close association with the principle of utility, as advanced by Jeremy Bentham in the latter part of the eighteenth century and John Stuart Mill about the middle of the nineteenth century. Bentham declared that the fundamental principle or end of legislation is the greatest happiness to the greatest number.[1] This happiness can be fostered by an individualistic policy in legislation in which reforms remove obstacles to individual happiness. The social-contract theory, the principle of natural law, the antiquated rule of judicial custom found in the common law and expounded in Blackstone's Commentaries all tend toward the defeat of the utilitarian principle of the greatest happiness to the greatest number. Government, of course, rests on consent, but men obey the state finally because of its utility in the individual's life. It may be argued that Bentham and his followers did not get away from essential ideas of the contract theory, for their state was based on consent, and in line with the contract theory individuals were held to be equal in political significance.[2]

While much absurdity is associated with Bentham, such as his proposal to the governments of the world to codify their legislation in accordance with the greatest happiness principle, he had many strong followers. Dicey has shown the influence of the utilitarian reform

[1] C. E. Vaughan, *Studies in the History of Political Philosophy before and after Rousseau* (Manchester, 1925), Vol. I, pp. 261–262, states that the greatest happiness principle is the hardest in the world to apply. It is essentially abstract and unhistorical; it is another name for natural rights.

[2] See Jeremy Bentham, *A Fragment on Government* (1776); *An Introduction to the Principles of Morals and Legislation*, Oxford ed. (1823); William Graham, *English Political Philosophy from Hobbes to Maine* (London, 1907); John MacCunn, *Six Radical Thinkers* (London, 1910); Leslie Stephen, *The English Utilitarians*, 3 vols. (London, 1900).

movement, and Bentham has, in fact, been credited with originating many significant legal reforms in the nineteenth century in addition to the general faith of that century in the power of law to improve social conditions.[1]

For Bentham and his followers the test of right and wrong was whether a given measure was conducive to the happiness of the greatest number. Such a position, of course, was contrary to a rationalistic interpretation of right and wrong, in which the truth was not relative to results, but was absolute and to be realized by the force of right reason. The nineteenth century in England was deeply influenced by utilitarianism, and it is probably true that in America today the appeal of pragmatic philosophy, which has much in common with utilitarianism, is strong because of the relatively persistent influence of earlier utilitarian views.

Bentham believed that happiness or good consisted in the presence of pleasure and the absence of pain, and that unhappiness or evil was the opposite, *i.e.*, the presence of pain and the absence of pleasure. He would not admit that certain pleasures, though equal in quantity, were rationally better than others. Pleasures and pains differed in intensity and duration, for example, but they did not differ in quality. Two pleasures of equal intensity, duration, etc., were also ethically or morally equal. The rude brutality of such a position is rather shocking to those who feel that some things are inherently superior to others, and it seems that individuals are unwilling to believe that they are not capable rationally of deciding whether one pleasure is better than another of similar characteristics. Moreover, Bentham probably relied too much on the inherent selfishness of man, and it is not true that always and consciously man works for his own interest. It is generally conceded that persons often do not know what their interests are, and they are led to act from other than purely selfish motives.

John Stuart Mill attempted to clarify the difficulties of utilitarianism which opposition to Bentham brought out. He admitted the possibility of unselfish actions, and thus conceived of a qualitative aspect to pleasure.[2] Mill's philosophy is as outstanding in general political science as is Bentham's in connection with the theory of legislation. By Mill's time it was not considered necessary for utilitarian philosophers to attack the social-contract theory and natural law. The more immediate problems of public policy demanded treatment. One

[1] A. V. Dicey, *Lectures on the Relation of Law and Opinion in England during the Nineteenth Century*, 2d ed. (London, 1920).

[2] See J. S. Mill, *Utilitarianism* (1863), *On Liberty* (1859), and *Representative Government* (1861); Graham, *op. cit.*

of the implications of both the social-contract theory and utilitarianism is that political democracy with its one-man-one-vote formula is a sound basis of the state. Mill was greatly interested in the problem of liberty and authority with primary reference to the functions of the state. He was an individualist and laid down a concise but generally unworkable test of state function. The general proposition was that the state should not interfere with those acts which affect the individual alone, but that it may act in the interest of the general welfare when the acts of the individual affect others as well as himself. It is impossible to delimit other-regarding acts from self-regarding acts, but at the time Mill was writing such a demarcation was necessary if utilitarian philosophy was to retain its historic leaning toward individualism. Individualists limit the function of the state, and it may be said that in all cases the limited-function state is founded, in theory at least, on the utility of its service and the consent and recognition of this service by individuals.

The *reductio ad absurdum* of the consent theory as shown in political individualism can be found in the theories of Herbert Spencer, the remarkable English sociologist of the latter half of the nineteenth century. Mill and Spencer have had a great influence on American social and political thought. Mill has been the chief support of orthodox individualistic economics in America, while Spencer has been the chief supporter of those most desirous of retaining the eighteenth century theory that government is best when it governs least. Spencer's political ideas are found chiefly in *Social Statics* and *The Man versus the State*. His organic theories of the nature of the state are developed in special articles and sociological writings. The theories of Spencer, combined with Sir Henry Maine's thesis of the historical development of individualism, which contended that at least to his day the progress of society had been from status to contract, made a powerful appeal to the American judicial mind. In fact Mr. Justice Holmes, in his dissenting opinion in the famous New York baker's case, declared that the *Social Statics* of Herbert Spencer was not a part of the Constitution of the United States.[1]

Spencer offered what he called the *law of equal freedom*, by which each had the freedom, by natural law, to do all that did not interfere with the equal freedom of others. The functions of the state were to be limited, for the realization of this law, to the barest police protection. Many of the ordinary functions of the state of today were to be left to private initiative. The state should not compel the payment of taxes for education or insist on persons' taking health precautions

[1] Lochner *v.* New York, 198 U.S. 45 (1905).

except insofar as it might interfere with the freedom of others. While Spencer's theory of government has not been carried out, and while all recent movements point to an increase in the function of the state, his theory has been a powerful incentive to those believing in political individualism; his arguments have been a haven for all those who fear the growth of the bureaucracy.[1]

The Force Theory of the State. We now turn to a different concept of the nature of the state, which may be denominated by the force or power theory. It claims for itself the distinction of being realistic in that the facts of political life are painted in their natural colors, if not a little darker for artistic effect. The single and persistent characteristic of this point of view is that the state is based on force. Of course it is true that more than consent is necessary for the continuance of political life; there must be force (or let us say authority) as well as consent, but force is never a justification of state activity.[2] The development of the state is traced in the work of those who were ruthless in the exercise of political power and who were willing to crush minorities without regard to any academic theories of individual rights. Machiavelli's *Prince* is considered the gospel of this approach to the state.[3] For Machiavelli, at least in the *Prince* rather than in his *Discourses*, the first duty of the governors is the preservation of the state, and at times it may be necessary, human nature being what it is, to resort to unethical practices as judged in the light of private morality.

Von Treitschke in the *Politik* declares that the state is power, and that the highest political morality is the preservation of the individual national state. States are sovereign and stand toward each other as legal equals, though in fact they may not be equal, either from the standpoint of military power or in their ability to carry forward the burden of civilization. As long as states are sovereign and independent there will of necessity be wars, since there can be no such thing as a judge superior to the individual state. The state is the chief repository of public morality, a morality that is distinct from private morality treating of the relations between individuals. For

[1] Spencer's law of equal freedom is almost identical with Kant's principle of right. See W. A. Dunning, "The Political Theories of the German Idealists," *Political Science Quarterly*, XXVIII (1913), 197–198. The use of Spencer to buttress individualism can be seen in the introductory notes to each chapter in Truxtum Beale's edition of *The Man versus the State.*

[2] See Willoughby, *The Ethical Basis of Political Authority*, pp. 34–35. See Rousseau, *Social Contract*, Book I, Ch. III.

[3] See Acton, *The History of Freedom and Other Essays*, Essay VII, for an admirable discussion of Machiavellianism and its influence on European history.

states are charged with civilizing and colonizing missions in the world. The individual is bound to obey the state for he is only a part of a great movement in human progress represented by his peculiar nationality; his private morality must give way before the state as embodied power and public morality; and his consent, especially if he desires to resist the state, is largely immaterial. Von Treitschke attempts to interpret the process of history as it is or was, but he is also determined to support the moral side of life. In fact, paradoxically enough, the state is power and is justified because of the ends of morality institutionalized in the civilization that it serves.

The power theory is largely the theory of the authoritarian state, and its position may be generalized by saying that, while law may come from custom and legislation, the state is a product of force and remains inherently associated with force.[1] We find Mussolini receiving a doctor's degree from the University of Bologna because of his laudatory essay on the statecraft of Machiavelli's *Prince*. Fascism does not stress the consent of the individual; it stresses rather the submergence of individual will in the will of the nation, which is found in the historical national tradition. Fascists argue for duties, not for rights; they argue for obedience and force rather than for consent and agreement with the policy of the state. When we look at Anglo-Saxon traditions, which we follow as to the limited state of an associational or consent nature, Mussolini's views and the well-reasoned views of his followers seem remote from the path of political progress.

But Mussolini wants to be judged only by the results of his regime, and objectively it is true that Italy has been stronger internationally than she was under a weak and wavering system of parliamentary government. We may insist on constitutionalism or the rule of law, but Mussolini will have nothing of such theories of liberty when what Italy needs is a splendid corporate and integrated political life. When the great ends of the state are questioned, it is not even kindness or charity to permit the minority to indulge in captious criticism of the program which, by its results, is making the state great.

Force and Realistic Politics. If we grant that human beings can conceive of purposes and then attain to some degree those purposes, it is not wholly material for us to inquire into the history of the primitive state. But the primitive Western state emerges first in its military functions; it is first an organization of power. The first assemblies were probably composed of warriors or the tribal aristocracy, who were rulers by virtue of their ability in religious and military

[1] T. H. Green admits, significantly, the importance of conquest in the historical origin of the state. *Principles of Political Obligation, Works*, Vol. II, p. 434.

functions.[1] The tribe was a fighting unit before it was a judicial unit; it waged wars long before the theory developed that wrongs between individuals were of public interest. Even in the Twelve Tables of Roman law, probably drawn up in 450 B.C., we do not have a clearly modern theory of wrongs, and the aid of the state is primarily to assist the injured individual in obtaining redress from those by whom he is injured.[2] It has been the service of legal historians to trace the development of the adjudicative functions of the state. Through long struggles in England, for instance, the royal courts usurped the judicial functions of the feudal courts. But long before this took place, what political organization there was lay primarily in the fighting capacity of the government.

The force theory of the state can be given a more modern interpretation. The realistic theory of government was held by many of the conservative framers of the Constitution of the United States. We can read in *The Federalist* (written by Madison, Hamilton, and Jay) that one of the prime functions of government is the protection of property and the balancing of conflicting interests. Political parties are given an economic interpretation, and the function of the government is not primarily to recognize the force of public opinion but to thwart it when it seeks to overturn property interests protected by government.[3]

There are several levels in the economic interpretation of government. It may be said, for instance, that economic forces tend to form one's opinions in the long run, but in this connection it may still be maintained that public opinion is the primary force in the state. The argument is usually carried further than the assertion that those who have economic interests seek to use the state to protect them.[4] The true economic interpretation of politics is that those who have economic power have, by virtue of that fact, the balance of political power. This is the theory of political power set forth in James Harrington's *Oceana* (1656), and it was coupled by this writer with the need of a wide distribution in the ownership of land, for Harrington

[1] Munroe Smith, *The Development of European Law* (New York, 1928); Edward Jenks, *Law and Politics in the Middle Ages* (New York, 1898); Alexander Goldenweiser, "Anthropolitical Theories of Political Origins" in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. XI.

[2] See in general W. W. Buckland, *A Text-book of Roman Private Law from Augustus to Justinian* (Cambridge, 1921).

[3] See C. A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1913) and *Economic Origins of Jeffersonian Democracy* (New York, 1915).

[4] See Roscoe Pound, *Interpretations of Legal History* (New York, 1923), No. V.

believed that political power followed the ownership of land. When we witness the economic impotence of the farmer as well as his political impotence, we realize that today it is not the ownership of land in itself that gives power. But we are not sure that the power theory of the state is wrong when it asserts that those who control the highly organized and integrated industrial titanics of today also control politics. The force theory of the state would assert that those who have the power over industry have power over political destiny, and those who have this power naturally use the state in their own behalf. However, we must remember that economic interest is a disruptive force, and that economic power is not sufficient to guarantee control of the state. To dominate the policy of the state there must be organization of interests and the long-run control of the formation of public opinion.[1]

Modern Russian political theory rests on the power interpretation of the state. The state for Lenin, the great theorist of the revolution, is an agent for the repression of the opposition. When the opposition, *i.e.*, those who oppose the dictatorship of the proletariat, have been crushed, the state will become a mere shadow, and the voluntary forms of association will take on added vitality with the destruction of the classes that symbolize the struggle for economic power. The individual or the groups of individuals who resist the true theory that communism presents should be crushed, and the state is the proper agent for that service. Liberal democracy is anathema to the communist, just as political democracy is anathema to the Fascist. Dictators and most utopian thinkers have this much in common at least, that they do not believe in the consent theory of the state. The rejection of consent implies the rejection of all the machinery that has been developed in the past for the expression of consent, and it implies the development of the technique of dictatorship and corporate efficiency.

While Russia may stamp out the defenders of private property, and the Fascists may stamp out the communists, each is using the technique of the other, and each is giving by deeds an interpretation of the nature and perhaps the origin of political authority. Wherever communism or dictatorships take root, the method of force and power

[1] Hocking, *op. cit.*, Ch. XIX, p. 283, n. 1, and p. 328. C. A. Beard, *The Economic Basis of Politics* (New York, 1922), p. 87, affirms an inherent conflict between what ought to be and what is. Hocking, p. 382, remarks: "What the economic interpretation stands or falls by is the proposition that political power is in substance economic power—Harrington's thesis; or, more generally, that material necessity plays the role in history which Hegel attributed to Spirit—Marx's thesis." See Sun Yat Sen, *San Min Chu I* (Shanghai, 1927), pp. 387 *ff.* for a criticism of the materialistic interpretation of history.

is at work, and the natural query arises whether those who are actually controlling democracies by controlling the formation of opinion would not wish, in the interest of efficiency, to do likewise. But communism and Fascism must bow in time to consent, if only to a leader democracy as in Germany, and it may be that the state as force or power is the expression of the primitive phase and a passing or temporary phase of the modern state. It is probable that the expertism of dictatorship cannot indefinitely do without consent; and it may find its peculiar technique not suited to the manufacture of consent which springs from fundamental agreement on matters of policy that must be defended by rational means.[1]

The force theory of the state is closely connected with a realistic study of political life, and certain aspects of pluralism appear in the camp of force and power. But insofar as pluralism limits sovereignty because of the rights of groups and the fact of loyalty to other associations than the state, pluralism is presenting a modified form of the consent theory. Duguit has argued that the fundamental characteristic of the state or the government is a differentiation between those who rule and those who are ruled. The state is a public-service organization; its right to exist (in terms of particular governing officials) is an assessment of the services that it performs. It is justified in the use of force if force is necessary for the performance of public services. Thus the state is an organization of force, inasmuch as ruling implies the use of force for the attainment of given ends. This conception of the state is connected with his theory of objective law. Mutualism is merely a statement of interdependence between men as a fact, but, if we go beyond this and assert that a conscious recognition of interdependence, which is in part an act of free will, is necessary, at least for those who are ruling the state, then the concept of social solidarity emerges. Modern French philosophy shows a distinct trend toward "solidarism," and under the guidance of Léon Duguit and Léon Bourgeois a definite interpretation of the state as a public-service agency has been developed. Social solidarity, however, is really objective as to the individual will, and it is this lack of emphasis on consent as the primary element in the life of the state which places Duguit with the force theorists.

Duguit's theory is part of a general sociological interpretation of the state. Sociological theory is inclined toward the position that the state is merely another manifestation of group life. While sociological

[1] See John Dickinson, "Democratic Realities and Democratic Dogma," *The American Political Science Review*, XXIV (1930), 283. See N. Lenin, *The State and Revolution* (London, 1919); Merriam, Barnes, and others, *op. cit.*, Chs. VI and VII.

theory has often stressed organic theory, such a phrase as "the social organism" being found frequently in sociological writings, the interpretation of political life in terms of the functioning of groups does not necessarily carry with it the organic theory of the state.[1] In discussing methods of political science study, the opinion was ventured that organic theories had little contribution to offer. The sociological emphasis is on the *science* of society, and probably the first step in the realistic study of politics is to gather facts. Force or coercion is undoubtedly one of the first facts with which we have to deal, and therefore the acceptance of force by sociological thinkers is not unreasonable if we grant their method of approach in the first instance.

Modern proletarian political theories, such as communism, socialism, guild socialism, syndicalism, and anarchism, all give power-and-force explanations of the state; their distrust of the state is based on a belief that destructive forces control the government and use its power of coercion contrary to public welfare. Most forms of collectivism, with the exception of state socialism, would radically reorganize the state, or destroy it, in order that social organization might serve different ends. The socialists, while not quarreling with the present political organization of the state, would reconstruct the theory of state functions. For the socialists the use of force is not primarily bad, but they do feel that force is needed far too much to support the present order of economic society.[2] For all proletarians except the moderate socialists, the *political* state as we know it is inherently a force organization for the support of pernicious interests. The socialists, on the other hand, do not feel that the present state system is inherently individualistic or capitalistic, for they contend that economic reform is possible by the proper use of existing political machinery.

The Juridical Theory of the State. The juridical theory does not necessarily involve any doctrines of the nature of the state which include ethical or moral evaluations, as is the case with the moral theory of the state, the consent theory, the force theory, and, in general, sociological theories. All interpretations of the nature of the state must adopt some theory of law. It may be contended that positive law theory is unsound; it may be asserted that there is no

[1] F. W. Coker, *Organismic Theories of the State* (Columbia Studies, Vol. XXVIII 1910). See also Bluntschli, *op. cit.*, pp. 76–77; the state for Bluntschli is a national organism. Hobhouse, *The Metaphysical Theory of the State* (London, 1918), pp. 96–97, distinguishes between the organic and the philosophical theory of the state.

[2] *The Socialism of Our Times, A Symposium*, ed. by H. W. Laidler and Norman Thomas (New York, 1929); Paul H. Douglas, "Proletarian Political Theory" in Merriam, Barnes, and others, *op. cit.*, Ch. VI.

distinction between public and private law as Duguit maintains; but, whatever the theory of the nature of the state, some theory of law must likewise be included. It might be observed that the theory of the state as a juristic person, while often connected with moral theories of the state, is not necessarily so related. Certainly, the advocates of the juristic nature of the state are not anxious to be involved in ethical interpretations, for their concern is to examine the system of legal values, enacted or otherwise, which are enforced. However, writers have been unwilling to admit this separation in attacking the moral or absolute theory of the state. The only point of interest here is that the juridical theory of the state, with regard to method and content, must be separated from the other theories we have treated in this chapter. All jurists, however, must proceed on the assumption that a legal system is a necessary part of public order in an objective sense, and most of them merely assume the ethical validity of such an order.

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Chapter VI

THE ENDS OF THE STATE

The whole world is kept in order by punishment, for a guiltless man is hard to find; through fear of punishment the whole world yields the enjoyments (which it owes).—From the Mahabharata and the Manusamhita.[1]

Change in Political Life Raises the Problem of Ends. If the conventions and institutions that men have established to regulate their lives in relation to one another were static and unchanging despite efforts to change them, or if it were possible for a society to exist in which the vast mass of individuals were satisfied with things as they are, the problem of the ends of the state would not be important. For after all, the state is merely one aspect of the conventions or agreements of men as to how things ought to be and are done, and institutions of a political character are merely structural devices or organizations for supporting conventions. The rate of change in society, roughly speaking, determines how significant is thinking about the ends of the state. Such thinking is important because the direction of human development is controlled, at least to a certain extent, by the content of the will. Many feel that industrial society is changing faster than men desire it to change, and that many of the changes are outside the control of public opinion.

There have always been maladjustments in society, *i.e.*, there have always been disappointment, suffering, and the failure of men to develop to their best. But if there were no change, either in the amount or intensity of this maladjustment, and no change in human thinking about suffering, society would soon reach a balance or equilibrium. The economist is continually talking about an equilibrium between demand and supply in goods, prices, and the rate of interest, but this is always over the long-run period, and the term is seldom used in connection with particular demands and supplies. So in the state there is a continual struggle between what men want of the state and what the state gives them. If men continued to want the same things and the state continued to function in precisely the same way, an equilibrium would be reached, however unfortunate it might

[1] U. N. Ghoshal, *A History of Hindu Political Theories* (Oxford, 1927), p. 60. By permission of the Oxford University Press.

be. The struggles of politics have been interpreted in terms of higgling in the political market, but this is true only if one could get what was desired of the state by paying the price demanded. There is no equilibrium if there is no supply, and there are probably some things the state cannot achieve, even if one were willing to pay the price. There must be effective demand and effective supply; the effective demand is what they can get out of the state and the effective supply is what the state has done or is able to do in the future.[1]

But change is obvious. There is change in the materials of politics as moral and economic values shift. The industrial revolution, the commercial and economic discoveries of science, and the development of means of transportation have altered the external structure of society. These changes have made living a problem differing with conditions, and new evils in terms of suffering have developed as the benefits of industrial and commercial society have been diffused. But also, and perhaps in the long run even more significant, there is the undoubted fact that by and large men are much more conscious of their particular misfortunes because of their knowledge of the conditions they might enjoy. Appreciations of this kind must inevitably be one result of generations of education—a by-product of the printing press, books, and journals, and of an economic surplus that makes education possible. Thus it may be said that the theory of a static society is utterly impossible in the present age though it may have been possible in the past, even though in the past there never was an actually static period. Society is changing, but there was never a period in human history when men have been so determined to control those changes and so willing to organize and sacrifice individually in order to attain this control. Consequently, the destiny of society is more important than in the past, and, just as the problem of method looms larger with the clarification of the present order, so does the problem of the ends of the state demand more and more rational attention. Practically every brand of social theory involves some conception of ends in general and finally some attitude concerning the ends of the state.

Is the State a Means or an End? We may ask whether the state is an end or a means. For those who stress consent, the state is clearly a means; for those who believe in the moral or the force theory, the state becomes an end in itself whether good or bad. Thus it has been said that for the Greeks the state was an end in itself, while for Jefferson

[1] Catlin uses this type of analysis in connection with the balance between liberty and authority. *A Study of the Principles of Politics* (New York, 1930), pp. 114 *f.*

and Paine it was only a means, and often a poor one at that. It is distinctly true that in modern times the individual has become separated from many customary forms of grouping; there has been a development of individuality. To stress individuality of a certain kind makes the Greek and Hegelian positions hardly tenable, and the upshot of individualism, whether it is purely economic, *i.e.*, capitalistic, or moral, is to declare that the state is only a means to an end.

There are qualifications, however, for Willoughby asserts that whether the state is a means or an end depends on the point of view. If the state is considered as distinct in any sense from the body of persons who compose it, it becomes an end in itself.[1] Bluntschli would not accept either the ancient or the modern theory entirely. A picture may be an end or a means; it may be the end of a life of artistic aspiration or it may be a means of getting food. So individuals may gain from the state and for them it may be only a means, but at the same time it may be viewed as an end in itself.[2]

As false ends of the state Bluntschli lists the conceptions (1) that the state has for its real end the rule of the supreme power, especially of princes over their subjects; (2) that the end of the state is to carry out the divine will, *i.e.*, the end of the state makes it an ultimate theocracy; (3) that the state may have as its end the service of some object external to the people and the country. In this last catagory he places the papal claim to territory which will give the Roman church an independent temporal status. Likewise, the principality of Lichtenstein has no legitimate end since Bluntschli claimed that it existed solely "to support the rank and dignity of the princely dynasty which lives outside the country at the imperial court of Austria."[3]

On the other hand, there are insufficient or exaggerated views of the end of the state. To assume, as did Kant, Fichte, and von Humboldt, that the state should exist only for the assurance of men's rights, restricts its activity within too narrow limits. This conception of the state was useful in protesting against overgovernment; it was a

[1] W. W. Willoughby, *An Examination of the Nature of the State* (New York, 1896), p. 317.

[2] Bluntschli, *The Theory of the State* (Oxford, 1892), Bk. V, Ch. I. On p. 307 Bluntschli remarks: "The one-sided view of the ancients, which overlooked the individual in the nation, seriously endangered his liberty and his welfare, and led up directly to the omnipotence, which easily degenerated into tyranny, of the state. The equally one-sided view of the moderns, which is unable to see the wood for the trees, fails to recognize the majesty of the state, and thus tends to dissolve it into a confused mob of individuals and to encourage anarchy." See H. Krabbe, *Kritische Darstellung der Staatslehre* (Haag, 1930), Ch. XI.

[3] Bluntschli, *op. cit.*, Bk. V, Ch. II.

means whereby the *Rechtsstaat*, or legal state, was substituted for the absolutist *Polizeistaat*, or police state. Such a view leads to the neglect of economic interests and intellectual interests, to the paralysis and death of public spirit in the nation, and to "the encouragement of a petty and pedantic system of law, the result of which is a litigious temper fatal to authority of the state." The opposite view, that the general happiness is the true end of the state, leads to evils of a different character, since as a result of it government is led to interfere unduly in the lives of men who are "not citizens in their whole life and being." It leads to a dissipation of the energy of state in efforts to attain objects that are really beyond its effective power.[1]

There is only one true end of the state, says Bluntschli, but it must be defined with care. It is not justice or the realization of the law, since the law is rather a condition of politics than its end. Even the Romans, legally minded as they were, did not consider *jus* to be the supreme end of the state. The domain of morality is far more comprehensive than that of politics, and therefore Hegel's belief that this is the end of the state is unsound. To attain public welfare is clearly one of the chief duties of the state, if public welfare is properly understood in connection with the natural limits of the state. "This political principle of the Romans, *salus populi suprema lex esto*, does not err in being too narrow, but rather in straining the power of the state, and extending it to alien matters." However, in time of crises the state may be called upon to make sacrifices in its efforts to survive which are certainly against public welfare. "But all these objections are avoided if we formulate the proper and direct end of the state as the development of the national capacities, the perfecting of national life, and, finally, its completion, provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity."[2]

John W. Burgess opens his discussion of the ends of the state by citing the views of von Holtzendorff in *Principien der Politik*.

He holds that the state has a triple end, the elements of which are interdependent and harmonious. Of these the first is power (*der nationale Machtzweck*). The state must constitute itself in sufficient power to preserve its existence and proper advantage against other states, and to give itself a universally commanding position over against its own subjects, either as individuals or associations of individuals. The second is individual liberty (*der individuelle Rechtszweck*). The state must lay out a realm of full action for the individual, and not only defend it against violation from every quarter,

[1] *Ibid.*, Bk. V, Ch. III.
[2] *Ibid.*, Bk. V, Ch. IV.

but hold it sacred against encroachment by itself. And the third is the general welfare (*der gesellschaftliche Culturzweck*). . . . It (the state) must hold all associations to their primary public purpose . . . [1]

Burgess regarded this statement of the end of the state as confused and incomplete. It takes account neither of the world purpose of the state nor of the body of customs and principles known as international law. A statement of the ends of the state must include both its ultimate and proximate purposes "in their proper relation, and . . . distinguish clearly state from government in the account of the forces employed in the attainment of these ends." The ultimate purpose of the state, or its universal aspect, is the perfection of humanity and the civilization of the world, which was expressed by Hegel's *Sittlichkeit*. But before there can be a universal state, there must be a national state, which "is the most perfect organ which has yet been attained in the civilization of the world for the interpretation of the human consciousness of right"; the perfection of nationality is the secondary aim of the state. On the other hand, the proximate ends of the state are government and liberty, and "the primary activity of the state must be directed to the creation and the perfecting of these." Thus, Burgess declares that "there never was, and there never can be, any liberty upon the earth and among human beings outside of state organization. . . . Mankind does not begin with liberty. Mankind acquires liberty through civilization."[2] The development of nationality will, in turn, affect for the good the general level of civilization in the world.[3] As Garner points out, it is difficult to see how the establishment of government can be an end in itself.[4] Yet none would well deny that the ends of the state may be classified on a threefold basis—the good of the individual, the good of the association, and finally the furthering of world progress or civilization.

Morality Is Involved in State Ends. Practically none of the statements of the end of the state are nonmoral. None asserts that the end of the state is neither good nor bad, and only the anarchists maintain that the state is for the purpose of conserving evil. Locke declares the end of government to be "the good of mankind."[5] John

[1] J. W. Burgess, *Political Science and Comparative Constitutional Law* (Boston, 1898), Vol. I, pp. 83, 84. By permission of the Columbia University Press.

[2] *Ibid.*, Vol. I, Ch. IV. By permission of the Columbia University Press.

[3] *Cf.* Georg Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), pp. 263–265.

[4] Garner, J. W., *Political Science and Government* (New York, 1932), p. 72.

[5] *Two Treatises of Civil Government*, Sec. 229.

Stuart Mill viewed "the proper end of government to reduce this wretched waste to the smallest possible amount, by taking such measures as shall cause the energies now spent by mankind in injuring one another, or in protecting themselves against injury, to be turned to the legitimate employment of the human faculties, that of compelling the power of nature to be more and more subservient to the physical and moral good."[1]

The Value of Concepts of the End of the State. Of what use is an inquiry into the ends of the state if the statements made do not project into the field of action? It may be asked whether the real question is not the functions of the state, which is seen in the conflict between individualism, anarchism, and the various forms of collectivism. There is much to be said for such a position because it is clear that the state socialist and the individualist do not materially disagree as to the end of the state, however different their views on means may be. The general end of the state may thus be seen as no issue of practical politics; what really counts is the immediate policy and the means adopted to effectuate it. The communist and the extreme individualist might both agree that the end of the state is the attainment of the best possible life of the individual, but they would be poles apart in their interpretation of the proper organization of social and political authority.

A general statement of the ends of the state may be defended on several grounds. In the first place, in dealing with such broad questions we need tentative hypotheses with which to work, for the treatment of every problem will be facilitated by commonly understood abstractions, even if they are only tentatively accepted. A general hypothesis concerning the end of political authority is of material advantage in beginning a rational consideration of the problem. Such a theory may not be in accord with the facts, and it may be proved that in particular states the theory is directly contrary to experience, but, as far as the working of the mind is concerned,

[1] J. S. Mill, *Principles of Political Economy*, ed. by W. J. Ashley (London, 1921), Bk. V, Ch. XI, p. 979. For the place of morality in the ends of the state, see R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V, pp. 449 *ff.*, in which the purpose of the state is seen as the maintenance of justice. Lord Acton, *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence (London, 1909), p. 22, says liberty is the highest political end; and *ibid*, p. 24, that we must find out what ought to be before we can prescribe. Bertrand Russell, *Proposed Roads to Freedom* (New York, 1919), pp. 144–145, declares that the object of political life is "the free growth of the individual." See Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), p. 247.

an hypothesis is as necessary as the facts. It must not be thought that any philosopher or scientist in attempting to explain the world will be content with a theory or a general proposition that has no ground in experience. In the second place, it must be conceded that such general statements are not entirely unconnected from the means employed to reach the end. A statement of the end or ends of the state influences thinking about the state. They are not pernicious so long as concepts are not made rigid dogmas that are unresponsive to rational or scientific treatment. Facts by themselves lack integration and interpretation, and it is the function of what rationality man has to read meaning into facts. The meaning, of course, depends largely on the propositions which clear thinking about the state has formulated.

How the State Attains Accepted Ends. How does the state realize its ends? The machinery of the state, *i.e.*, the mechanics of government, is devoted to the realization of purpose. While it may be true that the ends formulated in consciousness are not so comprehensive as results, and that results are often not clearly thought of beforehand, this condition may be explained on two grounds. The first is that the machinery of government itself is ineffective. Human inventiveness in social matters has not shown remarkable versatility, and the devices employed are often clumsy, inefficient, and costly. The second ground for this result is that there are objective factors in natural and social environment which do not readily respond to the determination of the human will.

But there is no reason to believe that with the aid of modern social science there can be no closer approximation between purposes and results. Legislation has often shown itself to be ineffective in the past, but there is no reason why, with scientific knowledge, it should be. The executive has not always been able to enforce laws, sometimes because enforcement was too costly, and often because the executive itself has been corrupt or poorly adapted to the purposes it was attempting to serve. The science of public administration should be able to correct this. The judiciary has often been too far removed from human experience, but there is no reason why a rational use of the historic legal materials should be antagonistic to the needs and forces of contemporary society. The development of sociological jurisprudence should make the judiciary a far more efficient agent in the realization of state purpose than it has been in the past.[1] It is

[1] See B. N. Cardozo, *The Nature of the Judicial Process* (New Haven, 1922); *Science of Legal Method*, by various authors (Modern Legal Philosophy Series, 1921).

too often true that popular judgment will not stand the test of experience, but there is no reason why popular judgment should always act or be led to act without knowledge. The voice of the people may be the voice of God, the voice of the devil, the effort of the dumb to articulate, or, perhaps, the echo of science. Modern democracy as we know it may be about a hundred years old, but certainly it is too early to judge whether democracy must always fail to attain its formulated purpose. In any case, the structure of government is the organization of means to attain purposes.

The struggle as to policies and means is seen clearly in the conflict in American constitutional law between the police power, whether state or national, and the general restrictions on government such as the bill of rights, due process of law, and the equal protection of the laws. Our particular difficulties arise from the more or less rigid system of constitutional law in which is embodied the separation of powers, the nondelegation of powers granted, the check-and-balance system, the federal form of government embodied in the written constitution, and in particular the system of judicial review over social policy. The modern doctrine of the police power is a product of the integration of many threads, of many types of public regulation in the interest of welfare. The power of the English city to regulate trades and trade, the theory of sovereignty as an inherent right of the people, the right of the government to regulate commerce, habits, dress, vice, navigable waterways, natural resources, etc., have been gathered together by the American judiciary into the theory of the inherent right of government to take action in the interest of the public health, safety, morals, prosperity, and welfare. The police power implies social legislation and executive and judicial coercion, but against it is the guarantee of rights of persons, whether natural or corporate, which is an effective check in the hands of the judiciary against formulated purpose resulting from democratic machinery. Perhaps our concept of the end of the state is primarily the work of the conservative judiciary,[1] but in any case it is one of the clearest illustrations of the conflict between means and policies in a general effort to attain the end of the state.[2]

The Ends of the State. *a. The Satisfaction of Will.* In an earlier discussion the problem of defining the field of politics was considered.

[1] J. A. Smith, *The Spirit of American Government* (New York, 1907); *The Growth and Decadence of Constitutional Government* (New York, 1929).

[2] C. K. Burdick, *The Law of the American Constitution* (New York, 1922); Charles Warren, *The Supreme Court in United States History*, 3 vols. (Boston, 1922); A. J. Beveridge, *The Life of John Marshall*, 4 vols. (New York, 1916–1919).

One theory, illustrated by the works of Professor Catlin, holds that ethics and politics must be severely cut apart, and that the true field of politics must be entirely objective. This theory suggests that political evaluations be left to the ethical philosopher and the educator. One of the immediate implications of this theory is that logically the end of government is social control for the satisfaction of wills. The individual will is considered the fundamental unit in the process of politics, and the immediate as well as the long-run purpose of the state is to give as much satisfaction as possible to as many wills as possible. The state exists to create a balance between wills, but the student of politics has no cause to inquire what should satisfy wills.

It might be argued that such a concept of politics and the end of government is more suited to the exhaustive study of the processes of politics than to an elucidation of the end of government. The primary value involved is merely that human wills are satisfied, but it is difficult to avoid the problem of judgment as to whether the satisfaction is the best possible for the largest possible number under the circumstances. The whole contention, however, revolves around an attempt to use the psychological approach in political science along with a dispassionate effort at objective treatment. Wills do not act in a vacuum; they must act in accordance with purpose, whether or not they succeed in realizing it. Hence, we must conclude that the end of government as the satisfaction of wills is only a partial solution of the issue. We must look farther and consider those theories of the end of the state which include ethical and moral evaluations as to the purpose of government and the means employed to secure these ends.[1]

[1] See Catlin, *The Science and Method of Politics* and *A Study of the Principles of Politics*. In the first volume mentioned Catlin develops a curious concept of the "political man." The "political man" is really an abstract man with an abstract will, which, it is presumed, is to be satisfied in the abstract also. The cardinal error of the method of Professor Catlin is the assumption that economics is an exact science and that politics should be the same.

Catlin, *A Study of the Principles of Politics*, p. 139, remarks: "The fact about individuals, which is relevant to the discussion of Politics, is not their musical tastes or the charm of their characters, but that they have wills, and may be counted on to endeavor to carry out what they may happen to will. Not what they will, but that they will is the significant consideration." *Ibid.*, p. 145: " 'Will' is, then, to be distinguished from 'interest.' And it is to be preferred to it since, if the political process is not a mere manifestation of the love of life, no more is it a mere calculation of interest. 'Interest' is too neutral a term, rather calling our attention to the object of desires in the imagination or a wish rationally calculated than to the activity by which will is translated into the objective world on the road to its gratification." By permission of George Allen and Unwin, Ltd., publishers.

b. The Attainment of Moral Progress. One of the most persistent theories of the end of the state is the attainment of moral improvement. This moral improvement may be stated in different ways. We may refer to the moral improvement of the individual, and contend that the state is the best means for the specific realization of individual capacities. But such is not generally the position, for if that were all there would be no conflict in fundamental theory between individualism and the paternalism of the moral leviathan. The theory of the moral end of the state is usually something deeper and more significant, for it becomes finally a transcendental conception of political life.

We have already considered some of the various theories that attribute moral purposes to the state. The difference is just here, for it is one thing to say that the end of government is the moral improvement of individual life, and another to say that the action of the state embodies moral qualities. For instance, justice giving may be considered a duty of the state, but, if one says that justice is a quality of the state, that is something very different from saying that justice is the external aspect of individual relations. Virtue is granted as a quality of the individual, but can we say that virtue is something inhering in an organization external to the individual? When we say that the end of the state is the moral improvement of the race, even then we have not gone so far as is necessary to the theory, for the state must be endowed with a mission peculiar to itself, *i.e.*, to perfect earthly morality. It means that the state is the only organization which can attain this end and that this end inheres in the state and is not to be performed by any other agency.

Greek theory was fundamentally pedagogical; the state was the great educator of individuals with regard to the way in which they might live the good life. But the Greeks also believed that the state was the only agency capable of performing this function. The nineteenth century German theory, represented in its highest development in the writings of Hegel, was also educative, but it was also fundamentally absorptive. The state included within itself the morality of which man is capable, and the individual could attain this development only by complete submission. The direct result of this type of theory is that the state not only may but is obligated to undertake a wide range of functions for the betterment of the individual, and the individual is morally obligated to obey the state in whatever commands it may issue. For Kant, the function of the state was the removal of obstacles in the path of the development of the individual, but the Hegelian theory was not hindered by such views.

For Hegel the nation as embodied in the state is the highest creation of reason as it is expressed in the course of history. It is the objectification in the world, through political institutions, of all the lesser forms of morality that may be found in the family or other types of association. The individual is moral because he is a member of the state. "The state," according to Hegel, "is the march of God in the world; its ground or cause is the power of reason realizing itself as will. When thinking of the idea of the State, we must not have in mind any particular State, or particular institution, but must rather contemplate the Idea, this actual God, by itself."[1] By this conception the state is able to convert into duties to itself whatever rights may seem to belong to individuals. "This substantive unity (of the state) is its own motive and absolute end. This end has the highest right over the individual, whose highest duty is in turn to be a member of the State."

The philosophy of Hegel is built upon a philosophy of history.[2] The rational is the real, and the critical study of history will show the course of rationality in the world. Each nation must be studied to discover the spirit actuating it and the rationality it embodies. For Hegel, this was the only means of giving meaning to history. His views on the march of rationality in history are developed in his *Philosophy of History*, the culminating work of his career. But it must be understood that Hegel did not condemn freedom as such. In fact, he would assert that freedom is possible only in the state, since it is only the state that can command the individual to do the rational thing constituting his true freedom. The state transcends the individual and absorbs his moral being, but this is only in order that the individual's freedom shall be rational.[3]

Hegel's influence was not limited to Germany, for as we have already noted he had considerable influence on English political philosophy during the latter part of the nineteenth century. In recent years the neo-Hegelian movement in jurisprudence has revivified his ideas in terms of the end of law. We find Josef Kohler in his *Philosophy of Law* contending that the object of law is to further the culture of man. "Culture" means the control of man over nature, and the progress of culture (the end of law and government) means

[1] G. W. F. Hegel, *Philosophy of Right*, tr. by S. W. Dyde (London, 1896), p. 247.

[2] Ernest Renan, *La vie de Jésus* (Paris, edition of 1923), pp. 40, 82, suggests that the author of the book Daniel created what was, perhaps, the first philosophy of history. The essential concept was that history was working toward the dominance of the Hebrews in temporal affairs. See Daniel, 2:44; 7:13–14, 22, 27.

[3] John Dewey, *German Philosophy and Politics* (New York, 1915), p. 64, *passim*.

the maintenance of his past and present control along with a greater control in the future. History shows this development. We also find Berolzheimer interpreting the progress of history in terms of the emancipation of various classes, finally concluding with the contemporary emancipation of women.[1] There is nothing inherently objectionable in the interpretation given by the neo-Hegelian jurists as to the end of law. In fact, Roscoe Pound, the leader of the sociological school of jurisprudence, finds the views of Kohler largely in harmony with his own pragmatic interpretation.[2] In any case, the divinity of the state and of law is lost in the functional interpretation of Pound.

The chief point in the validity of this theory of the end of the state is that government must be interested in the internal life of the individual. To say, as with Thomas Hill Green, that the state must limit itself to the external life of man,[3] to his actual needs and the conditions surrounding his conduct, violates a fundamental tendency in moral thinking. We are interested in what our neighbors are thinking as well as in what they are doing. While political theory, with the exception of the moral interpretation of the nature and end of the state, has in terms limited itself to external circumstances, it is probable that such a position is based on expediency more than on the desires of the thinkers themselves. The Greek thinkers were concerned with the moral and mental life of each citizen; the pedagogical theory of the state leads to this. The same is really true of German philosophy in the nineteenth century and of the English idealists who followed in their footsteps. A citizenship that is purely external cannot have a deep hold on the citizen. Nevertheless, it is true that German and English idealism did not develop in fact any means whereby the end of the state could with certainty be realized. The other broad alternative is to grant that moral qualities are peculiarly the property of individuals, and that the state, itself having no inherent moral qualities, must perform its functions in an atmosphere of ethical neutrality. This fundamental failure of idealism has made it unreal when facing practical political problems.[4]

[1] *The World's Legal Philosophies* (New York, 1929), pp. 466 *ff.*

[2] Roscoe Pound, *Interpretations of Legal History* (New York, 1923), "An Engineering Interpretation."

[3] T. H. Green, *Works*, Vol. II, pp. 340–341, 343.

[4] Vaughan interprets the movement in political thought launched by Rousseau and Burke and culminating in idealism as the answer to the atomistic theory of society at the base of the social-contract theory. The idealists insisted on the supremacy of the community over the individual, on the social character of rights and duties, and on the contribution, essential and inescapable, of society to

This failure to develop means whereby the morally superior ends of the state are to be realized has led idealists to believe in coercive power. Now there is a fundamental contradiction between morality and force. The anarchist feels that the state as an organization of force is destructive of all the finer qualities of the individual, who must act primarily on the basis of voluntary cooperation. The argument of force is might and power, but morality in practice is an internal quality of the individual mind.[1] Morality becomes significant only in relation to other individuals, even though we might insist that it is possible for a Crusoe to be virtuous and just. If coercion is sufficient to attain particular ends, there is no need of morality, and, if there is a conflict between force and morality, they operate on distinct planes. The argument that the state is inherently endowed to realize the moral ends of community life, as distinct, let us say, from the moral ends of an individual life, often becomes merely a thin justification for the use of force in expanding the function of the state. It is hardly possible that force applied to the external conduct of the citizen can give an internal and free-willing cooperation of the individual will in community effort. Force is primarily a disintegrative element, for it breeds force in opposition. Clearly it is no argument for the moral superiority of the state to say that the power of government is superior to the power of individual citizens or groups of them. Yet, on the other hand, the state must be an organization of force as well as an organization of cooperative citizenship. In general, it must be contended that, the less force is used by the state, the more likely it is to attain its ends. A government characterized by force must be first a tyranny and unmoral, at least, in its means. But if the state undertakes few functions and therefore uses little force, it is doing little to develop morality. The state must be an organization of force as well as an organization of morality.[2]

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progress in moral conceptions. Insofar as this is true, it is certainly unfair to see only military absolutism as the result of idealism. Obligation is established by the ends that the state serves, and not upon the empirical consent by the given members of a community. The Germans, interestingly enough, assert that a British thinker, Edmund Burke, is largely responsible for the whole nineteenth century movement in political thought denominated as idealism. C. E. Vaughan, *Studies in the History of Political Thought before and after Rousseau* (Manchester, 1925) Vol. II, pp. 143 *ff.*

[1] Christian morality, both Catholic and Protestant, stresses the purity of intentions in the concept of upright living.

[2] See C. E. M. Joad, *Introduction to Modern Political Theory* (Oxford, 1924); Léon Duguit, "The Law and the State," *Harvard Law Review*, XXXI (1917), Chs. IV and V; L. T. Hobhouse, *The Metaphysical Theory of the State* (London, 1918).

c. The Eudemonistic-utilitarian Theory. We have considered utilitarianism in connection with the consent theory of the state, but it was primarily a theory of the end of legislation.[1] Legislation was, of course, in Bentham's mind the chief means of attaining the ends of government and organized society. Therefore, it is not doing violence to the utilitarian theory to speak of it as a theory of the end of the state, even though in its terminology we find the purpose of legislation treated. There is much in common between Bentham and the law reforms in England during the nineteenth century.

Having rejected natural and all external authoritarian theories of morals, and having denied, one might say, the essential basis of Christian morality, Bentham and his followers, particularly the Mills, sought to found morality on the natural self-interest and desires of the individual. Bentham was an individualistic utilitarian and so was John Stuart Mill, but the later development, as in the case of Rudolph von Ihering, was along the lines of social utilitarianism, which has been far less individualistic. Happiness was seen by Bentham as the great end of man, and to assure that happiness in a concrete sense was the object of the science of legislation. Happiness, however, must be found in the atmosphere of freedom, and the clumsy artifacts of society, especially those found in the law, must be destroyed. The first work of legislation was to destroy the old, to break with nonsensical historical forms, and to simplify the law by means of modernized codes. Basic in utilitarian philosophy is the proposition that individuals know their own happiness, *i.e.*, they know what will give them pleasure. Of course, no utilitarian could go so far as to say that all pleasures were good according to the standard of individual judgment, since some forms of delight have to be suppressed, for instance, the delight of the thief in his dishonestly garnered wealth. But on

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W. E. Hocking, *Man and the State* (New Haven, 1926), p. 188: "The potential use of force by the state, and by the state alone, is necessary to assure to the bargain powers and the prestige powers of society their freedom of growth and decline. The state must use force in order that other groups, and individuals, may be free not to use it." See *ibid.*, Ch. V. Also p. 160: "Those who, like Kant, Green, and Bosanquet, limit the state to the external conditions of public welfare, or especially the external conditions of right, fail to make it appear how external conditions can promote right at all. For if the inner is so sharply separated from the outer, as the Kantian analysis insists, no external changes can either hinder or help the moral will." By permission of the Yale University Press.

[1] It must be remembered, however, that the happiness or welfare concept of the end of the state became a force in modern times in the theory of eighteenth century absolutism. This is the classical theory of the police-state and of state absolutism. Georg Jellinek, *op. cit.*, p. 243.

the whole the utilitarians believed that the greatest happiness to the greatest number was the only sure test of sound legislation. Should the greatest number become thieves, the problem would, of course, become complicated.

Happiness may consist of many things. It is not entirely certain that all people know immediately what will give them the greatest happiness at some later time, and we cannot be sure that what we call altruism is in all cases an indirect means of self-gratification, or that there is no such thing as one pleasure being better than another. But the greatest difficulty of utilitarianism as the end of the state appears in the application of the formula. How are the members of the legislative body, having the right to enact legislation, to know what will bring the greatest happiness to the greatest number? We find the utilitarian philosophy coming to the defense of political democracy, for by giving men the vote their interests and desires can be consulted by those having the right to legislate. If we make the unlikely assumption that all persons count equally in politics, there is sound reason for basing a broad franchise on such grounds. The chances are that a popular government will be more responsive to the felt needs of individuals.

But democratic experience does not show that reform will come by a broad franchise. Professor Dicey has shown how the conservatives have profited from the extension of the franchise, and in general how the expectations of radicalism in the enfranchised masses remain unrealized.[1] The mass of the voters have shown themselves easily subject to the influence of propaganda, which does not indicate that individually they are making careful calculations as to what measures will insure their greatest happiness.[2] The breakdown of the Benthamite solution of the end of government has come in its real failure to work through the machinery of political democracy. The delicate calculations of pleasure and pain that lead to happiness or unhappiness may be made by some, but surely the average voter does not know enough about the world and its objective conditions, about himself and the permanent conditions of life he desires or the changes that will take place in his wants, or about the governmental means or choices presented to him, to make an adequate judgment at a given moment

[1] A. V. Dicey, *Lectures on the Relation of Law and Opinion in England during the Nineteenth Century*, 2d ed. (London, 1914), pp. 240 *ff*. Dicey emphasized, of course, the latent socialism of collectivist humanitarian legislation. Also W. B. Munro, *The Government of American Cities*, 4th ed. (New York, 1926), Ch. XIII.

[2] H. D. Lasswell, *Propaganda Technique in the World War* (New York, 1927); Normal Angell, *The Public Mind and Its Disorders* (New York, 1927).

as to what will give him the greatest happiness. To make such a calculation the individual must know the world, know what he can accomplish, and have a wide range of information, not only of politics in general, but of the specific technical political situation. The modern complicated world makes the calculation a mere system of guesswork rather than a sound psychological and objective computation. Bentham, of course, felt capable of legislating for the nations of the world so that the greatest happiness principle would be attained, but most individuals would have difficulty in deciding what would give them as individuals the greatest amount of happiness.

Yet with all the defects of utilitarianism, it is not to be discarded lightly as a puerile solution of the end of law, government, and the state. It at least keeps open the gateway to change and reform. Under a utilitarian conception of the end of the state, there would be little need for political revolutions, and the changes of economic life can bring in their train adequate readjustments without undue social controversy or upheaval. The conception of moral values presented by Benthamism is so clearly in harmony with modern tendencies that we can say the beginning of contemporary political thought comes with the rise of the principle of utility. Benthamism has produced results in the past, and there is no reason why it should not be at least one basis for twentieth century reforms. We are creatures of the nineteenth century in politics and law, at least as far as many fundamental ideas are concerned, and it is probably true that we could make more progress with the scientific method in politics by a clearer reception of the Benthamite principle.

Of course, we cannot repudiate the past as Bentham advised, and we cannot calculate precisely the greatest happiness to the greatest number, but we can accept the principle as a method of attaining the general welfare. We may also assume that it would be irrational to have any other principle than the happiness of all. This means specifically that we must inquire into the consequences of particular legislative projects, rather than conclude dogmatically that a given reform is right, no matter how it may work in given circumstances. The connection between modern pragmatism and nineteenth century utilitarianism is obvious if we take Benthamism as an analysis of method, for both points of view come to the same conclusions as to the testing of policy. Policy is to be judged by the results it produces. If a given reform does not produce results under favorable circumstances, it probably has not increased happiness under the Benthamite formula; under pragmatism, it has no appreciable consequences and therefore no social value. In general, however, the difficulties of

applying the Benthamite solution have led writers to move on to other statements of the end of legislation and the action of the state.

d. The Development of Individual Personality. We have seen that the culmination of the morality theory of the state in the nineteenth century was the moral absolutism of the state and the absorption of the individual conscience in the political and metaphysical conscience. The statement of such an end is innocent enough, for the end of the state is conceived as the advancement of morality in terms of the *ideal* freedom of the individual. But the great significance of this theory lies in the fact that the state becomes an end in itself, while the more modern theory of the state in terms of individual development sees in the state only a convenient historical means for the furtherance of this purpose. All modern theory insists on the importance of the individual. It may be in terms of the individual will as dominated by moral purposes, the individual will conceived in a formal sense as by Catlin, or the development of individual personality as stated by Laski. The state is primarily a means to serve the individual, and even those most controlled by the dogma of scientific method admit that the individual can and should be conceived as an end in himself. The tendency today is to insist that the focus of all value is in persons and never in mere abstractions; the abstraction is only a tool useful in so developing the unified will of the community that it may lead to common action.

Hocking contends that the chief problem of political philosophy is to discover the purpose of the state, and that on such a discovery depends the reasonableness of its functions. We have already indicated that the mere conception of the satisfaction of a formal will does not do this and is, therefore, inadequate as an explanation of the end of the state.[1] Life in the state makes the individual more rational. By its very existence the state performs a service. It is permanent and therefore it creates an atmosphere in which human purpose can be realized without undue interference or disruption. The individual is not required to devote his energies to preserving himself against the disorders of anarchy; he is free in that his efforts can be positive and directed toward the realization of his desires. But the existence of the state, as a force organization, has further value. The mere fact that the state has reserved for itself the use of force means that individuals and groups are not allowed to use force in the attainment of their ends. The more completely force is monopolized by the state, the more completely interests must be defended on the basis of reason and rational appeal to others. In a negative sense,

[1] Hocking, *op. cit.*, pp. 77–78.

this can be said to be the chief rational defense of the monopolization of force by the state.

There is certainly no comparison between the rationality of ordinary decisions of life by force in a community without a well-organized state and in one of the modern civilized states, let us say, of Western Europe. True, the state should retain force more as a potential agency; it should not use it unduly, for that would mean that the activities of individuals would have no reference to free-choosing personalities. The communist asserts that under his program individuals can live better lives and that the use of force by the state is justified because it is used to suppress the exploiting class. The same argument is not completely alien to other philosophies of state function, including individualism. The activities of the state, according to Hocking, should increase the general store of individual opportunity, but, if the action of the state does in fact displace the private will where it has been effective without injury to others, then state activity is out of place.[1]

He views the state as making history; in fact, to make history is the chief end of the state. It does not make history itself, but it makes history in making its members, the individuals who compose the state.

> The state cannot be for itself unless it is in reality a self and not a mere fiction. . . . I agree that the state does not exist alone to serve the interests of its members; it exists primarily to make them. Its function as educator is its most characteristic function, and its chief contribution to history is its product in men. As our own hypothesis about the state's purpose we adopt tentatively this statement: the form of the state's aim is the making of history; its substance is the making of men. That is, it cannot make men without the long circuit of history. . . . But we assert the heart and focus of all ultimate value is in persons, not in such abstractions as society, culture, history; and that the state's purpose must find its terminus here.[2]

Combining the justification of the use of power by the state in the interest of rational will with the above idea of the purpose of the state, Hocking concludes as follows: "Let us give substance to our formula at the cost of complicating it, and say that the state is a territorial body of people united under a sovereign power for the purpose of making a better breed of men, by way of participating in world history and rendering more rational the inner play of social forces."[3]

[1] *Ibid.*, p. 169.
[2] *Ibid.*, pp. 173–174. By permission of the Yale University Press.
[3] *Ibid.*, p. 195. By permission of the Yale University Press.

The above discussion has laid emphasis on will, but we should also consider the emphasis of H. J. Laski on personality to make this aspect of the discussion more complete. The pluralistic conception of political authority frankly meets the moral issue in politics. Laski says,[1]

> Our obligation to obey the state is, law apart, an obligation dependent upon the degree to which the state achieves its purpose. We are the judges of that achievement. What it is, and the difference therein from what it has the actual power to become, is written into the innermost fabric of our lives. We must obey the state, not because its theoretic purpose is a splendid one, but because of our conviction that it is genuinely seeking to make that purpose valid in events. Power is thus in itself morally neutral; what gives it color is the performance it can demonstrate. Our ultimate allegiance is always to the ideal; and to the legal power that seeks to bind us our loyalty is conditioned by the purpose and substance we can discover in its effect.

The state is for the best self-realization of the individual, and the mechanics of a state devoted to such an end requires political democracy; according to Laski, who represented during the early postwar period much of the economic program of the British Labor Party, there must also be social democracy. Furthermore, the state must be responsible in the constitutional sense and in the moral sense, since its actions are to be scrutinized in terms of its ability to achieve, its actual achievement, and the specific purposes it is seeking to attain. The end of the state is thus tinged with moral evaluations, and these evaluations are centered in the individual self, the particular personality.

The will of the state for Laski means only the will of the government, for to him there is no distinction between the state and the government. The pluralistic conception denies to political authority that unity which is commonly associated with the doctrine of sovereignty and the interpretation of the end of the state found in political idealism. If society is pluralistic in its nature, urges Laski, then political authority can but recognize this in order to attain its ends. If we insist that moral evaluations are found only in the individual, and that it is the function of constructive citizenship to judge the attainment of the state, then the state becomes external with regard to many of the necessities of human personality. The pluralistic conception of authority means in fact that the state is severely subject to conditions; with unity denied to it, it may yet sanction, upon proper

[1] Laski, H. J., *A Grammar of Politics* (New Haven, 1925), pp. 26–27. By permission of the Yale University Press.

consultation of opinion and experts, much of a program that is essentially modern socialism.

e. The Maintenance of Rights. The emphasis on human will and the self is not a new thing in political speculation, for we have seen that no seriously thought out theory is able for long to ignore the individual. It is a matter of stress and emphasis more than anything else, but one of the logical results of including within the individual the final moral values is a theory of rights.[1] We have seen that earlier natural-law and -rights theories devoted most of their attention to the construction of a theory of rights. However, the a priori and universal statements on rights of the eighteenth century could not stand the critical examination of rationalism itself, of utilitarian philosophy, and of modern psychology. The mere insistence on the state as agent in the service of individuals requires that at least the outlines of that service be indicated. Such is the function in modern political thought of a theory of rights. Rights would, therefore, pertain to the individual or to groups of individuals as a means of assuring the interests of personality.[2]

Broadly speaking, there are three grounds for rights in political theory, namely, natural or moral law, the self-limitation of the state, and the formulas of science, whether based on sociological or psychological considerations. A statement of fundamental propositions about rights in connection with natural law has already been made in the discussion of the theories of law. The philosophical theory of the state in its extreme forms recognizes rights only as a grant of the state,[3] and the assertion is made in legal theory that all rights of individuals which constitute limitations on the state are merely self-limitations formulated by the government. The theory of self-

[1] In contrast, the idealistic view of the state, instead of having a theory of ultimate rights, has a theory of ultimate duties. The religious nationalism of Mazzini, for instance, stresses the duties of citizenship rather than the rights of citizens. Vaughan, *op. cit.*, Vol. II; Joseph Mazzini, *The Duties of Man* (Everyman's Library, 1907).

[2] "It is right, or absolutely right, that an individual should develop the powers that are in him. He may be said to have a 'natural right' to become what he is capable of becoming." W. E. Hocking, *Present Status of the Philosophy of Law and Rights* (New Haven, 1926), p. 74. From this point of view we may reverse the Aristotelian view that the state is logically or by design prior to the individual and say that the individual is logically and by design prior to the state in that the state attains its end or completion in the development of the individual.

[3] This is true since state and society are identified. The position, more properly, is that the individual attains rights as he attains duties, since rights are only a means of assisting the individual in fulfilling his duties. The individual attains both rights and duties as a member of society.

limitation is not inherently connected with the morality theory of the state, but it is useful in explaining rights when the absolute conception of the state is maintained.

If it is possible to accept the social philosophy of pluralism, which is fundamentally pragmatic in its ethics, without also accepting the attack on sovereignty, there is no unavoidable contradiction between the social theory of pluralism and the juristic attitude toward the state. A distinction should be made at all times between the ethical and the legal basis of rights. Such a distinction is in accordance with the common distinction between law and morals, and there is no reason why our ethical theory of rights should depend on legal theory. The general tendency of the theory that the end of the state is individual development is associated, in pluralistic writings, with an attack on the current theory of positive law and, accordingly, on the theory of self-limitation as a source of rights. But if we say that self-limitation by the sovereign state may be the source of legal rights, we make no assertion as to whether a guaranteed system of rights is ethically sound. If we are willing to admit that the law enforced by the courts, enacted by the legislature, or administered by the executive authority in national, state, or local government is positive merely because enacted or enforced, we can at the same time logically assert that no judgment is made as to the historical sources of the law or the rights involved, and likewise that no ethical judgment is made.[1]

That the above position is at least historically sound is seen by the fact that modern monists accept rights, whatever the immediate or popular grounds may be on which they are defended. The early American theory of rights, following seventeenth and eighteenth century British ideas of natural rights, stressed the integration of those rights with the law of the land, *i.e.*, the common law. It might be argued for instance that the motive for putting rights in the Constitution of the United States and in the constitutions of the various states was that the rights were fundamental and therefore were implied in the constitutions, and not that they became fundamental by becoming constitutional. The protection of rights, however, was recognized in terms of positive law, and the self-limitation theory has in reality been used in connection with natural law and rights, the

[1] The name of Georg Jellinek is most prominently associated with the theory of self-limitation, as he worked it out most completely as a means of reconciling sovereignty with the clear need of limitations on the functions of the state. Needless to say, the doctrine as Jellinek developed it was a doctrine of public law, not one of political ethics. Jellinek, *op. cit.*, pp. 386–87. See also Duguit, *op. cit.*, pp. 123–124, 126–129.

theory of idealism, and various modern sociological theories of rights. How one views the theory of self-limitation depends on one's attitude on the question of sovereignty more than on one's views as to the ethical basis of rights.

With the practical destruction of the natural basis of rights, newer theories have been advanced. Natural-rights theory is primarily a theory of protest and resistance against unpopular political authority,[1] and it performed its greatest service in supporting eighteenth and nineteenth century revolutions and political reforms, such as constitutional government and the extension of the suffrage.[2] Outside the theological support given to natural law on the basis of divine will and reason, as in Catholic philosophy, little serious attention is accorded at the present time to the law of nature. Natural law has not been destroyed as a concept, however, and we have the modern notion of natural law with a changing content, which is something entirely different from the historic system. Such natural law changes with the needs of society, the only static part of the theory being that at each time and place social organization presents definite needs for its continued existence and efficiency.[3]

The insistence on human personality as an ethical value is not far removed from natural-law concepts as a basis of rights. The argument runs that individuals have certain claims, one of which is to be considered an end in himself, and any use of the individual as a means to serve the end of someone else is pure exploitation. Such a view is in fact the Kantian position that each individual should be an end in himself and that each should live in accordance with a universal law of right. But the support of the doctrine at the present time is, aside from the neo-Kantians, anything but Kantian; it is essentially pragmatic. It is contended that realism demands that the individual be the final unit of politics, that no more ultimate end can be conceived in any concrete sense, and that on psychological grounds the individual has a claim to rights in order to permit the normal functioning of his personality. Psychology, of course, has not been able to say definitely and scientifically what claims an individual ought to make,

[1] Natural-law concepts precede the development of natural-rights theory. The shift takes place in the writings of Hooker and Grotius, who made the law of nature the law of reason instead of the authoritarian concept of law as coming from divine will. Natural law as the law of reason was much more flexible as a political instrument, and it rapidly developed into a support for rights. See A. R. Lord, *The Principles of Politics* (Oxford, 1926), Chs. I and IX.

[2] *Cf.* T. V. Smith, *The American Philosophy of Equality* (Chicago, 1927).

[3] See C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930); R. Stammler, *The Theory of Justice*, tr. from the German (New York, 1925).

but history has probably been as good a psychologist as the man in the laboratory.

The prevailing outlines of the psychological needs of the individual are to be found in the contemporary codes of rights in constitutional government. No one can deny that the grant of rights in our political and legal theory, if really assured, would satisfy most persons; the difficulty arises on a point of interpretation: in a given case should the individual believe that he has the right in question? The controversy in regard to the limits of freedom of speech indicates the issue quite clearly, as is also true of the conflict between freedom of contract and the police power. The point to be observed is that modern psychological theories concerning the needs of personality do not seem at the present time to have offered solutions of conflicts as to the nature of rights any more than did the elaborate treatments of natural law. We have already suggested, for instance, that the conflict between individualism and collectivism is one of secondary principles or methods of attaining the agreed end, the realization of the self.

Whatever general propositions we adopt with regard to the basis of rights, it is clear that dogmas concerning particular rights have no place in modern political theory and politics. Ethically the ends must be clear, but dogma as to particular means has never been fruitful of progress. It is essential to consider the individual personality as a fit subject for development, but to say that one particular idea of how this realization is to take place is fixedly a part of natural law, a psychological dogma, or what not, is productive of conflict rather than organized effort in the interest of the individual. We must be pragmatic in our means. The consequences of specific governmental policies in terms of individual development must be the test of value. Rights must not be construed narrowly in terms of the claims of one individual over another, or historically in terms of a political theory seeing only assurances to the individual against interference from others, *i.e.*, in terms of privileges. Rights must be given a broad functional interpretation; they must be the gateway to action and to living. Ethically, rights must be seen in terms of claims against others, perhaps to the latter's disadvantage; they must be seen in terms of freedom from interference by others; and they must be seen in terms of the duty of government to the members of the community. If rights as given or assured the individual make no difference, the ethical quality of the right may be questioned. Rights, therefore, must rest on some form of utility to the personality, to the supposedly rational creature whom we call man.[1]

[1] See D. G. Ritchie, *Natural Rights* (London, 1895).

The concept of rights must be limited to man. This is true primarily because man alone can profit in action by the assurance of rights. It is man alone who can demand rights, and this is because of his rational qualities, which exist along with his emotional and instinctive make-up. To give an animal less than man rights makes no difference in conduct, since the degree of intelligence present allows little diversity in conduct. If we say we grant dumb animals rights, the difference becomes apparent, not in the conduct of the animals, but in the conduct of men. What we have done is to regulate human behavior; we cannot on the face of it give rights to animals. Does the cat have a natural right to torture the mouse? Does the lion in the zoo have the right to natural conditions, among which would be the slaughter of the relatively helpless giraffe? Does the domestic animal which might instinctively desire to roam the pasture rather than pull the plow have such a right? No. The duties imposed on man must be in the interest of man or of society rather than in the interest of the animals themselves. If it is ethically degrading, let us say, for man to exploit unintelligent animals, this may be prohibited within limits. We may object to bull fighting, not because of the effect on the emotions of the bull, but because of the effect on man. Bull fighting may tend to destroy in individuals some of the qualities that are deemed socially useful.[1]

A further distinction between the legal and ethical notion of rights must be made. The legal concept of a right is that one individual, because of the will of the state or the protection of the law, has a claim against some other individual by which he can compel the other individual to do or refrain from certain acts. There are three sides to the right. There is the legal rule or command; there is the individual with the claim; and there is the person with the duty. A legal privilege is an exemption or freedom from interference attributed to one person against others by virtue of the law. On the other hand, the ethical conception of rights involved in political theory

[1] See Green, *op. cit.*, Vol. II, p. 513. "For true liberty," states Irving Babbitt, "is not liberty to do as one likes, but liberty to adjust oneself, in some sense of that word, to law. The Abbé Coignard, says Anatole France, 'would not have signed a line of the declaration of the rights of man because of the excessive and unjust discrimination established between man and the gorilla.' The true objection to the declaration of the rights of man is the exact opposite of the one stated by M. France: it does not establish a sufficiently wide gap between man and the gorilla. This gap can be maintained only if one insists that genuine liberty is the reward of ethical efforts; it tends to disappear if one presents liberty as a free gift of 'nature.'" *Democracy and Leadership* (Boston, 1924), p. 294. By permission of Houghton Mifflin Company, publishers.

insists that rights make a difference in the conduct of individuals. The right is granted for the individual's benefit and for the value accruing to men in general in their associated life. The effective right must attain its purpose, and, if rights are judged by the test of conduct or behavior, there can be no final ethical distinction between the right and the duty, since ethically the effective right is the duty fulfilled. The idea in political theory of a relation of duty and right does not mean that the duty is imposed regardless of the needs of personality, but that the duty is another way of meeting the needs of personality.

It is clear, in such a view, that the citizen has claims upon the State [says Laski]. It must observe his rights. It must give those conditions without which he cannot be that best self that he may be. This does not mean the guarantee that his best self will be attained. It means only that the hindrances to its attainment are removed so far as the action of the State can remove them. . . . The claims that we must recognize are those which, in the light of history, involve disaster when they are unfulfilled. That is the case, for example, upon which a democratic polity is most securely founded. . . . My personality . . . cannot be adequately protected when others, but not myself, have access to the sources of power. . . . We can, from the record (of history) we obtain, draw up a code of rights. Its general outline will alone possess validity; and the method and the level of its application will depend upon the special conditions of each State. But for Western civilization, at least, the outlines of such a code begin to formulate themselves with some distinctness.[1]

f. The Protection of Interests. During the dominance of the historical school in the nineteenth century, the realization of ends was thought to be a matter of slow evolution and development, rather than the active, conscious use of the law.[2] The popular concept has been, since the rise of democracy, just the converse, *i.e.*, the law should be the chief active agency of the state in the formulation and realization of purpose. The modern sociological school of jurisprudence takes a stand midway between the popular theory and the ideas of the historical school. As a result, the sociological jurist is claiming that he should be heard in the statement of the end of law, and, therefore, the end of the state. It is fundamentally a utilitarian position that

[1] Laski, H. J., *A Grammar of Politics* (New Haven, 1925), p. 93. By permission of the Yale University Press. See Green, *op. cit.*, Vol. II, pp. 351, 353, 354, 450.

[2] See James C. Carter, *Law, Its Origin, Growth and Function* (New York, 1907); H. S. Maine, *Ancient Law* (1861) and *Early Institutions* (1874); C. P. Patterson, "Recent Political Theory Developed in Jurisprudence," in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924); Roscoe Pound, *op. cit.*

one gleans from the most brilliant exponent of this school, Dean Pound, and it is a statement of the end of law as the formulation, protection, and maintenance of interests. The function of law is to balance interests. The definition and classification of interests are the first steps, and the improvement in the administration of justice is the next step. Interests may be classified as individual interests, public or state interests, and social interests.[1]

But the balance of interests in the mind of Dean Pound centers around the formulation and protection of social interests, which, in his opinion, have been seriously neglected by jurists. Strictly speaking, the concern of the law is with social interests that are interwoven with all other interests. This pragmatic concept of the nature of the end of law demands that the law be an agent of progress, and it can be such an agent, chiefly through the protection of the social interests, which include the general security, the security of social institutions, the use and conservation of natural resources, general progress (cultural, economic, and political), the welfare of individuals, and equitable adjustment of individual interests.

> For the purpose of understanding the law of today [says Pound], I am content with a picture of satisfying as much of the whole body of human wants as we may with the least sacrifice. I am content to think of law as a social institution to satisfy social wants—the claims and demands involved in the interests of civilized society—by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction—in short, a continually more efficacious social engineering.[2]

Indeed, the engineering interpretation of law is little more than a means of securing rights in the sense that we have considered them in this chapter.

[1] *Cf.* Milo J. Bowman, *Handbook of Elementary Law* (Part I published St. Paul, 1929), Ch. V.

[2] *Introduction to the Philosophy of Law*, pp. 98–99. By permission of the Yale University Press. Ihering declared that "the final end, then, of the State as of right and law is the safeguarding and the conservation of the vital elements of society. Law exists because of society and not society because of law." Cited by Duguit, *op. cit.*, p. 130. Perhaps we can see in the biological or racial nationalism of Germany the assertion that the preservation of the race is the primary social interest. See A. Hitler, *My Battle*, tr. from the German (New York, 1933), pp. 156 *ff.*

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Chapter VII

THE PRINCIPLES OF POLITICAL OBEDIENCE

> Wherefore by actions also, especially if they be repeated, so as to make a custom, law can be changed and expounded; and also something can be established which obtains force of law, insofar as by repeated external actions, the inward movement of the will, and concepts of reason are most effectually declared, for when a thing is done again and again, it seems to proceed from a deliberate judgment of reason. Accordingly, custom has the force of law, abolishes law, and is the interpreter of law.—*Summa theologica* of St. Thomas Aquinas.[1]

The Importance of the Question of Obedience. The ends of the state cannot be attained unless two conditions are present: (1) the proper means must be selected, and (2) the citizen body must accept the actions of the government. Since the problem of political obedience involves broader ethical questions than the adoption of proper and efficient means, it can be treated logically in connection with the ends of the state. Moreover, as we shall see, the problem of political obedience is becoming more important as the activities of government become more complex. In fact, it may be asserted that one fundamental issue in politics is whether the citizen body has a duty, other than purely legal, to obey the state. While the problem of purpose in the state may be the most profound and important in the long run, the issue of political obedience is of crying importance at every step the government takes. Practically all the great debates of political theory have some bearing on the question of obedience, and, from the day when Socrates refused to escape from prison in order to obey the laws of his city to the postwar period when the art of evading the Constitution became a part of the science of "politics," interest in the question of obedience has never subsided. One may say without exaggeration that in any modern society, aside from the issues of economic evolution and social justice, the outstanding immediate problems are the development of the science of public administration and the basis of political obedience.

Observers of the technological age are becoming more and more impressed with the breakdown of traditional authority. Every

[1] Part II (First Part), Q. 97, Art. 3.

generation, no doubt, flatters itself that its problem of change in morals is more acute than that of any other. But there is ample evidence that the indirect results of the industrial revolution are now near a point of culmination. The growth of cities and the problems incidental to such growth might alone be sufficient to show that the present has more changes to face than most other generations. The problem of adjusting life to modern conditions has brought an exaggerated significance to the question of obedience, and we may consider seriously whether our older ideas with regard to the duty of obedience to the state can stand the test without modification.

The breakdown of older authorities has tended to disrupt types of social control that have been invaluable to political authority in the past. Urban civilization is tremendously complex and delicate in its adjustments; homogeneity of standards of life and conduct is almost impossible; and, indeed, the very idea of authority is disappearing from the average person's outlook on life. We must not say offhand that such changes are to be condemned, for we must face the question of obedience from the outside as students of politics, while at the same time living and acting the citizen. Force in the action of the state must be emphasized when the long-established authorities, such as filial duty, religious truth, social pressure, and a respect for ordinary conventions of life, are being forgotten. The whole scope of authority in life and its relation to the force of the state hangs in the balance, and this is true primarily because our ideas of what the state should do indicate a greater reliance on the state, while at the same time we have adopted a more critical attitude toward an organization of authority and force.[1]

After all, force has not been the only or the most significant element holding the state together. Force as applied to the mass of citizens has been a puny tool of political progress. We have already tried to show that the chief value of the monopoly of force in the state has been that other agencies of social organization have thus been prevented from using it. The monopoly of force in the state, therefore, does not mean that the state is ethically justified in using it to the exclusion of education or persuasion. Law is valuable as an organizing agency in social life, and, whatever we may think of legal decisions in particular, the chief value concerned is that a decision is reached. Social order depends on decisions that can be accepted, and, as man must be viewed as a member of a community for the essential conditions of existence, there is ethical value in the mere existence of the state. The state is an organization for making decisions if it is anything at

[1] See Walter Lippmann, *A Preface to Morals* (New York, 1929).

all, and thus within limits the use of force by the state can be justified on two grounds: (1) the development of rational decision by virtue of the monopoly of force in the state, and (2) the maintenance of a system of decision making in controversies. Force is undoubtedly justified in the maintenance of the state itself, because social order requires the state, but the further question arises as to whether the use of force is justified in maintaining particular decisions.

The Use of Force in a Particular Situation. The conflict between liberty and authority is endless. To strike a balance between the disruptive liberties of the citizen and the restraint of the state is a matter that can never be avoided when government is undertaking new functions and seeking new advantages for the individual citizen. A formal distinction between law as positive and the rightness of the particular law does not elucidate the ethical issue of obedience. The sanction of municipal law (*i.e.*, law within the state) is force, but political thinkers have gone so far as to say that the use of force in particular acts of the state never needs to be justified. Justification of force in general does not justify force in particular because of the moral qualities of the individual judgment and because the moral aspects of state action are never the same in two decisions by the government. But this is an issue in itself. Some writers have been willing to justify coercion in particular because of the value of social organization in general.[1] The ethical value of social order is that it is observed. It is insisted that coercion exists for freedom, and that experience shows freedom is real only when the state is effective in its use of force.[2] While none but the anarchist denies that the state is a condition of freedom, that it makes freedom possible, it is nevertheless true that the state can be in error in its particular projects of legislation; therefore, to declare that the state should not be judged by the ethical standards of the community is to adopt with a vengeance the absolutist theory. Thus it does not seem to be an unhistorical, antitraditional, illogical, or unethical proposition to say that a distinction must be made between the ethical value of the state system of making decisions in general and the ethical consideration of particular decisions by the state.[3]

[1] See R. Stammler, *The Theory of Justice*, tr. from the German (New York, 1925).

[2] John W. Burgess, *The Reconciliation of Government with Liberty* (New York, 1915); *Political Science and Comparative Constitutional Law* (Boston, 1898), Vol. I, p. 55.

[3] W. E. Hocking, *Man and the State* (New Haven, 1926), p. 381, says: "We must distinguish: (1) the will toward a particular law, deed, or policy; (2) the will toward the existence of the present state; (3) the will toward the existence of any

If we say that the individual has only moral qualities and that the state, on the other hand, neither creates these qualities nor has them itself as a vast superorganism or moral leviathan, then the moral evaluation of the state by the individual citizens is essential in a democratic and responsible political society. There need not be a conflict between authority and morals, but there very often is. This conflict is particularly apparent if we adopt a pragmatic interpretation of morals, *i.e.*, if we accept as binding the general moral evaluation of the community or of significant groups in society. The difficulty of citizens' judging the state is as old as political theory. Before the state developed its newer functions, it was largely a matter of judging the officials making up the government, but the problem is now largely the estimation of policies directly affecting citizens. The machinery of democracy has been interpreted as a system whereby the citizen body can judge the state, but undoubtedly the amount of disobedience to law as an historical fact indicates that majority rule has not been effective in this respect. The real question is: why should the minority obey a *particular* law?

Majority Rule and Moral Judgments. The machinery of the state is established, from an ethical point of view, to give decisions which are to stand as the decisions of all, and it is here that the essential crudeness of majority rule appears. Locke in his *Second Treatise* defends majority rule primarily on the ground of expediency, for without it civil society could not endure, and in Rousseau's analysis the decision of the majority is glossed over by the question: what is the "general will" on this issue? It is plain that, while majority decision is the best expedient we have discovered for making decisions of a fundamental character, it does not answer the *ethical* requirements of state decision, *i.e.*, a decision that can stand as the will of all. Progress has been, in fact, away from the concept of unanimity, but from an ethical viewpoint the deed that is the deed of all must have the consent of all. The state commands the moral approbation of its citizens because they can accept its decisions, but this argument from the ethical aspect looks to eventual acceptance rather than immediate

state at all." Hocking believes that the real issue concerns the third statement—the mere existence of the state. *Cf.* W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930), pp. 19 and 236, for analyses of the problem of political obligation. See C. T. Muret, *French Royalist Doctrines since the Revolution* (New York, 1933), p. 189, for the papal distinction between resistance to a regime and to its legislation.

agreement.[1] Efforts to impute to a decision by the majority the ethical quality of a decision by all have failed simply because each individual must be considered by the state as a moral unit for the judgment of the act that is to pass as the conclusion of all.

Absolute ethics, furthermore, is directly contrary to any decision by counting noses. To absolute ethics a decision by war is just as good as a decision by majority rule, since the problem is not to get a decision, but to get the *right* decision. If divorce is contrary to the command of God, neither war, majority rule, nor the irresponsible dictatorship of the few makes any difference. The means of getting decisions is trivial beside the importance of the decision itself. To emphasize the importance of the decision itself leads, on the other hand, to the pragmatic ethics of the modern state which accepts public opinion as the test of right. The breakdown of authority has forced the state to accept the pragmatic ethics of the present day. The individual may feel that something is absolutely right, but the facts of modern democracy do, in fact, require him to put the value of the decision above the rightness of the solution.

Yet there is a fundamental contradiction here. If the state must rely on the ethical judgment of the individual citizen for the test of its rightness, it must also ask the citizen to ignore his own ethical judgment when the machinery of state decision has gone against his wishes. Such a contradiction must be reckoned with at all times, and no doubt the varying pressure of disobedience to the laws of the state is a fairly sure barometer of which way the judgments of individuals are going. If there is little disobedience it is certain that the value of the decision, for the minority, is being held uppermost; if there is considerable difficulty in enforcing a particular law, it means merely that the minority is putting the individual judgment higher than the value of the decision. Force may be justified pragmatically because

[1] Hocking, *op. cit.*, p. 384. John G. Heinberg, "History of the Majority Principle," *The American Political Science Review*, XX (1926), 52–68; "Theories of Majority Rule," *ibid.*, XXVI (1932), 452–469. In the first article cited, Heinberg concludes (p. 68) that "the majority principle is simply a convenient rule of law, and contains no inherent ethical validity . . . the achievement of wise decisions ultimately depends upon full utilization of the best judgment of the individuals who compose groups."

Heinberg notes (second article, p. 467) that the most elaborate and direct criticism and treatment of the majority principle in the English language is to be found in Sir George Cornewall Lewis, *The Influence of Authority in Matters of Opinion* (1849), Ch. VII.

it works, but only so far as it works.[1] The majority, of course, does not offer difficulties, for the wishes or ethics of the majority are embodied in the decision; their ideas of right have received the sanction of the state.[2]

Not all measures involve an equal amount of ethical evaluation. Some decisions are nonmoral, *i.e.*, the sense of right and wrong is not involved.[3] Whether we should drive our cars to the right or the left side of the street is *merely* a matter of decision. All would agree essentially that the only ethical problem is that a solution is demanded. But most of the actions of the state and most public questions, aside from the mere ethical value in the existence of the state, involve an evaluation of the particular act itself. It is exceedingly dangerous for democracy to adopt any absolute tests of right or wrong, such as might be drawn from a particular system of ethics, for the necessary and logical course for democracy to adopt is that, for public purposes, right and wrong is a pragmatic question. As issues become more complex ethically, the judgment of the individual conscience becomes more significant politically. Objectively, we might test the amount of ethical significance to a decision by the amount of support it can muster among the citizens and by the amount of resentment it can create in the minority. Only those inspired by vivid interest are likely to possess a sufficiently strong cohesion to hold together as a group, and if they are to gain a telling position in the state they must also have some system of ethics to support them. If we grant that the action of the state is not paramount to individual right, that therefore the action of the state is morally neutral,[4] the pragmatic conception of the functioning of the state must recognize as one test of the legitimacy of its action the amount of resentment that a given policy may arouse. Undoubtedly, some possible lines of public policy would produce

[1] John Dewey, "Force and Coercion," *International Journal of Ethics* (April, 1916).

[2] G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), p. 173, indicates that the authority of the state rests on two grounds: (1) consent, and (2) force, to which individuals may bow by a calculation of interest. We may generalize by saying that persons really obey the state from habit, except where (1) stubborn convictions are crossed, (2) the minority is so large that disobedience is often easier than obedience, (3) or enforcement fails for whatever reason.

[3] See Hugo Krabbe, *The Modern Idea of the State*, tr. with introduction by Sabine and Shepard (New York, 1922), who contends that the sense of right is the source of legal validity.

[4] Hocking, *op. cit.*, p. 98: " . . . so far as the state requires good of men it deprives that good of moral value. For only that can have moral value which comes from free choice. Whatever is required by law is therefore drained of moral quality "

disobedience that would amount to civil war, while other actions produce significant social harmony.[1]

The Effectiveness of Enforcement. There is another result of the pragmatic approach to the problem of obedience, as contrasted with any system of absolute tests of right and wrong. Enforcement of law, *i.e.*, the assurance of obedience on the part of the citizen body, is a practical matter as well as an ethical one. If we assume, and we cannot deny it in the face of history, that the resentment of the citizen body has a definite effect on the success of state policy, the importance of the practical limits of enforcement is primary. The cost of government must be paid by the members of the state. This cost may be divided into (1) primary costs of services, whether merely of an institutional character long recognized as proper to the state, such as maintaining a legislative body, a judiciary, and an executive department, or, if it is viewed in a functional light, as the expansion of administrative duties, such as operating municipally owned utilities; and (2) cost of enforcement itself. To consider the problem of obedience, we find that the cost of enforcement has much to do with the legitimacy of the action of the state. A balance must be struck between the cost of enforcement and the value of the policy to the community. The test of this value is, primarily, a matter of general judgment by the masses of the people. The minority can at least make the majority pay handsomely for enforcement. The chief reason why many laws are not enforced is that the cost in terms of personnel and social friction is too great; it is a disturbing element to a large section of the population.

But a further distinction must be made between different kinds of laws. Laws relating to rights over real and immovable property are easy to enforce. The incidence of enforcement is first on the property and next on one or a few individuals. The collection of taxes on such property is a simple matter, but if taxes on chattels are high the amount of evasion is recognized as a reason for tax reform. Two tests are available for this issue: the first is the number of individuals that enforcement touches, and the second is whether enforcement applies directly to the conduct of individuals or to their possessions. A

[1] See A. L. Lowell, "Prohibition and Reconstruction," *Atlantic Monthly* (February, 1929). Probably the finest example of nullification in American history, and one that had much to do with causing the Civil War, was the effective disobedience of the fugitive slave laws by the Northern opponents of slavery. The second great example was clearly the Southern treatment of the reconstruction amendments insofar as they were designed to protect the negro. A third example of historic importance was the regional ineffectiveness of American prohibition legislation.

law is easier to enforce if it touches only a few, *i.e.*, if the group to which force must be applied is very small. If it is an economical law to enforce, its value to society will undoubtedly be great in comparison with the cost of enforcement. Laws relating to security of title and possession fall into this class.

Since modern constitutional government does not in form at least have special legislation and since all laws must be general in application, any law relating to the conduct of individuals requires a much greater effort for enforcement. Every individual must feel potentially the burden of enforcement if it is to be perfect. A general law relating to the possession of inanimate objects is not hard to enforce since every individual does not have the same property or possessions. If conduct is regulated, every member of the state has his conduct regulated, and, objectively, the enforcement problem is greater. The expense of restraining every one is much greater than that of restraining a few.

As the expense of enforcement increases where conduct is involved, so does the problem of enforcement become more difficult if the conduct regulated involves moral issues. Hence a further distinction must be made. We must distinguish not only between the number of individuals restrained by the regulation, but we must also, in the case of conduct, distinguish between enforcement which relates to moral issues and that which does not. A traffic regulation touches a large number of people, but it does not involve the possession of property so much as the conduct of the individual in the use of his property, and it does not involve any significant moral issues. But the prohibition of the manufacture, transportation, and sale of intoxicating beverages does involve a large number of people; it does involve problems of conduct; and, on the admission of the prohibitionist, it does strike directly at moral issues raised by such conduct. Therefore, it is but natural to assume that the problem of obedience to prohibition is quite different from the problem of obedience involved in the average felony. It is reasonable to assume that a larger number of men in each one hundred thousand persons must be engaged in enforcing prohibition than in catching burglars; it means that greater moral resentment against the law will be aroused because of the conflict in moral standards, and it involves the further calculation between the cost of enforcement and social value.

There is a law of diminishing returns in enforcement, and, owing to the already high cost of government, a decrease is likely to appear without much delay in the case of moral legislation. Economic legislation, on the whole, does not involve such moral issues; it regu-

lates the conduct of fewer persons, and it is relatively inexpensive to enforce. The main question is whether the legislation shall be passed at all. But when purely moral issues arise, let us say, by the belief of the majority, the further question of the cost of enforcement must be considered when the potential conduct of every single individual may run afoul of the law.

In distinguishing the effectiveness of different types of enforcement, we reach the conclusion that there are some more or less natural or objective limits on the effectiveness of the majority. We have always admitted that the absolute government of a monarch has limitations on it in relation to what the people will stand, but we have been slow to recognize that this is also true of modern democracy and the mechanics of majority rule. We have also been forced to see that the coercion by the majority requires the consistent interest of the majority in that enforcement. One of the truisms of democratic politics is that the majority is found easily enough when the issue of enactment is raised, but it is hard to find when the necessity of minority coercion arises. The minority often confronts merely a few officers of the government, and naturally these officers shrink from social disturbance in the exercise of their functions. The minority seldom, in any concrete sense, confronts the majority that enacted the law.

Moral Codes and Legislation. Moral codes are as old as custom, and moral legislation, broadly speaking, is surely as old as political authority. But modern democracy raises questions not asked when law was primarily custom, for democracy has its great weapon in acts of legislatures and in the right of over 50 per cent of those who choose to vote. Earlier laws were probably better obeyed than modern ones because the older codes of moral legislation had more regard for the customs of the people upon whom the laws were to operate. The adventuresome spirit of democracy is reflected in the great number of statutes regulating moral practices; there is clearly an effort to build a moral code by means of legislation rather than by slow growth of custom. The very simple notion that laws can make men good or bad, ancient as it is, has never been so dangerous as it is at the present time.[1]

The Greeks were firmly attached to the idea that law could make men good, and the principle was followed time after time by the political thinkers of Western Europe. But not until the rise of the democratic spirit and the development of modern legislation did the

[1] *Cf.* A. Saint Girons, *Essai sur la séparation des pouvoirs* (Paris, 1881), p. 239.

Greek idea become a menace to the strength of political authority.[1] The ancients thought that the lawgiver should speak once and for all, but modern democracy cannot lay down a set and permanent code. And herein lies the danger. When laws are imposed by the majority against the customs of a large minority, one essential Greek idea is absent—an idea that the Greeks were never without—the necessity of the habit of obedience.[2] Therefore, modern democratic legislation has brought forth another ancient practice—that of disobedience to laws which are unjustly imposed.

Nullification is no new thing in the history of political authority.[3] For the most part political thinkers have assumed that laws are obeyed, and one must look into the history of governments to seek the facts of nullification. Nullification has been ever present in the history of states, but no doubt the use of it has been accentuated by the habit of the modern democratic reformer of running to the legislature whenever an abuse needs correction. Certainly, in neither the past nor the present history of legislation is this belief in legislation justified. The Greek lawgiver would never have thought of law as valuable unless education had formed habits and attitudes that would support it; he did not assume that just because a law was passed it would be obeyed. But the mystic incantation "be it enacted" is too often sufficient for the modern legislator. Nullification of laws, and particularly laws on moral subjects, is one of the great political problems of the present day.

The Moral Basis of Legislation. The question that modern democracy has not faced, yet must face, is: what is the relation of moral judgments of individuals and groups to the command of the state? One must assume the state, it would seem, whether it is essentially evil or marvelously good. Therefore, as a preliminary move we should examine the various answers that have been given to the question. Excluding anarchism, there have been five major solutions. In the first place, it has been said that the power of the state secures obedience, and that men obey because they are afraid to dis-

[1] Aristotle, *Politics*, Bk. VI, Ch. II. For instance, Aristotle did not see the possible conflict between liberty and popular control, but then he had practically no theory of legislation.

[2] Aristotle feared changes in the laws as dangerous to the peace of the state and the habit of obedience to the law. *Politics*, Bk. II, Ch. VIII.

[3] Nullification is used in the general sense of making laws ineffective by individual, group, or official action, rather than the specific sense in which it is used in connection with the Southern theory of the confederate nature of the American union. See S. C. Wallace, "Nullification: A Process of Government," *Political Science Quarterly*, XLV (1930), 347 *ff.*, for the application of this view.

obey. Secondly, it has been urged that God has commanded men through Revelation to obey the "powers that be." A variation of this theory is that of the divine right of kings, which attaches divine sanction to government through indefeasible hereditary succession. Thirdly, we find the early democratic answer that men should obey the state because it is founded on contract and that to disobey is a breach of faith. Fourthly, the breach-of-contract theory merges into the theory that men obey because it is useful to do so, as the idea of utility comes to take the place of the idea of natural law. Hobbes, for instance, after showing that men are bound to obey the social contract, states that a people prosper from obedience and concord and not from any particular form of government. The fifth and last view is that man has a rational and moral duty to obey because the state is the universal aspect of each individual's will. The last two solutions are particularly important at the present time.[1]

The psychological approach to the state has offered a number of solutions to the problem why the many obey the few. Alexander Hamilton indicated several grounds of obedience in speaking to the Constitutional Convention in 1787.[2] The interest of the ruled in supporting the rulers, the personal ambition of men of force, the habit of obedience, fear, force, and influence are all to be used in explaining one of the persistent facts in politics—that the many obey the few. Lord Bryce has also given an explanation of the phenomenon of obedience, and it is based largely on psychological grounds.[3] Inertia, deference, sympathy, fear, and reason are the outstanding motivations of obedience. We cannot assume that reason is the only ground of obedience, for we must agree with Aristotle that man is a political animal psychologically as well as rationally. Reason, however, must be considered of prime importance even though the rationality of our opinions may not always be assured under the modern conditions

[1] A. R. Lord, *The Principles of Politics* (Oxford, 1926), p. 14. A theory which is related to the last solution but which is, in fact, quite different is that of Fascism. Fascism postulates membership in the *nation* first and secondarily membership in the state as organizing the nation. One obeys the government, or, rather, the nation, because it is the universal aspect of the self or the coherent cultural and historical *milieu* in which the particular self may be realized in completeness. Idealism may or may not be nationalistic, but Fascism is national idealism in relation to which the state is both a means and an end.

[2] Max Farrand, *The Records of the Federal Convention of* 1787, 3 vols. (New Haven, 1911), Vol. I, pp. 284–285.

[3] James Bryce, *Studies in History and Jurisprudence* (New York, 1901), Essay IX.

surrounding the formation of public opinion.[1] The vast mass of men has always obeyed the few, but the minority has often successfully disobeyed its rulers. Psychology is more valuable, it would seem, in explaining obedience than disobedience, but even with a possible clear psychological explanation of the latter the ethical problem is still important.

The Development of Ideas Concerning Political Obedience. The Greek philosophers tell us that the perfect life of the individual is in the perfect state, that the state completes the moral and rational side of man, very much as a superior dinner does more than fill the stomach. It is because of this that the rational man will never think of disobeying the state, and a real use of reason will always lead the individual to the conclusion that it is his moral duty to accept political authority. Education, according to the Greeks, is an essential means of securing the perfect life of the individual in the perfect state, for by education the life of virtue is stimulated and the rational man comes to realize the glory and beauty of citizenship. The Greek ideal of freedom in Plato is freedom to do well; but a deeper insight shows that evils cannot be abolished save at the expense of the good, for a freedom to do well must also imply an opportunity to do evil. As a matter of fact, this Platonic freedom was unreal to most of the citizens of Athens during the moral development of the Greek city-state.

The Romans, being legalistic and prosaic, as Hegel tells us,[2] like many of our modern democrats, did not often concern themselves with the philosophy of political obedience. One answer is given in their theory of consent as the basis of law. According to the *Institutes* of Justinian, the people are the source of law, even if the actual organ of expression was latterly the emperor. The influence of Roman ideas on the idea of government by consent is not to be underestimated in the history of the state, but the Stoic philosophy, with its emphasis on reason, on a universal natural law, and on a justice that might be embodied in the state action, gave the Roman citizen a philosophy of obedience. It was a philosophy of the "higher law," which was the real rationale of obedience until the time of Montesquieu, Rousseau,

[1] A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923), pp. 22 *ff.* Holcombe cites with approval the thesis of Graham Wallas in *Human Nature in Politics* that "the empirical art of politics consists largely in the creation of opinion by the deliberate exploitation of sub-conscious, non-rational inference." Holcombe, *op. cit.*, p. 27.

[2] G. W. F. Hegel, *Lectures on the Philosophy of History*, tr. from the German by J. Sibree (London, 1894), p. 299.

and perhaps Jeremy Bentham. In other words, natural law in one form or another was the basis of the philosophy of obedience until it gave way before what is essentially a modern pragmatic idea of what should or should not be—the theory of utility. In the Middle Ages the Bible did service under the colors of the "higher law," drawing man's rule of conduct from either the eternal reason or the eternal will of God. As long as the state acted in accordance with the "higher law," it was one's duty to obey; but when the state wandered from the path of virtue, obedience was no longer necessary, and the "higher law" became a philosophy of disobedience and nullification.[1]

In the latter part of the eighteenth century Bentham went forth to do battle against the ancient natural law and against every concept of the "higher law" which did not accept his pragmatic explanation of utility. But along with the felicific calculus he brought the idea of majority rule. If the majority gets what it considers best, then little injustice can possibly be done to those who are in the minority. If we could take the idea of utility in practice, majority rule would be less dangerous than it is. But man is a moralizer, and the modern democrat accepts majority rule along with a perfectly inconsistent idea that, after all, there is an absolute right and wrong. Majority rule becomes in the hands of the reformer an instrument of the revived moral and natural law. Majority rule unconsciously stimulates the tendency to intolerance in the minds of the majority; it is but an added argument for the justice of a cause.

The Significance of the Minority. The minority in relation to the majority is the key problem of political democracy.[2] It is probable that the day is past when we may say that the state is to absorb our entire loyalty and the expression of our moral personality. There must be some rational justification of the majority, or there must be a system of individual rights, not only with regard to property, but also in the field of moral conduct. A scientific clarification of the minor-

[1] It seems clear that the apostles were thoroughly in favor of obedience to the state. In fact to obey was a Christian duty. With the entry into Christian thought of the pagan idea of the tyrant, probably in the work of St. Isidore of Seville, a new point of view dominates religious thought in the West. In general, the theologians agreed that there was a right to resist a tyrant, especially if his tyranny consisted in a violation of the laws of God. Some went so far as even to approve of tyrannicide, as is the case in the *Policraticus* of John of Salisbury in the twelfth century. See C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932); *The Statesman's Book of John of Salisbury*, tr. and ed. by John Dickinson (New York, 1927); Otto von Gierke, *Political Theories of the Middle Age*, tr. by F. W. Maitland (London, 1900); Ephraim Emerton, *Humanism and Tyranny, Studies in the Italian Trecento* (Cambridge, Mass., 1925).

[2] Catlin, *op. cit.*, pp. 262–266.

ity's position is needed in the political science of a state that is controlled by the majority.[1]

It seems true, however, that man now applies the moral calculus to fewer problems than in the past, and perhaps this is a sign of progress. Economic problems for the most part may be tested, legislatively, on the basis of results. Moral assumptions in the economic sphere are broader and more general, and methodology is clothed with the pragmatic dress, even if the purposes are not. But as we ascend in the scale of morality of issues, method becomes more and more rigid, and purely moral legislation is often as not legislation as to the method of morality rather than as to the intention of the citizen to be moral. Temperance was ostensibly the aim of prohibition, but the prohibitionist sanctified the method of temperance he had in mind in the Constitution of the United States and in the National Prohibition Act, forgetting, no doubt, that prohibition interferes with the highest and noblest form of temperance as well as the most base intemperance. The majority sets forth the method of reform, fully believing that there is a "divinity that doth hedge" a majority when the cause is just.

The pluralist makes the contention that the ordinary citizen has the duty to ask: why should I obey the state? As Laski has pointed out, the moral qualities we discover are in individuals, and, if we admit moral values, as we must, whether we take particular ones or not, those who have the moral sense must be allowed the right to judge.[2] The pragmatist finds that men judge and always have judged the state's actions.[3] What then? If the individual finds his moral values do not coincide with the action of the state, should he disobey? The nullificationist answers that he should. But in testing the validity of disobedience, the presumption of sincerity is not alone sufficient, and even the nullificationist admits the right of the state to inquire, where it is possible, into the sincerity of the individual claiming a particular relation to the law. Group standards are frequently resorted to, and

[1] T. H. Green contended that when a question of moral duty is involved the position of the individual in either the majority or the minority is not different. The majority's action cannot be a source of obligation in a direct sense. *Works*, Vol. II, pp. 422–423.

[2] *A Grammar of Politics*, pp. 21, 33, 250. Mahatma Gandhi's belief in civil disobedience as a practical program is fundamentally in harmony with Laski's view. However, the source of moral values for Gandhi is widely different from the ideas of Laski, the pragmatist.

[3] See Green, *op. cit.*, Vol. II, p. 373, for confirmation of this statement from an idealist. Green speaks of the "inveterate irreverence of the individual toward the state."

one of the easiest proofs of sincerity is to show membership over a period of time in a group that is in favor of the position taken by the nullifier. But as is the case with all moral questions, the technique of this evaluation cannot be materially developed.[1]

There are two concepts of the nature of the state which are relevant to the question of disobedience, and every citizen must assume one or the other of these views. The Greek view can be considered first. This view which has come down the course of history, though largely lost in the Middle Ages, was revived by Rousseau, expanded in the writings of Hegel,[2] and made a democratic program in the work of T. H. Green in England during the latter part of the nineteenth century. The state becomes, so to speak, a great moral person or organism,[3] a moral leviathan; it has a general will which is the real will of every citizen, a will which every citizen may share if he is willing what his best intelligence commands. His truest free willing comes when he wills what the moral judgment of the community dictates he should. Treitschke said the state is power, but he did not mean it in a crude way. The state is power, but the power is purified with moral purposes, the purposes that all morally minded persons can accept as guiding in their daily lives Edmund Burke in his *Reflections on the French Revolution*, with his emphasis on the historical development of the nation, is akin to the German and English idealists in their glorification of society and the state. The "perfected rationality" of the state is to be the guide of the individual.[4]

The ardent reformer has taken many hints from the view of the state as a moral person or organism. The purpose of the state is to protect the moral life of the individual, and the state itself is clothed

[1] The policy of many of the powers, including the United States, during the war admitted some few compromises with those whose conscientious scruples would not allow them to fight.

[2] See Green, *op. cit.*, Vol. II, p. 312.

[3] *Ibid.*, Vol. II, p. 463.

[4] See Bernard Bosanquet, *The Philosophical Theory of the State* (London, 1899), pp. 133, 186, 305. H. von Treitschke, *Politics* (1916), Vol. I, pp. 189–190: "We must banish all thought of any right of resistance." This is a denial in very clear terms of the consent theory of the state.

The idealist considers the community before the individual; the individual attains rights only as a member of society, the permanent interests embodied in society constituting the general will which is the real will of the individual. Green, *op. cit.*, Vol. II, Sec. A. The crux of the question is, obviously, whether an individual can get rights outside the state. If society is not the state, if we regard man as a part of nature (not nonsocial of course), moral qualities may be denied the state. *Ibid.*, Vol. II, p. 364. *Cf.* Hobhouse, *The Metaphysical Theory of the State* (London, 1918), pp. 91 *ff.*

with moral glory in its actions. Only here the machinery of majority rule becomes the means of expressing this moral purpose. The voice of the people is the voice of righteousness. The reformer assumes that no man, if he is using his best intelligence, will want to do wrong; it is not a part of real moral nature. The state can thus say to Jones: "We know what you would want in life if only you were your best self, and therefore we are not going to let you conduct yourself in a way which violates your real free will." The moral leviathan steps in with coercive authority to provide the external conditions of the good life, the goal of that perfection over which the state, as identical with society, must stand guard. The state is naked power only so long as the individual denies the moral validity of the judgments of the agents of the state. This reasoning may be used in connection with prohibition, child labor, the dissemination of information on birth control, divorce, the teaching of evolution in the schools, censorship of the press, movies, and the drama, and similar problems. Thus we have one point of view that the citizen may take. What about the other?

Few men really believe that they are concerned individually in the state as a moral leviathan; this is true only of the other man who does not agree that the state becomes a moral organism in which are vested all the higher purposes of life. On the contrary, for himself a man views the acts of the state as essentially neutral in moral tone; acts are per se neither good nor bad. What is the nature of the state when this view is taken? It is no longer a great moral organism expressing a higher rationality and the real free will of the individual. It becomes, as early American tradition taught us, a great association for the benefit of the citizens as they may care to use it. In nature it is little different from any other association. Its purposes are determined by the moral judgments of the individuals who compose the state; loyalty to the state is shared with other loyalties. The state becomes the instrument of coordination for the individual, as he expresses himself through other groups or in other ways than through the will of the state, *i.e.*, the law. Such a position explains the moral and social nature of political society, and the result is not the destruction of its legal supremacy, but the establishment of limitations on the action of the state in accordance with its nature so held.[1] The

[1] To say that the state is an association does not mean that critics of sovereignty believe in the social-contract theory; on the contrary it is vigorously rejected. Living in association or groups is a fact; but the consciousness of needs and the values of cooperation in reducing the ills of this life can foster a development of associational life. See Léon Duguit, *L'État, le droit objectif et la loi positive* (Paris, 1901), Vol. I, pp. 30–40.

philosophy of the content of law as expressed in the nonorganic nature of the state, the idea of the state as an association, and a critical attitude toward the commands of the state constitutes the contribution of political pluralism.

It is not contended that pluralism is a new theory of the nature of the state, for political authority in the Middle Ages had much in common with the modern group-atomism theory of the state. John C. Calhoun once said that free governments are complex, and Sir Henry Maine intimated that democracy is a form of government whose satisfactory operation is beset with the greatest difficulties. Pluralism denies neither of these views, but retreats to a theory of the nature of the state which, it contends, recognizes the complexities and difficulties of modern government in the hope that further bungling will be avoided.

Obedience and State Function. It has been said that these two views of the nature of the state are theories as to the rationale of political obedience, but they also have implications as to the function of the state. It has not been generally recognized how intimate is the relation of obedience to the function of the state, for the more the state does in one way or another, the more one recognizes the presence of nullification. Calhoun thought of nullification as a geographical force, but modern disobedience is a group affair, which may or may not be localized, and resistance to legislation builds up the group that nullifies a law. It is true, of course, that nullification becomes more effective when territorially segregated, and in this fact lies the truth of Calhoun's view. Calhoun was essentially accurate in his view of disobedience in that he recognized the finality of law in political units while developing in reality much of the modern program of political pluralism.[1] We may conclude, therefore, that the avoidance of nullification in part is the avoidance of functions that foster resistance to laws.

The organic view of the state sets practically no limit on its function, since whatever is in the interest of better community morality may be regulated by law. The only limits on the activity of the state are the limits that moral purposes conceive. There is, of course, in theory no limit to the extent of the power that the state may use to gain its ends. The pluralistic view of the state, on the other hand, gives the state no right to any function, because of its nature, except that of coordination. What functions the state takes over must be tested by experience; groups must want them; its functions must be in accord with general opinion in the state, and not beyond or above

[1] See *Works*, Vol. I.

it.[1] There is no goal of function toward which the state is driving, for it must pick and choose in a pragmatic, eclectic manner as it moves along. Resistance to the state is to be expected in the normal course of political events. By the nature of the state, its functions are restrained to an essential minimum; it does only what cannot be done by local government units or by other agencies. There is a closer coordination of function with obedience. The pluralist accepts the dictum of Marsilio of Padua that a law is useless unless it is obeyed, or that of Gratian that a law is not valid unless accepted by the customs of those concerned.[2] He would modify Acton's statement that no law is valid against the conscience of mankind to mean that no law is valid against the conscience of a group.

Some Issues Raised by Popular Sovereignty. In dealing with the relation of public opinion, or what is in the minds of those having the legal right to participate in the determination of government policy, nullification, and the laws of the state, a number of categories are involved. We cannot keep men from thinking, though in the long run it is possible to keep them from knowing much that is obnoxious. Free discussion is, however, a corollary of free thinking. If free discussion should lead logically to disobedience, what can the Hegelian say? He may answer as Spinoza answered: discuss freely but obey so long as the law stands. Such is also the answer of modern majority democracy. Hobbes discovered, by noting the crannies of his psychology, that, until discussion and study are controlled, disobedience, sedition, and disorder are the result, for men "retain a relish of that subtile liquor, wherewith they were first seasoned, against the Civil Authority."[3] Under the former solution, free discussion is connected with complete obedience; under the second, a psychological basis of obedience leads to the conclusion that free discussion and obedience cannot always go together, and that discussion must be controlled if the political authorities are to have the obedience of the citizen.[4] A third solution is presented by political experience. Free discussion and free formation of opinion lead to acting upon conclusions formed, to a certain amount of resistance and nullification. Especially in the moral sphere does man insist on action when conclusions are

[1] See John Dewey, *The Public and Its Problems* (New York, 1927), *passim.*

[2] See R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. III, pp. 47–48.

[3] See *Leviathan,* Chs. XXIX and XXX.

[4] See Hobhouse, *op. cit.*, p. 95, who says that Hegel was wrong in asserting that freedom of speech was parallel to freedom of action.

formed. Disobedience implies fundamentally the expression of judgments, the evaluation of the actions of the government.

It will be admitted, no doubt, that nullification is made easier in a democracy for at least two important reasons. In the first place, officers are theoretically responsible to the people, and often this responsibility is local. The consciousness of citizens with regard to control over public officials makes them more willing to disregard the instructions of officers if it is assumed that the duties imposed are not in accord with moral sentiments. In the second place, there is in general less reverence for the government in a democracy. The government is felt to be close to the people, the creature of popular will; it is no more sacred than individual citizens want it to be.[1]

The will of the majority is often ineffective when a real moral issue is concerned. No self-respecting individual can feel that he is bound by what a majority of the citizens have voted, when he knows from his own experience that the decision is wrong. He may do lip service to the will of the majority, but there is little sincerity behind such protestations. Tennyson said obedience is the courtesy due to kings, but it is problematical at least whether such a statement applies to majorities or pluralities. What appeal can be made to a man to ignore his own sentiments of right and wrong, merely in order that the will of the majority may stand intact? On the one hand, the state demands from the organic view a high sense of individual moral responsibility, and in the next breath it may ask him to surrender his moral values in order to accede to the moral values of those with whom he disagrees. A majority judgment is merely a convenient stopping point, a time of compromise, in the external competition of moralities.

Nullification and Public Order. When nullification is centered around group interests, it may be an orderly process. The group concerned sets out with clear-sighted purpose to ignore the law because they feel it is wrong. They may not deny the legal value in question is the law, *i.e.*, they may not deny the sovereignty of the state, but they do deny that from a moral point of view they are obligated to obey it. Often also, it is a peaceful process. No public

[1] These facts, on the other hand, give rational grounds for obeying the state since there is a hope of change without actual disobedience. Green, *op. cit.*, Vol. II, p. 417. However, the frequent failure of local officials to enforce a law that the federal government is really trying to make effective and the frequent unwillingness of juries to convict when laws provide penalties beyond the general sentiment of what is a just punishment for a given crime illustrate the point.

disturbances attend it; because of the extent of the group involved or because of changing social needs, the force of opinion becomes manifest and the enforcement of the law breaks down.[1] Nor can it necessarily be argued that such nullification is a destroyer of public order any more than revolutions have in the past been destroyers of such order. There is merely a difference of opinion as to the nature of the public order desired. All men seemingly want public order of some kind; even the anarchist confesses to such a desire. Those who attempt nullification do not deny the value of law and the state; they deny the value of a particular law the majority has enacted. The law pacifies those who want it and it irritates those who are opposed to it, but, if enforcement does not obviously mean too great an exercise of power, the latter will bide their time until they have a sufficient majority to take the law from the statute books, ignoring it in the meantime in a quiet way. The group character of nullification becomes evident in the organization of means to evade the law. Ordinarily, for the mass of the people serious nullification does not extend beyond questions which, on a pragmatic basis, we must admit to be moral questions.[2]

Given these characteristics of disobedience, it is to be asked seriously whether nullification is a menace to public order. Nullification does not spread without reason; it is not a fad or a fashion; it spreads only with moral resentment, particularly in an irreverent democracy. In fact, the modern defenders of disobedience may assert that nullification is a corrective and preservative of public order of an enduring kind, if the majority can be brought to see the force behind the movement. Assuming a citizen of high integrity disbelieves in an enactment, and, because of his beliefs, becomes an unpunished criminal in the eyes of the statutes, this does not mean that the same individual is going to violate any and every law that crosses his path. He will violate only those laws that go beyond the moral necessities of the situation, for he has a real interest in public order. The history of the violation of laws has not shown that moral resentment against particular acts becomes a general resentment against all laws. The framers of the Declaration of

[1] The peaceful process of nullification is most clearly illustrated in the contemporary world by the movement led in India by Gandhi.

[2] A most interesting study of nullification which not only shows its peaceful character but also its *official* character is Wallace, *op. cit.* Here, an investigation of the practice of prosecuting attorneys revealed the widespread nullification of a considerable number of laws. This study is valuable in showing the importance of official discretion in accelerating or retarding nullification. Nullification is a problem of a bureaucratic nature more often than is imagined.

Independence, according to the nullificationist, objected to a good many laws, but they did not object to public order.[1]

Organized nullification is an expression of opinion which the state through history has not been able to disregard with impunity. The law against which resentment is raised will no doubt go by the board as the habits of nullification become fixed,[2] and such a law, if not repealed, will become a dead letter. In such a case, nullification may be an actual preservative of the permanent elements in public order, nullification itself being merely a method of overcoming unwise legislative experiment. Nullification tends to bring laws into accord with the morals of different groups, for certainly the failure to pass a law does not prevent others from living up to a standard of morality which is not embodied in law.

The general tenor of the foregoing discussion leads to the conclusion that nullification is a fact in the political life of the community, and that it is probably as old as law itself as distinguished from custom. In other words, nullification should be studied as a manifestation of group opinion. Nullification is often the instrument of functional democracy and the enemy of majority rule. However, it must be admitted that nullification is disturbing even to the nullifiers. They do not like to nullify laws; the laws in question act as irritants upon them. Moreover, the cost of enforcement is necessarily greater and there is the ultimate danger that the majority will force the opposing groups into public violence, though, as was pointed out, nullification is ordinarily a peaceful process. What can be done, therefore, to minimize the necessity of nullification?[3]

[1] A few years ago in a Midwestern city a woman destroyed with an ax the property of a man presumed to have been selling intoxicants to one of her family. This was plainly a violation of the law; it was even a greater crime than the selling of liquor. A prominent eastern newspaper, *The Christian Science Monitor*, a supporter of the argument that violation of the law is contagious and spreads by imitation, did not condemn the woman for the violation of the laws of property as an incentive to bootleggers, but stressed particularly the revived interest in the enforcement of prohibition legislation as a result of the focalization of public interest. This incident does not mean that the woman in question will or has become an inveterate lawbreaker, because the violation of law by her was in the interest of a particular element of public order.

[2] It might be observed that the habit of obedience must always be balanced with the habit of disobedience. The habit of obedience, the psychological foundation of authority, is a general habit, while the habit of disobedience is always specific.

[3] Duguit quotes with essential approval the following statement from Benjamin Constant's *Cours de politique constitutionnelle*, Vol. I, p. 312: "Obedience to law is a duty; but like all duties, it is not absolute; it is relative; it rests upon the supposition

Democratic Policy and Disobedience. While in their nature moral questions offer no room for bending, in practical politics, in the use of the state for securing moral ends, a relativistic attitude must be taken.[1] Church groups should concentrate more on the improvement of their own members than upon the improvement of the citizen body in general. Law as an instrument of policy and power in morals should be used much less, and the old Greek ideal of education of the people should be substituted in its place. Education of groups is probably not more expensive than trying to enforce laws that bring about immense resistance, and its results are more permanent and satisfying. The nature of the state should be accepted for purposes of moral legislation in general as the pluralists would have it, an association of associations, with the correlative theory of the curtailment of the function of the state in moral legislation.[2] A pragmatic view must be taken of the moral functions of the state. It can no longer be asserted in the face of the welter of conflicts on moral ideals presented by modern civilization that one higher morality must control all the citizens of a given political community. We must admit differences and learn to compromise, admitting the necessity for moral progress by constant examination of the acts of the state.[3]

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that the law emanates from a legitimate source and is confined within just limits . . . No duty would bind us in regard not only to laws which would restrain our legitimate liberties and restrain such of our actions as there is no right to forbid, but which would also command us to act contrary to the eternal principles of justice or of compassion, which men can refrain from observing only by belying their nature." "The Law and the State," *Harvard Law Review*, XXXI (1917), 112.

[1] On the other hand, Montesquieu recognized that among the principles of democracy are sumptuary laws and a severe censorship to maintain the ancient morals. These laws were regarded as essential to preserve frugality and virtue, which are principles of democracy. Noted in Paul Janet, *Histoire de la science politique*, 5th ed. (Paris), Vol. II, p. 360.

[2] A distinction may well be made between the need for economic unity as demanded by the economic organization of the world, and moral federalism, *i.e.*, federalism as to norms of conduct or standards. In a day of giant corporations, economic unity is simply a social fact that the government should recognize; and it may well be that moral federalism is also a fact that should be recognized by the government on the basis of experience with centralized moral legislation.

[3] It must be remembered that more moderate idealists, such as T. H. Green, concede the right of the individual to judge the state; but he insists that his judgment must be that of a rational man, *i.e.*, a member of a society capable of seeing the ends for which society exists. The rational man is guided by an appreciation of the consequences; he is guided by the good will. The net result is that, while the individual may judge, he must also obey. Green, *op. cit.*, Vol. II, pp. 416–417, 425.

Decentralization of legislation on moral questions will do much to clarify the political atmosphere and prevent the friction incident to large-scale nullification. Smaller communities ordinarily have certain common standards, and these groups should be allowed to work out their own social control and then be protected in it. In certain localities where there is homogeneity in moral ideas, it will be possible for a great amount of moral legislation to be relatively well enforced. But in any case, it is an abuse of political society to attempt the imposition of laws not widely accepted.[1]

A final conclusion is evident from these observations. If moral legislation (pragmatically tested by the amount of moral resentment it may arouse in opponents) must be used, it can be based only on homogeneity of moral attitudes. This means that before moral legislation will be a success in any political unit there must be practical unanimity of opinion behind it; if there is any considerable minority opposed to specific moral regulations, they are doomed. Moral legislation, therefore, should be tested by the size of the minority opposed, and practical unanimity should be required before such legislation is enacted. As nonmoral matters of legislation arouse less resentment, there is less need of unanimity of opinion in such cases. A law, to be even a reasonable success on moral questions, must be supported by all but a small fraction of the community. Even those who kill say that murder is wrong, but they contend that in their own case they did not commit murder.[2]

Law as a coercive agent is, after all, one of the most prosaic instruments of moral progress. Law can protect with a fair degree of ease the expression of personality in terms of property and economic organization, but in the realm of the spirit, as seen in practice, no such success attends the action of the state. Inevitably we must come to the conclusion that the moral functions of democracy must be permissive for the most part rather than mandatory.[3] To aim toward the best possible as the end of the state is profound, to some even elevating; although the state should be on the side of morality within the limits of effectiveness, it is not itself morality. The morality of the average

[1] *Ibid.*, Vol. II, p. 432.

[2] There is clearly homogeneity of sentiment in the definition of most historic felonies and misdemeanors. Murderers have often admitted the justice of their sentence, but no one has ever admitted, so far as the author knows, that his punishment was just for the violation of blue laws.

[3] The state may foster morality either by coercion or by education. The burden of the argument here is that, even in regard to the external conditions of morality, coercion is likely to be a failure and therefore the permissive and fostering activities of the state should be used.

of the political community must forever stand as a limitation on the final purposes of the state. Both Hegelianism and pluralism make the state a condition of freedom, and not the negation of it. In pluralism the state is adjusted to man without seeking to make the citizens conform to an ideal of the state. Professor Lord has observed that a citizen's political rights can never be coextensive with his moral rights, the moral rights being greater and ultimate. But it is also true that political order must be dependent on moral rights if it is to be rationally justified.[1]

The moral leviathan speaks with the aristocrat: "The true way to seek the people's welfare is to give them what they need." Modern pluralism cannot agree with Burke that democratic will is not a standard of right and wrong, for it must fall back on an ultimate pragmatism as far as political method and the content of legislation are concerned. We may yet learn that education and not force is the ultimate function of the state. Machiavelli refers to certain citizens of Florence who protested to the signori in 1372 that "the young men are idle, and the old men lascivious, and every age and sex give themselves up to unbridled habits; and good laws are no remedy for this, being made useless by evil usages."[2]

Conclusion. No one who believes in the value of the state as a condition of morality can afford to advocate disobedience to the law. A disruptive and unhealthy condition exists in the state when nullification is present, but that it should be advocated undercuts the fundamental basis of the state—the integration of the state through the legal system. It is part of the science of politics to attain a condition of political organization in which disobedience is reduced to a minimum, and it would seem that on moral questions political modesty is more valuable than ambition. The state must rise with the people; it cannot permanently enforce standards that are higher than those of the mass of citizens. The soundest position is, no doubt, to recognize that nullification is a common but unfortunate fact in political life, but under no circumstances to advocate it as a public policy. The sentiment behind nullification must be real before it can be a factor influencing the state, and propaganda to encourage it should, no doubt, be suppressed as far as possible. It may be, however, that under these circumstances in a regime of propaganda the only freely formed opinion will be that which supports disobedience. The policies of the state should have a fair chance to prove their worth to the citizen body,

[1] Lord, *op. cit.*, pp. 263 *ff.*

[2] Niccolo Machiavelli, *History of Florence*, tr. and ed. by C. E. Detmold (Boston and New York, 1882), Vol. I, pp. 125 *ff.*

and in a democracy the "spirit of resistance" is of less value than in a government unresponsive to the will of the people.[1] Social peace would be no problem if there were no minority, but the minority is a part of the state, and the majority must live with it. It is a fundamental contradiction in democratic thought for the majority to assume that it may heedlessly use coercion rather than a rational appeal.

The scientific problem of the function of the state in relation to obedience must be sharply distinguished from the attitude that the government imposes on its executive officers. The executive officer does not like the use of force if he is a cultivated man, and the disturbance that disobedience brings to his mind is clearly shown in the statement of President Hoover made in New York City in April, 1929:

> What we are facing today is something far larger and more fundamental [than a particular crime wave]—the possibility that respect for law as law is fading from the sensibilities of our people. . . . No individual has the right to determine what law shall be obeyed and what law shall not be enforced. If a law is wrong, its rigid enforcement is the surest guaranty of its repeal. If it is right, its enforcement is the quickest method of compelling respect for it. . . . Respect for law and obedience to law does not distinguish between Federal and State laws—it is a common conscience. . . . There is another and vastly wider field than the nature of laws and the methods of their enforcement. This is the basic question of the understanding, the ideals, the relationship of the individual citizen and the law itself.[2]

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[1] See Catlin, *op. cit.*, p. 289, n. 1; Thomas Jefferson, *Writings*, Vol. IV, p. 370.

[2] Address of President Hoover at the annual luncheon of the Associated Press, New York City, April, 1929 (Government Printing Office, 1929).

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PART III

FOUNDATIONS OF DEMOCRACY

CHAPTER VIII

DEMOCRACY AS A FORM OF GOVERNMENT

Equal and exact justice to all men, of whatever state or persuasion, religious or political; peace, commerce, and honest friendship with all nations—entangling alliances with none; the support of the State governments in all their rights, as the most competent administration for our domestic concerns, and the surest bulwarks against antirepublican tendencies.—Thomas Jefferson.[1]

What Is Democracy? Democracy is probably the greatest political symbol of the modern age. Because individual welfare and social progress have been associated with the general idea of democratic government, it is natural that a number of meanings should be attached to the term. As Lord Bryce indicated in the preliminary remarks of *Modern Democracies*, it is little more than a hundred years old in any concrete sense,[2] and yet the progress of democratic government has only widened the breaches between different meanings put into this most inspiriting word of the modern political vocabulary. It is not our purpose here to insist that any one meaning is correct, for history must give democracy its definite significance in the lives of each particular citizen body. Democracy is not the same, precisely, in any two countries. Different and widely varying governmental institutions have been used in national development to assist in realizing the democratic form of government. True, there are many agreements of a fundamental character, but there are also fundamental differences.

In general, however, there are two concepts of democracy, and both are equally valid. The first insists that democracy is a form of government, a form of government in which the majority, regardless of the quality of that majority, has a controlling right of participation in the affairs of government. The second views democracy as much more than a form of government, for the form of government is merely

[1] First inaugural address, March 4, 1801.

[2] *Cf.* E. M. Sait, *Democracy* (New York, 1929), p. 12, for an even shorter estimate of the age of democracy.

incidental, a means and not an end, in the realization of a social philosophy. Democracy becomes a "way of life," to use the imaginative phrase of Professor T. V. Smith.[1]

What emphasis is involved in the philosophy of democracy depends on the individual and the interests he is seeking to protect. To an economic individualist, democracy probably means at least equality of opportunity in education and in economic life. To a collectivist, the democratic state is one in which the inequalities of wealth are removed through the power of government. In a narrower sense, democracy has been applied to the management of industrial units in which the workmen share with the managers and owners the determination of policy. Industrial democracy, however, may be used in a more significant sense, for the modern socialist intellectuals who head the League for Industrial Democracy, particularly Norman Thomas and Harry Laidler, consider "socialism" as another word for "industrial democracy."

Yet democracy, both as a form of government and as a social philosophy, has meant different things in different ages, just as today it means different things in different countries. The form of government best able to establish democracy has been a gradual result of experience, and in fact it may be said that it was not until the nineteenth century that democracy as a form or system of political institutions made its appearance. The older institutions could be used in modern ways, it was found, and many of the political devices so important to democracy today are not new in any sense of the word. As to philosophy, it is only since the late eighteenth century that the egalitarian principle has been a battle cry of democracy. Equality before the law is much older, and so is a theory of rights, but it took the modern democratic movement to insist that such ideas had any definite significance outside their historic and narrow scope.

Democracy Defined as a Form of Government. The older and more conservative students of democracy have been unwilling to extend the meaning of the term beyond its implications as a form of government. True, Tocqueville, Bryce, and Maine admit that there are philosophical principles in support of democratic government. The critics of democracy, such as Maine in his *Popular Government* (1886), while insisting that democracy is a form of government, have launched their strongest attacks in terms of the social implications of the system; they have recognized that democracy must be *for* something.[2]

[1] *The Democratic Way of Life* (Chicago, 1926).

[2] *Cf.* Sait, *op. cit.;* Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. II.

The same is also true of H. L. Mencken in his *Notes on Democracy*. But if the attack on democracy as a form of government consists primarily in picturing the results of democracy in the general social structure, then the defenders of democracy must go behind the form of government to the concept in order to sustain the principle. However, democracy is a form of government, and a wide and interesting variety of problems center around it as such.

Lord Bryce says:

> The word Democracy has been used ever since the time of Herodotus (Book VI, Ch. XLIII) to denote that form of government in which the ruling power of a State is legally vested, not in any particular class or classes, but in the members of the community as a whole. This means, in communities which act by voting, that rule belongs to the majority, as no other method has been found for determining peaceably and legally what is to be deemed the will of a community which is not unanimous. Usage has made this the accepted sense of the term, and usage is the safest guide in the employment of words.[1]

Because the many were the poor in the state, the word denoted to the Greek mind, and has since, the rule of the poorer classes; the term *demos*, or people, was often used to signify, not the whole of the community, but the elements that did not have economic power in society. In modern times also the word "democracy" has been used to describe the rule of the masses as contrasted with the rule of the classes, but Bryce insists that the rule of the majority is the more fitting explanation of the term.[2]

The Historic Question of Political Participation. Democracy as a form of government, therefore, centers around the legal right of participation in government. And participation in government centers around theories of citizenship and the proper means of providing for participation. Aristotle defines a citizen as one who has the right of participation in the election of officers, in passing judgment on

[1] James Bryce, *Modern Democracies* (New York, 1921), Vol. I, p. 20. By permission of The Macmillan Company, publishers. See also Sir George Cornewall Lewis, *On the Use and Abuse of Some Political Terms*, 2d ed. (Oxford, 1898), Ch. IX.

[2] Lincoln's statement of democracy as government of, by, and for the people emphasized "people" more than "of," "by," and "for." The late President Hibben of Princeton declared that one who was present at the Gettysburg Address said that Lincoln placed increasing emphasis on "people": government of the people, by the *people* and for the PEOPLE. See Christian Gauss, editor, *Democracy Today* (Chicago, 1917), Appendix, p. 29; G. P. Gooch, *English Democratic Ideas in the Seventeenth Century* (Cambridge, 1898), p. 83; J. E. Ernst, *The Political Theory of Roger Williams* (Seattle, 1929), p. 78.

violations of law, and in deciding on the content of law itself. Plato lived amid the activities of the Athenian democracy, and he knew as a fact that citizenship carried with it the right of participation in government, even though in his ideal republic the rule of the few philosopher kings would destroy this distinctive test of citizenship. But we must not forget that the Greeks did not believe in extending too widely the right of participation (*i.e.*, of the body of citizens), and that neither Plato nor Aristotle saw any inconsistency between democracy and a large slave population, which was excluded along with others of an inferior or alien class who were free.

While the Roman constitution did not approximate the clear-cut democratic theory of the Greek city-state of Athens, it did connect for citizens of the city of Rome the fact of citizenship and the right of participation. The constitutional history of Rome shows how the struggle between the patricians and the plebeians broadened the right of participation. It also shows that, owing to the imperfect state of governmental machinery suited to democratic government and the lack of consistent theory supporting democracy, as the fact of citizenship was broadened the right of participation became less significant and was gradually whittled away in the rise of the empire. As the *Institutes* of Justinian finally state it, drawing from Ulpian, the will of the emperor has the force of law because the people by the *lex regia* have delegated to him this power. Only the idea of democracy as a form of government remains, but that idea was treasured in the Latin sources and handed down to succeeding generations. Furthermore, Roman governmental theory was more complicated than the Greek, and the "virtues" of a mixed form of government took the substance from participation.[1]

It is of great significance in the history of democracy that Christian ideas as to the dignity and worth of each individual soul and the Stoic theory of universal natural law did not translate themselves into governmental or institutional expression. We find much attention paid by the classical Roman jurist-philosophers to the law of nature and nations. By the law of nature all men are equal, we are told, but by the law of nations (a law common to nations and not between them)[2]

[1] A traditional but probably not completely valid assumption is that freedom in antiquity consisted solely in political participation, while modern freedom consists in independence from the state, in freedom from the state. For the historical development of this generalization of Ferguson and Constant, see Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), pp. 295 *ff.*

[2] Paul Janet cites with approval Egger's contention that *jus gentium* to the Romans meant law between peoples as well as law common to people. *Histoire de la science politique*, 5th ed., Vol. I, p. 242, n. 5.

slavery is a justifiable institution. Many of the important ideas of modern democracy are tucked away in Stoic philosophy and Roman legal literature, but they did not eventuate in political institutions capable of expressing these ideas in everyday life. The citizenship of antiquity, the participating citizenship of the ancient democracy, was submerged in the very gradual social upheaval and disintegration of institutions that has come to be called the fall of the Roman Empire. The heirs of the city-state democracy, particularly of Greece, did not prove themselves worthy of their tradition.[1]

The ideal of participation was not entirely lost in the Middle Ages, for the germinal ideas that flowered into representative government are to be found in the practices of the medieval cities and the medieval church corporations; but the machinery was so defective that it could not be applied on a large scale without long political experience. Participation in government did not spring full-blown in modern times into an accepted institution. It centers around specific demands, and undoubtedly the controversies as to national religion and the civil wars resultant from these controversies had much to do with the gradual evolution in the early modern state of the notion that those subject to government should have the right of participation. In origin, the revival of participation is probably negative—a demand to be free from the state's control, particularly as to religious convictions. But the system of representation by estates, *i.e.*, representation by economic and social functions drawn from feudalistic inspiration, was there to be moulded into the machinery of popular representation.

It is clear also that the masses did not get the right of participation until they demanded it, and the growth of this demand on the part of the masses is probably one of the most remarkable developments in the history of Western civilization. The spread of knowledge fostered by the printing press, the commercial revolution, and a skepticism *produced by a broader accumulation of knowledge all played their*

[1] Bryce, *op. cit.*, Vol. I, pp. 26–27: "With the fall of the Roman republic the rule of the people came to an end in the ancient world. Local self-government went on for many generations in the cities, but in an oligarchic form, and it too, ultimately died out. For nearly fifteen centuries, from the days of Augustus till the Turks captured Constantinople, there was never among the Romans of the Eastern Empire, civilized as they were, any more than there had been in the West till the imperial power ceased at Rome in the fifth century, a serious attempt either to restore free government, or even to devise a regular constitutional method for choosing the autocratic head of the State." By permission of The Macmillan Company, publishers.

part. The Reformation and the Counter Reformation were forced to make their appeals to the masses, as it was not sufficient that the ruler of a state approve of a religion in order to settle religious disturbances. In any case, in the eighteenth century by the time of the Enlightenment or *Aufklärung*, the stage was set for the beginning of what we know in modern times as *public opinion*. Not all the masses knew and understood the issue of such a momentous character debated by the leaders, but a sufficiently large number were conscious of the state and its relation to them. This popular consciousness, of course, was the preliminary step toward the revival, let us say, on infinitely broader lines of the ideal of Athenian and Roman citizenship.[1]

The democratic struggles of the seventeenth century produced little in the way of political institutions capable of assisting political democracy. But the start had been made. The Levellers had demanded a social contract, a constitution, manhood suffrage, and popular representation; democratic speculation had finally seen the connection between the ancient theories of natural law and natural rights, the Christian respect for the individual, the legal theory of the supremacy of the law, and the conduct of government in the ordinary sense of the word.[2] Modern democracy must be traced to at least three significant trends in the development of Western culture. The first and most important is the rise of a general consciousness of the state in terms of its functions, and this is nothing more or less than the liberation of a public opinion, potential always in man as a creature with a mind. The second is the connection and integration of certain traditional deposits, such as were mentioned in connection with the Levellers, into a political program, the cardinal tenet of which is responsible and limited, or constitutional, government. And the third development, which comes only in the latter part of the eighteenth century and the beginning of the nineteenth, is the invention of machinery capable of translating the democratic urge into practical government and politics.

[1] See J. A. Smith, *Growth and Decadence of Constitutional Government* (New York, 1930), pp. 380–382. Sun Yat Sen, *San Min Chu I* (Shanghai, 1927), p. 165, believes that democracy began in science.

[2] T. C. Pease, *The Leveller Movement* (Baltimore, 1916), *passim*. Gooch, *op. cit.*, *passim*. A. D. Lindsay emphasizes that the Levellers wanted the recognition of rights superior to parliament. He suggests that constitutional rights above the representative are a substitute for direct democracy. He notes, however, that the people have never been happy about their representatives. *The Essentials of Democracy* (Philadelphia, 1929), p. 25.

Democracy Is a Product of the West. Democracy, therefore, is fundamentally a product of Western culture.[1] The believer in democracy has his strongest argument in the history of Western countries. This does not mean that the history of England, France, or other countries was inevitable in its terms or was directed by a specific content in divine will, but that history preserved in institutions and documents the deposits of thinking about particular contemporary situations. Democracy could not be invented by the mind of a single man, nor could it be realized in the experience of a single generation. It took centuries for parliamentary government to evolve in England, and it has taken even longer to develop institutions that limit government by law. That individuals as subjects of a government have a right to control the actions of government in relation to them is one of the most momentous ideas in political history.

The Essentials of Democratic Government. The Constitution. The first essential in the development of democracy will be treated in the succeeding chapters on public opinion. Our interest here centers in the traditional political usages of Western civilization and the institutional expression of these deposits. Despite the general existence of government through history and its spread over all peoples of whatever degree of civilization, it is admittedly true that man's inventiveness in the political field has been slow. Only rarely in the history of government has the force of general and abstract ideas coincided accurately with movements for change among the "forces" that generally control the state. Abstract ideas of democracy before the nineteenth century were generally poorly formulated, and the actual development of democracy as a form of government has been in large part the revaluation of older ideas. But the revaluation of the political deposit was a necessary step toward the more definite statement of the aims of democratic reformers. Moreover, the growth of democracy must not be associated too definitely with widespread rebellious demands, though it is obvious that revolution and protest against existing forms of political control have been of great importance. As Lord Bryce has pointed out, the development of democracy has come, especially in England, the dominions, and the United States, with comparatively little popular disturbance.[2]

[1] But see the claims made for the Orient in the development of democracy in E. D. Thomas, *Chinese Political Thought* (New York, 1927); V. K. Sarkar, *The Political Institutions and Theories of the Hindus* (Leipzig, 1923); Ameer Ali, *The Spirit of Islam*, rev. ed. (London, 1922).

[2] Bryce, *op. cit.*, Vol. I, Ch. IV, and especially pp. 33–34.

Assuming the development of a public opinion that can appreciate the existence of democracy, what are the important ideas that have been assembled as part of the machinery of political democracy? Departing from the chronological order and making a selection on the basis of importance, the first political principle to be mentioned is the constitution.[1] The written constitution when not too clearly separated from the laws of a community is a very old political fact. Aristotle studied comparatively[2] the constitutions of his day, but it cannot be asserted that the ancient constitution served the essentially modern purpose of limiting the government. The Twelve Tables of Roman law might in part be considered as a rudimentary constitution, and likewise the codes of law drawn up in later Rome, in the Eastern Empire, and by the barbarian kingdoms.[3] In fact, any law that deals with the functioning of political institutions bears the constitutional stamp. The charters of the medieval city or the guild likewise serve as prototypes of the written constitution, and it may be said that the American practice of drawing up a written constitution that organizes and limits government by the definition of power is to be traced directly to the practice of the crown of granting charters to the trading companies, which began the English colonization of the New World and the Orient.[4] The Fundamental Orders of Connecticut of 1638–1639 is said to have been the first written constitution, though others date the written constitution from the revolutionary period in the United States. Between the highly complicated system that exists in the world today and the humble beginnings made by colonists whose charters were a mere continuation of the practices of the British government, there is a wide and long evolution.[5]

[1] Esmein traces democracy back to natural-law doctrines and emphasizes four of these doctrines as of primary importance: the theory of national sovereignty, the theory of the separation of powers, the theory of individual rights, and the theory of written constitutions and the constituent power. Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, p. 303.

[2] Aristotle in the *Politics* defined a constitution as the arrangement of magistracies, especially the higher ones. Bk. III, Ch. VI.

[3] Munroe Smith, *The Development of European Law* (New York, 1928); J. C. Carter, *Law, Its Origin, Growth and Function* (New York, 1907).

[4] W. C. Morey, "The First State Constitutions," *The Annals of the American Academy of Political and Social Science*, IV (September, 1893), 201 *ff.*; also "Genesis of a Written Constitution," *ibid.*, I (April, 1891), 529 *ff.*

[5] For the Fundamental Orders, see J. M. Jacobson, *The Development of American Political Thought* (New York, 1932), pp. 61 *ff.* For a rather full examination of the problem of the constitution, see Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, pp. 603 *ff.*, 616. Esmein declares that Cromwell's Instrument of Government was the first written national and limitative constitution.

The Written and the Unwritten Constitution. The word "constitution" must not be associated too closely with the written document. Any institution, any permanently functioning organization, has a constitution in the broad sense of a body of fundamental principles and practices that direct the operation of the organization. A government as an organization has a constitution behind it or as a part of it, even if it is only a body of traditions that are observed; in progressive countries it is constantly changing and evolving new forms. The attention of the student of government was drawn to constitutions because the written constitution made its appearance as a definite governmental necessity in the latter part of the eighteenth century at the time of the American and French revolutions. During the nineteenth century the distinction between written and unwritten constitutions was developed chiefly for the benefit of Englishmen who felt that they should be admitted to the group of states having constitutions. Anson, Bagehot, Dicey, and Bryce must be listed among those who have contributed to the theory of constitutions by their insistence on the reality of the unwritten constitution, which, by the force of tradition, can be and often is just as stable and rigid as the written constitution of one of the United States or of the United States itself. Nor does the distinction between rigid and flexible constitutions matter to a great extent. As Professor Munro has indicated, it is not the terms under which amendments can be adopted but the actual spirit of politics that controls the amending process.[1]

Fundamental differences, however, exist between the American and the European conceptions of the constitution. American public law regards the Constitution as law in the fullest sense of the word, but at the same time it is fundamental law,[2] and its guardianship has been placed in the hands of the judiciary by the American doctrine of judicial review. England's constitution, declares Professor McBain, is the first and the last great unwritten constitution of the world.[3] It provides by historical practice for the supremacy of parliament, and because of this the judiciary is subordinate to the legislative body. The French, Belgian, Italian, and other constitutions are written, but there is no judicial review to enforce them against the supreme-in-fact

[1] See *The Governments of Europe* (New York, 1925), pp. 9–10.

[2] The eighteenth century regarded the constitution as the social contract and it had, therefore, to be submitted to the people. Esmein, *op. cit.*, Vol. I, pp. 445 and n. 408.

[3] H. L. McBain, *The Living Constitution* (New York, 1929), p. 14. Jellinek emphasizes the Hungarian constitution along with the British as examples of the unwritten type. *Op. cit.*, p. 532.

parliaments of those countries. The written constitution of France is not a single document, but several organic laws enacted at different times; it is regarded as law, but owing to the ease of amendment there is in fact legislative or parliamentary supremacy. When an American says that a law is unconstitutional, he means that an act of the legislature (national or state or city) is contrary to the Constitution as a higher or more fundamental law; when an Englishman says that an act of parliament is unconstitutional, he means that it violates the general traditions and the spirit of British government.[1]

While the French have a written constitution and little is said about laws being unconstitutional, there is a tendency among French jurists to assert that there are certain fundamental principles of French republican government, a violation of which is contrary to a sort of "superconstitution" or ethos of French political institutions.[2] It is often charged that American judges really enforce a superconstitution in that they have read historic or traditional meanings into "due process of law," "equal protection of the laws," and other phrases.[3]

Modern students of government insist that the form of the constitution itself does not make much difference. The unwritten constitution of the United States is gradually but surely encroaching on the written Constitution, while in England the unwritten constitution is becoming more and more written as parliamentary enactment touches the fundamental issues of governmental organization. Special studies have been made in the United States of the usage and practices of American government, collectively called the *unwritten constitution.*[4] Before this, however, Dicey in England made a classic analysis of the laws and

[1] E. L. Godkin, *Unforeseen Tendencies of Democracy* (Boston, 1898), p. 99, points out that "constitutional" meant the same thing in Rome as it does in Britain. On the unwritten constitution, see C. G. Tiedeman, *The Unwritten Constitution of the United States* (New York, 1890); H. W. Horwill, *The Usages of the American Constitution* (London, 1925). Acton, *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence (London, 1909), p. 58, cites Sir James Mackintosh's idea that constitutions are not made but grow. See "Canada: Law and Custom in the Canadian Constitution," *The Round Table*, XX (1930), 143 *ff.*

[2] See C. G. Haines, "Some Phases of the Theory and Practice of Judicial Review of Legislation in Foreign Countries," *The American Political Science Review*, XXV (1930), 598–599.

[3] See W. W. Willoughby and Lindsay Rogers, *An Introduction to the Problem of Government* (New York, 1922), p. 58, note, for the use of Grote's phrase (*History of Greece*, Vol. II, p. 425), "constitutional morality," referring to "a perfect confidence in the bosom of every citizen . . . that the forms of the Constitution will be no less sacred in the eyes of his opponents than in his own."

[4] See Horwill, *op. cit.*, and Tiedeman, *op. cit.*

the conventions or customs of the British constitution.[1] The drafting of written constitutions, especially under the democratic device of the constituent or constitutional convention (the usual practice in the United States), is a most significant development in the history of government; but as we have noted, the persistent tendency of the written constitution to evolve by the passing of statutes, the adoption of new amendments, the growth of practice or custom, and the force of judicial interpretation robs this distinctive form of political document of much of its importance in controlling government.

The assimilation of the written and unwritten constitution breaks down the fundamental character of distinction between the constitution as fundamental law and ordinary statutory law. This distinction has been slow in growth, and, as noted, it is not essential in the modern European constitutional systems, owing to the less significant role played by the judiciary in guarding the constitution against unconstitutional legislation. It may be said, however, that this separation of constitutional from other forms of law is primarily an American contribution. Thomas Jefferson in his *Notes on Virginia* (1783) was not absolutely certain of the distinction and in fact it was not accepted without question until the American doctrine of judicial review was established under the guiding genius of John Marshall as Chief Justice of the Supreme Court.[2]

But under whatever circumstances we see the written constitution at work, it has been of signal assistance in the development of democracy as a form of government. The written constitution in fact came into being as a part of the general democratic and revolutionary movement of the eighteenth century. While the French did not abide for long by any one constitution, the same cannot be said of the Americans. Nor can we say that the concept of democracy developed in the United States in the late eighteenth century is the same concept employed today, since democracy and constitutional or republican government were compatible with franchise restrictions of an extreme character. The doctrine of the consent of the governed eventuated in revolution and the formulation of written constitutions, yet the consent of the governed as we see it in the Declaration of Independence and in the Declaration of the Rights of Man and of the Citizen in France was too closely associated with the right of revolution for its defenders to be

[1] A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 8th ed. (London, 1924).

[2] We can say that, since the case of Marbury *v.* Madison, 1 Cranch 137 (1803), there has been no doubt about the distinction or its place in American public law.

greatly concerned with modern machinery for making the consent of the governed a consistent directive force on government.

Democracy as a form of government must be limited and stable in its machinery for making known the wishes of the governed, and it is just this service that was performed by the written constitution. While the theory of rights is in terms absolute, being based on theories of natural law, the rights themselves pertained to individuals and the individual was given by limited government a rational means of defending them.[1] Furthermore, the machinery of democracy has been preserved in permanent form, generally speaking, by the terms of the written constitution. Even where the legislative body was supreme, that legislative body was the product of a broad franchise; in France the liberty of the individual has been relatively better secured than in America, at least, so it seems to defenders of Gallic liberty. Furthermore, the constitution, as fundamental law guarded by the judiciary, has not always supported the force of opinion on government since the bench and the bar are notoriously conservative. There have been many battles in America between the bench and the sovereign people. The invention of the written constitution as limiting government made it possible for the opponents of arbitrary government to enthrone in the constitution provisions designed to abolish fundamental abuses of government, "to the end," as the Constitution of Massachusetts of 1780 declares, "that there shall be a government of laws and not of men." The written constitution became an instrument wherein could be definitely stated the principles of the social-contract theory of the consent of the governed, which in application to politics became the basis of democracy.

[1] Esmein, *op. cit.*, Vol. I, p. 608, indicates that the idea of a fundamental law goes back to the natural-law school. Thus the first bill of rights to be adopted was in Virginia in 1776, and it became the model for those that followed. Jellinek shows that under natural-law theory there was an eighteenth century concept of natural constitutional law. *Op. cit.*, pp. 345–347. Likewise, in the nineteenth century there developed, on the basis of appreciation of British constitutional and parliamentary practice, a liberal party notion of natural constitutional law. *Ibid.*, pp. 526–527. But he notes also that, despite the theory of natural law, there was no demand for a bill of rights on the Continent before the French Revolution. *Ibid.*, p. 521. Vattel's work is a good illustration of the tendency of natural-law students to reach the conclusion that a fundamental written law was necessary to preserve the law of nature. See E. de Vattel, *The Law of Nations* (Carnegie Classics of International Law), Vol. III, Ch. III. Cited in C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930), p. 51 and notes. Esmein also suggests (*ibid.*, p. 611) that Rousseau provided a method of differentiating ordinary from fundamental laws in his proposals concerning the government of Poland—the *liberum veto* should be retained only for fundamental laws.

Nor has the unwritten constitution, *i.e.*, the British constitution, proved itself an enemy of democracy. The evolution of the British constitution toward the limitation of arbitrary power in the executive was of direct assistance to the incipient democracy of Western countries. We have already stated the fundamental movements that resulted in parliamentary government, but we should recall them in connection with the development of democracy as a form of government. The unwritten constitution can develop only among a people devoted to stable political traditions, and one of the curious facts about English constitutional history is that practically no significant development in the direction of responsible and limited government has been lost in the course of the evolution of the constitution. The stability of British political tradition has not been an insurmountable obstacle to change, and it is one of the common observations of the present time that the British constitution is still rapidly evolving.[1]

While American and French democracy have developed in connection with abstract ideas, British democracy has not. As A. D. Lindsay in *Karl Marx's Capital* says, "Democracy has developed wherever the abstract appeal of the ideologue and the concrete experimentation of the practical man have worked together."[2] It is Bryce's contention, however, that British democracy came neither with active and violent public discord nor with the application of abstract ideas to politics. He points out that both the liberal and conservative forces in British party life have accepted further steps toward democracy largely because they felt that they might gain in political strength. A thoroughgoing tribute to the conservatives, surely![3] "Throughout this long march from feudal monarchy to extreme democracy which occupied three centuries, the masses of the people, whether peasants in the country or artisans, never (except in 1832) clamoured for political power. The ancient system was gradually broken down by the action of a part of the upper class aided by the bulk of the middle class."[4]

Does not such a position make the existence of public opinion unnecessary in the progress of democratic government? It is probably true that the growth of democracy was opposed by the conservatives in America more resolutely than by the conservative British. Yet it is true that in England by 1832, as the fear of the destructive forces

[1] See Ramsay Muir, *How Britain Is Governed* (New York, 1930).

[2] Cited in W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), p. 67.

[3] *Modern Democracies*, Vol. I, Ch. IV.

[4] *Ibid.*, p. 31.

of the fundamentally democratic French Revolution subsided, the march toward a democratic franchise had begun, and did not cease until toward the end of the third decade of the twentieth century with the general enfranchisement of women. There was, of course, heated demand for woman suffrage in America and England, but apparently there was no necessity for agitation in the dominions; the continental countries, such as France and Belgium, have not yet granted it, largely on the theory that it would increase the power of the clergy in politics.[1] It is certainly a curious commentary on the growth of political democracy that the traditionally conservative classes in England should have aided the extension of the franchise in England while they opposed it so bitterly in America as the greatest enemy of the stability of property.[2] Perhaps, with regard to public opinion, it should be said that its rise even today among the uneducated classes is not a strong, free force.

The art of propaganda in designing hands has shown itself able to control mass opinion, particularly through the tradition-forming agency of public education. The rise of public opinion must be viewed as a middle-class phenomenon, and certainly the students of suffrage expansion during the nineteenth century agree that the newly vigorous political parties in both England and America wanted suffrage extension in order to strengthen their programs. The nemesis of such tactics has not appeared in America, since the conservative Republican and Democratic parties still rule the government, but in England both Liberals and Conservatives have lost tremendously to the newer British Labor Party. Had such a result been foreseen, the expansion of the suffrage would, no doubt, have been a much slower process in the essentially conservative British community.

The laws of the suffrage are fundamental in England, and they take their place as part of the informal and evolving British constitution. The extension of the suffrage made the parliamentary constitution of Britain a democratic force, and in America the extension of the franchise (fairly well completed by 1830) and the rise of political parties have made the conservative check-and-balance Constitution of the United States also a democratic agent. But such a democratiza-

[1] Clemenceau once remarked that woman suffrage was harmless in America because Protestantism was merely a philosophy, while in France, Catholicism being a religion, woman suffrage could not be granted on liberal principles.

[2] See B. F. Wright, *A Source Book of American Political Theory* (New York, 1929), Ch. VI. See also Dicey, *Law and Opinion in England*, 2d ed. (London, 1914), p. 252; and J. A. Smith, *The Growth and Decadence of Constitutional Government*, Ch. III.

tion has come about in America through the development of what we have called the unwritten constitution.[1]

Constitutional Government. The Rule of Law. The argument so far has endeavored to show the importance of the theory of constitutions in establishing political democracy. But the constitution itself is only a means to an end, and the end is assuring the constant operation of certain ideas about government. The most important of the ideas about government in the democratic scheme is, probably, constitutional government.[2] Constitutional government is, by historic definition, a government of laws and not of men. The rule of law has different meanings, and its development as a constitutional principle in Western civilization has been slow and sometimes uncertain. The rule of law is a fundamental proposition in modern government, and its core is essentially this: that the acts of the agents of the state (or of the people subject to the law) shall be in accordance with the law and shall be limited so that the arbitrary action of governmental agents is legally eliminated, with legal machinery being provided to make the agents of the state amenable for violations of their prescribed powers. The written constitution and the rule of law provide the fundamental basis of government in accordance with the will of the people, taken in most cases, of course, in a long-run sense. The Anglo-Saxon idea of the rule of law is a product of British constitutional struggle which resulted finally in the elimination of what may be called arbitrary action on the part of the crown. The idea itself has existed in some form from the earliest development of orderly government and legal systems. We find Harrington in his *Oceana* (1656) speaking of an empire of laws and not of men, and it is probably through Harrington that the idea of limited government was crystallized into the phrase, "a government of laws and not of men."[3]

[1] See P. L. Ford, editor, *Pamphlets on the Constitution of the United States*, 1787–1788, (Brooklyn, 1888), for the "Objections to the Proposed Constitution" by George Mason, in which he declared (p. 332): "This government will commence in a moderate aristocracy; it is at present impossible to foresee whether it will, in its operation, produce a monarchy, or a corrupt oppressive aristocracy; it will most probably vibrate some years between the two, and then terminate in one or the other."

[2] *Cf.* Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), pp. 135–136, 137, n. 91, p. 139, n. 94.

[3] It must be pointed out that constitutional government arose as a form of monarchy and not as a phase of republicanism. According to Bluntschli, the modern state begins in constitutional monarchy about 1740. Constitutional monarchy first appeared in England and until after the Franco-Prussian War the whole effort of Europe was to find a permanent application of the rule of law, not in republicanism, but in constitutional monarchy. The intimate association of

According to the late A. V. Dicey, the eminent English jurist, there are three meanings of the supremacy of the law. "It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of the law, but he can be punished for nothing else."[1] The second meaning of the rule of law according to Dicey, is "not only that with us no man is above the law, but (what is a different thing) that here every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals."[2] And the third meaning, which is peculiar to English institutions is this:

> We may say that the constitution is pervaded by the rule of law on the ground that the general principles of the constitution (as for example the right to personal liberty, or the right of public meeting) are with us the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts; whereas under many foreign constitutions the security (such as it is) given to the rights of individuals results, or appears to result, from the general principles of the constitution. . . . Our constitution, in short, is a judge-made constitution, and it bears on its face the features, good and bad, of the judge-made law.[3]

Constitutional government, or the rule of law, is the democratic solution of the problem of government. It does not carry with it necessarily the dogmas of individualism, but it was developed in its present form in an atmosphere of political and economic individualism.

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constitutional government and political democracy is a result of the rise of liberal republicanism from 1875 to the present. Representative democracies or dictatorships are taking the place of the constitutional monarch. See J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), Bk. VI, Ch. XIV, pp. 397, 399, 409 *ff.*, for a discussion of nineteenth century constitutions.

[1] Dicey, *op. cit.*, pp. 198, 183. By permission of The Macmillan Company, publishers.

[2] *Ibid.*, p. 189. By permission of The Macmillan Company, publishers.

[3] *Ibid.*, pp. 191–192. By permission of The Macmillan Company, publishers. See A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923), Ch. XI, for a full discussion of the reign of law. Professor Corwin has indicated three forms of responsibility in the United States (not counting the responsibility of the administrative inferior to his superior): (1) the responsibility to the ordinary law; (2) the process of impeachment—in Jefferson's words, "a mere scare-crow"; and (3) political responsibility to the voters. E. S. Corwin, *The Democratic Dogma and the Future of Political Science* (Shanghai, 1930), pp. 41–42.

The *bêtes noirs* of political thinkers have been, through history, the uncontrolled discretion and arbitrariness of rulers when they attain power.[1] Constitutional government is the modern solution of the most pressing problems of government in action. The first two meanings of constitutional government as laid down by Dicey are accepted in the United States, but the third has less application because of our distinction between constitutional and ordinary law. But owing to the fact that the judges of the Supreme Court do actually give life and meaning to the provisions of the Constitution, we may say that our rule of law is, in many respects, the product of judicial decision and judge-made rules of law. Nor can we accept fully the separation of continental constitutions from the English and the American. English judges have applied general, pervading constitutional principles, and so have the judges of the American appellate courts. The difference lies, not in the existence and application of these general constitutional principles, but in the fact that in England and America these principles are applied by the judges with a free hand rather than by the members of the legislative branch and the executive power in the state. Whether the English and American concept of the rule of law is superior to the continental, the French in particular, is a matter of observation of results, and not, as Dicey thinks, purely a matter of abstract principles. The brunt of Dicey's attack falls on the continental practice of having separate administrative courts for the trial of causes that involve the public power; this is not done *pro forma* in England and America. The British-American administrative law is a product of the ordinary tribunals.

A written constitution or a traditional constitution is not in itself a sufficient guarantee of the rule of law in the first sense. The written constitution in Latin-American countries has often proved to be an ineffective barrier against despotism. Nor can we say that the ease of amendment of constitutions gives security to the people, since the American Constitution, which is singularly hard to amend in the formal sense, has been just as effective as constitutions of the British and French type which are easy to amend. The secret lies in the virility of the protest that would be entailed by the abolition of the privileges of orderly government. The key to the problem is not the fact that the American voter is enthusiastic about going to the polls, but that he would be violently rebellious if the right were taken away. So with the benefits of orderly government. Let them be given, and, if their withdrawal will arouse public indignation and resentment, the régime

[1] See C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), Ch. VII.

of constitutional government is relatively secure. This is not the case, of course, with many countries where constitutional government has been formally established in the interest of the general welfare, for constitutional government and democracy in Latin American and some European countries have not been outstanding successes.

Modern Problems of Administrative Law. Two important problems of the rule of law are being discussed at the present time. The first is the gradual growth of administrative discretion, which seems contrary to the fundamental principles of the British-American concept of the rule of law, and the second is the use of administrative courts in various continental countries. Let us consider the second first.

The application of the rule of law to public officials involves its application to private individuals, since the action of governmental agents is not in a vacuum, but in direct relation to private citizens. The rule of law stipulates that a public official can have a sanction for his acts only if the law gives him power. If he acts outside the law, his act is on his own responsibility and is in no sense an act of the state. For an illegal act of a public official, let us say a tort of a public officer, the state is not responsible. The individual, through proceedings in the ordinary courts, can question such an act, and, since the act of the individual may not be the act of the state, the individual can be made to respond in damages for injury to the citizen, or to the state itself for ordinary violations of the criminal law. This principle arises from our theory of the nonsuability of the sovereign.[1] If a public official is given orders by a superior authority and this order is contrary to the ordinary law of the land, the subordinate official who follows instructions can be made responsible at law for injuries sustained.[2] The British-American principle is that the public officer acting illegally, and therefore really as a private individual, is responsible individually before the ordinary tribunals.

In this respect Anglo-American practice has serious defects, the most important of which is the circumstance that the offending officer does not, in all probability, have the economic means to answer in damages; furthermore the private citizen is put to great expense in trying to enforce his claims in the courts. The French theory is outstandingly different. When a violation of the law has occurred while a public officer is acting in the course of his duty and is conscientiously trying to carry it out, the state assumes responsibility and the individual sues the government rather than the public official.

[1] W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924), Ch. XXV.

[2] Little v. Barreme, 2 Cranch 170; U. S. v. Lee, 106 U. S. 196.

But the determination of this state responsibility is made by special courts established for the purpose. These courts are called *administrative courts*, and in practice the students of French administrative law find that they give the citizen as much or more protection than the British-American system.[1]

The French point with pride to the work of the Council of State, which is the highest administrative court in France; they argue that it has in fact decided the cases fairly and impartially for the individual and against the state, and also that its cost of procedure is borne by the state rather than by the individual suing. The citizen makes his claims on a provided form, and the Council of State investigates and gives a fair decision. The ancient British theory of the supremacy of the ordinary law of the land cannot accept such a system of governmental or executive courts to decide this type of case. The British-American theory, of course, is different in that the state does not undertake to be responsible for the faults of the service; all faults of public officers are personal faults. It is true that the purely personal injuries of a public officer to a private individual are not assumed by the French state, but the truth is that many faults which we consider private torts are under the French theory compensated for out of the treasury. The question of adopting such a system in our country is not seriously agitated, though there is some demand that the government of the United States and the various states assume responsibility, to be determined by the ordinary courts, for the torts of its agents. The extension of municipal and county liability in America is a favorable indication of the expansion of this state responsibility.[2] It is thus possible that the strict adherence of the English-speaking peoples to the ancient, rigid, and customary idea of the supremacy of the law

[1] See J. W. Garner, *Political Science and Government* (New York, 1932), pp. 784 *ff.* and literature cited. Léon Duguit, *Law in the Modern State*, tr. from the French (New York, 1919). See Esmein, *op. cit.*, Vol. I, p. 568, for the position that French administrative law goes back to the constituent assembly which forbade the judiciary from interfering with the administration on the basis of the separation of powers. Edmund Burke noted and criticized this policy in his *Reflections on the French Revolution* (Everyman's Library), p. 205: " . . . those persons are exempted from the power of the laws, who ought to be the most entirely submitted to them." Henry Nezard asserts (Esmein, *op. cit.*, Vol. I, p. XVIII) that parliament in France has become omnipotent and that it controls the executive power.

[2] See, in general, Ernst Freund, *Administrative Powers over Persons and Property* (Chicago, 1928); Ernst Freund and others, *The Growth of American Administrative Law* (St. Louis, 1923); John Dickinson, *Administrative Justice and the Supremacy of the Law* (Cambridge, Mass., 1927); F. J. Goodnow, *Comparative Administrative Law*, 2 vols. (New York, 1893).

may not, in fact, be superior to the continental system that has developed under French influence.

The first problem, the growth of administrative discretion, is viewed by some as a serious menace to democratic institutions which rely so heavily on the principles of the rule of law or constitutional government. The increasing complexity of the activities of the modern state has placed a heavy burden on administrative officers and has resulted in a tremendous increase in the number of those who are carrying out in detail the functions of the state. Legislative bodies have been compelled more and more to pass statutes in general terms, leaving the actual details of application to the discretion of the executive. A ministerial duty of an officer is a duty in which no discretion is involved; a discretionary duty is one in which the officer is given leeway to exercise his own judgment in the particular situation. The amount of discretionary authority has been increasing at a rapid rate in British-American countries, until there is some approximation to the continental practice of passing statutes in general terms and leaving the details to be filled in by administrative ordinance. The ordinance power of British administrative officials and American officials, from the President of the United States to executives of municipalities, has increased until conservatives have become alarmed at the new administrative despotism.[1] Dean Pound has referred to it as a recrudescence of personal government, which is characteristic of a period of rapid transition in legal institutions.[2]

Administrative discretion takes two broad forms, the first being an increase in the ordinance power, and the second being an almost judicial discretion in applying general rules to particular facts.[3] The American classification of the powers of administrative officials of a discretionary nature includes the quasi-legislative (ordinance or rule-making powers) and quasi-judicial powers (the power of administrative officers or commissions to find the facts in particular cases). The courts have shown a tendency to refuse to review the decisions of administrative officers when a fair and impartial decision has been reached, and to sustain broadly their rule-making power by denying

[1] See Lord Hewart of Bury, *The New Despotism* (London, 1929). The author remarks (p. 37): "Between the 'Rule of Law' and what is called 'administrative law' (happily there is no English name for it) there is the sharpest possible contrast. One is substantially the opposite of the other."

[2] Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven, 1922), Ch. III, and pp. 135–136.

[3] U. S. *v.* Ju Toy, 198 U. S. 253 (1905).

it to be contrary to the separation of powers which forbids the delegation of legislative authority.[1]

Whether the rule of law is in danger remains to be seen. But it is probable that the modern issues of government demand some changes, and in the process of those changes it is also probable that abuses will creep into governmental practice—abuses that are contrary to essential principles of limited and responsible government.[2] These abuses can be corrected, however, without destroying the needful discretion of administrative agencies of the government. We have seen that the first great end of a formal constitutional system is the establishment of the rule of law, but the rule of law itself is significant because of the guarantees it gives the citizen that his personal rights will not be disregarded. We have already seen that the modern tendency with regard to the end of the state is to stress the development of the capacities of the individual, and this end of the state leads directly into a reasonable theory of rights. The rule of law is valuable because it assures the existence of a system of rights in a legal sense, and the existence of rights that are assured to the individual is, finally, the essential basis of democratic government.

The Revival of Natural Law and the Rule of Law. The discussion of the rule of law and constitutionalism has dealt so far with law as the creation of political authority—as positive law. But the rule of law has been given other interpretations. It is of historic importance that the rule of law in the medieval and early modern sense was the rule of superearthly law, as in the view of St. Thomas—eternal law, divine law, natural law, and human law. Behind the general objectives of the American and French revolutions is to be found the theory of natural law as a rational law, *i.e.*, a law to be discovered by the right use of human reason. We have already shown that in modern times "natural law" in a sociological and psychological sense (*i.e.*, as a form of naturalism) is being advocated, often in terms of a natural law with a changing content. Léon Duguit, the eminent French jurist, and Hugo Krabbe, a Dutch scholar in public law and political theory, are both interested in the rule of law. But for Duguit the rule of law, controlling the "public service state," is the rule of

[1] It may be noted that until 1935 no national statute was declared unconstitutional on the ground that it was an illegal delegation of authority to executive agencies of government. See Panama Refining Company *v.* Ryan, 293 U. S. 388 (1935).

[2] See Report to the Section of Criminal Law and Criminology of the American Bar Association, August 19, 1930, of the committee appointed to investigate the lawless enforcement of law. The Wickersham Commission also investigated the problem under the Hoover administration.

objective law, the law of social solidarity. While the individual will may observe the facts of society that are the foundation of the rule of law, it is primarily beyond the formulation of the state. It is a sociological and psychological law, and the duty of the state is the conduct of public affairs in harmony with the demands of solidarity.

The rule of law springs, in Krabbe's theory, from the feeling or sense of right in each individual as a member of a community. The feeling or sense of right, not the positive commands of the state, is the real basis of the validity of law. True, the state must issue commands, but they are not necessarily law, for they are law only if the general sense of right of the community members approves of the rule. Each individual as a moral creature is presumed by Krabbe to have this sense of right, and the difference in the sense of right between different national communities accounts largely for national and state differences.[1]

Undoubtedly, in the practical affairs of government the sense of right of the community and the objective needs of society must be considered. But that either of these facts should be elevated to a position which might determine the content of the law is doubtful when we consider the actual existence of positive law in state life. Perhaps the most fundamental criticism of the position of Duguit, Krabbe, and other pluralists, has been given by W. W. Willoughby, who contends that their theories are ethical and not truly legal or juristic.[2] Historically, these theories are out of harmony with British-American traditions of the rule of law and, since we cannot will to be free from history, the problem of accepting the theories of either Duguit or Krabbe is not great.[3]

Democracy and Theories of Rights. Constitutional democracy emerged in part from the theory of natural rights of the eighteenth and earlier centuries. One of the fundamental instruments of democratic government was the assimilation in British law of the so-called natural rights of men with rights under the common law.[4] Democracy as

[1] See H. Krabbe, *The Modern Idea of the State*, tr. by Sabine and Shepard, (New York, 1922); Léon Duguit, "Theory of Objective Law Anterior to the State," *Modern French Legal Philosophy* (New York, 1921).

[2] W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930), Part II.

[3] See Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. III; Elliott, *op. cit., passim;* see, in general, Haines, *op. cit.*

[4] See Roscoe Pound, *The Spirit of the Common Law* (Boston, 1921). Acton, *op. cit.*, p. 55, says: "Europe seemed incapable of becoming the home of free states. It was from America that the plain ideas that men ought to mind their own business, and that the nation is responsible to Heaven for the acts of the state—ideas long

a form of government with its broad franchise and the rule of the majority is probably inconsistent finally with an absolute system of rights, though many of the rights that were viewed as natural rights are fundamental in a democratic system. A given fundamental right may be inconsistent with the democratic impulses of certain communities and not of others, and yet again it is probable that most of the natural rights found in the history of political theory are not only reconcilable with democracy but really essential to the continuance of democratic government. So true is this that we may say that the theory of natural rights, which in the beginning had no very sure connection with democratic machinery of government, was yet an essential step in the development of democracy as a form of government.

In the first place, the right to the free formation of opinion and wide freedom in expressing opinions so formed is part and parcel of the utility of the vote in determining public policy. The free press, which is so characteristic a right in Western democracies, is of fundamental importance to the mere existence of democracy. The press in itself is not essential, but the function the press performs is essential to the existence of public opinion. Again, the right to gather in public meetings for the purposes of group life is one of the vital springs of democratic government. These rights have been woven into the theory of natural rights largely through English law, but that they are essential in fact in government, if it is to be in reality for the community and not for the rulers, is not seriously denied. Interestingly enough, the denial of democracy in dictatorially governed countries carries with it, it seems, the denial of these rights so long associated with constitutional government and political democracy.

However, a clear distinction must be made between rights which are thought in all democratic countries to be essential and those which spring from the democratic philosophy of particular countries. Since democracy as a form of government involves the right of participation of a considerable majority of the members of a political community in affairs of government, it may be said that rights necessary to the existence and expression of public opinion are an integral part of the democratic system of government.

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locked in the breast of solitary thinkers, and hidden among Latin folios—burst forth like a conqueror upon the world they were destined to transform, under the title of the Rights of Man." By permission of The Macmillan Company, publishers. *Cf.* J. A. Ryan and M. F. X. Millar, *The State and the Church* (New York, 1922), p. 277: "Man's natural rights may, therefore, be summarized as those of life, liberty, marriage, and property." Professor Corwin thinks that the guarantee of rights to the individual is "an idea which lies at the very root of the democratic theory of the State." Corwin, *op. cit.*, p. 45.

But the specific content of legislation and of the functioning of social institutions cannot be so considered. American democracy has given the private ownership of property and its relatively free use the status of a fundamental right. Other such rights are freedom of competition and the historic restraint of monopolies, which have been deeply embedded in British-American law. A radical or socialistic democracy, on the other hand, would not admit that the private ownership of certain kinds of property, especially where natural resources and important industries are concerned, is an immutable right. Nor would the socialist commonwealth place such reliance on free competition as an agent of economic progress. American democracy sees no conflict between political and legal equality and economic inequality, though social inequality is frowned upon in a mild way. British democracy accepted social inequality and economic inequality along with political and legal equality. The British Labor Party, however, is bound by its principles to struggle against economic equalities of the grosser sort, but it does not seem to be at war with the conventional British class system. The thoroughgoing socialist democracy would insist on the abolition of political, legal, economic, and social inequalities.

We thus reach the conclusion that a system of rights for the protection of public opinion is fundamentally necessary to democracy as a form of government, but that beyond this the system of rights maintained by a democracy is a matter of the peculiar social philosophy produced by the historical forces that created the community.[1]

Pluralism and the Problem of Rights. The general issue of pluralism is so important in modern political theory that we must consider it in detail in a later chapter. However, certain issues raised by pluralistic thinking relate directly to the problem of rights in political democracy. Pluralism accepts the state as a social fact, but denies the historic doctrine of sovereignty. Pluralism attacks the concept of sovereignty and the concept of the unified state as pragmatism attacks the dogmatic reliance on concepts incidental to logic. The result of the pluralistic attack, which is pragmatic at its core, is insistence that the state is merely one group among many groups, perhaps the first among equals. A federalistic picture of society is drawn in which the individual divides between the state and other groups the loyalty that conventional political theory assumes is concentrated on the state.

[1] Lord Acton, *op. cit.*, p. 99, lists the dogmas of democracy as follows: "that all men are equal; that speech and thought are free; that each generation is a law unto itself only; that there shall be no endowments, no entails, no primogeniture; that the people are sovereign; that the people can do no wrong."

Leaving aside the validity of the attack on the legal theory of sovereignty, and admitting in many respects pluralism presents a valid picture of the actual structure of society, what effect does this philosophy have on the historic doctrine of rights? In a previous chapter we considered the theory of rights in relation to the individual, but for the pluralist the individual is fundamentally a member of groups other than the state. To safeguard the rights of the individual, therefore, the state must view the existence of rights in terms of the rights of groups. The same conclusion is reached whether the group is viewed as a "real person," as Maitland insisted in following the theory of von Gierke, or whether, as with Laski and Duguit, the personality of groups is denied.[1]

It is true that the theory of the French Revolution denied the right of associations to mediate between the individual and the state.[2] Such was the theory of Rousseau by which each individual participated directly in the formulation of the general will. The common law on conspiracies, which in fact often related to the organizations of workers and businessmen, dealt hard with group life, though the idea of freedom of public gatherings has become a part of the common law. As Ernest Barker has pointed out, the issue is not, as with Herbert Spencer, *The Man versus the State*, but the group versus the state.[3] Pluralism goes farther than merely asserting that individuals should be allowed to join a trade union, a church, or professional and cultural organizations of various kinds; liberal thinkers assert that a realistic view of society accepts such associations and forms of group life as inherently necessary as the state, and they maintain that the state has no right to destroy them. Pluralism contends that the federal nature of society involves a surrender of the unitary authority postulated in the state by the doctrine of sovereignty. The group has rights, but these rights are not primarily the creation of the state. The group has rights as the state has rights, and in both cases the rights arise from the facts of social life.

This general principle of pluralistic thought assigns to the state a position as umpire or adjuster of claims between the group forces at

[1] See Otto von Gierke, *Political Theories of the Middle Age*, tr. with an introduction by F. W. Maitland, (London, 1900). Maitland's introduction has become a classic of modern political thought. See also C. J. Friedrich's introduction to *Politica methodice digesta* of Johannes Althusius (Althaus) (Cambridge, Mass., 1932), for a brilliant discussion of one of the first great modern systems of politics based on the examination of the nature of groups or communities.

[2] Esmein, *op. cit.*, Vol. I, pp. 585–586.

[3] *Political Thought in England from Herbert Spencer to the Present* (New York, 1915), p. 248.

work within it. Furthermore, the mere claim of a group to exist does not carry with it the right to exist, for no group has so inherent a right to exist and function that it may deny a like right to other groups; and if the group purpose is destructive to social order (such as groups organized for criminal ends), it may be suppressed. It is sometimes difficult to determine whether the pluralists present their theory of group rights as a fact, as a pragmatic datum with which the state has to deal, or as a purposive program for state reorganization. If the pluralist is truly pragmatic, he must see only behavior in political life; as he provides a program of purpose of an ideal character, he loses the pragmatic flavor.

No serious objection can be raised to the general proposition that freedom of group life should be guaranteed. The social program of pluralism, without its tinge of anarchism, is undoubtedly acceptable to the liberal who might also defend the unity of the state and the doctrine of sovereignty. As a suggestion for the content of modern legislation, pluralism offers fruitful proposals; as an attack on the unity of the state, its value is in doubt. In reality no policy of government has been more attended with arbitrary and unreasonable action than the suppression of the free formation of group interests; in fact, it may be doubted whether a state can long suppress the spontaneous grouping of interests, whether economic, cultural, or ethical. Laski speaks of the penumbra of anarchy found in the exaltation of the individual as a member of the group, but he does not feel that it is dangerous to the constitutional state.

On the other hand, it may be that the rise of the postwar dictatorship indicates a reversion to the political regulation of group life. The dictator is also pragmatic; his control is a fact and his program works. It may be said that the Italian state before the rise of Fascism did surrender to groups more privileges than the objective needs of Italy could warrant. The nemesis of the pluralistic theory of group rights, without the unifying influence of the constitutional state of Western democracy, may, perhaps, be found in the cycle depicted by Elliott, who says: "It [his defense of constitutional democracy] procedes from the conviction that political pluralism in practice goes through precisely the evolution of Mussolini and his Fascist groups; from revolutionary action, usually inspired by ends like those of the Socialist left, through conquest of power to repressive dictatorship in favor of nationalist ends of the imperialistic right."[1]

Democratic Government Structure. The burden of contention in this chapter has been that historic and institutional features of con-

[1] Elliot, *op. cit.*, p. 83. By permission of The Macmillan Company, Publishers.

stitutional government are the fundamental elements in democracy as a form of government. In this connection the service of the written constitution, the supremacy of the law, and the acceptance of certain rights have been emphasized. Yet it must not be forgotten that democracy as a form of government rests on the participation in the affairs of government of a large majority of the adult members of each political community. In most discussions of democracy as a form of government, governmental institutions connected with participation have been given an important place. These aspects of governmental structure are the right to vote, majority rule, and representative government (where direct democracy is not used, as in some smaller communities, such as the mountain cantons of Switzerland, the New England town meeting, and the ancient system of democratic participation, particularly in the democratic periods of the city-state). But it must be borne in mind that all governments have some system of participation, however oligarchic or aristocratic. The principle of majority rule far antedates democracy itself, and there is no necessary connection between the two. Moreover, representative institutions may or may not be democratic; it is the extent of the application of the principle that determines whether or not democracy as a form of government is to be found in a particular state. Republican government, which the *Federalist* viewed as representative government, may be decidedly aristocratic in fact if we take the test of democratic government suggested by Bryce. It is a matter of relative importance, for without the limitation of government by the written constitution, the rule of law, and the acceptance of rights, the presence of a right to vote and the principles of majority rule and representative government would result in a modern democracy fundamentally different in character from that which now exists. In further chapters these structural problems of government will be investigated with regard to theory and practice.[1]

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Chapter IX

DEMOCRACY AS SOCIAL PHILOSOPHY

As the State develops, as its members grow in social wisdom, in the consciousness of their own needs and the possibilities of satisfying them through political order, the power of the state comes to rest more and more on its service of that end—or else there is distraction, weakness, cleavage, finally perhaps revolution.—R. M. MacIver.[1]

Democratic Philosophy and Government Distinguished. In the last chapter the classical theory of democracy as a form of government was discussed. It is the purpose of this chapter to examine, as distinct from the idea of democracy as a form of government, the social theory that has evolved in the democratic state. If political science were purely objective, if it left the kingdom of the ends to the educator and the philosopher, it would not be proper to take up this subject. It would be necessary only to describe and analyze the social and political structure of democracy. It would be sufficient in that case to consider merely the mechanics of political support and the interaction of human wills in concrete situations. But that is not sufficient, for further inquiry must be made as to the actual results of democracy in terms of the life of the individual and the development of civilization. A mere pragmatic description of consequences will not suffice, since man is a creature of purpose as well as of circumstances and conditions. A description of democracy gives no normative judgment either as to its past achievements or as to what it might or should accomplish in the future. The pragmatic approach is of great value in testing the working of certain democratic devices, such as voting and the functioning of representative government, but this type of test clearly must be carried on with normative judgments in mind. The normative or the purposive aspect of human life constitutes the field of social philosophy, and it must be considered in connection with political democracy.

Democratic Philosophy a Problem of Public Opinion. The critical problem of the social theory of democracy must be stated in its fundamental terms as a problem of public opinion. In political democracy it is true, theoretically at least, that the masses of the political com-

[1] *Community*, 3d ed. (New York, 1924), p. 33. By permission of The Macmillan Company, publishers.

munity have the right to judge the functioning of government and to inject into the will of the state the specific social aims one finds in legislation. Whether such an end is actually attained depends on how public opinion works in practice. The practical effect of opinion is not a matter of simple analysis, for a given social end may be desired by a large percentage of the voting population and yet it may not be translated immediately into governmental action. Thus there are two distinct problems. Public opinion may desire a certain public policy, but it may or may not be effective in securing that policy. This aspect of the question will be discussed in later chapters where problems of the electorate, the political party, representative government, and public administration are considered. Certainly, a test of the effectiveness of democratic government or machinery should be the ease with which opinion secures recognition and the permanent attornment of government action to that recognition.

But as to social ends, the second problem arises from the simple fact that there is no certainty that democracy will approve, condemn, or be indifferent to specific proposals. There is no guarantee that the democratic state will take as valid any particular suggestion. Certain ideas of public opinion vary widely in different democracies, and it must be recognized that no current of public opinion can be dissociated from general social ends. The reformer, for instance, has two alternatives. He may either urge by propaganda or education that the masses accept a given step toward Utopia; or he may believe that the masses will never be interested and may therefore seek to gain his ends without popular support on the theory that, if the government accepts the policy, the people by experience will come to appreciate it, or at least they will not oppose it. The latter plan, of course, is not consonant with Western democratic ideas, for public policy should be a reflection of considerable sentiment and specific attitude in the electorate. Reformers have generally underestimated the strength of definite opposition by the masses, and they have realized only faintly the difficulty of reforming in the face of inertia.[1]

The Factors in Democratic Philosophy. The action of public opinion itself is not so direct and controlling as is sometimes thought. Various explanations must be given before we can understand the social philosophy embodied in the policy of particular democracies.

1. The most significant of these factors in determining the philosophies of democratic states is history. Every contemporary struggle

[1] See W. B. Munro, *The Government of American Cities*, 4th ed. (New York, 1926), Ch. XXII; *Personality in Politics* (New York, 1924); F. C. Howe, *Confessions of a Reformer* (New York, 1925).

that involves a conflict of ends or values reaches back into the history of the state. Ideas seem to be carried in the social heritage with remarkable ease and persistence, and surely the effect on ideas of a period of a century or two is not to be overcome by the fiat of the legislature on a given day. By looking at the history of a state we can gather the scattered threads of ideas that together constitute the social philosophy approved by dominant public opinion.

2. The second force determining the social philosophy of a democracy as seen in its public opinion may be called the objective social factors.[1] Social life itself implies certain conditions of existence, and in any political society there is a group of philosophical values that are intimately connected with the mere existence of the state. "Social order" undoubtedly summarizes the largest part of the objectively necessary conditions of life. One of the ends of political society is to preserve order and harmony, though of course order itself is to be defended rationally. The limits of order cannot be seen clearly at any single time, and whether a given disruptive force in the state is contrary to the objective necessity of order is often a matter of acrimonious debate. Institutions, whether economic or cultural, are the product of history and are intimately interwoven with the problem of order. Institutions often claim as one reason for their support their contribution to order; since it is easier to support a particular system or order than to venture into untried fields, we find that political society is inherently conservative. Public opinion, with the exception of abnormal and anarchic trends, accepts the finality of order. One may suspect that this social theory in favor of order is objectively necessary since public opinion and political democracy could not exist in the Western sense without it.

3. The third factor that may be used to explain the philosophy of a given democracy involves the "ought" or "should be" element in public opinion. In theory, public opinion can really be free in determining the "ought." It may be that those disillusioned with the massive, mechanico-morphic, and impersonal civilization in which we live feel that morality is a lost cause and that a fragile and egoistic self-expression and satisfaction are the only justifications of life. Yet democracy is so fundamentally a part of Western culture of the last few centuries that to surrender the democratic ideal is virtually to surrender the validity of our civilization. Here is a forensic question, but it may be asserted that it is historically impossible to surrender definitely the old ideas of liberty, rights, and the governmental struc-

[1] *Cf.* F. Thomas, *The Environmental Basis of Society* (New York, 1925), *passim;* Aristotle, *Politics*, Bk. VII, Chs. II and VI.

ture of democracy. Such values may die, but Western society would be a different thing without them. It is not a conclusive argument to urge that the masses by themselves are incapable of formulating the ends of political democracy. The answer is, probably, that such a formulation is the work of the leaders of thought. No justification of the constitutional state may be valid for more than a generation, or even for one generation, but man must live by an argument after all.

Is There a General Will? The vision of the good life in the good state has haunted political speculators from the time of the Greeks to the present, and yet the nature of the good life and the ends of the good state have been a matter of perpetual struggle and conflict. Is some synthesis possible by which political democracy can come to definite conclusions as to the nature of these great ends of the political community? Democracy with its system of participation makes the matter more difficult. An absolute monarchy, a close corporation of oligarchs, or a state in which a single dominant religious faith controls the government is not a matter of dispute. There may be resistance to the synthesis of social ends, but it is ineffective, and anyone who cares may read the statement of the purposes for which the government stands. But such governments are irresponsible as far as the members of the community are concerned, and democracy, with political participation giving definite expression to dissentient voices, is never sure of the stability of social theory and philosophy.

The refuge of the ancient world when rational and honest political life was sought was the ideal legislator. This idea sprang, no doubt, from the legends of the great law-givers of the past who in their wisdom produced codes of laws that did not stand in need of change. The ancient thinkers realized that democracy implies instability of social philosophy in that there is always the possibility of new legislation. They were not confident, having seen the turbulent yet splendid life of Greek democracies, that the citizens were as wise as the great legislators, even though participation and citizenship were limited to the more responsible members of the community. In the Middle Ages, though the state was viewed as having divine approval, the content of legislation was not a matter of general discussion and debate, for the church stood as an authoritarian exponent of what social ends should be approved by the masses. Furthermore, the church gave its approval to custom as a test of the validity of legislation, and this in turn made it difficult for rulers to develop the practice of lawmaking.

The eighteenth century defense of responsible government did not concede the free statement of social ends. Locke's *Two Treatises* put

above the rough determination of majority vote the immutable natural rights of man, and even the use of reason for the recognition of these rights of man did little more than suggest the future gateway or entering wedge of public opinion in formulating social policy by legislation. Natural law is, after all, an authoritarian standard, but its formulation was not in the hands of a strong historic church. It must be admitted that Locke did not give a clear answer to the problem of social philosophy in political democracy. This response was left to that brilliant yet paradoxical and erratic Genevese, Jean-Jacques Rousseau, who in the *Contrat social* stated the theory of the general will.[1]

As A. L. Lowell pointed out, behind early democratic theories of public opinion there lurks the uncomfortable specter of such a will finding expression through the organization of government.[2] The fundamental assumption in such a will is something like the physiocratic theory of the universal harmony of interests; since there could be no ultimate conflict between the interests of men, the only conflict is concerning the nature of the permanent unities that bind all rational men together in society. The philosophical problem of the general will arises because of the belief that the general will is always right, that it always supports the good. It is the best expression of the harmony of men in the state. But the opinions of each citizen have to be formed freely without the interference of parties or factions between the individual and the state. The question presented to Rousseau's direct democracy was not, what should be done in this particular case? but, what is the general will? The general will was distinguished from the will of all, which was dominated by the particular interests of individuals and not by the harmony of interests involved in the moral and corporate life of the state. To put the problem of the general will more concretely, we may say that individuals may do what they want to do, or they may do what they ought to do. By its moral qualities the state expressed the true nature of the citizen, and, by having a direct vote on the question of what is the general will,

[1] The term *volonté générale* was used before Rousseau by Montesquieu in *L'Esprit des lois* (1748), Bk. XI, Ch. 6. However, it is probable, if not certain, that he used the term in a sense different from that of Rousseau. See Georg Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), p. 466 n. 1.

Hans Kelsen, *La démocratie*, tr. from the 2d German ed. of 1929 (Paris, 1932), Ch. X, notes that some defenders of democracy have made proposals for the determination of what ought to be the content of the political order, particularly Rousseau in his theory of the general will, which held that the minority was simply wrong.

[2] *Public Opinion and Popular Government*, Ch. III.

the individual himself participates in the decision that tells him what he ought to will.

Yet Rousseau was not sure that a majority vote of the sovereign citizens would assure the expression of the general will, *i.e.*, the formulation of a proper philosophy of democracy. Of course, if Rousseau had remained adamant in his defense of majority rule, his solution would have been entirely self-consistent. But he did not do this; in fact he fell back on the ancient device of the ideal legislator who is able, by virtue of his wisdom, to codify an adequate expression of the general will. To political thinkers, the use of majority will for ascertaining the general will of the state is really the weakest element in Rousseau. As we said, the idea of the good life in the good state is one of the oldest of political ideas, and it is also one of the noblest. The German idealists or absolutists took Rousseau's idea of the moral contribution of the state to the individual, combined it with certain elements of ancient thinking, made their own nationalistic interpretations, and developed the theory of the absolute state to which the individual owes the deep moral obligation of perfect and free obedience.[1]

The idea of the general will provides a rallying point for the defenders of modern democracy. They might insist that, while irresponsible government may not really express the general will, a democratic form of government comes closest to this expression and may at times actually realize it in practice. With the aid of the general-will theory, the social philosophy of democracy takes on the quality of rightness and goodness; it becomes an expression of social truth. Public opinion itself is clothed with the metaphysical halo of finality. It is a source of truth, or moral validity, since individuals helping to express the general will express the harmony of permanent interests embodied in the political community; public opinion in creating a general will is inherently incapable of injuring itself. The individual is therefore truly free when he obeys the general will, and in fact may be forced to be free, to use the expression of Rousseau, if he attempts to resist the impact of this will on his own life.

The Criticism of the General Will. But the criticism of the general-will theory as a solution of the problem of democratic social philosophy is far-reaching. In fact, it may be said to have few integral defenders now, and it may be regarded as one of the nearly lost illusions of political philosophy. In the first place, modern criticism, under the influence of realism, denies there is a universal or state harmony of

[1] H. W. Schneider, "Political Implications of Recent Philosophical Movements" in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. VIII.

interests; rather it insists that there is a universal conflict of interests and that no device so patently artificial as the general-will theory can successfully evade this fact.[1] In the second place, if there is this fundamental conflict of interest between individuals and groups of individuals, where is the moral unity of the state upon which, finally, the general-will theory rests? Modern democracy must admit that the conflicts of public opinion are fundamental, and not mere differences as to the nature of the common interests of all individuals. Of course, it might be admitted that the preservation of order is a common interest and superior to the interest of a single individual, but the state is more than a mere preserver of order, and the nature of public order itself is a matter of eternal conflict. In such circumstances, the democratic state cannot hope to express a moral unity of its citizens that does not exist. It must admit that the moral qualities of civilization are found in individuals who use civilization and who are produced by civilization.

Such a moral and corporate unity is not often to be found in the state, though this does not deny in any sense that there is community of purpose shown by the mere fact of the existence of the state and the definite formulation of policy. It cannot be asserted, however, that any statement of policy given by the dominant groups in the state is, in any sense, a real expression of the purposes of those who are opposed to that particular statement of social ends. But even granting, for the sake of argument, the possibility of the general will, it is urged that using a majority vote or an ideal legislator is no guarantee that the general will is thereby stated. The principle of majority will is a device or expedient for arriving at decisions in order to prevent conflicts rather than to express a metaphysical or moral unity of the state.[2]

If the general will is not the expression of the true social philosophy of a political democracy, what then? The net result of the rejection or alteration of the general-will theory is merely that the statement of a social end by political democracy is a point of balance or of political equilibrium. The policy itself is the policy of those who supported it and who secured the formal approval of the state, rather than the expression of the theoretical moral unity of the state. Such a position, for modern political thought, is infinitely nearer a realistic and true presentation of the way in which the philosophy of democracy should

[1] See W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), p. 218.

[2] Hobhouse remarks that the real objection to the general will "is that insofar as it is will it is not general, and insofar as it is general it is not will." *The Metaphysical Theory of the State* (London, 1918), p. 126.

be stated. Rousseau did not contend that the general will had a fixed and permanent content, but he did believe that by freely legislating the general will could be destroyed through the preponderance of particular rather than general interests. But at least the general will was permanent; it was a fixed attribute of the democratic state, as Rousseau pictured it, with a small citizenship and direct participation in the legislative assembly rather than participation through representative institutions. The opposing point of view insists that, while the balance may shift, and while the content of legislation may change, some balance or acceptance of common purpose is necessary for the continued existence of the state. The state cannot perform its manifold functions in the disruptive atmosphere of violent resistance. Those who seek to move the state to their will are never at rest, and, as only a few in a state are opposed to orderly government, an equilibrium is possible. Efficient democratic machinery can and should find the balance that gives peace, order, and progress, or else it should be reorganized in such a way that this end can be attained.

Democracy is, therefore, a problem in social balance as well as in moral and corporate unity. Individuals and groups have ends they desire to be sanctioned by the state, and democratic social philosophy is not immutable but relative to balance. The balance must be between interests that are expressed in the determinations of individual will or group demands. Interest itself must not be used in a narrow sense, but more in the sense of a claim to the recognition of a particular value, whatever may be the source or the historical origin of the value. It is not contended that the state stands off and can view interests objectively, or that the state does not embody interests or represent values. The only contention is that interests are not completely embodied within the state, and that they are harmonious only by virtue of the existence of the state. Hence, it is necessary for the state to act upon interests, and often to create them. The state can create interests because it embodies inherently certain aspects of life and can shape the course of individual thought and conduct.

The interests in life that are sufficiently extensive to give rise to group activity are not, generally speaking, younger than the state. In fact we may say that the interests that directly bear upon the action of the state are probably as old as the state or older. As the modern state emerged, its development proved it capable of dealing with certain interests of human beings more effectively than with the groups themselves. As a consequence, the function of the state has increased, and the problem of balance between interests has become more delicate. But the category that Dean Pound has called "social

interests" is quite largely a creation of the state. To recognize a social interest is to create a common purpose.

The balance of interests, which expresses social philosophy most clearly, must be a balance between group demands of various kinds. The relations between state and state represent such a balance and an interpretation of the proper course of public affairs. Again, the struggle within the state between conflicting interests can be interpreted as a conflict of social philosophy. The demands of the American Federation of Labor, the organizations of farmers, the Chamber of Commerce of the United States of America, and various interests of an industrial character present different views as to the social norms that should be reflected in democratic practice. The efforts of fundamentalists to exclude certain views of scientists from the public-school curriculum is a matter of democratic as well as religious philosophy.[1] American difficulties with democratic theory center around the struggle of economic groups for recognition of their unique views and interests, and also around the organization of general humanitarian and moral movements, such as the Protestant drive for prohibition, which brings to light the alteration in the balance of social ends that noneconomic groups can achieve. Historically, there have been many such struggles to bend the state to the social aims of organized interests, and the present time does not show a diminution of the constant efforts of gradually developing group interests to move the state to their demands.

Such a view of politics makes the historic theory of the general will untenable. Concretely, there are limits to the fundamental harmony in the state; the pains of progress and the alterations of democratic theory make this conception of harmony a vague ideal, especially in times of rapid flux. But the theory of the balance of interests, which expresses fairly and without arbitrary power the dominant ideas of the purpose of democracy, takes account of this lack of social harmony and insists that change should take place with the evolution of new ideas and needs. A balance of interests, of social philosophy, which does not change too rapidly gives time for experimentation and the testing of theories, and yet the very idea of the balance in no sense demands that a static concept of social philosophy should be maintained by any democracy.[2]

[1] See Walter Lippmann, *American Inquisitors* (New York, 1928); Peter Odegard, *Pressure Politics, The Story of the Anti-Saloon League* (New York, 1928); *The American Public Mind* (New York, 1930).

[2] See G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), pp. 247–248; Léon Duguit, *L'Etat le droit objectif et la loi positive* (Paris, 1901),

Historic Democratic Theory. Liberty, Equality, and Fraternity. The most stable and most impressive elements in democratic philosophy have been evolved in the course of history. The old names perhaps carry new meanings; there may be new wine in the old bottles; but those who still believe in the constitutional state and in the ideals of liberty and equality find the most valuable and distinctive elements in political philosophy in the history of Western democracy. To put the matter briefly and to the point, the ideals of liberty, equality, and fraternity express most clearly the social theories that have grown up in connection with democratic government. Early democracy was more interested in assuring liberty and equality,[1] but modern democracy is interested in giving a vital meaning to fraternity or, to use the modern expression of the same idea, the community. It is not possible to cast off the traditional ends of democracy by merely taking thought; if at all it must be done through the course of history itself. The experience of modern times does not show conclusively that these views of democratic social theory are valueless. Rather, certain traditional forms of liberty and equality have been realized in a practical form, and the great interest of the present is to secure the participation of all members of the state in common purposes, *i.e.*, in the vital democratic community. The fascists contend that people are tired of liberty and equality, that they are tired of the inefficiency of governmental forms devised in part to realize these ideas; nevertheless, they insist on the importance of the community, which they interpret as the integrated, corporative Fascist state. This agreement on the importance of community life does not constitute a reconciliation between dictatorship and the philosophy of democracy, however; differences of view go back to the

pp. 40 *ff.* George Cornewall Lewis, *A Treatise on the Methods of Observation and Reasoning in Politics*, 2 vols. (London, 1852), Vol. I, p. 431, remarks: "The disposition to supply fictitious causes has exercised as extensive an influence in physical and metaphysical, as in political speculation, and as in historical composition. From the infancy of philosophical reasoning there has been a tendency to imagine occult entities, not objects of sensation or consciousness, as the principles or causes of apparent phenomena."

[1] Lord Acton, *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence (London, 1909), p. 79 says: "Ancient democracy . . . was never more than a partial and insincere solution of the problem of popular government. The ancient politicians aimed no higher than to diffuse power among a numerous class. Their liberty was bound up with slavery." By permission of The Macmillan Company, publishers.

fundamental problem of free participation in government which is characteristic of democratic ideas.[1]

The Nature of Liberty. We have grown so accustomed to certain liberties that it is difficult to recall that their assurance to the individual was a matter of long political conflict and structural evolution in government. Liberty has proved susceptible of many definitions.[2] Its primary significance, it seems, is associated with popular sovereignty, the doctrine of the American and French revolutions that all having equal and natural rights have an equal right to consent to the government over them.[3] Political liberty is the liberty of engaging in the conduct of popular government; it implies that the highest power is the power of the people expressed through the ordinary channels of popular government. Civil liberty consists in the guarantee of a body of rights to individuals, such as the protection of property, the right of free speech and press, etc., but it does not include the idea of political liberty, which has come to mean merely the rights to vote, to hold office, and to serve on juries.[4] Individual liberty has been defined in terms of a sphere of activity to be secured to the individual against interference either by others or by the state.[5]

The guarantee of civil liberty, *i.e.*, the ordinary concept of equality before the law, is not necessarily connected with democracy, for it could be realized in an absolute state without political democracy. But the assurance of such liberty would be less permanent than in a government in which the people have a vigorous ability to protest the decisions of the government. Popular sovereignty and republican

[1] *Cf.* Sun Yat Sen, *San Min Chu I* (Shanghai, 1927), p. 189. Dr. Sun rejects the Western synthesis in liberty, equality, and fraternity and in place takes the "three people's principles," nationalism, popular sovereignty, and livelihood, the last principle including the philosophy of economic equality or state socialism.

[2] See Baron de Montesquieu, *The Spirit of the Laws*, (1748), Bk. XI, Ch. II. *Ibid.*, Ch. III, he says: "In governments . . . liberty can consist only in the power of doing what we ought to will"; in Bk. XIII, Ch. II, he remarks: "Political liberty consists in security, or, at least, in the opinion that we enjoy security."

[3] See The Declaration of Independence and The Declaration of the Rights of Man and the Citizen, Art. VI.

[4] J. A. Ryan and M. F. X. Millar, *The Church and the State* (New York, 1922), p. 281.

[5] See Hobhouse, *op. cit.*, p. 60, for an important definition of liberty contrary to the theory of the general will; see also p. 61, for the connection between political liberty and active citizenship. *Cf.* R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West*, Vol. V, p. 447; E. Emerton, *Humanism and Tyranny* (Cambridge, Mass., 1925), p. 211, for the idea of participation in relation to equality in the medieval Italian city states.

or representative government are the fundamental ideas of political liberty, and it is only the democratic form of government that provides this type of freedom. There is little debate about it in most Western democracies, but the evolution of new democratic governments has shown how difficult it is to attain in practice.[1] Furthermore, the natural-rights theory of the eighteenth century assumed that all men would have civil rights, but in general it was felt that political rights should be reserved to those who held property. The framers of the American Constitution, and even the eighteenth century liberal thinkers, such as Thomas Jefferson, could not believe that those who had no property, especially in land, could have a genuine interest in the community.

But a distinction must be carefully understood. It is not customary today to value highly the right of revolution. The revolutionist is a dangerous individual, and revolution itself is destructive of the best interests of the state. Such was not the case in the heyday of democratic theory of the classic type in the latter part of the eighteenth century. Revolution was considered a legitimate means of securing the rights of the people, but this was because the evolution of democratic government was only beginning, while the abstract principles of democracy associated with the doctrine of natural rights were already mature.[2] A brief perusal of the American Declaration of Independence with its inalienable rights and the French Declaration of the Rights of Man and the Citizen of 1789[3] will show how necessary to the theory of popular sovereignty was the idea of natural rights. Since revolution was in fact used to break the crust of custom and tradition holding back the achievement of government by consent, the absolute idea of natural rights fostered the feeling that revolution was sound. The modern temper in Western democracies, however, views revolution with alarm; it is felt that the age of revolutions is past. The wide right to vote and the ability of the masses of the people to change the government make the right of revolution hardly necessary. There is perhaps some logic behind the modern revolutionist's contempt for democracy. The right of revolution was viewed in the eighteenth century as a kind of ultimate participation of the masses in government, and it was only in the nineteenth century that participation for the protection of rights was connected definitely with a broad franchise.[4]

[1] Bryce, *Modern Democracies*, Vol. I, p. 58.

[2] Bryce, *op. cit.*, Ch. V.

[3] See Thomas Paine, *Rights of Man* (Everyman's Library), pp. 94 *ff.*

[4] See J. A. Smith, *The Growth and Decadence of Constitutional Government* (New York, 1930).

With the acceptance of political liberty in the sense of popular sovereignty, however, the support of natural-rights theory has been gradually cut away. Popular sovereignty can be defended on the ground that, since the state must serve the interests of all to the limit of its capacity, the best way to determine what the state should do is to give everyone who has reasonable political intelligence the right to vote. Democracy exists that the state may act for the greater interest, and certainly the individual himself must be trusted to a certain extent to know what he wants and what is best for him. The results of democracy are viewed as its surest defense, along with the general proposition that, no matter how defective democratic government is, there is, in reality, no ultimate substitute for it in the modern world. The only modern substitute is the opposite extreme of dictatorship; no one seriously contends that it is possible to create in fact a political aristocracy that would attain better government. Public policy must be supported to be effective, and the only counter in the game of support is general consent on the part of the members of the state. It may be that actual consent is a fiction, but the citizen always has the opportunity to protest through the ballot concerning the prevailing policy of the government. Each experiment with a broader franchise has led to another still broader. In the nineteenth century property and religious qualifications for voting and holding office were cautiously eliminated; finally in the twentieth, other things being equal, liberal thinkers were willing to forego restrictions based on sex. No serious harm has come from these expansions. But the high-water mark of the broad franchise has been reached, and the problem now arises whether it is not possible and desirable to restrict the right to vote in certain cases of incompetence.

No intellectual defense of democracy in terms of results can evoke the enthusiasm that abstract democratic principles once aroused. The period of the American and French revolutions, as Bryce has indicated, was the period in which abstract principles exerted the greatest force in the history of democracy. People may die for a principle, but they have no desire to die for results. While the theory of natural rights has been shelved for other concepts, while the suffrage has been expanded to its probable limit, the argument for liberty has taken a different turn. In this other interpretation, liberty has not been inherently connected with democracy, since the argument has turned on the proper extent of individual liberty and the function of the state.[1] John Stuart Mill in his essay *On Liberty* tried to define

[1] Acton, *op. cit.*, p. 3: "By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and

the nature of freedom in favor of individualism. His arguments evolved into a systematic attempt to limit the function of the state to controlling the individual in those acts that affect others. This theory of individualism, this theory of the function of the state, is of general application, and of course it has a direct bearing on democracy. The problem of reconciling liberty and authority is not alone a problem of democracy, though democracy may be able to solve the question more easily, since by participation the individual may assume a part of the responsibility for restricting liberty.[1]

Because the eighteenth century was interested in establishing a government that would respect the rights of the individual, because it sought to institutionalize the democratic form of government in order to make consent a reality, and because liberty came to mean popular sovereignty, the eighteenth century was more interested in liberty than in equality or fraternity. Liberty implied lack of restraint upon the individual; it implied his consent to the acts of the government. Liberty was a negative condition of noninterference on the part of arbitrary government. It is easy to see that, if the state is to be an effective agent in the march of civilization, such a concept of liberty has little to offer. Various distinctions were drawn. John Winthrop[2] spoke of natural liberty, which man has in common with the beasts, and civil or federal liberty, which man realizes under a controlling political authority. What is the nature of a positive liberty? If liberty means more than merely freedom from restraint, what more does it mean? The argument proves more than it intends, for, if we insist that man should be free to do what he ought to do, the individual no longer is viewed as competent to assess the proper sphere of his liberty. If this be true, what becomes of democratic government? Of what value is political participation? If the government can determine for the individual the ends he should desire, the gateway is opened for the development of absolutist theories of the state. The state absorbs the moral functions that the individual is supposed to possess in democratic theory. After all, this problem seems to be one of the imponderables, for the individual cannot be left to decide alone

majorities, custom and opinion. The state is competent to assign duties and draw the line between good and evil only in its immediate sphere." By permission of The Macmillan Company, publishers.

[1] An even more extreme philosophy of individualistic liberty is found in the works of Herbert Spencer, *Social Statics* and *The Man versus the State*. *Cf.* E. S. Corwin, "Social Planning under the Constitution, A Study in Perspectives," *The American Political Science Review*, XXVI (1932), 1–27.

[2] Cited in C. E. Martin, *An Introduction to the Study of the American Constitution* (New York, 1928), p. 289.

what he should desire, and on the other hand the state cannot wholly assume the duty.

Democracy does offer a sort of pragmatic solution of the problem. If the state acts by majority *support*, it is expressing the general standard of civil virtue found in the community. Such a standard is at least livable by the ordinary citizen. True, if civic virtue should descend too low, the state might accept policies contrary to the best interests of civilization as seen by the rest of the world, but in actual fact no civilized country has shown any such inherent barbarism. The standard that the majority desires to see formulated in law is often too high for the mass of the citizens. Such political policies are ineffectively enforced, *i.e.*, they are selectively enforced, but they probably do good only when the resistance of minorities is not active. The minority and the majority may be better off because of the formulation of an ideal of civic virtue. The problem of modern liberty is the reconciliation of individual freedom with the control of just laws. Liberty is not absolute, for it is governed by conditions and by the balance of social philosophy that at a given time controls the state. Liberty, therefore, must be a product of struggle, but the historic deposit of democratic theory gives the benefit of the doubt to the individual rather than to the state. It leans toward the idea of the state as protecting the liberty of the individual, the liberty that he demands, rather than defining through governmental action what the individual ought to do. The solution of constitutional democracy is liberty under law, but the law is to be the product of the political support of the members of the community. Holcombe writes:

> Liberty, as the word is used in the Preamble to the Federal Constitution may best be defined as the absence of arbitrary human restraint upon personal conduct; that is, restraints other than those imposed by authority of just laws. Obedience to just laws is not only not incompatible with the enjoyment of the blessing of liberty; it is an essential part of it. The enforcement of just laws is, indeed, the means of securing liberty, since it is the condition upon which, other means failing, the individual accomplishes those of his purposes which require for their consummation the assistance of others.[1]

The "just laws" of any time are, it would seem, the laws that are, but the balance does not have to stay as it is, and it is the virtue of democracy that changing the balance is not too difficult a task.[2]

[1] Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923), p. 289.

[2] See Catlin, *op. cit.*, p. 182: " . . . liberty has been assured by that massive and slowly elaborated structure of obligations called civilization." See J. W. Burgess, *The Reconciliation of Government with Liberty* (New York, 1915); Holcombe, *op. cit.*; H. J. Laski, *A Grammar of Politics* (New Haven, 1925).

The Issue of Equality. Equality, while in modern times an inherent part of democratic philosophy, is much older than democracy.[1] The nature of equality was discussed by the Greeks and by the Roman classical jurists,[2] and the general principles of Christian theology supported the equal treatment of individuals on certain matters, particularly those involving faith and morals. But the modern doctrine of equality springs from the evolution of the idea of natural law, which in the hands of Hooker and Grotius was turned into a consideration of the natural rights of men. Natural law and rights were buttressed by the struggle waged by the English lawyers for the independence of the common law and against the control of the lawless prerogative of the Stuart kings. Seventeenth century democratic thought and general political philosophy took the idea of natural rights as the basis of government.[3] From the English philosophy of the seventeenth and early eighteenth centuries, equality (as seen through natural rights) became a cardinal tenet of the rising democratic faith. But the democratic notions of equality are more recent than the idea of equality before the law, which we have seen become of fundamental importance in the governmental structure of the democratic state. Monumental statements of the principle of equality are found in the French revolutionary philosophy, in American political thinking in general until the revival of Greek influences by John C. Calhoun, and in the works of Abraham Lincoln. The principle of the natural right to various types of equality has been a tremendous force for change, even though the principle in itself is now generally discredited and modern thought lays little stress on equality, except before the law.

The type of equality supported by revolutionary doctrine was not equal economic power, but equality where social organization or political problems were concerned.[4] Equality before the law has been the fundamental type; it is essential to the existence of the democratic state. In America and France the attempt to destroy social ranks and privileges formerly protected by law was another expression of the doctrine, though in England it has not been extended this far even

[1] Emerton, *op. cit.*, p. 21.

[2] Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), p. 136, 218, n. 75.

[3] See T. C. Pease, *The Leveller Movement* (Baltimore, 1916); G. P. Gooch, *The History of English Democratic Ideas in the Seventeenth Century*, 2d ed. (Cambridge, Eng., 1927).

[4] Acton, *op. cit.*, p. 88, says: "The deepest cause which made the French Revolution so disastrous to liberty was the theory of equality. Liberty was the watchword of the middle classes, equality of the lower."

at the present day.[1] While America and France have struggled rather futilely against the existence of social distinctions, British sentiment has undertaken the reconciliation of aristocratic groups with democratic government by making the former serve the state for beneficial ends. The British aristocracy includes only the first-born son who inherits the title and those who have been raised to their rank as a recognition of their service to the community. There has been a constant turnover in British aristocracy and a constant influx of new blood, while large numbers of those born of noble families have taken their places as commoners since they did not inherit titles. Yet the aristocracy by its training and tradition has been one of the strongest supports of efficient administration. The control of policy has been taken from it by virtue of the weakening of the House of Lords and the political dominance of the House of Commons.

Constitutional government secures equality before the law, at least in theory, and the destruction of titles of nobility in America and France did away with the formal recognition of social inequality. But this has not exhausted the concept. Social philosophy in democracies has insisted, by virtue of the historic tradition of equality, on the general equality of opportunity, though it has not demanded a vindictive leveling throughout society. The meaning of equality in the mind of Lincoln is fundamentally that each individual must be given the right to use to the best advantage all the ability he has. Slavery in Lincoln's mind prevented the negroes from developing freely and to the extent to which they were able. Equality meant outlawing exploitation of human personality, and it meant the extension of the historic rights to all groups in the community. The destruction of slavery and the extension to women of the right to vote may be viewed as further applications of the principle of equality found in the Declaration of Independence. One cannot read the writings of Lincoln without seeing how essential to him was this principle. In fact, it may be said that he, more than anyone else, revived in his time the principles of the Declaration of Independence when they were in danger of being eliminated from American democracy. Neither aristocratic New England nor the Athenian South had any love for such principles,

[1] In a letter to John Adams on October 28, 1815, Thomas Jefferson lists four reforms which he advocated to destroy the remains of the "pseudo-aristocracy": abolition of primogeniture, abolition of entails, division of the land of intestates equally among their children, and more general diffusion of learning, *i.e.*, public education. See *The Writings of Thomas Jefferson*, ed. Ford, Vol. IX, pp. 425 *ff.*

The British still retain the idea that the aristocrats should be the permanent and responsible civil servants.

and Lincoln as a representative of the Western frontier reinjected for a time the concept into our public policy.[1]

It will be conceded immediately that such general applications of the principle of equality do not do away with inequality. Much of the modern attack on the principle is irrelevant, since the democratic fathers did not mean by their doctrine that all men were equal in intellectual capacity, physical prowess, or business genius. It was equality of rights, equality before the law, in which they were interested, though it was not until the time of Lincoln that the principle was extended to the submerged negro population. If the psychologist demonstrates that mental abilities are unequal as between individuals, and perhaps between races, the defender of the historic doctrine does not consider such findings an attack on the theory. As usual, the problem becomes in part one of results. If the antidemocratic thinker can show social ills resulting from the general application of the principle, as in the freedom of the vote and in the right to hold office, he is launching a fundamental attack on democracy as a form of government, assuming that suitable substitutes are available. But the social philosophy of democracy insists that it is the duty of the state to enable each individual to develop himself as far as he can, and that it is only by the general grant of equal rights that such results can be attained. The problem becomes normative, for, even if the results of the wide extension of rights seem deleterious in part, the value involved in human personality as expressed through a system of equal rights would remain.

The problem, however, goes deeper. If, for instance, equality is insisted upon, and further attempts are made to remove the existing system of inequalities of life, what becomes of the liberty of the individual to develop himself, which is implied in the theory of equality? If liberty to be a superman is granted by democracy on the ground that each individual should utilize his highest abilities, what place remains for the prevailing legal and social principles of equality? We must not forget the historic setting of the doctrine or the purpose for which it was intended. If modern conditions make a reconciliation between liberty and equality difficult, it must be borne in mind that the historic results of the idea cannot be eradicated from our present system of political institutions. Certainly the liberty of the individual to accomplish should not be restrained except for justifiable social ends. Both liberty and equality have to function in society; they are useful and valid only as they contribute to social life, to

[1] V. L. Parrington, *The Romantic Revolution in America*, 1800–1860 (New York, 1927), pp. 152 *ff.*

community progress, and to the development of the interests involved in the democratic state. The fundamental equalities embodied in the political system must remain, likewise the liberties of individuals when devoted to legitimate ends as defined by the prevailing thinking of the time. The conflict is no doubt real, but it becomes of importance only in a regime of exaggerated individualism which idolizes the Nietzschean superman on pragmatic grounds, *i.e.*, that he has achieved. A generous respect of personality in general involves an integrated community; it depends on the recognition of fundamental and historic equalities.

The argument must go further. What of the economic inequalities in present-day society? Should equality of income be a part of the credo of democracy? This is undoubtedly the most critical question of modern politics, if we take a broad view of the matter and consider the ends that various democracies are trying to include in legislative programs. The growth of postwar radicalism, communism, and socialism and the prewar creeds that involve discrediting the state, such as syndicalism, are factors in attacking the actual bifurcation of society into workers drawing small wages and employers who in many instances receive inconceivably large incomes. We have not found in America that the doctrine of equality of opportunity is inadequate, for undoubtedly there has been a long-run rise in the standard of living and there is a constant passage of individuals from the ranks of the workers to the class of employers, and vice versa. The normative problem is settled and both conservatives and radicals agree: the individual must be given equality with his fellows by a genuine equality of opportunity. If he fails to use his opportunity, the state cannot be blamed in all cases. The conservatives insist that the present system does provide such an equality, while the reconstructors of society cry with conviction that it does not. The philosophy of democracy is therefore fairly well settled on the point, and the problem is one of the means that should be provided the individual for the attainment of the economic condition that he is capable of appreciating.[1] No one seems to doubt that the principle of equality should be extended to the sphere of economic life and that the state has grave responsibilities for such an extension; it is part of the philosophy of democracy. But the general failure of individuals to maintain for themselves a decent standard of living raises in a pertinent form the

[1] It may be said, for instance, that the American system of education has for its objective the establishment of the natural limits of opportunity, though it cannot be said that this end has been accomplished. See A. J. Nock, "American Education," *Atlantic Monthly* (May, 1931).

question whether in fact the opportunity is present. Indeed, the conflict over the democratic principle of equality may be only beginning.[1]

Fraternity and the Community. American democracy has not stressed, as has the French, the principle of fraternity. Perhaps it was really more of a battle cry to arouse the emotions than a fundamental principle of democracy. Eighteenth and early nineteenth century democracy was almost completely absorbed in the theory of liberty and equality. Liberty and equality were to be realized in popular sovereignty, constitutional government, and the elimination of special privilege. But if we translate fraternity into *community*, there is no more fundamental social interest in the democratic state. The avowal of liberty and equality has made us forget the social ideals of democracy that can be reflected only in community. Liberty and equality imply a community of interest, which is more than mere mechanical interdependence in living and which involves a rational acceptance of common norms and purposes.[2] If people are to be free, they must be free through living with others; if they are to be equal, they must seek equality in the cooperation of the democratic community. While equality may not be a fact, it may be necessary to retain it as a fiction because of its value to community life.

Democracy, as seen through the principle of community life, is the fullest and freest and most comprehensive type of human association, an association made possible by the intelligence and will, which bring to light the principles upon which all human associations rest—the participation of all in the common good.[3] Such an association, to be democratic, must be a willed association, not a mere instinctive result.[4] According to Wright, "Community rather than equality, therefore, is the first principle of democracy. By a community is meant the participation of all members of society in a good which cannot be divided into parts that fall to the exclusive possession of their individual owners, but which, since it is by nature a common good, can only be realized jointly by a group of communicating

[1] For a brilliant treatment of the doctrine of equality in America, see T. V. Smith, *The American Philosophy of Equality* (Chicago, 1927). Smith seems to regard the principle as ethically ultimate in community organization. Even if men are not equal, they should be treated so in order to encourage community cooperation.

[2] *Cf.* B. Whitlock on the purpose of democracy, quoted in Joseph Wright, *Readings in Municipal Problems* (Boston, 1925), p. 279.

[3] H. W. Wright, *The Moral Standards of Democracy* (New York, 1925), p. 10.

[4] See in general R. M. MacIver, *Community*, 3d ed. (New York, 1924), and *The Modern State* (Oxford, 1926).

individuals."[1] The clear consciousness of communal life in all its implications serves to constitute the idea of democracy.

The principle of fraternity, or the community properly understood, destroys the absolute character often perceived in theories of liberty and equality based on natural law. Rights are to be discovered, either in the moral uniqueness of the individual and limited by social organization (*i.e.*, state, family, etc.) as *reasonable utilities*, or in the individual as a member of society and only as a member of society, which in the minds of the idealists really is identified with the state. But either explanation has this in common with the other: that *rights are the basis of community action*, a basis of types of order. The function of natural law in Hobbes's theory was not to protect for the individual a sphere of free action, but to provide a rational basis of community life. Despite the defense of despotism in Hobbes, his basis of community life has in it a recognition of the ultimate moral value of the individual. The community perhaps springs less from a balance of liberty and authority than from an integration of rights and order. Spinoza felt that by the mere fact of the existence of the community the significance of the individual will became greater, for the community relied finally on the rational consent of the human atom.[2]

The idealists derive the community from the mutuality of the good will; in T. H. Green the individual has rights because his powers or capacities become moralized by this recognition of them as a part of the common interest. The thing of importance is the community—the fraternity of the rational. Some idealists, such as Bosanquet, find the general will, *i.e.*, the community, in the impossibility of conflict between the individual and his common self. In such a synthesis the talk is of duties and not of rights; the individual becomes nothing, morally, as against the community. But Green recognizes the organic relation of necessity between the community and rights. Even though the individual is moral only as a member of the community, yet the basis of the community is rights, even as in the speculations of *Naturrecht*.[3] Whatever the political philosophy, it is agreed that "as Aristotle taught that fraternity formed the correlative of justice in the maintenance of society, so St. Augustine taught that

[1] Wright, *op. cit.*, p. 6. By permission of D. Appleton-Century Company, Inc., publishers. See also John Dewey, *The Public and Its Problems* (New York, 1927), p. 149.

[2] R. A. Duff, *Spinoza's Political and Ethical Philosophy* (Glasgow, 1903), p. 393.

[3] See Green, *Works*, Vol. II, pp. 351, 353, 354, 450; see Sec. A in general.

the existence of the *civitas terrena* was only possible through the mutual good will."[1]

Democratic Theory and the Conditions of Life. Democratic theory cannot remain static; while the historic deposit of doctrine cannot be forgotten, the objective needs of democratic society suggest other values. The central point of this argument is that the demands of a machine age are different from the preceding commercial and agricultural societies. The authority of objective circumstances speaks to democracies as it has spoken in the past, and no laudation of public opinion as a freely operating force can ignore this successfully. As Dewey has pointed out, democracy is not only a product of historic doctrines, but is the product of a multitude of consequences and changes that have been taking place in the modern world. There is no necessity, however, to surrender to a cruel determinism of economic or social institutions. During the course of time such forces may be bent, but they must be accepted in the democratic philosophy of any period as *conditioning* rather than controlling factors. There is no choice but that of maintaining the existing modes of transportation and communication. Even presuming the desirability of overthrowing a given institution, the history of change shows that bursts of rebellious rage are peculiarly ineffective in dealing with the deposits of culture. Modern industrial society was not created by an act of will, though without will it would have been impossible.

Insofar as the authority of conditions is recognized, democracy must be pragmatic; it must be interested in the multitude of consequences that together constitute a particular situation. Pragmatism, on the other hand, insists on the intelligent treatment of facts rather than a blind surrender. It believes in the effectiveness of human determination, but such determination must be guided by consequences rather than by the authority of rigid and inapplicable dogmas or concepts. Concepts that embody social theory must be treated as experimental hypotheses rather than as immutable truths. This means that the authority governing democratic philosophy is fundamentally the workability of the philosophy instead of a priori defenses

[1] R. H. Murray, *History of Political Science from Plato to the Present* (New York, 1926), p. 40. A distinction may be made between the Catholic and the Protestant theories of democracy. The Catholic theory centers the community on the liberty of the family or the group, while the Protestant theory is more inclined to emphasize the community directly without intervening groups between the individual and the state. See G. de Reynold, *La démocratie et la Suisse*, 2d ed. (Berne, 1929), pp. 319 *ff.*, 333. Also C. J. Friedrich, editor, *Politica methodice digesta* of Johannes Althusius (Cambridge, Mass., 1932), Introduction, for a discussion of the implications of Calvinism with regard to democracy.

that have no direct bearing on immediate circumstances. While the philosophy of the genial William James and the instrumentalism of John Dewey give a test of social truth in given circumstances, they do not assist when the problem of purpose and norms is considered. The value of pragmatism in democratic philosophy is primarily indicated by the fact that other absolute tests, such as historic concepts (*e.g.*, religious asceticism, which denies the value of the everyday grist in the political mill), are rejected. Insofar as pragmatism means the rejection of authoritarian standards of correct philosophy, and aside from the controlling force of objective circumstances, it is the birthright of public opinion. But pragmatism ceases to be of fundamental value when the formulation of ends is concerned; it is of value in testing the application of purposes.

Such is the fundamental challenge of Duguit's law of social solidarity as the basis of political society. We are a part of a solidarity or community of interest and purpose, and the only rational solution is to accept and foster solidarity. The democratic state becomes for him a public-service state; its *raison d'être* is the function it performs in the interests or needs of the solidarities who compose the state and the groups within it. Insofar as circumstances cannot be evaded, it is the duty of democratic thought to recognize them. Here is a difficult lesson for democratic theory, which for so long has found its counters among the historic doctrines of liberty, equality, and community. Yet, if it is to be efficient in dealing with the problems of the modern age of industrialization, there seems to be no other solution. It would seem that the Christian standard of asceticism, with its contempt for the wails of the merchants of Babylon who saw their commerce destroyed, must give place to the account of ordinary and objective circumstances that pragmatism may be able to offer.

Democratic Philosophy and Normative Thinking. As we pointed out above, pragmatism does not assist materially when we are dealing with the construction of standards or norms, the realization of which must be sought through the machinery of democratic government. Nor can we go to history with its doctrines of the ideal purposes of democracy. Pragmatism has at least taught us that we must meet new situations as they arise and concede that they are new situations. The pragmatist does not like to admit the importance of normative thinking; Dewey tones it down to differences of "judgment." But assuming that the all-comprehensive purpose of the democratic state is the development of the individual personality and the release of capacities for the social good, the best intelligence of any state should be devoted in part to thinking that may open avenues to this end.

It is not that the facts must be ignored, for they cannot be ignored, but that the facts or circumstances by themselves offer few clues as to what may be done over a period of time. It is only the barest outline that can be completely objective. If facts may be bent to purpose, they must be bent by the use of intelligence. Yet new thinking and new solutions are dangerous, since they are experimental. Measured experiment, with a careful sense of the consequences produced, should not be dangerous in a democracy that relies on intelligence and instructed judgments.

Values produced by reflection, and it is difficult to see how they can be produced otherwise, are vague; they do not have the definiteness of an interpretation grounded squarely on factual situations. To say that this is particularly true of democratic normative thinking is to admit the nonexistence of supporting facts; other values that are an interpretation or defense of a particular factual situation become more specific and more readily applicable in a pragmatic sense. The pragmatist may question the significance of any interpretation that is outside the realm of practicable or workable experiment or existence, since pragmatism denies that, when a problem of truth is concerned, there can be a differentiation of theory and practice. Truth must be based on practice. No doubt the more visionary interpretations of the ends of democracy must be rejected, or at least they must not be permitted to distort the outlines of an immediate problem. But this is a matter of degree. Since we cannot escape the formulation of ends in terms of value judgment, to say that an end is beyond immediate realization is not per se a condemnation of that ideal. Normative thinking to be effective must pay attention to the immediate problem, and this again is the lesson of pragmatism. The normative thinker must avoid the pitfall of the short-run interpretation which, by changes in circumstance, may prove entirely inadequate; he must propose interpretations that in the long run can be attained by an efficient and educated democracy. The development of education, which is undoubtedly necessary in a progressive democracy, and the increase in the number of instructed judgments participating in democratic governments must of necessity give greater scope to thinking in terms of values. If the ends of democracy must be colored with pragmatism, especially where the means of democracy are considered, democratic thinking must go beyond a purely pragmatic stage. The standard of morality embodied in each constitutional state is a matter of no small importance.

The problems requiring philosophical treatment in a democracy include both the means and the ends of democracy. But it is in the

development of means that pragmatism is of the greatest service. It is probable that many of the historic devices of democratic government which are defended in part on a priori or dogmatic grounds are retained merely because of the historical deposit of prejudice. Since pragmatism demands that all concepts be tested in an experimental sense, on rational grounds it is probable that mere means, such as particular governmental institutions and theories about the function of the state held by different democracies, should be considered as means only; where definite results are not produced by them, alterations should be proposed. If individualism is merely a means for attaining the development of the individual personality, then scientific method may be able to state with certainty whether such results come from it. This is particularly true in the postwar period where other theories of state function are being tested, for instance, in Russia with its advanced collectivism, in Italy and Germany where another form of collectivism is being tried, and in other governments where socialism of a more moderate type is supported.

The problem of means shades imperceptibly but certainly into the problem of ends. If we say that the development of the individual is the only end of democracy, and if that development must be seen in terms of a vital community life, the normative standard is vague enough. The result is that modern thinking tends to regard all institutions as means only. A system of rights is a means to an end; a system of property rights ceases to be an end in itself, and the test of the value of private ownership of property is its effect on the general social welfare. The consequences of such an approach can be seen clearly in Laski's treatment of the institution of private property. While he admits that there is nothing inherently wrong with the notion of private property, and that in some ways it may be said to express in a genuine sense the individual personality, yet, regarding it as a means to broad democratic ends, he is impressed with its inadequacies. In fact, he is presenting the socialism of the British Labor Party when he says:

> The present system is inadequate from whatever angle it is regarded. It is psychologically inadequate because, for most, by appealing mainly to the emotion of fear, it inhibits the exercise of those qualities which would enable them to live a full life. It is morally inadequate, in part because it confers rights upon those who have done nothing to earn them, in part because, where such rights are related to effort, this in turn has no proportionate relevancy to social value. It makes part of the community parasitic upon the remainder; it deprives the rest of the opportunity to live ample lives. It is economically inadequate because it fails to distribute the wealth it creates so as

to offer the necessary conditions of health and security to those who live by its processes. In the result, it has lost the allegiance of the vast majority of the people. Some regard it with hate; the majority regard it with indifference. It no longer infuses the State with the idea of purpose through which alone a State can prosper.[1]

To Laski, property is merely a social fact that is in process of evolution, and it is significant only in relation to a given period of history. Pragmatic as Laski is, he has not forgotten the necessity of normative thought, for he is interested in the relation of property as an institution to the rational ends of the democratic state.

The welter of conflicting values is seen in the constantly accelerating progress of social legislation.[2] When modern American social legislation, sanctioned under the police power and under the delegated powers of the national government, is balanced against the historic tradition of individualism found in Western democracy (expressed in the fundamental ideas of natural rights, liberty, and equality), the question arises whether the historic doctrines are not hopelessly out of touch with modern political and social demands. The real question is whether the application of the historic deposit of democratic ideas is valid in the complex economic life of the present age, and whether such an application does not in fact defeat the ends of democracy. The rise of social legislation, which is fundamentally contrary to our historic ideas and which is leading in the direction of a moderate collectivism, seems to indicate that historic political democracy as an end is giving way as a means before the rising wave of social democracy.

Is Democracy Radical? By way of conclusion to the present discussion, it may be noted that the fears of those who opposed the expansion of the suffrage during the nineteenth century have proved unfounded for the most part. The conservatives of the 1820's who saw ruin and dissolution following the footsteps of Jacksonian democracy were singularly inaccurate in their prophetic insight. The propertyless masses have not risen in revolt against the conservative integration of society. Furthermore, they have shown themselves remarkably indifferent to proposals of social reform. American labor and, to a certain extent, British labor, growing powerful and able to move the state to their interests, have become more careful in the advocacy of paternalistic legislation, and the indifferent masses have not attempted seriously either to formulate or to demand more

[1] *Op. cit.*, p. 216. By permission of the Yale University Press.

[2] See C. W. Pipkin, *Social Politics and Modern Democracy*, 2 vols. (New York, 1931); L. L. Lorwin, *Labor and Internationalism* (New York, 1929); F. E. Haynes, *Social Politics in the United States* (Boston, 1924).

advanced social principles.[1] The masses, and incidentally public opinion, have been able to support all forms of government and nearly every form of exploitation. The aristocrats of England during the nineteenth century developed the principles of humanitarian legislation which have become the characteristic of progressive democracy. The establishment of effective contacts between opinion and government has not opened the way to destructive and venturesome changes in the social structure. Moreover, the masses of democratic citizens have shown themselves particularly susceptible of influence by well-organized propaganda. The fear of insecurity has been the bulwark of conservatism, and it will continue to be. The present social and economic order of Western democracies is secure so long as the average man has something of a chance. The effect on public opinion of the long and distressing unemployment of the postwar period remains to be seen. Having known better times, it is probable that the average individual will not readily accept the harder grind in maintaining himself. With reasonable prosperity, the ordinary individual is willing to see in the moderately conservative democracy a chance for the good life on a limited income.

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[1] See E. D. Thomas, *Chinese Political Thought* (New York, 1927), p. 214, for a recognition in Chinese political philosophy of the conservatism of the masses.

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Chapter X

THE NATURE OF PUBLIC OPINION

Power through ideas is the specifically human power, and power through ideas can be had only on condition of making these ideas the property and servants of the community and the race.—W. E. Hocking.[1]

The Concepts of Public Opinion.[2] Those writers who have published books devoted exclusively to the subject of public opinion are all comparatively late students of the social process. Public opinion must, in the nature of the case, be as old as governments, but it has been studied as a distinct and separate subject only in recent years, and particularly since the rise of psychology and political democracy. Psychology has drawn attention to the working of the mind, without, at the same time, emphasizing the content of human thought, and democracy has made mass opinion a genuine force in political life. But throughout the discussion of public opinion there has been a startling divergence or lack of clear-cut views on the definition of public and opinion. Some writers have almost been willing to concede that defining public opinion is defining the indefinable.

It may be unduly optimistic to attempt the statement of what may be injected into some of the concepts that make up the total notion of public opinion. Any suggestions made in this chapter must be regarded as tentative rather than definitive, for what any student of politics should desire is an understanding of the real forces at work in the state rather than a body of concepts distinguished for their self-consistency. In the process of community life there is a constant flowing of the individual will to his neighbor's will, and in the desire to stabilize the things common to wills we have one of the most basic psychological foundations of political society. While John of Salisbury used the term "public opinion" in 1159, it is clear that emphasis on either public or opinion is a comparatively late development in the

[1] *Present Status of the Philosophy of Law and Right* (New Haven, 1926), p. 96. By permission of the Yale University Press.

[2] See the paper by the author "Concepts of Public Opinion," *The American Political Science Review*, XXVII (1933), 371 *ff.*, for a more thoroughly documented examination of the problems raised in this chapter. This chapter is reprinted with modifications by permission of *The American Political Science Review.*

history of the state.[1] Public order, as Dean Pound has observed, is the first interest of primitive law and government. Public order in a primitive community is regarded as objective with respect to opinion, for it is not admitted that a man's opinion concerning what is can have any value. Public opinion attains significance when, in later state development, individual and group opinions are taken as measures of value in the determination of certain aspects of public policy. But this acceptance of opinion goes hand in hand with the modern development of political participation. If public opinion is to be accepted finally as a political force, we must believe that opinion has value in itself. A pragmatic or utilitarian test of public policy is, therefore, a part of the theory of public opinion.

The Nature of the Public. It is much easier to come to some agreement as to the characteristics of opinion than it is to agree on the nature of the public. Many students of public opinion have been willing to abandon the notion of both opinion and public, but an even greater number have been willing to give up in the face of difficulties the definition of "public." The word "public" is simply descriptive of opinion, and it should indicate a given kind or area of opinion; it means that public opinion is not any opinion. But it is difficult to reach satisfactory conclusions as to just what is implied by the word. Two broad solutions may be observed. One tendency is to identify public with political and legal considerations, and the other is to say that public connotes the social nature of opinion. Those who say that public is a political or legal term are inclined to believe that all opinion that relates to government or the state may be public opinion, while the other group insists that public opinion is only a certain part of the opinion that is related to the state. The former is a public-law theory of the public and the latter is a sociological concept.[2]

Two significant concepts of the public have been presented by A. L. Lowell and Walter Lippmann. Lowell believes the public to be those who are willing to abide by the decision of the majority. He discusses the conditions necessary to the existence of the public, the most important being a certain basic homogeneity of view and the treatment of questions where decision by political action is possible. Lippmann agrees with Lowell to the extent that the essential problem of the

[1] *The Statesman's Book of John of Salisbury*, tr. and ed. by John Dickinson, (New York, 1927), pp. xxii, 39, 130.

[2] The term "people" should be distinguished from "public." "People" is a political and governmental concept as is "public," but it implies primarily, it would seem, the idea of allegiance.

public is participation, but he argues the ineffectiveness of the masses in dealing with the "unseen environment," and proposes, accordingly, a set of canons concerning the activity of the public. A public consists of those who are spectators, who are not judges of the merits of a question, and who are interested chiefly in making certain rules of the game and in holding to those rules parties in a dispute.[1]

However, a number of views as to the nature of the public may be held. The public may be defined as those who can influence the conduct of government. Such a view resolves ultimately into a study of the formation of government policy, and it does, indeed, consider the problem of participation from a realistic point of view. This notion hovers between public and opinion; it may be a statement of the process of politics but it can hardly be a statement of the nature of the public in universal terms. It is a concept dealing with the expression of opinion rather than with the nature of the public. On the other hand, it has been suggested that the public consists of those upon whom the incidence of governmental action falls. It is striking that the element of participation is eliminated from this definition, and because of this fact it is scarcely acceptable in a democratic state.[2] A statement which contains by implication this feature, but which is in fact narrower, is that the public is a body of persons owing allegiance to the state, or perhaps the citizens of a state, or those who have a legal duty of obedience.[3] There is certainly some value in this idea, though it would be difficult to associate such a public with opinion so as to derive the modern notion of public opinion. It is hardly necessary here to discuss the sense in which a newspaperman refers to the public in relation to the press—the public here consists of those who are willing to pay attention to the news. Such a view has, however, more bearing on opinion, especially its formation, than on the concept of the public.

[1] See A. L. Lowell, *Public Opinion and Popular Government* (New York, 1913); Walter Lippmann, *The Phantom Public* (New York, 1925). Lowell's idea that the people may have valid opinions as to how a problem may be settled is developed into a major thesis by Lippmann.

[2] John Dewey, *The Public and Its Problems* (New York, 1927). Dewey is really developing a thesis on the nature of the state. In his use of the term, the public, when organized, is the state. The burden of his argument applies, moreover, to the consequences of nongovernmental behavior rather than to the incidence of governmental action.

[3] James Bryce, *Modern Democracies* (New York, 1921), Vol. I, p. 430. "The public opinion of a people is the expression (as applied to politics) of the intelligence, taste, the temper and moral feelings of the individual *citizens*." Italics are added.

Sociological speculation makes the word "public" virtually synonymous with group, for in this approach public opinion is group opinion. Public opinion must be regarded from the standpoint of collective action; it is a whole series of reactions involved in collective deliberation; it is a form of group thinking. Social opinion may be distinguished from group opinion.[1] The former consists in the traditional views of groups; group coherence based on other than contemporary problems does not constitute a public. "In short," as Clark expresses it, "when current events rather than arbitrary standards became the controlling factor in directing activities, and when interests began to be organized functionally rather than traditionally, the public was born." Interest groups thus become publics with reference to special undertakings or to the fields concerned. Clark thinks that the general public acts more in line with social than with public opinion.[2] In this point of view, the public is simply descriptive of the group aspects of opinion, the importance of which no one denies. The rejection of the sociological interpretation implies simply that the group aspects of opinion are regarded as a phase of the problem of opinion rather than of the public, and the idea of the public is thereby left to take care of a number of political and legal problems that the sociological interpretation does not touch.

On the contrary, it may be suggested that when we consider the public we must begin with the state, and in all states there is some scheme of political participation, the logical starting point for our investigation. For an absolute government, as pictured by Thomas Hobbes in his *Leviathan*, the interpretation of the public offers no problems. It consists of all those who are subject to the rulership of one absolute monarch or oligarchy by virtue of their participation in one decision, the social contract, *i.e.*, to be so legally obligated. Such a limited participation is envisaged by John Locke in his *Two Treatises of Civil Government*, though further participation for the protection of individual natural rights is retained eventually by the right of revolution. Hobbes and Locke have, therefore, little difficulty with the notion of the public, as indeed a strict adherence to the social-contract theory of original participation would indicate. However vaguely outlined, any representative institutions, as admitted by Locke,

[1] The social opinion of a country may be the most important single fact about its culture. Finally, a cultural level is an opinion level.

[2] See Carroll D. Clark, "The Concept of the Public," *The Southwestern Social Science Quarterly*, XIII (1933), 311–321, and literature cited. This view is perhaps not unlike that of Lippmann in his *Public Opinion* (New York, 1922), where he speaks of the *public* and *publics*.

present the ultimate difficulty of the public. Such an admission is a prophecy of the modern democratic problem of participation in government.

Active participation was made an attribute of citizenship by Jean-Jacques Rousseau in the *Contrat social* of 1762, and majority will was made in most cases a test of the general will. It may be seen that Rousseau and Lowell, aside from the metaphysical conception of the general will in the former, are rather close together in their views as to the nature of the public. An individual not willing to be bound by the general will is a political outcast, *i.e.*, he is not a member of the public. But the general criticism of the idea of the general will, which came to imply the eternal rightness of decision by the government, has robbed it of its hold on man's imagination. If there is such a thing as a general will, it might be taken as the objective evidence of the existence of a public that is organically coherent. It is not necessary, on the other hand, to insist that those who participate in government shall be homogeneous in their views in order that the public may exist.

Participation becomes a dominant problem by virtue merely of the organization of political society. Forms of government have been defined in terms of participation from Aristotle to the present, though the general agreement in modern liberal states that stability comes chiefly from well-recognized means of participation has devitalized the principles of governmental classification. Nothing is so inherent in democracy as participation, and this gives the surest ground for a definition of the public. In defining the public as those persons who have the right of participation, we have reached, perhaps, a reasonable interpretation. Such a view leaves the problems of the formation and expression of opinion in psychological terms to the further discussion of the nature of opinion itself. The legal character of political organization is not obscured by psychological or sociological distinctions, and the problem of groups is considered as an aspect of opinion rather than of the public.

But even if we assume an essential validity in the idea of participation as a test of the public, this does not mean that the substance of participation is fixed and unchanging. Many of the historic reforms in government have been attempts to reorganize the prevailing system of participation. In modern times new ways of making participation effective have been developing, especially by organized and conflicting groups or interests. In some cases these means have as yet an uncertain legal position in relation to the public. Participation is likewise being realized in other ways than by the ballot, and the stabilization

of such means of expression alters the limits of participation. But participation as an essential notion remains; it is the basis of action that relies on the will of the individual. Nor does the inactivity of those having the right of participation invalidate the concept; this may signify merely that older devices, such as the vote and the political party, are becoming less effective. It may also be true that disobedience to laws is a form of negative participation in political life.

At this point one may ask if there is such a thing as an international public, since the term "international public opinion" is coming into general use. Obviously, under the present state system of the family of nations there is no world public, *i.e.*, there is no general system of individual or group participation in the determination of international policy. At best such participation is indirect. It is possible to regard international public opinion, however, as the total or summation of the opinion of various publics. But if we assume that the League system is the beginning of a world state or universal federation of political units, it may be granted that there is an adumbration of the world public. Such a public would, of course, be rudimentary, since the League scheme of participation is that of governments for the most part, though in the International Labor Organization a type of group or functional representation similar to that of the national state is provided. Thus it may be said that, when representatives of trade unions and employers' organizations appear in the International Labor Conference, we have the suggestion of an international public, though it is in no sense so fully developed as in the particular state. The demand that peoples rather than governments constitute the representation in the League organization looks toward the establishment of a genuine international public. On the other hand, one should make a distinction between international public opinion and public opinion on international affairs. The latter we certainly have; the former may be established in the future.

The Nature of Opinion. If man acts only by cause and effect and if he has no freedom to choose between two or more possible lines of conduct, there can be no value in considering public opinion as a force, for the forces that are important are behind opinion. If there is ever so little ability in human beings to deliberate and choose, opinion becomes important to the extent of this freedom. As far as practical politics is concerned, experience seems to indicate a power of choice. To think of opinion in a vital sense, we think of deliberative freedom in man and not of man as completely controlled by external or psychological forces or innate ideas. The state must deal with wills in order to satisfy them, and, concretely, the will to power or

self-satisfaction through ideas is merely another name for a public opinion that involves the freedom of deliberation and choice.[1]

Opinion may be thought of as an idea or ideas that have a certain amount of force, since the ideas determine choice as between contrary or dissimilar views. Yet ideas as forces exist in a world which imposes conditions and which limits thereby the real freedom of choice. The real or the natural must, therefore, be balanced against the ideas of men and the force these ideas may exert. From a dynamic viewpoint, we must admit that public opinion constitutes a movement of ideas toward rules, regulations, and legislation, perhaps even toward custom. In Lochner *v.* New York Mr. Justice Holmes remarked that every opinion tends to become a law.[2] Holmes's view is similar to that of the French positivist, Alfred Fouillée, who insisted that every idea tends toward realization by virtue of the fact that it is conceived.[3] The idea of freedom in opinion involves the contradictions that other notions of freedom evoke. Liberty is relative to something else, and it would be absurd to assume the existence of a complete freedom of opinion or the all-powerful character of ideas as forces. Still, it may be that reason, where it exists, is as real a force in life as any other, and perhaps we may assume that there is a system of determinism or conditioning laws in the action of the mind just as there is in material interest, geography, race, or other forces. If we can conceive of an ideal freedom, a freedom that man as an intelligent being may will for the universe, may we not assume that this ideal freedom finds expression in the existence of opinion? In any case, the mere fact that such a freedom can be conceived, or is conceived, is directive to a degree in human conduct.

It is too often assumed by deterministic thinkers that human history has been enacted without the directive aid of individual opinion. Deterministic ideas may be true for those who explain a culture in terms of geography or race or for those who think in terms of the unfolding oversoul which must, if it exists, finally dominate the individual mind. The individual opinion becomes a derivative and not an original force when such views are held. Perhaps it is not too much to assert that in any event practical freedom as we know it by our own experience is compatible with science. This means that the laws of human action are different from those that affect sticks and stones, and that in human relations the same laws of causation do not prevail as in the inorganic world. It is the deeper fallacy

[1] W. E. Hocking, *Man and the State* (New Haven, 1926), pp. 316, 404.

[2] 198 U. S. 45 (1905).

[3] See "Synthesis of Idealism and Naturalism," *Modern French Legal Philosophy* (Boston, 1916), *passim*.

of the scientific method to assume that a knowledge of how things take place in the subrational world explains how they occur in the human. To the extent that man lives by norms, he does not live by the laws of physics.[1] Every idea requires for its fulfillment a means of realization, and it is certainly true that the means of attainment are unequal under given social, historical, and material conditions. We shall see shortly that we may assume the existence of objective factors in relation to opinion, and that the realization of ideas as forces must take place within the pragmatic limits of these conditions. The existence of self-legislating opinion is one thing, and the channels of realization are clearly another.

When we consider the various theories of truth, it is striking how infrequently the individual opinion is given value. The supposed creative energy of the mind is reduced to a passive and thankful acceptance of the world as it should be.[2] Moral theology within its field leaves nothing of an essential character to public opinion; philosophical and other idealisms often stress the incompetence of the laity; and naturalism places truth beyond any vital function of individual perception, or, as in romantic naturalism, truth is something less than reason. Even with the great leaders of the liberal movement of the eighteenth and nineteenth centuries toward a free opinion, something of the same tendency may be observed. Perhaps Milton, Jefferson, and Lincoln best illustrate this proclivity. With Cicero they agree that "the people, although ignorant, yet are capable of appreciating the truth, and yield to it readily when it is presented to them by a man whom they esteem worthy of their confidence."[3] If we begin with will and consciousness, as does Duguit, we must inquire likewise as to the relation of this will and consciousness to the "objective" facts of social solidarity.[4] Will and the content of consciousness for Duguit have no real contribution to make to truth. Truth is social solidarity, and the duty of opinion is to recognize and foster it. But whatever our theory as to the nature of truth may be, we can rest in part on the fact that individuals do have opinions and that these opinions are significant in human relations.

The formation of habits of thought may be observed historically, and, within limits also, the revision of previous and customary points

[1] Hans Kelsen, *Allgemeine Staatslehre* (Berlin, 1925), pp. 12–13.

[2] See Paul Vinogradoff, *Outlines of Historical Jurisprudence* (Oxford, 1920), Vol. I, p. 37.

[3] Cited by Niccolo Machiavelli, *Historical, Political and Diplomatic Writings: Discourses*, tr. by C. E. Detmold (Boston, 1882), Vol. II, p.106.

[4] Léon Duguit, "Theory of Objective Law Anterior to the State," *Modern French Legal Philosophy* (Boston, 1916), pp. 267, 272, 294.

of view. Custom is an evidence of opinion, and particularly so when manners of thinking are organized by means of social institutions. Each man shows at least a partial systematization in points of view, in which, proceeding from perceptions, we may observe feelings and then feelings associated with a certain amount of rationalization may be called sentiments. But sentiments are stabilized into pattern reaction types that may be called *mental attitudes*. Attitudes are the organizations of feelings and sentiments into consistent groups. It should be observed that in this discussion opinions do not become public by their content or because of the way in which a person reaches them; opinions are public because they are *de re publica*, because they involve the existence of the commonwealth.

Lippmann has preferred the word "stereotype" to explain the consistency of public reaction, but he stresses the visual aspect of opinion almost to the exclusion of evaluations, and this, combined with his failure to appreciate adequately the stability of opinion, robs the term of its analytical value. It is doubtful, in any case, if such a term, borrowed by Lippmann from a field of art in which visualization is significant, can be stretched to cover the needs of political science. He does use at times, however, the term "attitude," but he wavers between the idea of opinion as formed in a short time and opinion as a relatively permanent force. The cliché is undoubtedly valuable in the discussion of casual opinion which is formed primarily to meet an issue, but it is defective in treating the deeper and more permanent strata of the public mind where conviction is primary and where the visual element is only an incident of application.[1]

With mental attitudes as a starting point, we reach the problem of the formation of opinion. As a generalization it may be said that the broader and more fundamental opinions are slowly matured and are relatively permanent when formed; it is only in cases in which individuals accept no immediate interest that opinion can be formed in a short time.[2] But it should be noted that casual opinion is formed in harmony, for the most part, with the more slowly developed mental

[1] See Lippmann, *Public Opinion*, pp. 81 *ff*. Another way of approaching this question is to emphasize the use of symbolism and formalism in social institutions, such as the law. Conceptual symbolism has taken the place of the earlier use of magic and other devices. Concepts may guide the individual opinion by a symbolic or formalistic force.

[2] In German Alliance Insurance Company *v.* Lewis, 233 U. S. 389 (1914), Mr. Justice Holmes said: "The universal sense of a people cannot be accidental; its persistence saves it from the charge of unconscious impulse. . . . " In Plessy *v.* Ferguson, 163 U. S. 537 (1896), Mr. Justice Brown said in part: "The argument also assumes that social prejudices may be overcome by legislation."

attitudes or permanent opinions. The social heritage is clearly the most important single factor in the formation of opinion, and a definite understanding of it will ordinarily give a certain degree of accuracy in prediction as to the nature of individual opinion. The literature on public opinion has neglected this aspect of the question in its hurry to observe surface flurries. Needless to say, the social heritage is composed of ideas and values as well as material equipment.

Evolution in culture may be sharpened by certain types of changes, and Ogburn has demonstrated a lag in ideational development.[1] However, it is possible to see values as fixed but with a changing application as material culture alters. It may be doubted whether material culture gives more than the vaguest outline of the changes in social ethics that should accompany the advance of material culture. It is too early to say what effect the rapid technological changes of the present will have upon the content of thinking, and we cannot say what effect, if any, the historic ideas of Western civilization will have on the technological revolution of the contemporary world. It must be true, certainly, that technology can destroy ideas only by indirection and over a considerable period of time. It is likewise to be suggested that the changes in ideas that should occur as a result of these developments cannot be determined by a simple study of technology itself. To do so would be merely to clothe a social subjectivism with the mantle of the engineer. Social judgments must arise from the original social material that is man in relation to man.

It has been the fault of individualism not to emphasize the conjoint behavior of individuals. Natural-rights theory withdrew the single person from preexisting associations, and so did economic individualism. Natural law in economics and natural rights in the state have been assimilated, and neither has tended to view man in realistic association with his fellows. An exaggerated rationalism may also fail to look beyond the individual mind. While a theory of public opinion must start with the individual will, it cannot remain there, for the meaning of that will in its efforts to deal with the world can be understood only in connection with other wills and the impact of environmental conditions. This environmental effect is produced, to be sure, by the mechanics of contacts, primary and secondary, but more fundamental is the significance of associational life which those contacts impart to the individual. Attitudes are the product of life in society whether we think of them as favoring or opposing a given order. If opinions are generated in associated life, they can best be

[1] W. F. Ogburn, *Social Change with Respect to Culture and Original Nature* (New York, 1922).

expressed at times through group activity. But unless we assume some theory of the state as a moral or a real person, we must continue to deal with the individual, though if we are to understand him we cannot forget life in association with others.[1]

From the standpoint of fundamental notions, we do not need to enter here into a discussion of the crowd or the mob or the group mind. Two great historical theses stand opposed. The one insists, as Aristotle, that man in the crowd has a better judgment than man in isolation; the other urges that man in the mass becomes a prey to all the baser emotions and instincts, and that his judgment is very bad, if it does not in fact cease to exist. The latter view has been presented by modern social psychologists and the critics of democracy.[2] All interpretations will admit, of course, that effective human opinion must be shared and must result in joint action. There is likewise a level of calm and collective deliberation that groups may experience which all the students of the social process recognize. It may be readily suggested, for instance, that an individual walking on the crowded street of a metropolitan area can be more isolated and less subject to the influence of the ideas of those around him than a man living in a rural community or working in the field. The more people assemble in the same area without a psychological organization, the less, it would seem, they fall victims to the unreasoning effect of crowd emotion. Individual wish and will have more influence upon life in the city than upon life in the country, where life is more dependent on the fortuitous circumstances of the natural cycle. There is, because of this, a greater degree of fanatical belief in the country than in the urban area.[3]

We recognize today the need of experts and technicians in finding a basis of action. If we develop means of getting at what may be spoken of as relative truth, opinion will be left as the ruler of a functionless kingdom. If opinion may only support, and if it has no right to resist,

[1] See John Dewey, *op. cit.;* R. E. Park and E. W. Burgess, *Introduction to the Science of Sociology* (Chicago, 1921), pp. 280–287. *Cf.* the discussion of Giddings's views by Clyde L. King, "Public Opinion as Viewed by Eminent Political Theorists," *University Lectures*, 1915–1916 (University of Pennsylvania, 1916), Vol. III, p. 442.

[2] M. M. Willey, "Some Recent Critics and Exponents of the Theory of Democracy," in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. II; C. E. Gehlke, "Social Psychology and Political Theory," *ibid.*, Ch. X. See also the literature cited in both instances.

[3] F. Tönnies, *Kritik der Öffentlichen Meinung* (Berlin, 1922), p. 29. See Clyde L. King, "Public Opinion in Government," introduction to W. B. Graves, *Readings in Public Opinion* (New York, 1928).

the experts, the value of democracy is clearly in question. If the technique of finding and acting on facts is to be restricted to assessors and specialists, popular government, except as a means of obtaining obedience from the masses, may well be only one short phase in the history of politics. There is some evidence to show that those dealing with the problem of keeping economic life functioning efficiently, or at all, have a steadily diminishing confidence in the mass of the people. This antagonism is shown by the concerted efforts to control casual opinion which, though expensive, have been relatively effective. A thoroughly integrated economic society cannot tolerate too much effective heterodoxy in opinion; homogeneity on certain matters of opinion is a condition of its existence.[1]

The difficulty of arriving at tentative conclusions regarding opinion as a concept of political science has been increased by a series of distinctions that serve no real purpose. Public opinion, says King, is not mob action, public indignation, public sentiment, popular impression, preponderant opinion, general opinion, or public judgment. With this careful refinement completed, public opinion remains as a "social judgment reached upon a question of general or civic import after conscious, rational public discussion." Public opinion is, in this view, essentially what may be called casual as against permanent opinion, though he quotes with approval the idea of Ellwood that public opinion is a force back of all regulative institutions; this obviously involves the preservative rather than the generative aspect of opinion.

Mob action is rejected because it carries old standards, while public opinion creates new ones. But obviously the maintenance of standards when once formed cannot be clearly excluded from the action of opinion. It is not clear why public indignation should not be considered at least a manifestation of stable opinion, or why public sentiment cannot include rational thought as well as feeling. It is not clear that popular impressions, which he says are unthinking reactions caused by suggestion and imitation, are always shallow, transient, and fickle. A preponderant opinion is artificially defined as a majority judgment without discussion and in accordance with mental attitudes and habits; but there is no logical reason why such a decision can never be as rational as one derived by discussion, and there is certainly no objective criterion of the discussion necessary to convert preponderant opinion into public opinion. A general opinion, according to King,

[1] See G. E. G. Catlin, *The Science and Method of Politics* (New York, 1927), p. 96; John Dickinson, "Democratic Realities and Democratic Dogma," *The American Political Science Review*, XXIV (1930), 305.

involves a fatal unanimity, and is wanting in recent discussion and criticism. Yet why should not this be public opinion? Public judgment is merely less mature than public opinion and perhaps more calm.[1]

Plainly these distinctions are subjective and they make it almost impossible to determine what Lowell would call "real" opinion. They are qualitative judgments on the panorama of social conflict and human wills in action. We need start only with will and its content or wish; we need only say that public opinion is the content, in terms of valuation and attitude, of the wills of those persons who compose the public. To one the opinion that seems predominant may be good; to another it may be bad; to one it is informed and to another it is uninstructed. We must recognize that the study of true ideas is not always the study of actual social forces; propaganda does not have increasing righteousness as its effectiveness increases. On the other hand, the formation of opinion and the judgment of its content are not static or universal problems; they are to be faced in different ways depending on the character of civilization and a moving world of struggle and strife.

Opinion, the Public, and the Government. It is the theory of political democracy that, having begun with opinion, we ascend to the public and from the public to the government, which, within its means, has the duty of realizing public opinion. As a matter of abstract logic, it is of primary importance to show that, in a democracy, the member of the public has a right to his opinion, and that the expression of this opinion when effective is a criterion of public policy. It is quite conceivable, naturally, that a broad public opinion may be created for no other purpose than to encourage a willing obedience to the propaganda of the government. The one-party technique of modern dictatorships comes very close to this notion since, as a general principle, the opposition parties are excluded from any share in elections. Here there is a relationship between opinion and the public and between the public and the government, but whatever may be said about it, it is not a democratic one. It is, perhaps, less destructive of opinion than an alteration of the usual idea of the public. From the standpoint of the opposition, participation is a fruitless gesture, as might be shown by the German election in November, 1933, after Germany's withdrawal from the League. The relation of opinion and public to the government is not, however, so theoretical as it is practical. The effectiveness of the public and of opinion is limited in various ways, as we shall soon see; it differs likewise with the form of

[1] King, *op. cit.*, *passim.*

government, especially with the peculiar combination of oligarchy and participation found in the modern dictatorial system.

Our interest here must center upon the assumption of a broad public theoretically expressing freely a freely formed opinion. We must recognize first that the public is supposed to be the controlling agency of the government, and that the administration or the legislative authority is in reality carrying out the formally declared majority will of the active public. For democratic purposes we must assume in the second place that the system of participation is efficient. This leaves the theoretical question of the true functions of opinion in a democracy; it takes us back to the statement made earlier that public opinion in a democratic sense requires a pragmatic or utilitarian foundation of public policy.

If we assume that the public consists of those who have the right of participation in government, the function of such a concept is ultimately to designate the area or body of opinion that will be given weight by a democratic political organization. The political aspects of opinion arise logically, therefore, from the primary concept of the public. But if other definitions of the public are accepted, the relation between opinion and the public becomes more complex. To say, for instance, that the public consists of those who are interested in the rules of the game and who are not parties to a controversy is really a statement of limitation on the function of opinion. To say, for instance, that the public consists of those who are willing to abide by the decision of the majority makes opinion itself the test of membership in the public, at least logically, so that public and opinion are not really separable concepts as Lowell would have them. If we say the public consists of those upon whom the incidence of governmental action falls, the emphasis is not on opinion at all, and there is no need of a statement of relation between the two ideas.

It may be assumed that there should be no relation between opinion, the public, and the government—that true opinions come from God, natural law, or the right use of the reason by the elect. Authoritarian theories would limit or destroy the relation at the source, but demand of necessity that certain true opinions be held. For instance, in a theocracy there would be no room for functioning opinion on issues of significance because true opinions would be found in the flamenic code at the base of public and private institutional life.[1] Modern democratic theory developed first in connection with the authoritarian view. It was first asserted that men have rights,

[1] See J. A. Ryan and M. F. X. Millar, *The State and the Church* (New York, 1922).

religious and political, which governments must respect, and it was under this belief that the disfranchised masses insisted upon and finally won the Western code of civil and political rights. In the latter part of the nineteenth and the beginning of this century the authoritarian basis of democracy was weakened. Democracy has become pragmatic and flexible in its method of determining right conduct in government. What the people want is presumed to be the standard of right in social relations. Those who believe in democracy must also assume that it is possible for this freedom, which in turn is compatible with science, to contain the elements of a rational judgment, or at least a good judgment. In theory modern democracy demands a close conformity between opinion and government, which is to be attained through the legal concept of the public. The public is merely the lever of social mechanics, as Ihering would say, for the realization of the force of opinion in government. The public with its related opinion becomes a factor in political control; and the functioning total concept of public opinion emerges.

The Limited Effectiveness of Public Opinion. It is only when there is a definite theory of a close relation between actual opinion and the public that the study of public opinion is fundamental in politics. Democracy makes the assumption that opinion, which is subjective in itself, has some validity, especially as it approaches unanimity;[1] a further assumption is made that democratic control of government is, therefore, the best ethical foundation of the political community.

Any theory of opinion as such, without reference to a standard existing above it, must be in essence pragmatic. The development of faith in public opinion has coincided generally with an abandonment of authoritarian notions with reference to the state, social structure, and orthodox beliefs. So long as a theological or natural-law bias is prevalently held, the function of opinion is limited. Virtue, not opinion, said William Penn, is the cement of society.[2] John of Salisbury declared in his day: "Vain is the authority of all law except it bear the image of the divine law; and useless is the decree of the Prince unless it be conformable to the discipline of the Church."[3] In the political dicta of St. Paul or John Locke there is little scope for public opinion. The "general interpretation" of the admonition of St. Paul that men should be obedient to the powers that be has, how-

[1] Hocking, *op. cit.*, p. 384.

[2] G. P. Gooch, *Political Thought in England from Bacon to Halifax* (London, 1914–1915), p. 226.

[3] R. L. Poole, *Illustrations of the History of Medieval Thought and Learning*, 2d ed. (New York, 1920), p. 206.

ever, made for the play of opinion, since Christian writers have admitted that obedience as commanded in the New Testament does not prevent a community from determining its form of government.[1] A similar result has been secured by the modern tendency to discredit the theory of natural law as a controlling force in politics. In other words, the state is being thrust from the domain of absolute ethics and it must wander in a world of relative values; democratic theory holds that its highest duty is to be responsive to the effective opinions of the public. Perhaps the rise of the modern theory of public opinion is a tacit admission that the search for truth in terms of the political absolute has been a failure.

Yet it may be urged that the great principles of the superior moral law have always given expression to the prevailing attitudes of the people. Natural law and theological points of view have been effective against the people when the right of effective participation was limited and when the interpretation of moral principles was an oligarchical rather than a semidemocratic function as it is today. Such ideas as due process of law, reasonableness, and natural law receive their content continually from public opinion. Public opinion is that aspect of the social process which consists of an endless pouring of new wine into old bottles.[2]

The discussion above has indicated that philosophical evaluations, when held by a dominant force in a community, do in fact limit the functioning of opinion, and especially is this true when the evaluations are advanced as part of a long-established human culture. There are suggestions of this situation in the technique of dictatorship as shown in certain of the European countries. In these countries the government has been able to control the formation of opinion by government propaganda in which the ordinary reactions of discussion are absent; the dominating attitudes of the oligarchy of Russia, for instance, are those of the masses, but the attitudes in themselves are relatively objective with regard to the action of the individual. There are other ways of viewing objective factors in the notion of public opinion. Social institutions in most cases are limitations on the sweep of opinion. The traditional legal materials, devoted to the cause of maintaining things as they are, have in the hands of the judges directed the development of civilization, often without regard to public opinion. As Professor Catlin has remarked: "Law, then, does not depend solely

[1] See Romans 13: 1–7; John A. Ryan, *Catholic Doctrine on the Right of Self-government* (New York, 1920).

[2] J. C. H. Wu, "The Juristic Philosophy of Roscoe Pound," *Illinois Law Review*, XVIII (1924), 302.

upon opinion, but also upon the facts of the social structure."[1] Our greatest judges have never been afraid of the force of opinion, and in economic relations they have been able to make their conclusions hold, no matter what the people may have thought at certain times. Law, as an institutional limit on public opinion, has not been so effective in the field of standards and conduct, and here what Dean Pound calls individualization in the application of the law has been in reality an expression of public attitude.

A distinction may be observed at this point, however, between institutional limitation on the individual and on the group. The "social facts" of an age work primarily as a restriction on the vagaries of the individual will. The state and the community, in the hands of custom,[2] stand as resistant facts, "enduring and organized over centuries by the agreement of millions of wills, built up as a coral reef by a myriad of coral insects, slowly changing under pressure from a changing environment."[3] But the institutional limitation also conditions the vagaries of groups. Habits of individuals are hard to change, whether individually or in association, but larger groups comprehending smaller ones limit the latter even when there is substantial agreement to resist the larger ones. It must be obviously true that the individual in resisting a group has less chance of success, *i.e.*, of gaining support, than has the organized dissentient group. This fact explains, no doubt, the rise of interest and pressure organizations which are seeking to alter the dominant habits of thought of a people. If society is unitary in any sense, it must be clear that both individuals and groups are powerless to change opinion in a short period; if society is federalistic in its nature, the power of the group is much greater, while that of the single individual must remain approximately the same.

A statement of the objective needs of human society is attempted by Duguit in the elaboration of his theory of social solidarity. A modern technological society is very sensitive to disarrangements that can be seen and felt immediately only by those in directive positions. If we take a panoramic view of the Western world since the conclusion of the war in 1918, it is easy to see that democracy in yielding to mass opinion has made many serious blunders. The

[1] G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), p. 443. For the influence of the Supreme Court, see Charles Warren, *The Supreme Court in United States History* (Boston, 1922); C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930).

[2] R. M. MacIver, *The Modern State* (Oxford, 1926), p. 40.

[3] Catlin, *A Study of the Principles of Politics*, pp. 85–86.

present economic system must obtain a calm and dispassionate appraisal of the world's economic forces if it expects to survive. This appraisal cannot come through popular stubbornness or inertia. Public opinion has had little to do with the growth of technology, and it seems to have as little ability in determining what should be done about the steady and cumulative advance in the production of human inventions. Economic organization has generally been superior to the force of casual opinion, as likewise has been the corpus of social heritage. Neither economic nor cultural life immediately controls opinion, but both do in the long run, partly at least through the conscious program of education developed by those who have the power and by those whose interests are at stake.

We may agree with Lippmann that a complex environment is a great limitation on the force of opinion. In modern times the "unseen environment" has, perhaps, become increasingly complex. It is less a question whether opinion should be consulted as to certain phases of public policy and more a matter of impossibility of so doing because of its irrelevance. The results of the industrial revolution were not foreseen, and its indirect consequences are now considered more significant in social development than the obvious results toward which thinkers looked. People are joined together by vast currents that they cannot control and seldom understand. "The forms of associated action," says Dewey, "characteristic of the present economic order are so massive and extensive that they determine the most significant constituents of the public [that is, the state] and the residence of power." While some of the fundamental habits and traditions have been little affected, such as the desire for profit, Dewey concludes that "the new forms of combined action due to the modern economic regime control present politics, much as dynastic interests controlled those of two centuries ago. They affect thinking and desire more than did the interests which formerly moved the state."[1]

Effective legislation suggests the fields in which public opinion can best operate, and these involve human relations, conduct, and standards, though even here the historic heritage of ideas controls and limits. The choice of personalities, the maintenance of things as they are, and the decision as to new problems of conduct and standards may, with adequate machinery, be dominated at times by public opinion. But the more we stress the objective factors in society, the

[1] Dewey, *op. cit.*, pp. 107–108. By permission of Henry Holt & Company, publishers. See also Pound, *The Spirit of the Common Law* (Boston, 1921), pp. 165, 192, 195–196.

less is public opinion a gateway to truth, and in time we may become tired of leading opinion to what may be called the objective necessities of society as perceived by those in positions of authority.

A further broad qualification of the effectiveness of opinion is seen in the uncertain development of social invention and the effectiveness of majority coercion. It is one thing to recognize a social need or to adopt a particular concept of purpose, and it is quite another to attain the purpose or to satisfy the need. While legislation has been considered in modern times as an agency for the attainment of purpose, the facts show that an exaggerated faith in the efficiency of majority enactment and judicial decision is not justified. Inventiveness in mechanical fields is much more certain to continue than is social invention. It is probably true that the greatest contribution of scientific method will be in the mechanics of social technique. In regard to the liquor question, for instance, no law has made it possible for the state to guarantee that those who drink and are not a menace to their fellows may still drink and that those who drink and are a menace may not drink. Berolzheimer has denied that progress is the issue of conscious, rational, and deliberate striving as depicted in the utilitarian view. "History shows that the ends striven for and attained are not correctly formulated in consciousness; the alleged purpose and the achieved accomplishment are rarely the same."[1]

The objective factors in relation to public opinion may be summarized in the following order: first, the continuity of social institutions, the organized folkways and mores of a society, in which should be included the detached and restraining influence of the traditions of governmental organization, the historic constitution, and the law; second, the objective needs of society, recognized as a social force that limits the discretion and effectiveness of public opinion; and third, the ineffectiveness of majority coercion where public opinion might otherwise act as in the field of conduct and standards, and the slowness and uncertainty of human social invention which might make human effort more effective and organized public opinion more easily felt.

The Creative Public Opinion. The objective and limiting factors surmounting public opinion are generally recognized. But to admit that the acts of government may have a great effect is not to admit also that public opinion has an equal power. Agents of a modern

[1] Fritz Berolzheimer, *The World's Legal Philosophies*, tr. from the German (New York, 1929), p. xliii. D. G. Ritchie, *Natural Rights* (London, 1895), pp. 183–187, explains the rise of toleration primarily by necessity, the wish of the majority being ineffective and contrary to the needs of society. See Taft's opinion in Truax *v.* Corrigan, 257 U. S. 312 (1921).

government moving in a primitive culture are almost immune from the influence of native opinion, and by breaking down primitive sanctions for belief they can undermine a whole culture. In modern society political action is taken by the government and not by the public; it is a mere truism to say that government has the greater effectiveness. The public may, however, influence what is being done. It is not simply that governments have more information, but that the agents of the state deal with a problem in an official capacity. The government is able to compromise, to adjust conflicting interests, while opinion, because of the machinery through which it works, must speak in terms of yes, no, and silence.

If we assert that the action of government in certain respects is creative, what is meant by the theory of a creative public opinion? The broader question is, naturally, to what extent is the state creative? The creativeness of the public must be less than that of the state. Most philosophies of politics have been willing to concede that state action has conclusive influence within a strictly limited sphere. It is said that the state is, for the most part, external to the creative forces in social life; that it cannot create morality except by the clearest indirection; that economic life escapes constantly from the domination of the political power; and that many institutionalized interests, such as religion and the family, are in fact older than any modern state. We cannot adopt here in a dogmatic sense any of the jarring faiths as to the capabilities of the state, for most of the intense conflict of modern times over economic life centers finally on the issue of the proper functions of the state. An individualist must naturally assume that government is less creative than a socialist would consider it to be, and by the same token public opinion is less effective for one than the other. An anarchist would naturally reject the whole notion of creative public opinion since he would destroy the public. Even a collectivist might admit that most of that great and complex mass of attitudes which goes by the name of social rather than public opinion is outside the power of the state. Rather it would be said that the public achieves what creative force it has by virtue of the stable and permanent social opinion that makes society possible. It might even be asserted that, as most social opinion becomes public by the expansion of the action of the state, political society becomes more destructive than creative. To admit that the state is merely one aspect of the community is to impose at the outset the greatest of all limitations on its creative force.

It is not properly within this discussion to determine to what extent social opinion may be creative. But in any case, society is

what it is because of the coherence of men through institutions and attitudes. The characteristics of a society endure for centuries, and from this fact specific cultures and nationalities are assumed to be part of the eternal order of human temporalities. Nevertheless, it may be true that, as the range of social opinion coincides to a greater extent with public opinion, there is a greater creativeness in the latter, to the extent that social machinery is capable of translating public opinion into political realization. Yet to assign new functions to the state might not automatically increase the creative force of political society. We may assume that the state, as a peculiar human institution, has its own laws of action that human wish and will may not transcend. The historic despotisms have been little interested in anything other than security for the regime, and it may be that modern social-welfare despotisms (Fascism, communism, etc.) will demonstrate capacities in political organization which historical thought has little suspected.

If we return to the specific question at hand, it may be said that it does not matter how opinion is formed; what matters is the significance of opinion after it exists. Does this mean that opinion may be a source of truth, whatever the nature of its formation? The pragmatist is likely to say that this is one aspect of the creativeness of opinion. Yet what we must mean by creative opinion is that it is effective in controlling government within the objective limitations of the action of government. It is obviously true that any objective restrictions on the efficacy of government are likewise limitations on public opinion, though the objective limitations on opinion are greater than those which the government must admit.

The pragmatist believes in the efficacy of human effort, and the gospel of action comes to its own in this philosophy. But Kohler, the neo-Hegelian, comes to the same conclusion—that culture in a creative sense is the control of man over nature, the preservation of his control, and its development in the future. In this connection, a negative creativeness of public opinion may be seen in conditions favorable to human activity which public opinion might disrupt but does not. There is also a close connection between the permanency of opinion and its creativeness; by its stability opinion remains a consistent force on the government and its policies. It is quite possible for the government to ignore unstable and new opinion, especially in our form of constitutionalism. Whatever we may say, the creative opinion must be an opinion that accepts without revolt the objective limitations on its action; it must accept these limitations in order to preserve its creativeness within these limits.

The problem of creative public opinion in other than a negative sense is the problem of creative participation. It is the contribution to political life of a will containing the elements of rational activity and of a conscious judgment instructed regarding the objective dictates of environment. It is essential in the long run for the existence of democracy, though democracy, if its agents are capable, can build on the foundations of evolved culture.[1]

From this discussion we derive a secondary notion or concept—the creativeness of public opinion. The problem of modern democracy is largely how to make opinion more creative in the light of the present facts of society and the machinery thus far evolved for bringing about participation. To such men as Bertrand Russell and James H. Robinson, it is a problem in the reconstruction of the thinking process. As Russell says, men fear thought as they fear nothing else on earth; hence all the social invention to restrict the creative powers of the mind.[2] Even in pragmatism the creative function of opinion must be limited to the field of evaluations; the world about is callous and uninterested in our ideas. It is unconditioned in many respects by opinion or belief, and we must face it as a fact or body of facts. By these limitations the creative power of opinion becomes much more real, for the foundations of its effectiveness become clearer, and as they become clearer human purpose becomes more rational and scientific.

Pragmatism, with its belief in human thinking and activity, scientific method, and the development of social science, may be used to establish the effective creativeness of public opinion and "the legally outwitted and impotent masses of today."[3] Social experimentation and reconstruction will not then be blind and stubborn opinion thrashing against a wall of objective reality.

Conclusion. An effort has been made in this chapter to indicate some of the general and permanent problems of public opinion.

[1] Lippman believes in the creativeness of opinion in his *Public Opinion* (*e.g.*, p. 159), but in *The Phantom Public* his concept of the public is based on the uncreative character of public opinion. His idea of the rules of the game as simple, superficial, and external is simply untrue, for the best of human mentality has been devoted for centuries to the construction of these rules. The rules of the game are the real problems of valuation; they imply evaluations. The externality view of opinion in *The Phantom Public* seems also to contradict his theory of "government in the people" in *A Preface to Morals*. See P. Sorokin, *Contemporary Sociological Theories* (New York, 1928), pp. 706–709, for an opposite view of Lippmann's position in *Public Opinion*.

[2] J. H. Robinson, "The Still Small Voice of the Herd," *Political Science Quarterly*, XXXII (1917), 312–319.

[3] Hocking, *op. cit.*, p. 380.

Naturally, it could not be claimed that the concepts suggested have anything more than a tentative validity, but it may be that they fit into the scheme of political democracy better than speculations founded upon the purely sociological and psychological approach to the problem. The central question involved in the approach suggested here is the nature of the public. It is proposed to call the public a body of persons who have the right of participation in government; the public is regarded as a legal and political concept rather than a sociological group united in the discussion of new questions. But, in the second place, it is suggested that opinion should be a generic title to cover all the attitudes of those who compose the public, and not just the rational opinions of men. Further, it has been suggested that democracy requires some acceptance of opinion as a test of policy, but it must also be recognized that opinion is not omnicompetent; opinion is subject to limitations over which, generally speaking, it has little control. Finally, there is a residual area of action in which opinion may be a creative force.

We know that unity in our social ideals is wrought by the hands of men under the given restrictions of conditions. We know, because of the effectiveness of propaganda, that opinion and righteousness are not the same; that a knowledge of true ideas is not a knowledge of social forces. To know fallacies is not sufficient in itself, for we must also know how truths and fallacies are made effective in moving a citizen body.

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Chapter XI

SOME DYNAMICS OF PUBLIC OPINION

> This feeling the wise governor has strengthened by his guidance of public opinion and has brought to a state of great effectiveness by custom and education, in order that shame, no less than fear, might restrain the citizens from wrong doing.—Cicero.[1]

Enlightened Opinion. Reality or Illusion? The attack on democracy centers finally on the action of public opinion. Apparently all modern unfavorable criticism of democracy would agree that public opinion does not embody rational social philosophy and that its conception of political problems is unscientific. The attack itself is divided into different phases. It is charged that public opinion is a seething caldron of ignorance and prejudice; that public opinion approves mediocrity and hates brilliance and originality in political leadership; that it cannot be educated to a full appreciation of scientific treatment of technical issues; that it cannot understand the complexity of modern government; that it is unstable in its purposes; that it is so stable in its prejudices that it hinders progress; that the majority is arrogant and intolerant of the minority. Finally, at the present time, it is charged that there is no connection between rectitude and public opinion owing to the pervasive force of propaganda, the technique of which has been developed tremendously during and since the war. If any considerable part of these charges is true, it is a worth-while attempt on the part of the intelligentsia and aristocrats to devise some sort of government that can be controlled by reason and science rather than by public opinion. The issue that determines the value of democracy is whether public opinion is worth following. Or we might say, is it worth while to be held back by it? If it is not worth consulting, the public should be curtailed to those who have some consciousness of the problems of government, who are rational in their evaluative judgment, and who, withal, have what may be called "instructed judgments" in civic affairs.

The problem of enlightened opinion is not new. The Greek defense of philosopher kings and the exclusion from participation of all but a

[1] *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), p. 246. By permission of The Ohio State University Press.

small citizen group in the state were based on a fundamental distrust of the judgment of the man who does not have the time to be an expert in government. Government for the Greeks was not a week-end affair; being a citizen with the full right of assisting in judgments demanded far more time than the busy commercialist could spare, even if he were willing to devote it to the state. The Greeks did not believe in the equality of human beings, and this simplified and justified the limited participation upon which the Greek conception of democratic citizenship was based. In modern times those who distrust the judgment of the average man must finally assert the political inequality of man, even though the argument may be stated merely in terms of the inaccuracy and lack of value in popular judgments. The defenders of democracy themselves admit finally that the system must fail unless public opinion is sufficiently intelligent to meet the problems of the modern world; if it is not, the alternative, at least at the present time, seems to be Fascism or communism, which involves the scrapping of the historic system of constitutional government. Lord Bryce's parting words to the coming generations were an exhortation not to despair of democracy so long as there is a popular interest in the affairs of government.[1] Bryce's statement is no answer to the question in the mind of the critic of democracy, since he maintains that interest which is uninstructed and dominated by irrational prejudices is far worse than mere indifference to government. If the uninstructed masses are indifferent, it at least gives those who have instructed judgments more of a chance to control public affairs. If the force of propaganda is as great as is claimed, certainly interest itself is no sure sign of vitality in modern democracy.

David Hume, the mid-eighteenth century English utilitarian, made much of the argument that all government is finally by the few, though at the same time it is "on opinion only that government is founded." The few have been submissive to the many all through the history of government, and, as Bryce indicated, there has never been any government save that of the few. No matter how tyrannical the few, they could never govern unless the many accepted their control, or at least did not resent it enough to resist. While it may not be wise to follow the tendency shown in the works of Lowell, Holcombe, and Clyle L. King and to say that the only public opinion is the rational opinion of the instructed judgment, it may nevertheless be said

[1] E. W. Shoup, "The Initiative and Referendum in Thirty-six American Cities in the Years 1921 and 1922," *National Municipal Review*, XII (1923), 610–615. Cited in Joseph Wright, *Selected Readings in Municipal Problems* (Boston, 1925), p. 326.

that an effective democracy must be controlled by enlightened public opinion.[1] On the other hand it is probably unwise also to insist as does Lippmann that public opinion is dominated by unreal and vague pictures of the unseen environment. Enlightened opinion is one kind of public opinion; ignorant and prejudiced opinion is merely another kind, just as majority and minority public opinion and permanent and casual public opinion are varieties of the same thing. One kind is more valuable to effective democracy in the long run, no doubt, but both are "real" public opinions. The mistakes of public opinion do not mean that it does not exist in the first place, just as the mistake of a government does not mean that the government does not exist in fact.[2] The thesis concerning "real" opinion savors too much of the general-will theory which asserts by definition that the general will is always working for the public good. Certainly, if there is a real fact in politics, it is the opinion of an individual who has the right of participating in democratic decisions. Popular government is founded upon devices for collecting and accepting these random judgments.

We cannot, however, say that a despotic government is a democracy. Even if the opinions of the masses were enlightened, it still would not be a democracy. There is no general system of popular participation in despotic government. The issue is not really the enlightenment of opinion, but the effective participation of individuals in government even if they do not have any distinct opinions concerning the propositions submitted to them. True, a democracy without enlightened opinion is not an effective democracy, and it might not be worth preserving, but it would still be democracy in an objective sense. It is also true that the only democracies that have challenged the attention of students of politics are those in which there is some degree of enlightenment. The history of transplanted democratic institutions, in which the people do not have a distinct consciousness of the meaning of political participation, is rather woeful, and such transplanted democratic institutions have generally lapsed into partial or complete despotism. Even Thomas Jefferson, who believed in the natural rights of man, had to admit that some peoples were not suited for free government, *i.e.*, democratic government.

[1] See A. L. Lowell, *Public Opinion and Popular Government* (New York, 1913) and *Public Opinion in War and Peace* (Cambridge, Mass., 1923); A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923), Ch. I; C. L. King, "Public Opinion in Government," introduction to W. B. Graves, editor, *Readings in Public Opinion* (New York, 1928).

[2] The students of public opinion who assert that public opinion does not exist if it is not opinion produced by rational public discussion resemble the idealists, like Green, who assert that a state is not a state in fact if it does not live up to certain rational specifications.

The Enlightenment of Public Opinion. Democracy could not be established until there was a demand for it, though since it has come into existence it has been established in countries where there was no such demand. To what facts, therefore, can we trace the rise of enlightenment in opinion which might insist that it be made public? It is a problem in the degree of enlightenment, for in all ages there have been individuals whose judgments were nearly rational and scientific. Nor does the enlightenment necessarily mean that every individual in the state should want to participate. At the present time nonvoting is one of the most distinct characteristics of democracy. But the enlightenment that leads to democracy has a rather specific meaning: it means that a considerable number of individuals in the state wish to substitute their own judgments on public affairs for the contemporary authority controlling society. The general movement called the Enlightenment, the *Aufklärung*, or the *éclaircissement* of the eighteenth century marks the beginning of free opinion, making political democracy a necessary reform. If public opinion itself is the fundamental ingredient in democracy, the beginning of free opinion must be the beginning of democracy itself. And such is the case. In specific terms, the enlightenment of opinion meant the overthrow of dogmatic and authoritarian social theory.[1]

Since the leaders of the Reformation, such as Luther and Calvin, conceived of liberty in opinions as simply the liberty to think correctly and morally, they cannot be said to have consciously demanded the present-day freedom of opinion. It would have seemed to them, no doubt, the worst form of license. But the Reformation did weaken the bonds of authoritarian, hierarchical society which had been established in the Middle Ages, and the struggle of the reforming sects against the older forms of authority, both religious and political, took from authority as such a prestige that it may never regain in the minds of men.[2] The grist of politics is after all the ordinary concerns of this world—the conditions of making a living, of increasing the standard of living, and of enjoying a full life in the sense of one's own choosing. The ancient church had never looked kindly on the desire

[1] Lord Acton, *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence (London, 1909), p. 188, recognized this in his assertion that the place once occupied by religious opinions is now occupied by political opinions. Such a result came from the development of the Protestant state which assumed the functions once performed by the church. It is also true that sixteenth century secular theories of the state, *i.e.*, nonreligious theories, tended to stimulate a bifurcation between religious and political opinions. See in general, Paul Janet, *Histoire de la science politique* (Paris), 5th ed., Vol. II; D. Mornet, *Les origines intellectuelles de la révolution française* (Paris, 1933).

[2] See John Morley, *Voltaire* (London, 1885).

for profit, and greed and usury (with some exceptions) were condemned in moral theology. Even Protestantism in its early stages had no thought of compromising with the merchants, but it did not appeal to the aristocrats and it did not, as did the aristocrats, scorn the value of human labor. The reconciliation of Protestantism with commercialism and later capitalism is one of the fundamental forces in the rise of public opinion. Protestantism became this-worldly in part, and the seeker of profits was using his talents as God would have him.[1]

The result of this was that the ordinary concerns of life were worth fighting for; and the mill of politics ground incredibly faster. The ancient ascetic standard, which contemplated the trials of this world as mere tests of moral courage and virtue for the world to come, was thus given a severe blow. Since public opinion must deal with the affairs of the world in a serious way, and since it must be fundamentally concerned with mundane affairs, the issues of politics were clothed with a new and startling dignity where the judgments of the individual were involved. The ascetic standard was the authoritarian expression of the other-worldly attitude of Christianity. True, individuals were equal in the sight of God, but the troubles of this world were of infinitely less importance than one's religion. The overthrow of asceticism is an indirect consequence of the Reformation, and it followed from the weakening of social authority in general and the vitality of the interests of the Protestants.[2]

The ascetic standard, which relegates the force of opinion, dealing with ordinary concerns, to a minor place in life, was attacked also by the revolutionary tendencies of thought involved in the Enlightenment. The taproot of the Enlightenment may be found in the work of the early scientists such as Galileo, Kepler, and Newton, and earlier in the work of Roger Bacon.[3] As the critical faculties of the human mind were being aroused, confidence in human judgment became the supreme egoism of democracy. It is not the judgment of a few, but

[1] R. H. Tawney, *Religion and the Rise of Capitalism* (New York, 1926); Max Weber, *The Protestant Ethic and the Spirit of Capitalism*, tr. from the German (New York, 1930); Ernst Troeltsch, *Die Soziallehren der christlichen Kirchen und Gruppen* (Tübingen, 1912). The author does not mean to imply an acceptance of the views of Weber and Troeltsch. What is suggested, however, is the importance of the decline of religious authority in the rise of a secular attitude toward the problems of politics.

[2] See in general C. J. Friedrich, editor, *Politica methodice digesta* of Johannes Althusius (Cambridge, Mass., 1932), introduction. But *cf.* Werner Sombart, *Le bourgeois*, tr. from the German (Paris, 1926).

[3] See E. A. Burtt, *The Metaphysical Foundations of Modern Physical Science* (New York, 1925); J. H. Robinson, *The Mind in the Making* (New York, 1921).

the judgment of human beings in general that is its groundwork. The "common sense" philosophy of Newton and Locke, for instance, made a tremendous impression on Voltaire and the Encyclopedists who carried the vanguard banners of the Enlightenment. But what is "common sense?" Is it anything more than a belief that human judgment is capable of stating the major propositions of social theory and the ends of life in society?

The ascetic standard, or the authoritarian view of social relations which made them insignificant, could not successfully compete with the ferment going on among those who were taking places of leadership. The liberals of the eighteenth century did not have a press to spread their ideas, for the *ancien régime* seemed to sense its own defeat if the liberalism of eighteenth century England were scattered in France. It is not that the liberals of eighteenth century were so profound as those of the present, or even the philosophers of Greece in their day; but they believed fundamentally in the rational powers of man for the discovery of truth, and they also believed that this same attitude should be extended to the study of social values and institutions. The logic of science has always proved to be contagious, even if its results outside the field of natural science have not been great; and it is no doubt true that scientific method was fundamental in making possible eighteenth and nineteenth century confidence in the rational powers of the individual.[1]

The cross currents of the Enlightenment are curious as they apply to the development of democracy. For the leaders of the Enlightenment did not surrender the belief in natural law. The right use of reason would enable men to see what their natural rights were, and it was no longer the prerogative of social authority to define the rational needs of men. Any theory of natural law and rights is ultimately authoritarian, both in its nature and in its method of determination. The existence of a law-of-nature theory retains an immutable element in social life, and it is only by the right use of reason that the ordinary man can come to the truth. The ordinary man might require leadership to discover the fruits of reason. The philosophers of natural law, however, could never attain for themselves an authoritative position in society. It is somewhat absurd for a revolutionist to claim as authoritative a position as those who are being displaced. The freedom of opinion, which the natural-law theory of government was so instrumental in securing, was in turn the means of the destruction of natural-law philosophy.

[1] See Kingsley Martin, *French Liberal Thought in the Eighteenth Century* (Boston, 1929), *passim*.

What remained? No authority in matters of opinion surely, except in a psychological sense.[1] Without authority opinion becomes free, at least in theory, though whether it is rational is another matter. The age of Calvinism and the age of reason became the age of the utilitarians, as the idea of natural law and rights succumbed before the concept of utility. The age of the utilitarians of the nineteenth century merged into the age of pragmatism in the twentieth, with the exception of those forces that are roughly called idealism in politics. The groundwork of the utilitarian theory of Bentham and Mill was, of course, laid in the egoism of the age of the rationalists, insofar as human judgment was trusted as a test of happiness and good, and the groundwork of pragmatism was laid in the utilitarian emphasis on the consequences of governmental conduct.

The final struggle for freedom of public opinion appears in pragmatism, for aside from pragmatism the only other view now is some form of authoritarianism, which is flatly contrary to the whole idea of public opinion as a value determinant of policy.[2] Pragmatism has two distinct sides. It believes in the effectiveness of human will and judgment in dealing with the concrete affairs of life, though it cannot go so far as to deny the existence of values in life. It also believes that the test of truth is found in the consequences of action. It is in action rather than in contemplation that public opinion will discover its effective scope and the content of political truth. In this sense it is anti-intellectualistic, for it holds that reason alone without the facts and circumstances of life cannot determine truth. As long as pragmatism insists on the effectiveness of human judgment in action, it is the contemporary philosophy of public opinion *as action;* it is, in fact, the long-deferred birthright of public opinion. But insofar as pragmatism insists on the limiting consequences of facts, it denies that opinion is the test of truth, and it insists therefore that only in action and under conditions does public opinion exist as a force in the life of the community.

Rationalism and Anti-intellectualism. The Claims of Rationalism. The great leaders of political democracy have always believed in the freedom of opinion, and they have believed in it because of the capacity

[1] G. C. Lewis, *The Influence of Authority in Matters of Opinion* (London, 1849).

[2] Hans Kelsen, *La démocratie*, tr. from the 2d German ed. of 1929 (Paris, 1932), p. 111, cites with approval Adolf Menzl who showed that all through the history of ideas those who have taken an absolutist position as to truth or a metaphysical conception of the world have favored autocracy, while those favoring a relativistic attitude toward it have supported democracy. Plato is thus an autocratic thinker, while the Sophists favored democracy. See Adolf Menzl, "Democratie und Weltanschauung," *Zeitschrift für öffentliches Recht*, II, 701 *ff.*

of the individual finally to perceive truth. Milton, Jefferson, and Lincoln, for instance, do not assert that public opinion is always right, but they do claim that, because of the rational powers of man, the truth ultimately prevails over ignorance. Tolerance in matters of opinion pays for itself in revitalized truth. Democratic theory, however, has never been clearly dominated by modern philosophical movements, which began in the scientific rationalism of Descartes to Leibnitz, which became the abstract dogmatic reason of the Enlightenment, and which finally resulted in the skepticism of Hume, as well as the romantic rationalism of Rousseau and the idealists.[1] The real leaders of democracy have been little more than pseudo-philosophers. Truth has been the outstanding goal of democratic government, and the fundamental connection between democracy and various forms of rationalism is to be seen in the trust in the judgment and reason of the individual. Modern philosophical movements have centered on the social life of man, and, as they have done this primarily by emphasis on *individuality*, the connection between philosophy and democracy is easily perceived. But the democratic argument, which is grounded upon faith in reason, becomes essentially a defense of freedom in opinion. Jefferson once said that he would be willing to choose newspapers instead of government if the choice had to be made, and Lincoln was convinced that "you can fool part of the people all the time, and all the people part of the time, but cannot fool all the people all the time."[2]

Perhaps the romantic defense of freedom of opinion given by John Milton in the seventeenth century expresses the confidence in human judgment necessary for a venture into political democracy.

> Where there is desire to learn, there of necessity will be much arguing, much writing, many opinions; for opinion in good men is but knowledge in the making. Under these fantastic terrors of sect and schism, we wrong the earnest and zealous thirst after knowledge and understanding which God hath stirred up in this city. What some lament of, we rather should rejoice at, should rather praise this pious forwardness among men to reassume the ill-deputed care of their religion into their own hands again. A little generous prudence, a little forebearance of one another, and some grain of charity might win all these diligencies to join and unite into one general and brotherly search after truth; could we but forego this prelatical tradition of crowding free consciences and Christian liberties into canons and precepts of men. I doubt not if some great worthy stranger should come among us, wise to discern the mould and temper of a people and how to govern it, observing the high

[1] A. K. Rogers, *A Student's History of Philosophy* (New York, 1907), Section 27.
[2] See E. L. Godkin, *Unforeseen Tendencies of Democracy* (Boston, 1898), p. 186.

hopes and aims, the diligent alacrity of our extended thoughts and reasoning in the pursuance of truth and freedom, but that he would cry as Pyrrhus did, admiring the Roman docility and courage. "If such were my Epirots, I would not despair the greatest design that could be attempted to make a church or kingdom happy."[1]

The fundamental assumption of rationalism has been that freedom of opinion is sound because opinion becomes valuable in the long run, even though it might be erroneous for a time. Rationalism spoke in terms of freedom of the will, of reason as the last criterion of political value, and yet through all the discussion there has been retained, for the most part, the theory of innate ideas of right and wrong. Modern empiricism, under the leadership of Locke, undermined the concept of reason developing the practical application of such ideas, for Locke attempted to show that there were no innate ideas and that all knowledge came from experience. A general rejection of innate ideas and abstract rational principles was contrary to the ordinary defense of freedom of opinion, for in the Miltonic sense opinion arrives at truth; it does not create it. While his theory of knowledge undercut authoritarian principles, whether of a churchly character or the authority of abstract and innate principles of right and wrong, Locke also stressed in fact the utility and expediency of things as a test of their worth. This emphasis is inherent in the empirical attitude toward truth, which regards it as an outgrowth of human experience, and it may be considered as a necessary step forward in the theory of opinion as a measure of value. It must not be forgotten that Locke also supported the theory of natural law which leads in the direction of innate ideas and abstract principles of controlling authority.

The significance of utilitarianism and pragmatism in connection with public opinion becomes apparent, since public opinion, when seen as working toward innate or immutable principles, is not a measure of value, politically speaking, in itself. The age of rationalism criticized forms of authority and then attempted to establish others in place of the old ones. The use of reason under the empirical theory of knowledge as derived from experience (through sensation and reflection) indicates the possibility of significant value in opinion, aside from the older Miltonian view of opinion *arriving* at truth.

But the history of public opinion has worked toward the disillusionment of its believers. Those who conceived of opinion arriving finally at truth found that political democracy continued to debate and quarrel over values instead of reaching agreement. Those who thought of opinion as liberated from the control of innate principles

[1] See the *Areopagitica.*

found that the treatment of experience by public opinion was contradictory and was likely to continue so. If the currents of opinion could be harmonized, and if this harmony reflected itself in progress toward practicable ideals, the criticism of the action of opinion would be much less. It might be conceded that public opinion could attain a reasonable and rational result. But it is just in these respects that the severest condemnation of democracy develops, which leads to the anti-intellectualistic criticism of public opinion and political democracy.

The Anti-intellectualistic Criticism. The nineteenth century saw the development of types of thought which, if carried to their logical conclusions, would deny that public opinion is a suitable vehicle of rational political decision. The criticisms of public opinion converge on one general proposition, as we have stated—that public opinion, if accepted, must not be judged on purely intellectual or rational standards. Professor Elliott has given this modern movement the general title of "the pragmatic revolt in politics." He has taken his thesis from the general anti-intellectualistic bearing of pragmatism as seen in radical political theory, such as pluralism, syndicalism, and Fascism. The gospel of modern thought is that the results of action rather than of reason should be the test of political truth.

The Psychological Attack. The first fundamental tendency that should be observed is found in psychology. The rationalism of the Enlightenment stripped man of his emotion and intuitive nature and judged all social issues in terms of principles deduced from reason. Since man had the power of reason, it was felt that he could and would so determine political issues. But modern psychology has shown the place of instinct and emotion in political life, though there is little agreement among the psychologists on either instinct or emotion.[1] Graham Wallas published in 1909 *Human Nature in Politics*, a book Professor E. S. Corwin says may be grouped in the future with Machiavelli's *Prince* for its union of realistic outlook with a constructive intention,[2] which was a protest against the intellectualistic assumptions of students of democracy. Wallas attempted to show the force of emotions and irrational prejudices in determining the values accepted by individuals in their political conduct. Public opinion is formed by exploitation of the subconscious inferences made by individuals. The political party appeals, not to reason, but to the irrational and fixed prejudices of its members. It uses catchwords

[1] See L. L. Bernard, *Instinct* (New York, 1924); P. H. Odegard, *The American Public Mind* (New York, 1930).

[2] E. S. Corwin, *The Democratic Dogma and the Future of Political Science and Other Essays* (Shanghai, 1930), p. 18.

and slogans, banners and catcalls—and it wins elections. True, in his later work, *The Great Society*, Wallas protested against the overemphasis of anti-intellectualistic views, but his ideas had taken root and he had become the herald of the modern criticism of democracy on psychological grounds.

The development of social psychology, the psychology of men in group life, has been rapid since the turn of the century. In the works of Ross and Giddings, for instance, we have attempts to fathom and explain the conduct of men in terms of reason as well as instinct, emotion, and habit. The political ideas of the individual are created by his environment. Tarde spoke of imitation as the fundamental force in the spread of ideas, rather than the rational freedom of the individual to make his choice of values. The spread of conventionality is examined in detail by Ross, but the modern student who has attempted to systematize these tendencies on the specific problem of public opinion is Walter Lippmann.

Lippmann undertakes to show that opinions are, fundamentally, pictures in the mind of the individual of the political world he cannot see, and concerning which he can read only uncertain and fragmentary accounts. These pictures in the mind, or, we should say, attitudes, since undoubtedly evaluations as well as pictures are involved, tend to be stable, but they can be transferred so as to control thinking about new issues. Thus for Lippmann public opinion is out of touch with reality; it is a creative force, to be sure, but under the limitations of human knowledge, and, owing to the force of prejudice and emotion, it cannot get an adequate grasp of the political necessities of society. Lippmann says:

> The subtlest and most pervasive influences are those which create and maintain the repertory of stereotypes. We are told about the world before we see it. We imagine most things before we experience them. And these preconceptions, unless education has made us acutely aware, govern deeply the whole process of perception. They mark out certain objects as familiar or strange, emphasizing the difference, so that the slightly familiar is seen as very familiar, and the somewhat strange as sharply alien. They are aroused by small signs, which may vary from a true index to a vague analogy. Aroused, they flood fresh vision with older images, and project into the world what has been resurrected in memory. Were there no practical uniformities in the environment, there would be no economy and only error in the human habit of accepting foresight for sight. But there are uniformities sufficiently accurate, and the need of economizing attention is so inevitable, that the abandonment of all stereotypes for a wholly innocent approach to experience would impoverish human life.[1]

[1] *Public Opinion*, pp. 89–90. By permission of The Macmillan Company, publishers.

It would seem, however, that, if public opinion were so out of touch with the real environment, society would have been wrecked long since. The answer may be twofold. Public opinion may in fact be more rational than Lippmann would lead us to believe; it may come nearer the truth than social psychology of this type suggests. On the other hand, it may be that public opinion is not so important in the state as we like to think. It may be that the state, as a vast institutionalized organization that has developed through history, is capable of continuing stably without the active aid of public opinion. Lippmann's interpretation of public opinion under the influence of modern social psychology is, however, only one of two possible views.[1]

According to King, "The other view holds that the modern individual lives so in association with others that his individuality is suppressed by the crowd and hence all public decisions and judgments are but manifestations of crowd psychology. In one view the individual lags behind his environment; in the other he gives spontaneous and immediate expression to it." The development of this line of argument views public opinion as a product of group life; it becomes, for some, a sort of group will which is as real as the will of the individual.[2] The theory of "real personality" has been applied in public and private law to the theory of the corporation, and among the leading exponents of this theory were Gierke in Germany and Maitland in England who adopted the Gierkian theory of the group will. The state is also viewed as a real person because it has a group will which is, in fact, the public opinion of a state. A less ambitious presentation of this contention is that integrated groups have a mind that is distinct from the sum total of the minds of persons who compose the group. The individual may have his own opinions, but his opinions in relation to the affairs of the group are the product of the group reaction; the individual is submerged in the group existence.[3]

[1] See in general Seba Eldridge, *The New Citizenship* (New York, 1929); Pitirim Sorokin, *Contemporary Sociological Theories* (New York, 1928), pp. 706–709; King, *op. cit.*, in Graves, *op. cit.*, p. xxviii.

[2] See Otto von Gierke, *Political Theories of the Middle Age*, tr. by F. W. Maitland (London, 1900), especially the Introduction by Maitland.

[3] See Wm. McDougall, *The Group Mind* (New York, 1920); G. LeBon, *The Crowd, A Study of the Popular Mind*, new ed. (London, 1926); W. Trotter, *Instincts of the Herd in Peace and War* (London, 1916); G. Tarde, *L'Opinion et la foule*, 4th ed. (Paris, 1922).

LeBon's denunciation of crowd or mob opinion and action is savage; group opinion is always less rational than individual opinion, contrary to the view of Aristotle. McDougall, on the other hand, insists that the level of organization of the group mind must be considered. Some group minds are superior to individual

The setting of individual opinion is one of the contributions of social psychology that students of public opinion have been forced to consider since the development of crowd theory. Man lives and dies as a part of society; every waking movement is subject to conditions of existence that the structure of society has imposed upon him. But the real question is whether the opinion of the individual as influenced by his group life makes it any the less rational than the historic assumptions of the individual as an independent unit of society.

We may doubt, in the first place, whether the individual is really submerged by the crowd. Modern conditions do limit the individual, but they also create a greater mobility and the means of a greater individuality, especially in cities where the peculiarity of personality and opinion is easily preserved. The age of uniformity in sentiment is past, and with it no doubt passed the possibility of the permanent submergence of the individual. The crowd may not be a mob, since it may not have as its dominating motive a fierce anger or resentment based on fixed opinions. A large number of people may be assembled under modern urban conditions in one place without any two individuals recognizing that they have anything in common other than mere existence. There is greater difficulty in creating a mob bent upon destruction in the modern city than in the less cosmopolitan centers of population.

If it may be said that the individual is not necessarily submerged in the crowd under modern conditions, it may also be said there is no necessary degeneration in opinion owing to the integrated but interdependent lives that people lead in urban society. Opinion may be just as rational as it has been in the past, and certain conditions may actually tend to make it more rational. There is certainly more information distributed in a modern city than in the country, or in previous agricultural societies with small cities. The multitude of stimulations that seem to jade the sensibilities of the city dweller may make him more impervious to appeals of prejudice. The city provides the possibility of greater social tolerance; in fact, the city makes such tolerance a sheer necessity of social peace. In general, it may be said that the type of thought represented in Lippmann's analysis of the action of opinion is more valid than the crowd-psychology attack, but this is because of the complexity of the modern world and because of the congestion of population. The modern city is less favorable to the

thinking. Trotter condemns the herd instinct in the Germans, but assumes that the English were entirely different, especially during the war.

See also C. E. Gehlke, "Social Psychology and Political Theory," in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. X.

existence of mobs because the possibility of common *constant* stimulation is more remote.[1]

The Attack of Economic Conditioning. A second attack on the rationality of public opinion is found in economic determinism. The attack takes two general forms. The first is that economic interests limit the effective scope of public opinion, and the second is that economic interests actually determine the content of the individual opinion. In either case the function of free human reason is limited; in one case it is prevented from acting effectively, and in the second place the conclusions of the individual spring directly from economic interest rather than from reason. The general materialistic argument centers in the economic interpretation of history; the course of history is viewed as the result of the interplay of economic "forces" rather than as the product of human intelligence. The first argument is not necessarily connected with the Hegelio-Marxian theory of history. It is fundamentally the position of pragmatism, which insists on the consequences of action. Action springs from the human will, but it is not free of objective circumstances in society. We have already developed this argument in the previous chapter, and it does not in fact destroy the rationality of opinion since the most rational opinion would be the first to accept the limiting force of circumstances.

The second argument, however, is a genuine attack on the rationality of opinion. Most of our opinions, which seem to be arrived at freely and rationally, are viewed as mere rationalizations in our own interest. This is more than asserting that economic interests are important in the life of the state, which any one admits; it is holding that economic interests *control* opinion. Opinion becomes a mere reflection of the truly creative force in political society which is economic interest. The development of the state is determined by the economic structure (which is conditioned by geography) produced by the conflict of economic interests through history. Law is the expression of the economic interest of the dominant groups in the state; legislation is but the expression of the self-interpreted desires of effective interests.[2]

The Marxian socialist views history (through dialectic materialism, rather than economic determinism) as one long process of exploitation

[1] A somewhat paradoxical aspect of the effect of psychology on public opinion and democracy is that, while it is used to undermine the conventional rationalistic theory, it also "regards the instinctive action of man as good, and these natural impulses as indeed the foundations of right." Catlin, *A Study of the Principles of Politics* (New York, 1930), p. 289.

[2] Roscoe Pound, *Interpretations of Legal History* (New York, 1923), Lecture V, "The Economic Interpretations."

of the weaker by the stronger—economically.[1] By the inevitable process of such exploitation, regardless of the content of opinion, the rich wax richer and more powerful, and the poor become poorer, until in sheer desperation the latter will rise and overthrow the rotting capitalistic system that has robbed them through the wage system of their rightful share in production. Two of the little-noticed phases of the Marxian class-war view are, however, that individuals do not always realize they are being exploited and that long and continuous education or agitation must be carried on to make the proletariat class-conscious. The revolution may be logically inevitable in Marxian dogma, but it can be consummated only by the force of opinion. The ringing exhortation at the end of *The Communist Manifesto* that the workmen of the world unite perhaps indicates that even the communists are not impressed by the economic determination of public opinion.[2]

The economic interpretation of history is not the sole property of the Marxian socialist. We have already shown in discussing the realistic view of the state that one of its phases is the belief that economic interests are fundamental motivations of politics. Madison in his often-quoted passage in *The Federalist* states that the most durable basis of factions or parties is the unequal distribution of property, and that it is the duty of the state to balance these conflicting interests so that no one of them gets control of the government. A "faction" is, of course, nothing more than a number of persons united by more or less common ideas. Professor Charles A. Beard in his *Economic Basis of Politics* has shown by quotation that many leading Western thinkers from the time of the Greeks down to the present day have believed that economic interests were fundamental in the process of politics.

In any case, the economic-interest argument gives an anti-intellectualistic interpretation of public opinion. Public opinion is not a freely creating, freely moving force by which the course of public events is directed. The real forces are economic organization and interest, which dictate the essential content of public opinion. Democracy is not necessarily overthrown by such a position, but it becomes less useful and less creative than before; any other form of government

[1] See *The Communist Manifesto*, 1848, issued by Karl Marx and Friedrich Engels.

[2] It may be argued that Marx's materialistic interpretation of history is not a statement of the content of opinion. In fact, since the proletariat at least must be aroused, it might be used to show that propaganda is more effective than economic interest in shaping public opinion. The Marxian view suggests that only the exploiters have their opinions determined by their economic interests.

would probably attain much the same results, assuming a certain amount of constitutional control and a fair respect for the interests of the masses of individuals. Man's intelligence, while seemingly free, is not so in fact, since the economic motive is taken as the *sine qua non* of politics. Public opinion may, indeed, resist the pressure of interest, *i.e.*, certain groups may, but those who hold the balance of economic power finally control the state by directing policy and the content of law. There may be many forces in society; but the all-comprehensive force before which the others wither is, in this view, economic interest.

The Plea for Aristocracy against Democracy. A third anti-intellectualistic interpretation of public opinion finds expression in arguments that should lead logically to a defense of aristocracy. Here we find insistence on the ignorance of public opinion, on the public's unwillingness to see or act upon the facts, even when they are called to the attention of the public, and especially on a broad and permanent cleavage between the instructed judgment of the few and the uninstructed arrogance of the many. Sir Henry Maine's *Popular Government* is still one of the outstanding criticisms of democracy. To Maine, democracy is the most fragile of governmental forms. Democracy, of course, is merely a form of government in which the many have the right of participation. The history of government indicated to him the durable character of monarchy and the aristocratic elements in the state. Some democracies had worked, to be sure, but the great majority had not.

If Maine were writing today, his argument would still have strength. Along with the dictatorships and unstable democracies of the nineteenth and earlier centuries, he might list the bewildered parliamentarianism of the twentieth. The sunset of monarchy has not been also the sunset of dictators, as believers in democracy know. Its delicate balance, its tolerance of opinion, and its struggle for efficiency sometimes make democracy the least effective and least progressive of all forms of government. As usual, the argument centers on the defects of public opinion. According to Maine, to let the ignorant and unprogressive elements of society have equal political influence with the educated and the competent was utter folly. The length of popular control was only a matter of time; it might be overthrown by revolution, or the control of the state might otherwise pass from the hands of the public. Today Maine might point to propaganda as one of the natural means for defeating genuine democratic government.

The central argument against popular opinion, tending to show its irrationality and unsuitability for the control of government, is that,

according to Maine, it is unprogressive. In fact, it is reactionary in that it opposes salutary political changes. To Maine all the progress in science, industry, and education has come, not from the masses, but from the few—from the aristocrats.[1] He points to the time of industrial revolution when the masses, had they been given the right to vote, would have legislated out of existence new mechanical inventions that have since revolutionized the world of industry. He points to the intolerance of the masses when the rights of condemned minorities are concerned. He indicates the dislike of the many for the few who outstrip them in intelligence and ability. The ignorance of public opinion makes it unappreciative of steps toward better civilization which might cause some immediate dislocation in economic life. The masses of the people, not being educated in a comprehensive sense, respond to appeals of an emotional character. They will act politically when their anger is aroused or when fixed ideas are stimulated. The cold rational argument of a superior man for mass support falls on deaf ears, while the demagogue reaches the pinnacle of political preferment. In fact, the masses are incapable of knowing their true interest, or the interest of the state, and by giving them power mediocrity is honored and political genius has no standing.

Maine condemns the direct control of government by public opinion fostered by parliamentary government of the British type, in which one political party secures a majority of the seats in the House of Commons and has the power of appealing directly to the voter by a dissolution of Parliament on a particular issue. He looks with kindness on the government of the United States where the force of public opinion on government is less direct. Elections are held every four years and not in the heat generated by a political controversy. Public officials remain in office for fixed terms and public opinion is powerless to remove them. (Maine wrote before the day of the initiative, referendum, and recall, however.) A rigid written constitution guarantees rights to individuals which the majority is powerless, except by violence and sedition, to violate, and the protection of these rights is left to the judicial branch of the government, the branch least affected by popular sentiment. By reason of the separation of

[1] But see the interesting argument by Louis LeFevre, "Liberty and Democracy," *American Mercury*, December, 1930, that, generally speaking, the masses have favored liberty as well as equality. The aristocrats, he seeks to show, have not favored the principle of liberty but that of repression. He says that in the case of Athens and Florence, for instance, the democratic periods were the periods of great cultural development.

powers, the popular branch of the government cannot get complete control of the state. Democracy of the American type in which public opinion touches the state only indirectly and in specified ways can, therefore, serve the cause of progress more efficiently than one in which public opinion has a direct impact on the government.

To those who have read the proceedings of the Federal Convention of 1787,[1] the fear of democracy voiced by Maine is not unfamiliar. Many members of the convention felt that America was suffering because of the excesses of democracy made possible by the weak confederation under the Articles of 1781. The period of the Articles was not a prosperous time, and public opinion in the various states had shown scant respect for contractual rights by passing stay laws and securing the issue of paper money. Nor had public opinion respected the rights of the minority. Constitutionalism in the independent American states was at a low ebb. If we believe that public opinion became effective in Western countries with the American and French revolutions, and if we consider the excesses of opinion in both America and France, it was launched inauspiciously indeed as a force in government.[2] The members of the Federal Convention did not believe that manhood suffrage was a practicable basis of government, though they believed as a matter of political dogma in the consent of the governed in accordance with the social-compact theory. Government by original consent to the social compact had not come to mean government by participation in the democratic sense. But the arguments of the framers of the Constitution against the influence of mass opinion dealt almost entirely with the possible influence of the propertyless masses on the holdings of the more worth-while members of the community. For some, indeed, government was purely and simply for the preservation of order and protection of property. There is small room for a dynamic public opinion in such a theory of the function of government.[3]

In both the arguments of Maine and the fears of the framers of the American Constitution it can be said that objection is not made to public opinion per se, but only to the social theory embodied in it. Maine saw in public opinion an engine of mediocre collectivism; public opinion to him was radical and it would foster short-sighted

[1] Max Farrand, *Records of the Federal Convention of* 1787, 3 vols. (New Haven, 1911).

[2] See Godkin, *op. cit.*, pp. 183 *ff.*

[3] See *The Federalist*, No. 10; J. A. Smith, *The Spirit of American Government* (New York, 1907); C. A. Beard, *An Economic Interpretation of the Constitution of the United States* (New York, 1913).

measures for the protection of the unlettered members of society.[1] The nineteenth century, of which Maine was a prominent spokesman, was a century of political and economic individualism with its roots in the political and economic philosophy of the Enlightenment. While the work of the framers was done three-quarters of a century before that of Maine, it is in essential agreement on the functions of government. Both agree that its functions should be limited to protecting the initiative and aggressiveness of the individual, and both saw in public opinion a widely different theory of progress. For both the essential basis of society was in contract, and, as Maine phrased it in the *Ancient Law*, the progress of societies has hitherto been from status to contract. Maine's brilliant generalization summarized in a sense the jurisprudential theory of the nineteenth century, but in his treatment of public opinion in *Popular Government* a clear agreement with fundamental American individualism can be seen.

The fears of Maine and the framers of the American Constitution, it seems, were without sound foundation. The capacity of the masses to accept progress has been shown many times, but whether they are capable in terms of public opinion of originating progressive measures is another matter. As Professor Dicey has shown in *Law and Opinion in England during the Nineteenth Century*, there were distinct steps toward social collectivism from the middle of the century on. Individualistic utilitarianism of the Bentham-Mill stamp gradually gave place to social legislation that bore more clearly the imprint of collectivism based on the greatest happiness principle. Dicey indicated that much of the leadership needed to secure this legislation came from conservative forces in society, and it may be noted that the conservatives in England were responsible in large part for the quiet but gradual extension of the vote to the masses of the people. But the conservatives profited as much from such legislation as did the liberals, and it was not until the twentieth century with the rise of a labor party that conservatives might have had cause to regret their support of democracy.

In the field of social thinking we have passed from the individualism of the nineteenth century to an acute consciousness of "social inter-

[1] Acton, *op. cit.*, pp. 93–94, suggests that the *permanent* danger in popular government is the tendency to give "free play for the will of the majority." The true democratic principle that none have power over the people is taken to mean that there shall be no restraints on the people; the true principle that the people shall not be made to do what it does not like is taken to mean that it shall never be required to tolerate what it does not like; the true principle that every man's will shall be as unfettered as possible is taken to mean that the collective will shall be fettered in nothing.

ests" and a general-welfare theory of the state which may lead shortly to collectivism. Those who fear this movement may indeed bewail with Herbert Spencer the growth of bureaucracy and the rising cost of government. However, the argument of the liberal is not now that public opinion may favor radical legislation for popular ends, but that it will be opposed. The liberal of today is forced to consider public opinion nonrational as did the conservatives of the late eighteenth century—but for a vastly different reason. It was thought in the nineteenth century that the opinion of the masses would support great changes in social institutions and that the millennium of social progress was at hand. The history of democracy in Western countries has shown public opinion to be the bulwark of conservatism. It is the aristocrat and the intellectual who sponsors so-called progressive measures, often with little success when the accepted heritage of ideas is contrary to it. Progress again is the keynote; and the social theory of public opinion in general is again the defeating force. While the conservatives of the late eighteenth and nineteenth century feared opinion because of the changes in the state that it might bring about, their fears were not well grounded. But that cannot be said of the collectivist or general-welfare theory of progress which is held by liberals today. When the suffrage was extended to the masses conservatism took a new lease on life, but in America at least, as long as prosperity holds firm, there is little hope for the radical in his appeal to the so-called self-interest of the masses.

The twentieth century attack on the rationality of public opinion, as shown in the writings of Lippmann, Mencken (*Notes on Democracy*), and Faguet (*The Cult of Incompetence*), is that it is not a suitable vehicle of progressive ideas and that opinion is the mainstay of irrationality in politics. Property is not being attacked by public opinion, as the general weakness of radical parties indicates. The battle of today concerning the rationality of opinion centers on the failure of opinion to accept the findings of science when science is in conflict with ancient prejudice. The battle between science and opinion is not a new one, but the fact of political democracy takes the struggle away from the official control of the church and throws it into the arena of politics. In America this is true particularly since the majority of voters, or at least representatives in legislative bodies, still are of the rural rather than the urban tradition. In the postwar period the lines of opinion began to be drawn firmly against the findings of science, especially the theory of evolution, and political action was immediately forthcoming. The critic of public opinion points with certainty at "hick opinion," but that rigid system of

ancient beliefs is not to be ridiculed into silence. Again the battle lines of opinion are drawn for the control of the public-school system, itself a product of democratic social theory, as Lippmann has so clearly shown in *American Inquisitors*. To the scientist and the liberal churchman these tendencies in opinion prove plainly enough that opinion will not accept the fruits of human intelligence and that democracy is doomed to be unprogressive.

Sait writes:

> The higher critics have now fairly launched their drive against the key-position of fundamentalism. They are now trying to show that this public opinion, which is supposed to direct government, does not exist and cannot exist. The average citizen, they maintain, is incapable of forming an opinion, either because, being stupid, he has no reasoning faculties or because, being apathetic, he refuses to exert himself in public affairs. But if he were neither stupid nor apathetic, he would still be handicapped by the difficulty of getting at the facts.[1]

Realism. The Impossibility of Democracy. Professor Sait's statement leads to a fourth general anti-intellectualistic interpretation which springs from a realistic view of the process of politics. It may be explained by a quotation from Lippmann's *The Phantom Public:*

> What the public does is not to express its opinions but to align itself for or against a proposal. If that theory is accepted, we must abandon the notion that democratic government can be the direct expression of the will of the people. We must abandon the notion that the people govern. Indeed, we must also adopt the theory that, by their occasional mobilizations as a majority, people support or oppose the individuals who actually govern them. We must say that this popular will does not direct continuously but that it intervenes occasionally. . . . When public opinion attempts to govern directly it is either a failure or a tyranny. It is not able to master the problem intellectually, nor deal with it except by wholesale impact. . . . I set no great store on what can be done by public opinion and the action of the masses.[2]

In interpreting the process of politics, the realist asks why people act in a particular way. He considers the issues as they are settled by the action of public opinion and he finds in these settlements neither science nor intelligence. Perhaps it is because of the complexity of society and the sheer impossibility of truly intelligent voting. But

[1] E. McC. Sait, *Democracy* (New York, 1929), p. 63. By permission of D. Appleton-Century Company, publishers.

[2] Lippmann, *The Phantom Public*, p. 61. By permission of The Macmillan Company, publishers.

even granting the possibility of the really intelligent vote, the facts of bossism, which have become so obvious even to the casual observer of politics, and the trivial psychological motives, which often determine a vote, deny the existence of intelligent participation. Society may have the possibility of intelligent politics, but the realist is not inclined to admit that the present machinery of democracy and the conditions of public opinion can realize these desiderata.

The most damning charge of the realist is his insistence that propaganda really determines the content of public opinion. The democratic belief that individuals freely form opinions on the facts at hand and, when election time comes, cast their ballots accordingly becomes, for the realist, the democratic myth. Perhaps the myth is worth preserving because we are not certain just what the results would be if the present system were destroyed. However heartening to the individual unit of a democratic society this belief may be, and however valuable it is in maintaining satisfaction with the existing order, it is nevertheless a myth. To the realist, the technique of propaganda is the technique of forming opinion. By clever manipulation of inherent prejudices, fixed ideas, and historic attitudes (the cliché), the position of an individual on a new issue can be determined and yet the individual will think that his own opinion is freely formed upon adequate evidence.

What is propaganda? If someone attempts to convince you, for instance, that the short ballot is the cure for the evils of democracy, those who believe in the election of a large number of public officials may contend that this effort is propagandist. What one wants people to believe is education; but this is also propaganda to those who oppose it. The reality of propaganda lies in the fact that opinions may be formed by judicious advertising. Perhaps the rise of large-scale advertising is the beginning of modern propaganda; certainly the key methods of successful advertising have been carried over into the formation of political opinions. The technique of propaganda (and propaganda is simply technique) is grounded in an appeal to what the individual already believes or is inclined to believe or feel. The new proposition is presented in this light in an authoritative manner, so that prestige is attached to the utterance. Propaganda is, however, generally held to be interested or prejudiced from the beginning. When the bankers or the workers of a certain trade attempt to convince individuals that their particular position is correct, when the individuals conducting or paying for the "advertising" of ideas on issues will benefit individually from a "proper" decision of the question, it is generally said that such attempts to

form opinion are propagandist. In any case, in the modern complex and intricate society in which the individual is not capable of getting all the facts by himself, we have come gradually to accept the proposition that there is no essential relation between an opinion and its rectitude. Propaganda exists only because it is successful, and by its existence the realist judges the intellectual ability of those who compose the public.[1]

The newspaper is only one among a multitude of instruments of propaganda.

Since the days of the Anti-Corn-Law League in England the possibilities of organized minority agitation have been well understood. In the United States this self-conscious art of manufacturing consent has been carried to a remarkable state of efficiency. The number of propaganda groups is beyond computation, some of them formidable in membership, others consisting of little more than an office, a letter-head, and a paid secretary. The significance and effects of their activities has not been lost upon our publicists.[2]

[1] It is really an extremely difficult question to determine the nature of propaganda in anything like an objective sense. It may be said that propaganda is characterized by withholding some of the facts, or essential facts. Propaganda may also be said to desire action or support, whereas education or publicity (of an ideal sort) only seeks to inform people. It is clear that all the facts cannot be presented and that the judgment of what are the essential facts is subjective or opinionative in the first place. See F. E. Lumley, *The Propaganda Menace* (New York, 1933); Ernest Gruening, *The Public Pays* (New York, 1931); Jack Levin, *Power Ethics* (New York, 1931); L. W. Doob, *Propaganda, Its Psychology and Technique* (New York, 1935).

[2] Sait, *op. cit.*, p. 70. By permission of D. Appleton-Century Company, publishers. See F. R. Kent, *The Great Game of Politics* (New York, 1924), for a discussion of the lobbies in Washington. See Seba Eldridge, *op. cit.*, *passim*. Also Lippmann, *Public Opinion*, for a discussion of the role of the newspaper in forming opinion and giving information about the "unseen world." Norman Angell, *The Public Mind and Its Disorders* (New York, 1927) and *The Press and the Organization of Society* (London, 1922); and Harold Lasswell, *Propaganda Technique in the World War* (New York, 1927), should also be consulted. See Catlin, *op. cit.*, pp. 288 *ff.* See Sorokin, *op. cit.*, p. 706, for the further citations on opinion and the press.

A. Siegfried, *America Comes of Age* (New York, 1927), pp. 244–246, says: "Nowhere else can the public be so successfully manipulated by experts. . . . Nowhere else in the world are associations so powerful as in the United States, and especially if they have some social or religious propaganda in view. The good will, the funds, and the devotion at their command are enormous. With their excellent equipment and ceaseless and varied activity, they are the real expression of the community, and they enable it to carry out definite programs of reform. The reverse of the medal, however, is most alarming, for their unrestricted influence upon public opinion is positively dangerous. An Anglo-Saxon community is a veritable hot-bed of fanatics who know no scruples in imposing their favorite nostrums." By permission of Harcourt, Brace & Company, pub-

Is Faith in Public Opinion Possible? Let us admit that there is truth in the anti-intellectualistic charges made against the basis of democracy—the control of government by public opinion. The defects of public opinion as a basis of government instead of oligarchy, which according to Professor Michels is not avoided in democracy,[1] had to be become apparent by experience. Pragmatically, democracy had to be tried before a sound critique could be developed. The defects of public opinion do not mean that democracy must be scrapped, unless indeed there is no such thing as public opinion. In a negative sense it must be said that the so-called rule of public opinion has not been worse than the rule of the state regardless of opinion. Thus, even admitting completely the case against public opinion, democracy should be retained, it would seem. "The great purpose of democracy," Bernard Shaw once said, "is to prevent your being governed better than you want to be governed."[2] Democracy at least enables the people to veto the pressure of oligarchy, whether it is viewed in terms of propagandist organizations or of the dominance of economic interests in modern industrial society.

The essential question is, however, whether there is the possibility of a rational public opinion. The state cannot be founded upon mere gregariousness; the spontaneous crowd is not the essence of public or governmental life. Economic interests are stern, but they are a disruptive force, perhaps even more disruptive than integrative. The will of a reasonably coherent people must be the foundation of the state, no matter how significant we may admit the mere force of pragmatic consequences to be. A government of experts cannot provide the support prerequisite to the continued harmony necessary for state existence. It is only from public opinion that policy and essential evaluations can find support. The ends of the state must ever be grounded in public opinion and they must live by the support that it can give.

We cannot say that the education of public opinion has been given effective trial. While there must always be conflict on matters of policy—on matters of judgment and evaluation—it is possible that experts can agree where mere matters of fact are concerned. Public opinion has not had available the relevant information, and therefore

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lishers. On p. 255 Siegfried concludes that if propaganda and the lobby were not so powerful there would be a real democracy in America.

[1] *Political Parties*, tr. from the Italian (London, 1915); "Some Reflections on the Sociological Character of Political Parties," *The American Political Science Review*, XXI (1927), 753 *ff.*

[2] Cited in Sait, *op. cit.*, p. 83.

its judgments have not always been sound. Perhaps it should be one of the functions of the state to maintain sources of information that would enable the intelligent members of the public to form worthwhile judgments. Moreover, it would not be contrary to general democratic principles if those who are little more than children mentally were excluded from political participation. The structure of government, designed in many respects for a simple society rather than a complex one, can be integrated. The short ballot, which involves the election of a few important officials (and which has been employed in the national government but not to any extent in state and local government), should be adopted. The actual determination of policy by the electorate may be a mistake; the initiative and referendum may be contrary to the best interests of representative government, though their use has not been great enough to make the danger significant.[1] By organization and expert study the conduct of public administration can be improved with regard to both responsibility and personnel.

But it is also true that democracy must accept as the standard of government the level of public intelligence. Matters of policy, which, if accepted, are the surest grounds of political support and obedience to the state, constitute the real defense of public opinion. However ignorant the public may be on technical matters of government, there is no reason for assuming that the fundamental values of social life accepted by the state should be anything else than those approved by the individuals upon whom the accepted policy is to operate.

Few would deny, we think, the ideal Pericles held up as the Athenian ideal:

> We are lovers of the beautiful, yet simple in our tastes, and we cultivate the mind without loss of manliness. . . . An Athenian citizen does not neglect the State because he takes care of his own household; and even those of us who are engaged in business have a very fair idea of politics. . . . The great impediment to action is, in our opinion, not discussion, but the want of that knowledge which is gained by discussion preparatory to action. For we have a peculiar power of thinking before we act and of acting too, whereas other men are courageous from ignorance, but hesitate upon reflection.[2]

But the moral profundity of the Greek principle of simplicity in

[1] See H. J. Ford, *Representative Government* (New York, 1924), Part II; A. B. Hall, *Popular Government* (New York, 1921).

[2] Cited in R. H. Murray, *The History of Political Science from Plato to the Present* (New York, 1926), pp. 3–4. Something of this Hellenic faith is shown by A. D. Lindsay in *The Essentials of Democracy* (Philadelphia, 1929). Whole nations, he believes, are now public meetings because of the new means of publicity. Most criticisms of democracy are criticisms of what happens at the public meeting, visible or invisible. See pp. 27–28, 30.

legislation, as in education, has been forgotten by the relatively restricted democratic community as it has bowed before the regime of interest and propaganda, singing the many versions of the false litanies to success and power.[1] Yet the progress now achieved by democracy may lead to hope of future clarification of public opinion.[2]

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[1] See Jowett, *Dialogues of Plato*, Vol. III, p. cciv.

[2] See H. J. Laski, "The Class Character of Justice," *League for Industrial Democracy Monthly* (April, 1931).

PART IV

FUNCTIONAL PRINCIPLES OF DEMOCRATIC GOVERNMENT

CHAPTER XII

THE PRINCIPLES OF POLITICAL PARTICIPATION

C'était là un système peu harmonique et peu rationnel, dans lequel les débris du passé (même féodal) se mariaient à la grande force démocratique des temps modernes, le suffrage universel. Une fois de plus a opéré cette loi naturelle d'après laquelle, lorsque plusieurs principes sont déposés dans une loi, c'est le plus fort qui l'emporte.—A. Esmein.[1]

What is the Electorate? The electorate is composed of those persons who are qualified by law to vote. The electorate is not the same as the public, as it is a narrower concept and rests upon the mechanical principle of political participation embodied in voting. The public is not limited to the vote as a means of participation, but also avails itself of other means that are of an uncertain legal status. If one insists that the ballot is the only means of political participation, aside from holding office and performing public functions, then it might be said that the public is the conceptual side of the mechanical fact of the electorate. Yet, so far as the mechanics of democracy have developed, the vote is the cardinal means by which an individual can have some direct influence in the determination of official personnel and the selection of public policy. Owing to the general stability of public opinion and the slow but gathering momentum of its currents, the vote is a means of permanent influence on government, even though a particular individual may be required to vote many times in favor of a single proposition, or for men supporting the proposition, before it is actually enacted into law. As democracy has been worked out as a practical form of government, the ballot is the basic means of political participation.

[1] "Here was a system with little harmony or rationality, in which the debris of the past, even of the feudal age, mingled with universal suffrage, the great democratic force of modern times. Again that natural law was in operation according to which when several principles are included in one law the strongest wins out." *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, p. 427. This is in reference to the Austrian suffrage law of 1896.

Structural Problems of Popular Government. The structural problems of democratic government are, broadly speaking, three. The first is the composition, organization, and functioning of the electorate. The second is the composition, organization, and functioning of representative bodies. The third is the organization and functioning of executive and administrative systems. Some treatment of each of these structural problems will be given in this and succeeding chapters, but with emphasis on the general governmental principles involved in each of these broad divisions. Administration is the final stage in the process, and it is through the administrative and executive agencies of the state that the individual feels the impact of government. An uncontrolled and unorganized administrative and executive system is the essence of tyranny or oligarchy. It has been one of the fundamental purposes of democratic government to organize means whereby this most dangerous and most creative aspect of government is made responsible to, and is directed by, the predominant attitudes of the members of the state.

The composition of the electorate is found in the enactments of the legislative bodies of a political community, which define the qualifications of those who may vote and hold public office. The organization and function of the electorate are likewise found in the laws of the state relating to political parties and the circumstances under which they may act, such as legal definitions of parties, their right to hold primaries and conventions, the right of interested groups to lobby before representative bodies, and the circumstances under which the members of the electorate may participate in legislation directly by the initiative, referendum, and recall. Each political community has a general body of election laws which determine when and for what offices elections shall be held, as well as the qualifications of public officials. Also, in recent years increasing attention has been given to the problem of the honest registration of voters, which is of undoubted importance in the organization of the electorate. The functions of the electorate are, in general, defined by statutes. One of the most important elements in the unwritten constitution of the United States, and very frequently in the states also, is the party system, which has grown up without extensive legal regulation. Likewise, the functioning and organization of lobbies have been regulated with only partial success.

The structure of representative or legislative bodies is a matter of legal regulation. The Constitution and laws provide who may be members of such a body, and in addition outline some of the procedure that shall be followed in the enactment of laws. The executive and

administrative organization is also a matter of legal stipulation. Generally speaking, the Constitution provides for the type of executive and its functions, but the growth of practice or usage, along with legislation dealing with executive functions, prevents constitutional provisions from giving a complete picture. The administrative branch of the government, which is, for the most part, under the control of the executive in well-organized governments, is more a matter of ordinary statute, though there are usually a number of constitutional provisions in various American state constitutions dealing with public administration.

In the last chapter it was noted that Sir Henry Maine considered popular government a delicate and fragile type. One of the reasons for this is that popular government, which is supposed to be limited and controlled by law in nearly all aspects, requires a multitude of positive law provisions for its organization. Popular governments of a simple sort might conceivably develop by slow tradition. But the tendency of strong leaders to absorb more and more political power has shown that tradition works against the efficient operation of popular government, unless it is carefully systematized by means of positive law, *i.e.*, by constitutional and statutory provisions as interpreted by the judiciary. Without belief in the utility of legislation, either by representatives or by the people directly, popular government could not be securely organized. Furthermore, popular government requires constant changes and reorganization. The history of popular government and free legislation indicates that each change brings with it the need of further change. One democratic innovation, either in structure or social policy, breeds evils that require further action. In fact, it may be said that one phase of the history of democratic government has been a constant acceleration of legislative output until it is practically impossible to ascertain the number of constitutional, legislative, ordinance (executive and municipal), and regulative measures that are legally binding upon the individual citizen. The acceleration of legislative output has been connected in no small degree with the structural problems of democratic government, of which we are now beginning an investigation. While there does not seem to be much hope of cutting down the volume of legislative output, which even lawyers cannot grasp in its entirety, there is at least the possibility of eliminating obsolete legislation by the development of legislative codes, which are constantly brought up to date by experts permanently employed by the government for that purpose.[1]

[1] See "The Elimination of Obsolete Statutes," *Harvard Law Review*, June, 1930.

The Electorate and Positive Law. It is worth emphasizing, in returning to the immediate problem of this chapter, that the electorate is the creature of positive law. The ancient electorate, which was synonymous with the body of citizens of the Greek and Roman democracies, might rest on tradition since only the aristocrats really counted in government. But an expanded electorate, an electorate of minute qualifications in which the fact of being a citizen does not *ipso facto* bring about the right of participation, cannot rest on any other basis than positive law. Furthermore, the development of more complicated and stabilized governmental institutions, such as representative assemblies and responsible executives, both serving a limited time, requires the most careful legal definition and control. This does not deny, of course, that a member of the electorate may have ethical or moral grounds for claiming the right of participation; it means merely that the recognition of this right in an effective sense must be the result of positive law. As has already been shown, positive law is law in the formal sense of enactment or actual enforcement, and to say that a given provision or rule of conduct is law does not at the same time pass a judgment as to its moral validity.

The limitations of positive law as an agency for securing political ends are being noticed more and more, and one phase of this disillusionment is found in the continuing parade of electoral corruption which is so significant a part of the history of democracy. The most important electoral frauds have consisted in the exercise of the suffrage by those who were legally unqualified. Names of persons who have long been dead, of others who have never lived in the precinct or ward, of noncitizens, and of citizens who have not paid their poll taxes, as well as fictitious names, have often been on the electoral roster. The political bosses have used their henchmen for padding the list, and this has led to further corruption in the form of repeating at the polls and the purchase of votes. Practically every legislative device within the inventive power of man has been used to prevent these frauds, but even at the present time the constant uncovering of electoral corruption shows that positive law or legislative regulation has been ineffective in stamping out this evil. Yet, if political democracy is to function with anything like the needed efficiency demanded by modern conditions, the qualifications for voting must be certain and administered effectively.[1] Perhaps the grosser forms of electoral corruption

[1] See J. P. Harris, *Election Administration in the United States* (Washington, D. C., 1934), Ch. IX; R. C. Brooks, *Political Parties and Electoral Problems* (New York, 1923), pp. 42–43, Ch. IX. In this connection *The Autobiography of Lincoln Steffens* (New York, 1931) should be consulted.

can be eliminated by well-drawn election codes, but up to the present time positive law has not been able to cope with the determination of large numbers of politically led individuals to vitiate efforts to establish an honest ballot.

The Suffrage and the Organization of Government. The more naïve supporters of democracy have made many utopian claims that have not been borne out by political experience. A large number of these claims can be summarized in a general way by saying that it has often been believed that popular government can solve all the major difficulties of political society. It was thought that democracy would be efficient; it was thought that it would be progressive and forward looking without exception; it was thought that the best elements in the community would be eager to serve the democratic public; it was thought that democracy would do away with all forms of tyranny and exploitation; and it was thought that democracy would be honest inasmuch as the people would choose rulers from among themselves for themselves. Government of the people was government created by the consent of the political community; government by the people was government in which the rulers were chosen from the rank and file of the population; and government for the people was honest and efficient government in the general interests of the state. These general interests were to be served in the formulation of progressive legislation and the advancement of civilization. In Lincoln's famous statement in the Gettysburg Address are assumed the original consent of the members of the community, their immediate consent to particular rulers and laws, and the idea that the social theory of democracy would be progressive and efficient in administration. Democracy was hailed as an irresistible movement in government, and the final reform in government was thought to be its world-wide triumph.[1]

Up to the outbreak of the World War there seemed to be a general confidence in the ultimate success of democracy. During the war Woodrow Wilson's magistral idea of "making the world safe for democracy" was capable of arousing great enthusiasm, and the post-war revolutions seemed at first to be its consummation in Western countries. But the program of self-determination, *i.e.*, the consent of a nation to its government, was given rough treatment in the Peace Conference of Paris, and the reaction to the work of the Peace Conference was perhaps the beginning of a new scrutiny of the principles of political democracy. In Russia constitutionalism on the Western model quickly passed into the dictatorship of the communists; in Italy the doctrine of organic pragmatism as exemplified

[1] J. S. Penman, *The Irresistible Movement of Democracy* (New York, 1923).

in the teachings of Mussolini, a former syndicalist, took the stage, and the myth of the general strike was transformed into the myth of the Italian nation; a definite phase of the constitutional struggle in Spain culminated in the postwar dictatorship which finally passed into the new republic; in Poland Pilsudski inaugurated his dictatorship on the basis of military power; in Germany racial nationalism destroyed the socialist republic of the Weimar Constitution; and in Hungary, Turkey, Yugoslavia, and other countries the principle of the strong man with a will to govern, so contrary to the ideas of political democracy, came to the front. In addition, the general failure of democracy to take root in China, the irreconcilable sectarian and class struggles in India, the instability of democracy in Latin America, and the uneasiness in Western countries over the spread of radical ideas all tended to break the illusion of the war that democracy was the solution of humanity's governmental woes.

The alternative to democracy seems to be the pragmatic creed of action and efficiency. The American suppression of radicalism has something in common with Fascism and dictatorship, as well as the suppression of counterrevolutionary sentiment in Russia. This alternative to democracy leads to a belief in the efficiency of government rather than its popular character. But it is true that even the defenders of democracy no longer make claims of a utopian nature regarding the results of democracy; American political science is turning to the problems of public administration and the general reorganization of government as the solution of the structural problem of government, while the critics of democracy are going so far as to deny that public opinion even exists, with the consequent proposition that a wide electorate can make little impression on the fundamental problems of political society.

Yet the emphasis on the organization of government and governmental efficiency in the hands of the intelligent is not new in political thought, even in democratic countries. Political thinkers with an aristocratic turn of mind have been unwilling to admit the possibility of better and more progressive government as a result of the broadening of the franchise. The electorate in their thinking has been either a negligible factor or one actually dangerous to the ends of government. It is hardly conceivable that British conservatives would have consented to the reform laws of the nineteenth century if they had felt that the masses of new voters would be dangerous to society. The conservative opposition to the extension of the suffrage in the United States generally stressed the danger to social institutions in admitting to political rights the unstable and propertyless elements in the

community. The United States Constitution itself is a testimonial to the belief of the framers in the greater significance of the organization of government as compared with the action of the electorate. The separation of powers and the check-and-balance system, devised to make the separation of powers effective, advance impliedly the belief that good government comes from good governmental organization and not from political democracy. Likewise, the authors of *The Federalist*, Madison, Hamilton, and Jay, stressed the importance of good organization of government. The eighteenth century atmosphere, in which public opinion began as an active force and in which the groundwork of democracy was laid, did not consider the broad electorate necessary to good government.

The nineteenth century was the century of electoral reform. It was during this period that political democracy became a reality in Great Britain and the United States, and it was during this time that political reform gained headway on the Continent. Although American suffrage reform was a little ahead of the British, reform in both countries was almost simultaneous. The "frontier school" of American historians attributes the reform to the influence of Western individualism and belief in the rights of man,[1] but the movement in fact seems to have been general in countries of Western culture.[2] During the nineteenth century political thinking laid emphasis on the significance of the electorate. This is shown in the current democratic ideology of the United States, which came into being at this time, and the theory of British electoral reform, which has its roots in the philosophy of the English utilitarians. Almost immediately unbounded faith in the prowess and intelligence of the mass electorate began to wane, and the wartime enthusiasm for political democracy as the cure for political ills may be considered something of a flash in the pan or a propagandist effect.

Students of government today who insist on the objective approach are more interested in the organization of government and in the problems of effective social legislation and efficient public administration than they are in tinkering with the elemental structure of political democracy. The outstanding contribution of American political science seems to be, so far, the science of public administration. There

[1] F. J. Turner, "Contributions of the West to American Democracy," *Atlantic Monthly* (January, 1903). Also "The Significance of the Frontier in American History," American Historical Association, *Annual Report*, 1893, pp. 199–227; *The Frontier in American History* (New York, 1920).

[2] W. B. Munro, "The Pendulum in Politics," *Harper's Magazine*, CLIV (1927), 718–725; B. F. Wright, *A Source Book of American Political Theory* (New York, 1929), p. 368.

is at least this much in common between the student of public administration and the exponent of the authoritarian state reflected in post-war dictatorships: they both agree that effective and progressive government is not primarily a product of the electorate, and they both agree that the scientific management of government is more important than merely providing for a wide popular participation in government.

Theories of the Nature of the Suffrage. a. Legal Nature. Theories of the nature of suffrage may be divided into two classes—those which deal with its legal nature and those which treat suffrage from a conceptual or philosophical standpoint. The legal theory of the suffrage considers it in relation to positive law. Is the suffrage a legal right, a legal privilege, or a legal duty? Legal rights are claims to one's own advantage which may be made upon the conduct of another and which may be enforced by the courts. A privilege is a grant of freedom from interference by others, while a duty is legally the obligation of one person to be subject to control for the benefit of another. We have already spoken of the suffrage as a grant of positive law to members of the political community. It is commonly spoken of as a right, a privilege,[1] and a duty, but the last definition really becomes ethical in that it insists that the individual has a moral obligation to vote. We may say, however, from the standpoint of law, that the vote is not a duty since the law does not, except in certain countries where compulsory voting is established by statute, attempt to compel an individual to exercise the franchise. If it is a duty at all, it is moral or ethical and not legal.

We have left for consideration the notions of suffrage as a right and as a privilege, and it may be said that both cases depend upon how it is viewed. The suffrage is primarily a privilege; it is a grant to the individual of a certain type of action with which other persons may not interfere and concerning which other individuals can make no claims. In strict law it may be considered analogous to getting a license. If the individual has the qualifications imposed by law, he may get the license, if no matters of public policy or the police power prevent him. Once the license has been granted, there is no legal obligation to take advantage of it. One may get a license to sell tobacco or to drive an automobile, but one does not have to use it. By having a right to drive an automobile, one is entitled to use the public highways in that

[1] See J. A. Ryan and M. F. X. Miller, *The State and the Church* (New York, 1922), p. 281. While these writers support natural rights on theological grounds, they do not regard the suffrage as other than a political privilege created by the state for a civil purpose.

manner, but there is no legal obligation so to use them. The privileges of a public library may be extended to one, as to the rest of the community, and, so long as the rules in regard to its use are observed, one is entitled to withdraw books, but there is no legal duty imposed to read. To put the matter quite plainly, unless there is a provision of positive law commanding one to vote, it can hardly be said that there is a legal duty to vote.

But the argument does not stop here. If one is entitled to get a license to drive an automobile, the authorities who grant such licenses are not free to refuse one that license. In relation to public officials who have charge of registering voters and conducting elections, one's privilege becomes a right. In relation to other individuals, it remains a privilege. A legal duty is imposed on public officials in charge of establishing the electorate for a particular election, for they must admit one to the exercise of the suffrage if one fulfills the standards set forth in the statutes. In regard to the ordinary right as embodied in positive law, there are three factors. There is first the authority that makes the law, as Austin would say, the sovereign; but there is also the individual to whom the claim is extended and the individual against whom it operates. The state grants one the right to vote; in relation to other individuals there is no claim. One has a privilege that pertains to one as a citizen; but in relation to public officials one has a claim which operates against them, which limits their conduct, and which requires them to recognize one's right to participate in an election.[1]

b. Theoretical Conceptions of the Suffrage. According to Garner, there have been two general theories of the suffrage. The first is that the vote is a natural and inherent right of an individual as a member of the state if he is an adult who has not been disqualified by a direct attack on public order through the committing of some heinous offense. The second theory is that the vote is a public office or function conferred upon the individual for the social good; because the welfare of society is in large measure dependent on the wise exercise of the office, it is limited to those who are fit and capable of so discharging it.[2] In addition to these theories there are those added by Shepard as follows: first, the primitive tribal theory, which was characteristic of the city-states of the ancient world and which regarded the right to vote as "an adjunct and function of citizenship"; second, the late feudal theory, which regarded the suffrage as an "adjunct of a

[1] See G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), pp. 261–262, for a contrary view of the legal nature of the suffrage.

[2] J. W. Garner, *Political Science and Government* (New York, 1932), p. 543.

particular status, generally tenurial in character." According to this theory, the suffrage was a vested privilege accompanying the possession of land. Third, the ethical theory of the suffrage, which is finding an increasing number of supporters, and which regards suffrage as a necessary and essential means of developing individual character "for the realization of the worth of human personality."[1]

A sixth theory may also be suggested; this has its roots in the pragmatic and realistic conception of the process of politics, which regards the right to vote primarily as a right of protest on the part of the member of the community against the conduct of public affairs at a given time. This view regards the existence of constitutional government, which limits the individual official and which also embodies the general fundamentals of social policy in constitutional provisions, as the most significant guarantee of the integrity of the personality of the individual. When functioning properly, this guarantee makes a constant exercise of the suffrage unnecessary to good government.[2]

The Suffrage as a Natural Right. In considering the social-contract theory, which based government on the consent of the governed, the modern student is impressed with the fact that it did not apparently carry with it the theory of universal suffrage as a natural and inherent right of the citizen who has willingly given his consent to the formation of the state. The more moderate defenders of natural rights and the social-contract theory were not willing to go further than to admit that the duty of government was to assure the content of these rights to the individual; it was only the radicals of the American and French revolutions who demanded that the suffrage should be granted on the basis of natural rights.

Otis and Paine in America demanded such an extension of participation, and some of the early state constitutions, notably the constitutions of Massachusetts and New Hampshire, carried the doctrine by implication, owing to the statements of the social-compact theory and the doctrine of natural rights. Earlier in the eighteenth century Montesquieu had declared that all the inhabitants should have the right to vote for representatives, except those who were in so mean a condition as not to have a will of their own.[3] Rousseau's insistence on the inalienability of sovereignty as vested in all the citizens found

[1] Walter J. Shepard, "The Theory of the Nature of the Suffrage," *Proceedings of the American Political Science Association*, IX (1913), 108.

[2] See the author's article, "The Pragmatic Electorate," *The American Political Science Review*, XXIV (1930), 16 *ff.*

[3] *The Spirit of the Laws*, Bk. XI, Ch. VI.

its echo in the statements of some of the leaders of the French Revolution such as Robespierre and Condorcet, but the actual principles of the constitution of 1791, according to Duguit, was that the suffrage was an office or *fonction.* Citizens were divided into two classes, the active and the passive.[1] The rights of a citizen were above positive law, as such rights were inherent, but participation in government was to be determined by positive law. Condorcet even went so far as to demand that the suffrage should be extended to women, owing to the logic of the natural-right-of-participation theory. While the constitution of 1793 expressed the abstract right of participation, this constitution did not go into effect, and subsequent French constitutions reverted to the original revolutionary position.[2]

Revolutionary philosophy must not be understood in too literal a sense. The notions of Locke which were fundamental in American revolutionary theory did not mean universal suffrage, and likewise universal suffrage was not implied in the American natural-rights doctrine. Consent to government meant in fact the right of revolution, which was justified when the natural rights of the individual were not respected by the government. Revolt itself is a form of participation which, owing to the rise of constitutional democracy, is not approved at the present time. A narrow meaning must be given to consent in social-contract theory, just as a narrow interpretation must be given to slavery. Slavery for Locke existed only when the master had *absolute* power over the slave, and not when he had merely the right to the slave's labor and the control incidental to such a right. The slave of Biblical times was not in fact a slave, according to Locke. So the canon of consent was practically fulfilled in a government that respected the rights of the individual; revolution, and even participation of a general sort, became unnecessary.

Furthermore, since participation implies the free use of individual reason in the control of the state, there is finally a conflict between natural-law-and-rights theory and the force of opinion on the acts of the state. The individual whose reason did not permit him to appreciate the content of natural rights was not in fact qualified to a voice in the affairs of the state. External evidences, we find from the political history of the eighteenth century, might be used to determine whether the individual was entitled to participation. To Jefferson, the framers of the Constitution, and the political leaders of America before the Jacksonian era, such evidence might be found in taxes

[1] Constitution, Tit. III, Ch. I. Duguit, *Droit constitutionnel,* 2d ed. (Paris, 1924), Vol. IV, p. 9. On the suffrage in France in general, see pp. 1–104.

[2] Duguit, *op. cit.,* p. 12, 447; Esmein, *op. cit.,* Vol. I, pp. 406 *ff.*

paid or in the ownership of landed property; to others it might be found in orthodox religious beliefs, as the early religious tests for voting and holding public office indicate. But these requirements were more in accord with natural rights and natural law than with the consent theory of the state without any qualification.

The Suffrage as Public Office. The second theory of the suffrage, that it is a public office or function, seems to have the greatest support in modern times. It might also be called the general-welfare theory of the suffrage, in that the right to vote is granted to an individual by positive law in order to promote the well-being of the political community. In the light of this theory, restrictions on the right to vote and the exclusion of citizens from the suffrage for various reasons are in accordance with republican principles of government and for the best interests of the state. As Garner remarks:

> The view which practically all writers on political science adopt today in regard to the nature of the suffrage is that it is an office or function which is conferred by the state upon only those persons as are believed to be most capable of exercising it for the public good, and not a natural right which belongs without distinction to all citizens of the state. The suffrage is a franchise or privilege; as to whether the exercise of it is a moral duty, and whether it ought to be a legal obligation opinions differ.[1]

Such a situation is most clear in American constitutional law in the distinction between the right to vote and the rights of a citizen, or the "privileges and immunities" of citizens of the United States and of the several states.[2] The rights of citizens do not include the right to vote, and the vote itself is viewed as a right or privilege conferred on the individual at the discretion of the legislative body. Until recently in many states those individuals who had taken out their first papers, though they were not yet citizens of the United States, were permitted to vote.[3] The postwar agitation and hostility toward aliens in the United States brought about a reversal of the older historic policy, and the practice now is that, unless a person is a national citizen, he may not vote. However, being a citizen of the United States does not necessarily entitle an individual to vote. The citizens of the United States in the District of Columbia, for example, must partici-

[1] Garner, *op. cit.*, p. 547. By permission of the American Book Company. J. Leclercq, *L'État ou la politique* (Bruxelles, 1929), p. 494. Esmein, *op. cit.*, Vol. I, p. 399. See also Georg Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), p. 422, n. 1, for the citation of further literature.

[2] See Minor *v.* Happersett, 21 Wall. 162 (1875).

[3] See C. E. Martin and W. H. George, *American Government and Citizenship* (New York, 1927), pp. 373–374.

pate in government in a more informal way than by the vote.[1] Individuals in a state who do not qualify for the vote according to the minute and protective provisions of state election laws are likewise eliminated from participation. Furthermore, the national government has a very indirect control over qualifications, chiefly through the negative provisions of the Fifteenth and Nineteenth Amendments to the Constitution of the United States, which are limitations on the powers of the states with regard to race, color, previous condition of servitude, and sex. Likewise, the provision in the Fourteenth Amendment guaranteeing individuals the equal protection of the laws was used to invalidate the Texas "white primary" law of 1923 and a later statute of this state permitting the state executive committee of the Democratic party to determine who shall have the right to participate in the party primary election.[2]

The same general principle seems to be embodied in all modern systems of establishing an electorate. The dogmatic and doctrinaire positions of the eighteenth century are forgotten. But this should be noted: the office or function theory of the suffrage is not primarily a theory that would lead to the expansion of the electorate, while the natural-rights theory would. It is much easier to see the general-welfare theory expressed in restrictions rather than in expansions of the electorate. It is undoubtedly true that the nineteenth century conservative opposition to the expansion of the suffrage was based on the general-welfare and functional theory of the vote. On the other hand, it is easy for individuals excluded from participation to demand the vote on the basis of natural rights. When the modern movement for woman suffrage began in the United States, the natural-right basis was one of the fundamental lines of argument.[3] The principles of the Declaration of Independence were important in justifying the abolition of slavery and the extension of franchise rights to the colored race. Residential and registrational tests of the right of participation

[1] See, for instance, G. C. Havenner, "Voteless Washington Expresses Itself," *National Municipal Review*, XVII (1928), 326.

[2] See Nixon *v.* Herndon, 273 U. S. 536 (1927); Nixon *v.* Condon 286 U. S. 73 (1932). In a later case, Grovey *v.* Townsend, 295 U. S. 45 (1935), the court held that negroes might be excluded from the Texas democratic primary if the exclusion resulted from action by the party convention in the state. The result of these cases may be that the regulation of the party in a state wishing to exclude the negro from political participation will be surrendered to the parties. The Fourteenth Amendment guarantees only the equal protection of the laws against the interference of the state. See in general Luther H. Evans, "Primary Elections and the Constitution," *Michigan Law Review*, XXXII (1934), 450 *ff.*

[3] See T. V. Smith, *The American Philosophy of Equality* (Chicago, 1927).

spring from a desire to make the ballot pure, while educational and poll-tax requirements may arise from the welfare theory of the suffrage. The welfare theory of the vote must be retained, but it must be retained only as a basis for suffrage restrictions.[1]

The City-state Theory of the Suffrage. The primitive tribal theory and the feudal theory are chiefly of historical interest. The primitive tribal theory has a modern form that might be called a citizenship theory of the vote, and it is in fact common at the present time. It implies that the person to whom the right to vote is extended is under a general political and ethical obligation to exercise the right. The state has extended to the individual this function as a part of his citizenship and, because the state offers him protection and guarantees him civil and political rights, he is under a moral duty, as a citizen, to vote. As Jameson says: " . . . it is a duty, a trust enjoined upon, or committed to some citizens and not to others." The modern emphasis is that, unless there is a particular reason for disqualification, the citizen has the duty to vote. If it were not expected by the political community that the individual would vote, the suffrage would not be extended to him. In fact, this is the modern version of the theory of the vote as the definite characteristic of the citizen which was found in the city-states of antiquity. While most modern democracies do not require by legal provision that the citizen vote, those who favored the extension of the suffrage in the nineteenth century presumed that with its extension all individuals would vote, owing to their general interest in political affairs. Such, of course, is not the case, and, as Beard says, it is probable even in colonial times that more people were away from the polls on election day because of indifference than because of legal disqualification.[2] Certainly, the agitation for the extension of the suffrage is a comparatively modern movement, and Bryce has shown that in some of the British Dominions it was extended to women simply because some women wanted it and there was no opposition.[3] Each election period in the United States brings heated efforts on the part of the "civic-minded" elements in the community to stimulate enough interest to get the voters to register in spite of the inconvenient and difficult system of registration that prevails in most of the American states. The success of these cam-

[1] See Joseph Story, *Commentaries on the Constitution of the United States*, 5th ed. (Boston, 1891), Vol. I, Sec. 580; D. G. Ritchie, *Natural Rights* (London, 1895), p. 255; John A. Jameson, *A Treatise on Constitutional Conventions*, 4th ed. (Chicago, 1887), Sec. 337.

[2] C. A. Beard and Mary Beard, *The Rise of American Civilization* (New York, 1930), Vol. I, p. 110.

[3] James Bryce, *Modern Democracies* (New York, 1921), Vol. I, pp. 33–34.

paigns depends on the type of issue presented by the election much more than on the intensity of the campaign.

The Greek and Roman theory of the citizen as one who has the right of participation in government is a noble but impracticable ideal for modern democracies. The nineteenth century enthusiasm for the extension of the suffrage has worn away, and even in the twentieth century, with its extension to women after intense agitation in Britain and America, the interest of women in public affairs is not marked. On some issues, such as prohibition and legalized prostitution, the influence of women has been felt, but in general the woman's vote has been absorbed in the major political parties. The same disappointment that came after the general extension of the vote to men in the nineteenth century is being experienced in the twentieth after its extension to women. Great progress and important changes in legislative policy did not attend the extension of the vote to the middle and lower classes; likewise the changes that have come about since the admission of women to political participation have their roots in the pre-woman-suffrage period rather than in the period after it was granted. The present sees a greater separation between citizenship and the ballot, and this is also sensed in the backwash from suffrage extension which seeks more stringent qualifications for membership in the electorate in order to exclude much "child mentality" now found among the voters.[1]

The Ethical Theory. The ethical theory of the suffrage, which would extend the vote in order to educate the citizens of a state and develop individual character, is supported now with severe qualifications. David Starr Jordan once remarked that the object of democracy was not to secure efficient government, but to make better citizens. However, the impulse of the present is toward efficient government rather than the expensive education of the electorate through trial-and-error political participation. The vote is an important type of participation when the electorate is aroused and when issues are presented which are not already controlled by constitutional provision. In America there are fewer such issues than in a country with an unwritten constitution, where the will of the legislative body, such as the British Parliament, is the final word on the content of the social philosophy of democracy. But the students of modern democracy are beginning to feel that the education derived from political participation may be expensive and quite uncertain, and that

[1] See Seba Eldridge, *The New Citizenship* (New York, 1929), Ch. XI, for a functional interpretation of citizenship. See also N. J. Lennes, *Whither Democracy* (New York, 1927).

it can be better performed by other agencies. The history of democratic government seems to indicate the accuracy of this view, for, not only do large numbers of the electorate remain away from the polls, but the force of propaganda at election time is immense. Nor is there any certainty that the individual citizen, even if he tried conscientiously, could arrive at an objective judgment on the qualifications of the candidates or the issues upon which he is to vote. Moreover, many of the issues of modern government are technical and scientific; they should be treated, not by the stumbling efforts of an uneducated electorate, but by the experts who are or who should be employed by the government to give direction on these matters.

The sixth theory of the suffrage, that it is a right of protest, will be considered more fully in the next chapter in connection with the problem of nonvoting and the inactive electorate.

Types of Political Participation. So far political participation has been considered exclusively in connection with the vote. The vote is the fundamental and historic means of participation. But it arose at a time when political society had problems of a less complicated nature than at the present, and also when participation was not the groundwork of the state as it is now. In a general way it may be said that the electorate, *i.e.*, those who have the right to vote, has become dissatisfied with the vote as the only means of participating in the affairs of government. Other means have been developing, and some of the critics of democracy are inclined to see a distinct decline in the significance of the ballot. The public, as those who have the right of participation, whatever its form, may supplant the electorate as the primary element in democracy. But this eventuality depends, of course, on the utility and the effectiveness of the ballot in dealing with the modern problems of democratic social philosophy. The future of the ballot remains to be seen, but in the meantime other forms of political participation have been developing which may be as fundamentally important as the ballot. The essential problem is to arrive at a fair judgment of the content of public opinion on a given issue. If other means than the holding of elections can be found, the ballot is certain to decline in importance. If these other means fail, the future of the ballot is secure.

The ballot is a rigidly formal means of ascertaining public opinion on issues and personalities. Elections, at least in presidential and some parliamentary countries, come with calendaric regularity. The issues may come and go, but the election comes anyway. This in itself may not be objectionable. If the issue is not important enough to last until an election, the electorate should not be troubled

by it. Furthermore, elections at stated times are logical and necessary if the holders of public office are not to be allowed indefinite tenure. If "public office is a public trust" it is reasonable to demand that at stated intervals officials shall submit their records to popular judgment, and this is advisable even if the popular judgment is not intelligent, for such judgments keep democracy from being too good for the masses of the community. But this is not the real objection to the formal participation involved in the ballot.

Participation in government should be interested as well as instructed; it should be more than a ritual imposed by positive law. The elections may be frequent and the issues insignificant, and the number of candidates may be great as contrasted with their caliber as public servants. The election being formal, it is difficult for it to express in accurate terms the interests of particular individuals; the decision in the election is yes, no, or silence; the expression of the interests of individuals, as they see their lives in the political context, may be a very complicated story. The individual may want action from the government, but there is no certainty that the forthcoming election will give him any real chance to indicate a choice on the problems of the political community that strike nearest his own interest. Participation, in order to be vital and real, the citizen has found, must be more flexible and qualified than is possible under the system of merely counting noses. Again, the election, in theory at least, makes the opinions of all voters equal. The mass equalization of voters may be a valid procedure in certain matters, but individuals whose claims for governmental action and policy are more direct should be given a definite hearing by the rulers of society. A decision by majority or plurality vote is not an answer to a claim; it may not be even primarily an appreciation of a complicated issue.

The Ballot and Economic Conflict. Dean W. R. Inge has shown that one result of the industrial revolution and the rise of urban society has been the breakdown of tradition.[1] With the strong guiding hand of tradition on the reins, political issues can be kept within historical bounds, but the ancient traditions of economic life are now unstable; with the rise of radical thinking the battle of social theory is being waged more and more as to the proper policies of economic society. It is also in the sphere of economic interests that informal participation has shown its most marked development. Those who sponsor legislation for an economic interest have few and concentrated virtues. In the first place, the fight is never over, and persistent effort in many directions characterizes their efforts to secure legislative protection,

[1] *The Legacy of Greece* (Oxford, 1921), pp. 37–38.

either by preventing or by securing legislation. In the second place, any and every means of moving the state to the recognition of particular claims is used, and in this type of agitation the ballot and the formal expression of opinion through elections may not be even the chief points of concentration. Interested groups have often been considered a menace to the state. The idea that democracy should be entirely unselfish has dominated the ideology of politics for so long that it is difficult for us to accustom ourselves to the idea of the lobby and pressure politics. But gradually we are coming to recognize that public interest so enlisted is the truest form of public interest, and that the state itself is incapable of suppressing it.[1]

Undoubtedly, the lobby has been corrupt, and in many cases unfair types of pressure are still put on members of legislative bodies. But this fact must also be remembered: every group with an interest at stake has formed a lobby of some kind, and the old theory that a member of a legislature can go back to his constituents over the heads of interested organizations has become increasingly impracticable. The organization of interest groups working directly upon the representatives of the people is slowly altering our ideas of representative government, and representatives are forced to listen to the claims of those who are actually submitting their briefs. It is charged, of course, that the lobby is often a minority group, but on the other hand the lobby represents in all cases something vital to a certain number of members of the state. There is no guarantee that this is the case with those who are content to indulge in oratory about the supremacy of the sovereign people and who at the same time are silent or inchoate in their ideas about the *particular* issue before a legislative committee or body.[2]

We have come to realize that the formulation of issues is necessary to action by public opinion. Leadership must come from some place, and the mantle of responsibility seems to have fallen, at least in our current democracy, upon the political party. While the party platform has become of waning significance owing to the direct primary, the platform itself, whether state or national, is a means of crystallizing public attitudes on particular problems. The political party with its platform and nominees offers a leadership that the vast majority

[1] See Peter Odegard, *Pressure Politics* (New York, 1928); W. B. Graves, *Readings in Public Opinion* (New York, 1928), Ch. XXVIII; E. P. Herring, *Group Representation before Congress* (Baltimore, 1928).

[2] Donald Wilhelm, "The Washington Soviets," *Forum* (November, 1925); Frank R. Kent, *The Great Game of Politics* (New York, 1924); T. A. Bailey, "Congressional Opposition to Pure Food Legislation, 1879–1906," *American Journal of Sociology*, XXXVI (July, 1930).

of the voters seems to accept as a sufficient expression of its will. Of course, the lobby represents a much more concrete statement of political claims, and one in which the masses have little auricular interest. So long as the claims of interested groups are not granted to the injury of the citizenry, there is little objection, and one of the functions of the political party in securing control of office and having a statement of policy already formulated is to prevent the lobby type of pressure politics from running away with the political show. That the political party is a balance wheel to pressure put on members of the legislature seems certainly true, though this function of the party has not generally been stressed. The ordinary voter may go to the polls and vote for the party of his choice (and this choice usually remains much the same during his life) and, if the leadership of the party is intelligent, an effective counterbalance is created against the irresponsible minority. Likewise, the pressure groups are a part of public opinion, for, as we have seen, public opinion itself is a product of crossing and interweaving currents. As Madison in *The Federalist* so clearly pointed out, the future of a government depends in part on keeping a balance between conflicting claims that tend to move the state. But he did not see that the party itself is one of the most important means of effecting this balance, for the party cannot hope to attain wide and popular support and yet surrender completely to any particular pressure upon the state.

Thus, even though the pressure group seeks to escape the uncertainties of the political election, the political election stands in the background as a checking agency, for political parties give some sort of leadership to the unorganized masses of the public and they must constantly seek to widen and consolidate this support. Pressure politics takes many forms. Each lobby represents an interest group in the state, and each interest group seeks the ear of the state with startling directness. Most of the individuals who are useful to the community are members of groups making claims upon the government, but such membership does not ordinarily exhaust the political interests of the individual; the party is the successful claimant of residual political interests.

Consultation and Political Participation. All forms of direct contact with the members of the government, whether through personal interviews, communications, petitions, or the lobby, are specific efforts toward a more informal type of political participation. The more or less rigid democratic machinery evolved in the past cannot readily adjust itself to the interest groups that have become so increasingly important since the industrial revolution. The whole problem of

participation is now in an uncertain state. The newer forms of participation are new only in the sense that they were not anticipated by the founders of political democracy, who did not in general believe that any mediate organization should come between the individual and the state as represented by the government. The critics of democracy, with an eye to the essentials of the problem, have centered upon public opinion and the formal means of its expression as the proper points of attack. Those who condemn democracy believe that participation in an intelligent sense is a utopian dream; those who believe in democracy suggest improvements in participation derived from observation of the process of politics. All the indications of the present point to the formal acceptance of the newer types of participation.

The problem is really how to get the state in touch with those members of the community whose interests count and whose judgments are sufficiently instructed to make their contribution to the members of the government valuable. It is generally felt that the leveling process of an election is too indirect and uncertain in many cases for the election to be considered an answer to a question. Laski sees it as a problem involving the consultation of citizens in a more direct way than at the present time.

The first great need of the modern State is adequately to organize institutions of consultation. The weakness of the present system, and one of the real roots of its irresponsibility, is that a government is compelled to consult, not an association which represents the interests affected by some statute, but those only whose protest against its action it chooses to deem important. If industry were to be given such a constitutional form as that here outlined, it would be possible to compel the prior consultation of authoritative bodies before any policy was given statutory form.

The advantages of such a method are obvious. It secures, in the first place, effective access to the government by the interests involved. Their wills at the least receive authoritative exposition. They are placed in a position where they can learn, in detail and in principle, the purpose a government has in view. They are thereby enabled the more effectively to oppose or support such measures. They can appeal with the confidence of knowledge to opinion outside. They can seek from an assured basis to influence the supporters and opponents of the government in the legislature. They can supply to the minister information of real value in the construction of the details of his measure. They can offer him suggestions as to its probable working. They form, in brief, a deposit of *expertise* upon the different aspects of policy which, effectively used, create an atmosphere of responsibility about governmental acts.[1]

[1] H. J. Laski, *A Grammar of Politics* (New Haven, 1926), pp. 80–81. By permission of the Yale University Press.

Government must seek support as well as efficiency. Consultation of interested groups provides both support and experts. A consultation that chooses experts without regard to their group affiliation may give efficiency, but it is efficiency without participation and therefore efficiency without support. To consult interested groups in an unintelligent way may provide support without efficiency. Laski's suggestion has the great advantage of gathering support while at the same time the government is relying upon experts. His suggestion is one of the gateways to scientific and intelligent participation in government, which is not possible under the formal and rigid system that insists that the only proper means of participation by interested groups is through voting in an election. A large number of commissions have been appointed in American government, national, state, and local, but very often a deliberate effort has been made to choose experts without affiliations, and this has tended to wean support away from the consultation arranged by the government. Consultation to be effective must bring support to the government as well as information. Consultation is a form of political participation in addition to the vote.

Qualifications for Electorate Membership. It is not our purpose here to trace in detail the history of suffrage requirements. A few generalizations will be sufficient for the purpose of this discussion. The democratic system of suffrage is an achievement of the nineteenth century. The eighteenth century imposed religious, property, and residential qualifications on the voter. The religious qualifications have gone with the secularization of the state, which went hand in hand with the rise of political democracy. Property qualifications after severe conflicts were gradually and haltingly reduced, while the residential qualifications have remained primarily as a means of assuring an honestly organized electorate. The postwar constitutions of Europe extended the suffrage to women, where revolutionary constitutions were adopted; in some cases a reduction of the age requirements for the vote was made; property qualifications have practically disappeared.[1]

In general, the requirements for the vote now consist of the following: (1) the individual must be a citizen of the country in which he votes; (2) he must be at least of a given age, usually twenty-one years, though in some countries it is less and in others more; (3) he must fulfill residential qualifications depending upon the type of election, *i.e.*, district elections, state elections, national elections; (4) he may

[1] See H. L. McBain and L. Rogers, *The New Constitutions of Europe* (New York, 1922), *passim*.

have to fulfill other qualifications imposed by law such as paying a poll tax or passing certain educational tests, as well as the legal requirement of the formal placing of his name on the list of voters. Some system of registering voters is a fundamental necessity in modern democracy to prevent election frauds.

With the disappearance of sex, property, religion, and race as fundamental tests of qualification for voting, the modern issue centers on the question of education. True, in some countries opposition to woman suffrage is successful on the ground that clerical influence would become greater, as is the case in France. Regardless of the religious question, suffrage has been extended to women with some exceptions as a general principle of democracy in Western countries. Nor can we consider it other than peculiar that the negro element in politics has produced electoral qualifications designed to prevent the negro from voting. The "grandfather clause," the educational test, the payment of poll taxes, outright social discriminations, and the exclusion of negroes from party primaries have been used in southern states to bar him effectually from political participation.[1]

But the fundamental and long-run problem is whether the electorate can be improved by educational tests; whether by such tests the electorate can be made less unintelligent. Democracy is becoming weary of the illiterate voter; it no longer wishes to gamble on his support. Many American states now require the voter to be able to read and write, to be able to sign his name, or to be able to read and interpret a passage from the national or the state constitution. The "children" of the electorate must play at less consequential games than marking ballots or tinkering with a voting machine. The New York literacy test is one of the outstanding recent efforts to secure such an end. In accordance with an amendment to the state constitution adopted in 1921, the legislature in 1922 provided two methods of testing the literacy of new voters—tests by election boards and the certificate of literacy. "For the first method fifty word extracts from the state constitution were selected to be read and ten words from the selection are to be written. New York is original in that it has created through its board of regents a certificate of literacy to be given to voters after an examination has been taken."[2] Such tests are of a

[1] J. E. Pate, "The Texas White Primary Law," *National Municipal Review*, XVI (October, 1927). All textbooks on political parties give accounts of the various types of suffrage discrimination used in the United States.

[2] F. G. Crawford, "The New York State Literacy Test," *The American Political Science Review*, XVII (1923), 261–263; also "Operation of the Literacy Test for Voters in New York," *The American Political Science Review*, XXV (1931), 342–345.

minimal character and they are merely suggestive of the reaction that is gaining strength against the nineteenth century theory of suffrage expansion.

The wave of suffrage freedom has passed, it would seem, to the farthest limits of generosity; any future changes will have to be in the direction of limitation of the right to vote. The general-welfare theory of the suffrage is behind the revival of limitations. Modern limitations are based on the results of experience. There is little chance that a system of weighted or plural voting will ever be established again, owing to the persistent influence of eighteenth century ideas of equality, but the welfare theory can qualify this influence and modify nineteenth century individualism to the extent of imposing intelligent, though minimal, requirements upon individuals who desire to attain the right of political participation.[1] Should a more vigorous policy than imposing minimum qualifications be resorted to, the groundwork of political democracy would be undermined. A revised faith in political democracy, with due allowance for the truth of criticisms and the necessity of political support for continued peace and order would seem to be permanent elements in the modern state. Certainly there is no reason to permit morons and the illiterate to vote, since their conceptions of politics are immature and since their opinions are likely to be controlled by local prejudice and rudimentary propaganda.

The Electorate and Emancipation. The creation of the modern electorate is a part of the historical process of emancipation of classes and individuals which has so long been in process. To those who are under Hegelian influence and who desire to see the objectification of reason in the historical process, political democracy, however ineffective it may be in some respects, is nevertheless a part of the historic and rational emancipation of the race. As Berolzheimer remarks:

> The movement of emancipation of the last [nineteenth] century was not limited to the liberation of the great classes that suffered most from mediaeval oppression. When we observe that in the course of four centuries the temporal power was emancipated from the spiritual power, and the civic estates from despotism, and the laboring classes from the capitalistic yoke, we equally note that the emancipation was that of classes as such. It is true that with the liberation of a given class the individual members thereof also were set free, but the movement was centered upon the overthrow of the class burden, leaving the individual within the class in complete independence. A clear example thereof is afforded by the course of social democracy, which imposes upon its adherents a discipline of such severity, and demands of the individual such large sacrifices in behalf of class interests, as would make every form of

[1] Garner, *op. cit.*, pp. 551 *ff.*

governmental or capitalistic paternalism seem mild in comparison. . . . The emancipation of the classes had yet to find its complement in the emancipation of the individual.[1]

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[1] Fritz Berolzheimer, *The World's Legal Philosophies*, tr. from the German (New York, 1929), pp. 467–468 *ff*. By permission of The Macmillan Company, publishers. Berolzheimer discusses the movement for the liberation of women as a part of the general trend toward emancipation.

Chapter XIII

THE POLITICAL PARTY IN THE DEMOCRATIC STATE

The apathy of the masses and their need for guidance has as its counterpart in the leaders a natural greed for power. Thus the development of the democratic oligarchy is accelerated by the general characteristics of human nature. What was initiated by the need for organization, administration and strategy is completed in psychological determinism.—Robert Michels.[1]

The Individual Faces the State. The democratic state exists on the assumption that the government is responsible to the members of the political community. Such responsibility is secured in two general ways; it is secured by a system of constitutional government in which the acts of the government are said to be under the rigid and unwavering scrutiny of the law, and it is secured by political participation. After all, constitutional government itself is merely one means of making effective the participation in government of the democratic public. The government in theory is passing under the constant judgment and evaluation of the public, but modern critics of democracy have shown that this evaluation is defective; the question is seriously raised whether the current ideas about democracy are true in the sense that they bring about an actual governmental responsibility. Of course, it might be urged that government should not be responsible entirely to the members of the participating community, but such a thesis is a denial of the utility of democracy.

The problem of responsible government is to bring the individual, either alone or through his groups, face to face with the state so that the government and the governed will understand each other's claims and needs. Such a perfect system of participation in government, under the democratic system, might make government well-nigh a perfect instrument of social justice. But in fact the path of the claim or judgment of the individual or group to the sense organs of the government is often long and devious. Owing to the many stages between the individual and the government, the claims of individuals are often distorted or forgotten. The motivation of the government becomes incomprehensible to the individual. Neither the individual

[1] *Political Parties*, tr. by E. Paul and C. Paul (London, 1915), p. 217. By permission of Jarrolds, Ltd., publishers.

nor the government has a clear picture of the claims and the difficulties of the other. Democratic dogma, which assimilates the rulers and the ruled and which can utter nothing but the clarion slogan of the sovereignty of the people, makes the solution of the problem all the more difficult. Claims on the state are not to be seen as of one individual alone, but as those of the groups to which the individual's interest leads him to adhere. Responsible government implies a recognition of the vitality of groups in the state, a recognition of the federal nature of society.

> The structure of social organization must be federal if it is to be adequate. Its pattern involves, not myself and the State, my groups and the State, but all these and their inter-relationships. For when I respond to the demands of the State, there grows up between us a process which alters both response and demand. That process is compounded not merely from my State-context, but from the total environment in which I find myself."[1]

To view the problem of responsible government and participation in government in the light of a federal society makes the path of the individual to the state a more difficult one under the present democratic system, which thinks of political society as a unified whole. It is true there must be some moral unity, something more than mere group significance of citizen and life, or there would be no state. But when the specific interests of groups and the interrelated character of group demands are concerned, it is well to recognize the fact that consent and responsible government are not one problem, but a multitude of problems grouped around, let us say, a single act of the state. That some Western liberal states have secured a sufficient reconciliation of conflicting interests to maintain stability is clear enough, merely by the continued existence of democracy. Some suggestions that look to more effective and scientific relationships between the individual's claims and the action of the government have been given in the preceding chapter.

The Traditional Pattern of Responsible Government. Let us trace the standard conception of how the individual faces the state, but include also some admixture of the reality of the process. There is first the population of a political community. Most of this population is citizens, *i.e.*, it owes a definite and stable political allegiance to the state. Out of the mass of citizens emerges the electorate, which, under the provisions of positive law, is legally qualified for formal participation in government. In a democracy this number is a con-

[1] H. J. Laski, *A Grammar of Politics* (New Haven, 1925), pp. 262–263. By permission of the Yale University Press.

siderable majority of the adult citizens, and it may even include aliens, who owe a temporary or residential allegiance to the state, *i.e.*, the legal duty to obey the laws. But within the electorate we have been forced to recognize what may accurately be called the *active electorate.* The active electorate consists of those who either from habit or casual interest are recent participants in the political process. Rival political parties that are willing to assume the responsibility of controlling the government claim the confidence of the active electorate. Support of the party leads nominally to legislative representation, which is nominated and pledged to support the platform of the party, and beyond the democratically chosen legislative body is the executive official, who has discretionary power, and the administrative official, who theoretically has a very limited discretionary authority. The acts of the government are seen finally in the administration or the execution of the legislative proposals that are duly enacted. Such is the formal structure of democratic-party-system representative government.

Obviously there are lacunae in this utopian sketch. The system does not always satisfy the predominating demands of the members of the state. The active electorate is a shifting quantity, though the continued existence of the inactive electorate indicates that those who do vote perform for it an adequate representative function. Parties compete for the support of the active electorate, but within the limits prescribed by the constitutions and laws of the state and of the United States. Party platforms are satisfactory to the voters only on certain issues—issues upon which there is a real chance of a popular decision. Many of the most fundamental issues of American government have already been decided by the terms of the Constitution and by the interpretations of the Supreme Court. Thus the representative functions of the party are limited, and the freedom of the active electorate in granting support is also limited. Furthermore, the parties are constantly competing for a wider support and this makes them chary of too deep an entanglement with disturbing issues in public life. The failure of different party platforms in many cases to present adequately the possible alternatives weakens their significance as representative agencies of the active electorate in popular government. The party as an agent of responsible government is, therefore, important, but like other devices of political democracy it is defective.

The party is often considered to be a part of the government, and therefore the difference between the officially elected legislative representative and the party and its leaders is not one of kind, but merely of degree; the elected representative is the result of the representational devices farther in the background. Responsibility

is supposed to be placed securely in the hands of public officials chosen by the active electorate, but this responsibility, as all students of democracy recognize, is sometimes an uncertain quantity. The representative is elected on personal claims or on a limited set of issues, and when other problems arise it is difficult at times to ascertain what might logically be named as the claim of the majority of his constituents. The representative is subjected to other influences than the public opinion represented by the active electorate. Another step beyond the active electorate is the bureaucracy, which exists in every complicated state, no matter how strong the antibureaucratic tradition. The executive head may be elected by the votes of the electorate, but it has been found to be impossible and ineffective to elect many policy-executing officials. The Anglo-American theory of the bureaucratic official is that he does not in fact have great discretion, though the actual facts of government tend to belie the constitutional theory. The administrative bureaucrat does not always perform his representative functions with responsibility for several reasons. His work is not so public as other parts of the government, his tenure is more secure, and his work is often so technical that to the ordinary citizen it is quite incomprehensible. The independence of the administrative official has become so marked in recent times that students are beginning to speak of the government of experts with democratic responsibility.

The system we have outlined is slow moving and cumbersome; it is rigid and irresponsive to any but the best organized and the greatest needs of political society. This statement is not a condemnation of the system of responsible government in which the party is the keystone, but it implies that the present machinery of party government needs to be supplemented rather definitely in order to attain the responsibility of government to the community. To supplement the present system merely means that ways should be provided by which the individual can come into more direct contact with the government. In the previous chapter we discussed the same problem from the viewpoint of political participation, and it was shown that the claims of members of the state have been pressed with a directness that undermines the orthodox theory of party government. It is fairly obvious that those who made these pressing demands are not content to use the slow-moving machinery of the state; when such claims have been well organized and well financed, the chances of success in presenting them are not remote.

But it should be noted that such a system does not mean that orthodox responsible government is to be scrapped in bringing the demands of individuals through groups directly to the notice of the

state. The party would still be representative of the active electorate, and through the members of the legislature it would preserve a balance of interest, particularly of the social interests. The difficulty with orthodox democratic theory has been that of unwillingness to admit other means than the party system of bringing the demands of the public to the attention of the state. In simplified government, such as properly and effectively organized municipal corporations, individual responsibility has been important, but in more complex governmental units, such as the state or the nation, the party should be the fundamental agent of responsible government. The party in the United States assumes responsibility for the conduct of the executive and the members of legislative bodies; in the parliamentary system of Great Britain the party is the primary agent of responsibility, though the members of the executive may by direct appeal to the electorate accept a personal responsibility in addition to that of the party. This is most certainly the case in parliamentary systems where there are more than two major parties and where the coalition system of cabinet government is developed.[1]

If individuals and groups appeal directly to the government, this may weaken the responsibility of the party, but it does not weaken the general support of the public for the government. Pragmatically, we may say that anything which tends to gather to the government additional support is valuable in making the state an effective agent of progress. The direct appeal, this stepping around the indirect machinery of democratic government, does nothing more than weaken the party system; it cannot in any sense supplant the general popular interests represented by historic and well-organized and well-supported political parties. Again the direct appeal, the vision of popular sovereignty in terms of the direct participation of the individual in legislation, is fundamentally in accord with democratic theory.

Rousseau developed the direct contact of the individual with the state in terms of direct democracy, *i.e.*, a legislative body in which all participating citizens shared equally and directly.[2] Society for Rousseau was a combination of human atoms in a common purpose expressed through the general will, and for the individual to trust indirect agents for the expression of his contribution to the general will

[1] The nonpartisan movement, particularly in local government, implies individual responsibility rather than the collective responsibility assumed by the political party. See W. J. Johnson, *Toledo's Non-partisan Movement* (Toledo, 1922), pp. 55–58, 62–63. Cited by Joseph Wright, *Selected Readings in Municipal Problems* (Boston, 1925), pp. 284 *ff.*

[2] See *Contrat social* (1762). See William Orton, "The Atomic Theory of Society," *The American Political Science Review*, XXIV (1930) 628 *ff.*

destroyed the essence of popular government. Popular sovereignty necessitated the direct contact of individual and government and a repudiation of the federal structure of society, which includes agents of participation and representation for the groups and associations to which an individual belongs. While the more direct impact of the individual will on the government may hardly be defended at present on the basis of Rousseau's general-will theory, it may be defended on the pragmatic ground that additional and more vital support is brought to the government, so that the government itself becomes more responsive to the claims of social groups and therefore more truly responsible.[1]

What Is the Political Party? No fully satisfactory definition of the political party has been given. As is too often the case in matters political, there is a variety of concepts competing for recognition, and it is true also that the objection to each definition is only partial. Edmund Burke defined a party as "a body of men united, for promoting by their joint endeavors the national interest, upon some particular principle in which they are all agreed."[2] It may be said that the most widely accepted concepts of a political party agree in general with Burke. "A political party," says Ray, "is a durable organization of individuals or groups of individuals fluctuating in personnel and numbers, united by common principles or a common policy, and having for its immediate end the control of the government through the carrying of elections and the possession of office."[3]

Taking this definition as a starting point, one fundamental question arises as to whether the unifying force of the party is common principle or common tradition. The Republican party began as a protest against the extension of slavery into the territories of the United States, but it has become the party of conservatism, the high tariff, and the protection of "big business." The Democratic party began as an expression of state rights and decentralization and it was founded upon the political spirit of agrarian democracy and the individualism of the frontier. But at the present time the democracy of the Southern

[1] See C. E. Merriam, "The Political Party and Unofficial Government," *American Political Ideas*, 1865–1917 (New York, 1920), Ch. X. See "Trade Associations, Their Economic Significance and Legal Status," *National Industrial Conference Board* (New York, 1925).

[2] *Thoughts on the Cause of the Present Discontents* (1770); *Works*, Vol. I, p. 530.

[3] See P. O. Ray, *Introduction to Political Parties and Practical Politics*, 3d ed. (New York, 1921), Ch. I. By permission of Charles Scribner's Sons, publishers. R. C. Brooks, *Political Parties and Electoral Problems*, 3d ed. (New York, 1933), p. 14; Anson D. Morse, "What Is a Party?" *Political Science Quarterly*, XI (1896), 68.

states is widely different from the democracy of the North. Democracy in New York City, as led by the Tammany Society, has little in common with the anti-Catholic and prohibitionist views of the South. The Democratic party is forced to rely on the unifying force of tradition rather than principle, while the Republican party cannot regard its tradition too seriously and must rely on the unifying force of conservatism, which is primarily a matter of principle. Third-party activities are based on principle rather than tradition since they represent a departure from the traditional party mores.

Aside from the essential issue of tradition *versus* principle, the above conception of the political party is stabilized around the association of like-minded individuals who are at the same time eligible for participation. It resolves itself into a concept of support. Any voter who supports the party is a member of it, but other persons who cannot vote are also often regarded as members of the party. For instance, territorial delegates are found in the national conventions of both the major parties in the United States, despite the fact that territorial support does not influence presidential or congressional elections.

A second fundamental conception of the political party is that it is an organization. Those who give support to the organization are not necessarily members of the party. A man may vote all his life for the Republican or Democratic party, but, if he is not a member of the party *organization*, a payer of dues, or a part of the machinery of the party, he is not a member of it; he is never more than a supporter. We have here a realistic view, for the party is easily conceived as organization and nothing more. Organization in terms of discipline from the lowly precinct to the conventions and committees acting as a national unit is characteristic of the party.[1] A thoroughly organized political party has a precinct organization in every or nearly every precinct in the nation. The organization consists of a party chairman and committee for the precinct. Above this may stand the city or the county organization, usually a county organization, owing to the development of the nonpartisan movement in the cities. There is a county committee, and perhaps an executive committee headed by the chairman of the party for the county. This organization is duplicated in the state.

It is probably a matter of splitting hairs to debate whether or not we have forty-eight state parties, a number of territorial parties, and in addition a national party. A national party is in fact a federation

[1] See E. E. Robinson, *The Evolution of American Political Parties* (New York, 1924), p. 4, for support of this view.

of party organizations. There is a national committee and a national chairman, but, since the national organization cooperates and sometimes directs the state parties, it makes little difference whether we insist that there is only one national party or a national party with separate state parties. In addition to the committee organization of the party, there is a parallel system of conventions held in the precinct, the district, the county, the state, and the nation. Such conventions are ordinarily under the control of the committee system, particularly under the chairmen of the county and state committees.[1]

The structure of American government lends force to the contention that the party is an organization of interested workers, rather than an association of like-minded individuals fighting for common principles through political democracy. American experience would indicate that, no matter how wide apart the differences of opinion within a party may be, as long as there is no open revolution the national party organization will be sustained. The governmental explanation is very simple. Unless there is a national organization that can win support in all states, there is little hope of securing a majority of the votes in the electoral college. A party that is strong in certain sections may elect Congressmen and Senators; it may control the government in a given state; but it cannot control the national executive without a national organization capable of delivering a majority of the electoral votes, and this majority must come from all sections of the country. If no party has a majority in the electoral college, the election goes to Congress, and the chances that the party will control the selection of the President and vice-president become correspondingly less. As long as the President of the United States is chosen as he is, there will be national parties in terms of organization.

A popular election of the president by plurality vote would seriously weaken the national party organization, and the likelihood of a split in the older and traditional parties would become more imminent. To remove the choice of the President from a popular vote of any kind would no doubt be the death knell of the two-party system in the United States and the beginning of a multi-party system. The multi-party system in the United States, however, would not be attended by the evils of the system found in parliamentary countries where the sheer existence of the actual executive depends on a number of parties agreeing on the formation of a cabinet. To put the election of the President into the hands of Congress would be to establish the principle

[1] C. E. Merriam and H. F. Gosnell, *The American Party System*, rev. ed. (New York, 1929), Ch. IX–X. Detailed information on the structure of the party system may be found in textbooks on American political parties.

of the Swiss executive in the United States without the Swiss collegiate system.[1]

A third fundamental conception emerges from the sociological interpretation of the party. The party becomes one form of group life; it is a sociological fact just as any other group expressing community of interest and like-mindedness is a sociological fact. Furthermore, this treatment of the party involves the assumption that the party is but an extension of the government itself, and according to Merriam it is part of the government. The more orthodox view of the party places it outside the government, but the sociological approach, in rejecting the legal conceptions of ordinary public law, arrives at the position that the party as a sociological fact is part of the government.[2] Whether one asserts that the party is a part of the government or is extragovernmental, all admit, of course, that at the present time it is a very essential part of the political process. Modern democratic governments are inconceivable without the group known as the political party. For this view, the fact that the party is also an organization is quite incidental; the group interest it expresses is the important point of departure.

Professor Merriam presents this point of view in the following words:

> The party may be looked upon as a type of social group, primarily concerned with social control as exercised through the government.[3] It rests upon fundamental psychological tendencies, upon social or economic interests, develops its own organization, and attracts its personnel, acquires its own professional standards and professional technique, and in time its traditions, tendencies, predispositions. Like other groups its momentum may carry it on, after its immediate purpose has been achieved. Group solidarity, personalities, traditions, ambitions, will have been obtained in the struggle and those who have been acting together in the narrower circle as governors and in the broader circle of those interested for wider social and economic reasons, may go on acting together for other purposes. . . . In this sense the party may be regarded as a part of the government itself, an extension of officialism, shading out from very definite responsibility for official acts to the less definite responsibility of shaping and guiding the course of public opinion.[4]

[1] See H. L. McBain, *The Living Constitution* (New York, 1927), pp. 142–143, Ch. IV.

[2] See Merriam and Gosnell, op. cit., Ch. XV.

[3] Robert Michels, *Political Parties*, tr. by E. Paul and C. Paul (London, 1915).

[4] Merriam and Gosnell, *op. cit.*, p. 427. By permission of the Macmillan Company, publishers. See also R. M. MacIver, *The Modern State* (Oxford, 1926), pp. 396 *ff.* On p. 400, MacIver remarks: "The party system was in particular the mechanism by which the class-state was transformed into the nation-state."

The Party as a Public Association. In all definitions the party is an association or group of individuals. How broad the group is or what the uniting forces are may give rise to differences of opinion. The above conceptions of the political party differ merely as to emphasis. The first definition stresses the party as a definitely organized association of like-minded individuals for the control of government; the second definition discovers the party by the exclusion of supporters of the organization; and the third concept argues the extension of officialism to the party and that the party itself is a social group whose function is essential in the process of government. It is a matter of emphasis, and in reality there is no inherent contradiction between these three statements of the nature of the political party.

But there is one question concerning the nature of the party group which has given rise to important legislation. The party has been recognized as part of the ordinary machinery of government by the statutes of the various states *controlling* the party. It may be considered an indirect recognition, but regulation of the party implies its recognition favorably under positive law.[1] In the United States the regulation of the party is within the jurisdiction of each state, though the national government controls or can supervise the election of national officials. In the Newberry Case it was decided that the United States has no control over the *nomination* of party candidates within its states for national offices; this throws the nomination machinery, even of national officials, clearly into the hands of the state.[2]

The legal recognition of the political party constitutes a revolution in American tradition. Not only did the framers consider the party,

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MacIver's approach to the general problem of party alignment is worth the reader's attention. Another conception of the party, closely associated with Merriam's view, is that it is a definite means or technique of getting control of the state. It is a means of lifting oneself to power. This idea of the party is suggested by the history of Fascism, National Socialism and Communism in Russia.

[1] The election laws of the various states, usually printed in a separate bulletin by the Secretary of State, is the most direct source of information on the regulation of parties.

[2] Newberry *v.* United States, 256 U. S. 232 (1921). The unconstitutionality of the Texas "white primary law" was not based on the control of elections authorized by the delegated powers of the national government over the election of national officers or the restrictions on the state by the Fifteenth and Nineteenth Amendments, but upon the provision of the Fourteenth Amendment forbidding a state to deny to persons the equal protection of the law. This case shows that, in extreme situations at least, the nominating machinery will be controlled by the national government through the judiciary. Nixon *v.* Herndon, 273 U. S. 536 (1927).

i.e., faction, a private association, but a very reprehensible one at that, according to Washington in his farewell address.[1] The party arose in the United States by the turn of the eighteenth century, owing to the astute leadership of such men as Jefferson, Hamilton, and Burr. But for most of the nineteenth century the party was an informal and largely unregulated association in the state. Because of the gradual evolution of the party as the most important political association, and the fact that the party machinery had become oligarchic and unresponsive to democratic ideology, the regulative movement began near the end of the nineteenth century. At the present time the political party as an association or organization within the state is carefully regulated. The old convention system has been abolished generally and the direct primary election for the nomination of officials has been substituted. The nonpartisan movement has attained some success, in a formal sense, in cities and counties. The choice of delegates and committeemen is also regulated by law, and, owing to the fact that such regulation implies the public character (*i.e.*, governmental character) of the association, almost any one may become either a direct supporter or a member of the party. The direct primary for the nomination of party candidates, which was designed to destroy the control of the party bosses and politicians over nominations, has opened the party to anyone who desires to vote in the primary.[2]

Various signs of reaction are appearing. A few states have abolished the direct primary, and in others modifications have been made. In any case, the state party organization retains the convention for the purpose of drawing up a state platform, even though under the direct primary system it is not allowed to nominate party candidates. In general it may also be said that erstwhile defenders of the direct primary have been forced to admit that little political improvement has been attained by its adoption, that the caliber of candidates has not been materially elevated, and that the expenditure of large sums of money has not been prevented.

Another form of reaction has developed since the Supreme Court declared the "white primary" in the South unconstitutional. Ever since the Civil War the Southern states have been devising means of preventing negroes from voting. In 1923 Texas invented the best means since the Civil War—the white primary. The Democratic party was defined for primary purposes as composed of white voters.

[1] James D. Richardson, *Messages and Papers of the Presidents* (Washington, D.C., 1897), Vol. I, p. 219.

[2] See C. E. Merriam and Louise Overacker, *Primary Elections* (New York, 1928); for discussions of the direct primary see Ray, Sait, and others.

Since the Supreme Court declared this regulation unconstitutional, the alternative seems to be to give the party freedom to define its own membership, in which case negroes may still be excluded from participation. The extreme alternative might mean the revival of the convention system, effectually excluding the negro from any influence on the choice of nominees of the dominant party in the state, the Democratic party.

Those who oppose the regulation of the party by statute are forced on principle to assert the private character of the party association. The regulation of the party by the state is viewed as an unnecessary and illiberal restriction on the freedom of individuals to form associations and conduct the affairs of the association without interference by the state. The burden of the attack falls not upon the control of the registration of voters or the control of the use of money in elections, but on the prohibition of nominations by the party through party conventions. The direct primary is a cardinal nuisance in the eyes of those who wish to see the party merely as one of the free associations or groups of citizens in the state. If the party is a private association, the state should let it alone; if it is a public or governmental association, then the state is justified in its regulations. The state does not determine how a particular church shall select its officials; it does not determine how long officers of a lodge shall serve, nor does it regulate the election of trade-union officials. So should it be with the political party. The trade union, the lodge, and the church are forms of voluntary associations which should be left free to organize as the members see fit; likewise the political party is a voluntary association having for its purpose the determination of public policy and personnel, and as a voluntary association it should not be regulated by the state.[1]

The whole question centers around the problem of the public or private nature of the party association. It is a question of constitutional morality rather than positive law, since positive law may define or regulate as it sees fit, at least in a formal sense. If the political party is a part of the government, if it is an extension of the principle of official representation involved in the theory of the democratic state, there can be little question but that the party is a public association. As part of the government its functions and organization should be regulated in the interests of the general welfare. The party has, of course, the ordinary characteristics of a private association, the chief of which is that it is a voluntary association. No individual can

[1] See Bernard Freyd, *Repeal the Direct Primary* (Seattle, 1925). See also the dissenting opinion in Nixon *v.* Condon, 286 U. S. 73 (1932).

be compelled to belong to a political party. Yet, on the other hand, no voluntary association is completely free from the control of the law. Some organizations, such as associations for the purpose of violating the law, are repressed and destroyed in time by the state. Those associations with valid purposes are also regulated; while their membership may be a matter of free volition, the ends of such associations must come within the provisions of the law. A trade union is regulated very definitely as to the means it may employ to attain its ends. Associations may have the right to hold public meetings, but the right of public assembly is subject to the regulation of the state in the interest of public order. The question naturally arises, therefore, whether the party should not also be regulated. It is probable that the party, even if it is viewed as a private association, has such significance for the operations of democracy that it should be carefully controlled. In any case, it is merely a matter of degree. The party, like any other association, cannot be entirely free from regulation. And since the party performs such important functions in connection with government, it seems a valid proposition that the party is morally subject to the regulations of the state in the interests of democratic government.

Historical Theories of the Party System. The mere existence of the party system implies certain ideas of the process of constitutional government. The Italian Fascists, the German National Socialists, the Russian Communists, and the Chinese nationalists will not admit immediately the authorized existence of an opposition party.[1] Western democracy has in general believed that the solutions of politics are a matter of balance and that criticism and opposition supplied by a party out of power are a valuable corrective to the major or majority party. Opposition assures publicity at least, and this publicity provides machinery for the freer formation of public opinion. Anglo-American theory rests on the proposition that governments work best when there are only two parties and that in the course of politics each party will be the "ins" and the "outs."[2] Continental experience with

[1] Sun Yat Sen defends democracy, which, of course, is done neither by Fascists nor communists. As far as the author is aware, Sun Yat Sen is the only modern thinker who postulates democracy without more than one party in the state.

[2] See R. G. Gettell, *History of American Political Thought* (New York, 1928), p. 153, for the view of William Winterbotham, *An Historical Geographical, Commercial, and Philosophical View of the American United States* (1795): "It will be easy to conjecture from the preceding account, that the Federalists are the *ins*, and the Anti-Federalists the *outs* of American government."

One of the earliest writers to take this view is Vittorio Alfieri, a late eighteenth century Italian liberal, who, according to Ruggiero, "expresses a profound insight into the essence of political liberalism, which consists in an opposition of parties

the multi-party system is discouraging to those who desire stability in government, and yet, if political parties are to provide for all shades of public sentiment, the logic of the multi-party system seems inevitable. Certainly, it is rather dogmatic to assume that there are only two sides to each public issue; furthermore some parties do not recognize even as issues certain problems that third, fourth, or fifth parties might insist on raising. The area of agreement between Democrats and Republicans is far greater than the area of disagreement, but it is entirely too dogmatic to assume that Democratic and Republican platforms exhaust all the legitimate issues that may arise in public life. Far less can the one-party system do this.

It has only been since the rise of Western democracy that members of opposition groups in politics have been elevated from the position of sedition mongers and traitors to the rank of intelligent and useful critics of the administration. The nineteenth century came to recognize the party quite definitely as having a share in government.[1] The late eighteenth and the nineteenth centuries saw the formation of opposition parties in Western Europe, and this period also saw the general acquiescence of public sentiment in the idea that opposition might be more than conspiracy or captious criticism. In Washington's farewell address we read:

> The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. The disorders and miseries gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this despotism to the purpose of his own elevation, on the ruins of public liberty. The common and continual mischiefs of the spirit

transcending the opposition of classes. The conflict of social classes compromised the power of Rome; the conflict of parties nourishes the strength of England." Guido de Ruggiero, *The History of European Liberalism*, tr. by R. G. Collingwood (Oxford, 1927), p. 283. By permission of the Oxford University Press. De Ruggiero is not willing to admit the originality of Alfieri's ideas, and perhaps he was influenced by David Hume's analysis of political parties. *Cf.* Paul Janet, *Histoire de la science politique*, 5th ed. (Paris), Vol. II, pp. 554–555. See David Hume, *Essays*, ed. by T. H. Green and T. H. Grose (London, 1875), Vol. I, Essay IX, especially p. 134. Janet observes that the principle of party opposition spread from England to the rest of the world.

[1] But *cf.* Ephraim Emerton, *Humanism and Tyranny* (Cambridge, Mass., 1925), p. 223, for the suggestion that the two-party system was recognized by the Papal States in the middle of the fourteenth century. In discussing the tyrants of the Italian trecento, Emerton suggests that certain types of them were in most respects similar to the modern party boss.

of party are sufficient to make it in the interest and duty of a wise people to discourage and restrain it.[1]

But Washington had been bruised by the harsh party agitation of his period.[2] Public opinion had not reached a level which demands that the claims of party leaders for support shall be couched in more intelligent and less abusive terms. James Madison, the "father" of the Constitution, took a calmer position regarding political parties, for he saw in them the expression of public opinion based on the economic interests of the members of society. In Madison's view:

> . . . the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors and those who are debtors fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.[3]

It is hardly possible to take Madison's account of parties, his economic interpretation, without qualification. To know economic interests does not guarantee a knowledge of individual opinions, and every party includes within it, likewise, diverse and somewhat conflicting economic interests. Man is a purposive animal, and he can act generously, *i.e.*, contrary to his own material interest. Undoubtedly, the tradition of the party and the traditions of the nation influence and control public opinion as much as or more than the immediate economic interests of the individual. The significance of the passage from Madison is fundamentally this: he recognized that in the normal course of government the party would exist; he recognized that politics is for the satisfaction of the individual claim or will, and that this satisfaction as a practical matter cannot be catalogued merely in terms of right and wrong.

Although the party system has been characteristic of public life since the rise of democratic ideas, analysis of the party system is a product of the nineteenth century. Moreover, this type of discussion

[1] Richardson, *loc. cit.*

[2] Washington's position is reminiscent of the belief of Plato that existing governments were "states of faction." B. Jowett, *Dialogues of Plato*, Vol. III, p. clxxiv; *The Laws*, VIII, 832c.

[3] *The Federalist* (Lodge, editor), Nos. 10 and 54. *Cf.* C. A. Beard's theory of parties in Joseph Wright, *op. cit.*, pp. 279–284.

came late in the century, and even then was due only to the gradual appreciation of the evils of party patronage and spoils and their demoralizing effect upon effective public administration.[1] The denunciations of the methods used by Jackson and his followers in building up party power, particularly those of Webster and Calhoun, cannot really be called systematic points of view on the party system. In the eighties of the last century there appeared in the United States interpretations of the party in terms of the boss, the machine, and the exploitation of patronage.[2] According to Merriam,[3] the first systematic attempt to analyze parties in the United States appeared in *The American Commonwealth* by James Bryce, the first edition being published in 1888. To Bryce the pathological conditions in party government which had been given so much attention were due to the complexity of the American system of government and the general tone or level of the electorate. But his major proposition was that the party did in the end represent the demands of public opinion and when public opinion was aroused it was always obeyed by the party.[4]

Professor Merriam classifies the recent, *i.e.*, twentieth century, interpretations of the political party in the United States under four heads: (1) the structure of government as an agency for providing responsible government; (2) a group for the purpose of serving as a "broker" of candidates and policies; (3) the party process, especially on its pathological side, as the by-product of social and industrial forces; and (4) the party system, especially on its pathological side, as a necessary agency of popular control under actual conditions.[5]

[1] Merriam and Gosnell, *op. cit.*, p. 409.

[2] See Theodore Roosevelt, *Essays in Practical Politics* (New York, 1888); W. M. Ivins, *Machine Politics* (New York, 1887); Merriam and Gosnell, *op. cit.*, p. 410.

[3] *Ibid.*, p. 411.

[4] See D. G. Thompson, *Politics in a Democracy* (New York, 1893), for a defense of Tammany Hall. For Thompson, a governing syndicate is necessary in most cities until the people are able to rule without superiors. Tammany is the governing syndicate of New York City, and it is fundamentally democratic. It succeeds because it adheres to national democracy, supports good administration, and has developed a network of social activities.

See S. H. Wandell and Meade Minnegerode, Aaron Burr, 2 Vols. (New York and London, 1925), for Burr's political activity which launched the Tammany Society upon its political career.

[5] Merriam and Gosnell, *op. cit.*, pp. 414–415. On the interpretation of the political party in the United States see the following: F. J. Goodnow, *Politics and Administration* (New York, 1900); H. J. Ford, *The Rise and Growth of American Politics* (New York, 1900); Woodrow Wilson, *Constitutional Government in the United States* (New York, 1911); Elihu Root, *Addresses on Government and Citizenship* (Cambridge, Mass., 1900); Herbert Croly, *Progressive Democracy* (New York,

The Functions of the Political Party. There is no longer any serious objection to the honest functioning of political parties in Western democracy. The efforts of legislation have been to improve the party and make it a responsible political agent; legislation has attempted to throw legal safeguards around the functions that it is supposed to perform. These functions may be classified as: (1) the selection or nomination of official personnel; (2) the formulation of public policies; (3) conductors and critics of government; (4) political education; (5) intermediation between the individual and the government;[1] (6) the development and maintenance of a sense of national unity;[2] (7) the coordination of the branches of the government, particularly in a government such as the United States where the separation of powers would encourage deadlocks without the integrating force of the party system;[3] (8) minimizing of the clash of economic forces by establishing a basis of compromise under a common party platform;[4] and (9) making it possible for the electorate to function in an organized and effective manner.[5] There is, of course, overlapping in the above statements of the function of the party, but they include most of the various emphases that have been placed by different writers on the potentialities of the party system. If the political party could perform perfectly all the functions listed, there would be little need for any contact of the individual with the government other than through the party. But the practical experience of individuals and groups with political democracy has shown that the party system is an imperfect agent of representation and responsibility. The party system itself is fundamentally interwoven with the inflexible machinery

1914); A. C. McLaughlin, *The Courts, The Constitution and Parties* (Chicago, 1912); A. L. Lowell, *Public Opinion and Popular Government* (New York, 1913), and *Public Opinion in War and Peace* (Cambridge, Mass., 1923); A. N. Holcombe, *Political Parties of Today* (New York, 1924); Lincoln Steffens, *The Struggle for Self-government* (New York, 1906); Lincoln Steffens, *The Shame of the Cities* (New York, 1904); W. J. Ghent, *Our Benevolent Despotism* (London, 1902); Jesse Macy, *Party Organization and Machinery* (New York, 1912); Brooks Adams, *Theory of Social Revolutions* (New York, 1913); Frank R. Kent, *The Great Game of Politics* (New York, 1924); *Political Behavior* (New York, 1928); M. Ostrogorski, *Democracy and the Party System in the United States* (New York, 1921); *Democracy and the Organization of Political Parties*, tr. from the French, 2 vols. (New York, 1902); Robert Michels, "Some Reflections on the Sociological Character of Political Parties," *The American Political Science Review*, XXI (1927), 753–772.

[1] Merriam and Gosnell, *op. cit.*, p. 436.

[2] Bryce, *Modern Democracies* (New York, 1921), Vol. II, p. 44.

[3] Bryce, *The American Commonwealth* (New York, 1926–1927), Vol. I, pp. 283–292; *Modern Democracies*, Vol. I, pp. 115–116.

[4] E. M. Sait, *American Parties and Elections* (New York, 1927), pp. 163–164.

[5] A. L. Lowell, *Public Opinion and Popular Government, passim.*

of political democracy and it is responsive to group claims only after insistent pressure.

The Problem of Party Support. The Inactive Electorate. The political party makes the most direct appeal and open bid for political support; its appeal to the individual whose group interests are not acute is stronger than any other bid for support to be found in the democratic state. For an individual to be independent of the political party is to surrender much of the possible influence he may have. The independent voter is not in fact a competitor of the party, since he is not organized with fellow voters. The small party likewise is ineffective in our present system of presidential government, though it can be pointed out that third parties have had great influence on the program of the major parties.[1]

The independent vote is primarily a vote in protest against the existing order, though it is not clear why a voter of even the most unorthodox opinions cannot find a party to which he can conscientiously lend support. Thus, if the avenues of appeal to the state are only two, the direct appeal of group interest, most clearly represented in the lobby, and the indirect appeal through the machinery of democracy as moved by the party system, can we say that either or both of these contacts with government are sufficient and appealing to the voters as a whole in view of the existence of a large inactive electorate? The active electorate is the body of voters who constantly lend their support to a political party or to a protest cause. The inactive electorate may consist in part of those who feel that their interests can be better cared for through group interests and group demands, but it undoubtedly consists very largely of individuals who give no support in a direct sense to the current democratic machinery. They are individuals who feel that their interests are sufficiently cared for by the standardized operation of constitutional government. There is no more perplexing problem in the field of political support, so largely occupied by the political party, than that raised by the existence of the inactive electorate. The fact that large numbers of possible voters remain away from the polls is a direct challenge to the creative usefulness, not only of the political party, but of the current democratic state.[2]

[1] F. E. Haynes, *Social Politics in the United States* (Boston, 1924); Holcombe, *op. cit.*

[2] The independent vote, much more significant in recent years than in the past, may be regarded as a symptom of the breakdown of the party, as suggested earlier in the chapter. Such at least is the opinion of Sir Austen Chamberlain, for no political program as outlined by a party seems to command *continuous* loyalty and support. See W. Y. Elliott, *The Pragmatic Revolt in Politics* (New

A number of modern states have passed compulsory voting laws with a measure of success.[1] Orthodox theory insists that only those individuals who are capable of voting are to be given the right to vote, and, since the right to vote is given to them for the welfare of the political community, they are morally obligated to participate in the elections set by positive law. In Anglo-American countries the theory of the compulsory voting law has received little support. Statistical information as to the types of individuals who do not vote is not at all complete. If only individuals who have instructed judgments voted, it might be in the interests of successful democracy that incompetent individuals remain away from the polls. But the problem is far more complicated than this, for, if constitutional government has secured to the average individual all that he can well expect from the state, and if elections do not touch the fundamentals of constitutional government in terms of individual action and experience, it can hardly be said that the inactive elector is withdrawing his support, morally speaking, from the democratic state under which he lives. Certainly no one could well advocate that political education in a democracy be neglected, or that individuals whose judgments on political matters are vital should not vote. On pragmatic grounds, however, the inactive electorate seems to be a permanent factor in modern democracy. Let us examine the question in some detail.

The Ballot and the Nature of Citizenship. The problem of political support must be resolved into a theory of modern citizenship. With the broadening of the franchise in the nineteenth century, city-state ideals came to life again; in a general way, the theory now is that a citizen should vote. Eligibility to vote, as defined by statute, does not logically carry with it the duty to vote, but those who favored or opposed a general franchise assumed that the people would participate. The fact remains that our government was organized during a period of mistrust of the ordinary citizen; it was not designed along the ideals of antiquity, but rather against the harmonizing of political participation and citizenship. The eighteenth century distinction between active and passive citizenship found in the French constitution of 1791 is implied in the colonial and early state restrictions on the right to vote. However, the extreme democratic sentiments that developed during the nineteenth century—whether because of frontier influences

York, 1928), p. 184, n. 12, for citation to the *Times*, March 17 and 18, 1923, in which this view is expressed. See also the sketch by author, "Independent Voting," in *Encyclopaedia of the Social Sciences.*

[1] See J. W. Garner, *Political Science and Government* (New York, 1932), p. 548, and literature cited.

or a general world democratic movement does not matter—take a very different position. Citizenship, in a real sense, means active participation in politics; it implies very much the same definition as was given by Aristotle.[1]

The Vote as a Right of Protest. It is a fact that most men do not vote unless they feel that they have something at stake; it is probably a fact that few men vote simply because they feel that it is their duty to do so. On pragmatic grounds there is much to indicate that the vote in the ordinary sense of politics is fundamentally a right of protest. Whether this is stated directly or arrived at by indirection, as by Lippmann in *The Phantom Public* where he insists that the electorate can merely take sides, makes little difference. What can be done is to suggest that a considerable amount of political experience indicates the wisdom of the distinction between citizenship and participation in government. This questioning of democratic fundamentalism is based on: (1) the distracting complexity of modern society which leaves politics as a residual interest, (2) the permanence of important values in public opinion which make it unnecessary to express the same opinions in constantly recurring elections, (3) the security of political values under constitutional government, especially with judicial review and a limited majority, (4) the uncertain results of increased voting, either in improving the character of public officials or in checking oligarchic tendencies in party organization, (5) the nonmechanical nature of nonvoting, such as a seemingly inevitable inertia in the electorate, (6) the decline of the ballot as a means of expressing opinion, particularly where group interests are concerned, and (7) the unimaginative and psychologically uninteresting character of political contests.[2]

[1] The conservative contemporary theory is stated very well in W. B. Munro, *The Government of the United States* (New York, 1925), pp. 101–113. Following Thomas M. Cooley, Munro argues that there is a connection between the vote and public welfare; the vote is a privilege given for community benefit; therefore there is an obligation to exercise it. Of course, the qualifications for voting must be laid down by the state. The restrictions imposed are obviously for the general welfare, but these are considered to be exceptions to the general rule that adult citizens, under proper conditions, should be able to vote. It is doubtful whether the privilege of voting was established on a purely general-welfare basis. More probably the doctrine of equality and nineteenth century individualism brought it about. Those who have opposed suffrage extension have undoubtedly made a wide use of the general-welfare theory.

[2] See C. A. Merriam and H. F. Gosnell, *Non-voting, Causes and Methods of Control* (Chicago, 1924); Gosnell, *Getting Out the Vote* (Chicago, 1927). It has been remarked that the danger of revolution may be tested by the percentage of the active electorate. As the number of the voters increases, the danger of

The modern citizen's mind is filled with the echoes of an industrial society. Only when government intrudes beyond the sphere in which his interests dictate that it should work, is he aroused. This interest may come once in a lifetime, or every four years. The field of art in all its complexity, the talkies, the radio, the newspaper carrying the infinite stimulations that society has created, the wealth of books and magazines—all lead natural interest away from the somber realities of government. Yet government must work, and it must justify itself by the service it performs, not by an abstraction that may be called perfect democracy.[1]

The nature of public opinion gives support to the position taken with regard to the democratic process. Is opinion permanent or constantly changing? We may follow the theory of mutability and fickleness or of constancy. John Locke remarks in Sec. 223 of the second book of his work, *Of Civil Government:*

> To this perhaps it will be said, that the people being ignorant and always discontented, to lay the foundation of government in the unsteady opinion and uncertain humor of the people, is to expose it to certain ruin: And no government will be able long to subsist, if the people may set up a new legislative whenever they take offence at the old one. To this I answer quite the contrary. People are not so easily got out of their forms as some are apt to suggest. They are hardly to be prevailed with to amend the acknowledged faults in the frame they have been accustomed to.

Public opinion is not formed today, but through many yesterdays. It swings back and forth, to be sure, but only in a narrow ambit. It is natural for the mass of men, conservative in their political views and

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revolution is greater; as it decreases, we have a sign of relaxation in social tension. The almost universal participation in German elections before the advent of Hitler as chancellor perhaps offers evidence of the truth of this observation.

[1] A book by Charles Merz, *The Great American Band Wagon* (New York, 1928), suggests by implication that the really remarkable fact may be that there is as much interest in politics as there is; for politics offers no exciting escape from the realities of life as do a thousand other things, such as the radio, the automobile, and the tabloid.

Cf. A. R. Lord, *The Principles of Politics* (Oxford, 1926), p. 161: "The more frequently elections are held, the less interesting and important they appear to be, and the less likely is a busy man to go out of his way to record a vote. Private affairs in populous and prosperous communities have assumed an abnormal and disproportionate importance; and amongst those who are immersed in commercial enterprises, political duties, except where they directly affect private business, are apt to be resented as an intrusion upon and an interruption of the normal course of life. The professional and the economically influential classes tend more and more to ask for government without trouble." By permission of the Clarendon Press.

appreciations, to accept government so long as government obeys the fundamental currents of opinion. What difference, it may be asked, does it make in the average of political personalities if one man or another is chosen, so long as government is thus conducted? Men, and therefore, governments, react in patterns.[1]

Constitutional government, while originally designed to prevent the balder forms of tyranny, has enabled government to provide an eventual control of misconduct through its internal machinery, and it has given politics a stability that makes it conform with the essential elements of public opinion. Americans are fond of the phrase "a government of laws and not of men." They recognize the constitutional structure as fundamental, and so long as it is not impaired they do not worry. Constitutionalism provides grooves along which all public officials, whether efficient or inefficient, must move. For the sake of security, we have hampered the genius in politics in order to add strength to the weak and the mediocre. A government of laws makes the recurring expression of opinion less necessary than in a government of men with moderate democratic leanings. It may be supposed that there is no government save that of men. Men control, but it is Caesarism according to law. Perhaps Hobbes deserves as much credit as any one for pointing out that men in society are largely equal in their overt political capacities. Subjective elements loom large at given times, but in the long run men govern as equals in ability. This fact may be noted as one of the great justifications of the rule of law and the restrictions that it places on the rulers and the ruled alike. Our political structure depends upon fundamental opinions expressed in the rule of the Constitution, and not upon the free play of individual genius. Thus the very nature of our government makes the continuous expression of opinion less necessary. We have so organized

[1] *Cf.* A. V. Dicey, *Law and Opinion in England* (London, 1920), p. 19; H. S. Maine, *Popular Government* (New York, 1886), pp. 127 *ff.*, stressing the essentially conservative character of public opinion.

In a rather negative way propaganda itself illustrates the permanence of opinion. If we say that propaganda is a *technique* of forming opinion and that it has little or nothing to do with the truth or falsity of the opinion, it is to be observed that the technique is really a shorthand formation of opinion by which the rationalistic appeal, which is circuitous, is avoided, and an attempt is made to show that the opinion presented is consistent with habitual mental evaluation. Negative propaganda consists in avoiding the conflict between a new idea and the habitual mental evaluation; positive propaganda consists in urging the harmony or contradiction between the idea presented and beliefs already held. When an habitual mental value is highly charged with emotion, it is often unnecessary to argue even the consistency or contradiction between the new and the old; it is merely necessary to state it and the emotional response does the rest.

government that people may place reasonable trust in it, even if this means that mistrust may limit it. The structure of constitutional government makes it possible for a small minority, controlled by fundamentals of opinion expressed in the Constitution, to direct public affairs satisfactorily.[1]

It has been realized of late that the mechanical problems involved in securing a large vote are not simple. We have depended too long on the plain formula of stressing duty to government. It has never worked, and now we are in a fair way to realize that such a formula will never be successful. As Merriam and Gosnell have shown in *Non-voting*, general indifference is not the only cause of the inactive electorate. Some of the causes are physical, *e.g.*, sickness, invalidity, or distance from the polls;[2] others spring from the organization of industry, under which men fear the loss of profits or wages; many of the causes come from defective organization of democracy, such as congested polling places, an unintelligibly long ballot, restrictive registration arrangements, or a discouraging frequency of elections, which obliges many intelligent citizens to face popular government with a deep sense of frustration. Still other causes are to be discovered in disbelief in the ability of the people to control and in a conviction of the thorough and final corruption of politics. Where education along civic lines will help, the state should make it available to the voter, but, where other causes are concerned, a more perfect organization of democracy would aid. Men, however, often do not feel the

[1] See J. A. Smith, *The Spirit of American Government* (New York, 1907), pp. 209 *ff.*, for an adverse criticism of American government on these grounds. Smith contends that the devices in the American Constitution to check ordinary majorities tend to defeat popular will and rob it of vitality, thus diminishing interest in government.

There is some analogy between the continental practice of enacting laws in general terms and leaving the administration of the law to executive ordinance and the American distinction between constitutional and ordinary law as far as the relation of public opinion to government is concerned. The Constitution, like the continental statute, is an enactment of general principles, and our statutes, like the ordinance, carry out the general principle. It is important that public opinion be expressed in the enactment of general principles; but American and continental experience indicates that public interest cannot be sustained in the formulation of *means* to effect principles.

[2] See *The Federalist* (Ford), No. 61 (60), p. 405. The framers of the Constitution seemed to appreciate the inevitability of indifference in the electorate. See sixty-ninth Congress, 1st Session, House Document 398, p. 192. Here Madison reports Mr. Jennifer as observing that "too great frequency of elections rendered the people indifferent to them." Madison also reports Mr. Gerry as saying (*ibid*, p. 442): "The election of the Executive Magistrate will be considered of vast importance and will excite great earnestness."

need to vote. If government wends its way without serious mishap, there is a real conviction that mere talk will not down; one vote does not make much difference. Abstractly, the single vote is important. But the average man, busy in a workaday world, views himself atomistically; he is the real unit that his consciousness knows, and his own interest looms largest in his thoughts. If men really wanted to vote, an imperfect organization of democracy would not greatly deter them. To organize democracy perfectly would still leave the enormous problem of the inactive electorate.

Conclusion. Whatever may be said in explanation of the lethargic electorate, it cannot be defended so long as the current theory of democracy as government by participation is retained. While the government may be reformed to encourage more persons to vote, it is intelligent and instructed support that democracy and government by the party system require. Support is both controlling and directive; the party system may be responsible in part if the support is critical, but it can also face new issues with more fearlessness if the directive power of the electorate can make itself felt. Just as in the case of disobedience to law, we must recognize non-voting as a permanent and universal fact in democracy; yet we cannot advocate it as the highest kind of conduct if we wish to preserve government by mass participation.

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Chapter XIV

PRINCIPLES OF REPRESENTATION

> It [the Senate] is valuable in our democracy in proportion as it is undemocratic. I think that a philosophical analysis of any successful and beneficent system of self-government will disclose the fact that its only effectual checks consist in a mixture of elements, in a combination of seemingly contradictory political principles; that the British government is perfect in proportion as it is unmonarchical, and ours safe in proportion as it is undemocratic; that a Senate saves us often from headlong popular tyranny.—Woodrow Wilson.[1]

Representation and the Functions of Government. The theory of the separation of powers brings into sharp relief the theoretical function of representation. Participation and representation are the two sides of the shield of democracy. Participation results in representation and representation should give vitality to participation in the complex modern state. But representation in a definite sense is not extended to all phases of government. It is limited primarily to the legislative and executive branches, and Western democracy has never held strongly to the idea that the judiciary should respond easily to the currents of public attitude made apparent by political representation.[2] Of the three standard functions of government—legislative, executive, and judicial—the first is most suited to the needs of participation and it is the branch in which representation is of the greatest value.[3]

Ever since the time of Aristotle the functions of government have been analyzed by differentiation.[4] We find the idea of the separation

[1] *Congressional Government* (Boston, 1885), pp. 226–227. By permission of Houghton Mifflin Company, publishers.

[2] See Mr. Justice Sutherland's dissenting opinion in the Minnesota Mortgage Moratorium Case, Home Building and Loan Association *v.* Blaisdell, 54 Sup. Ct. 245 (1934). Sutherland cites T. M. Cooley, *A Treatise on the Constitutional Limitations Which Rest upon the Legislative Power*, 8th ed. (Boston, 1927), Vol. I, p. 124.

[3] Representative government is really a meaningless term or idea until the notion of legislation is developed. The supremacy and flexibility of the legislative body were among the most important characteristics of the modern state. There was little or no legislation in the early despotic empire, but, on the other hand, an effective administrative court might be more useful in such a situation than a representative or legislative body. *Cf.* H. S. Maine, *Early History of Institutions* (New York, 1875), Lecture XIII.

[4] The term "functions of government" is used here in contradistinction to the "functions of the state."

of powers and the check-and-balance system originating from the praise of Roman republicanism, and perhaps the ideas of Polybius come nearer than any other to being the foundation sources of future doctrine on these points.[1] In the middle of the eighteenth century Montesquieu came to the conclusion that the secret of British liberty was in the mixed constitution and the separation of the legislative, executive, and judicial authorities. A concentration of governmental powers, particularly the absorption of legislative authority by the executive, brought liberty to an end. While Montesquieu could not see that the British constitution was evolving rapidly toward a union of powers and that under this union of powers British liberty was to be preserved, the historic prestige of the doctrine among political liberals and conservatives alike made a great appeal to the founders of the American constitutional system.[2] At the close of the revolutionary era we find both France and America operating on the principle of the separation of powers, but with widely different results. The differences came as a consequence of the different theories of constitutional government held in France and in America. The judiciary in America, under the leadership of Marshall and various state judges, began the development of the American doctrine of judicial review on the basis of constitutional principles and the common law, but the development of the theory of the separation of powers in France resulted in the limitation of the judiciary. The separation of powers to the French mind meant that the courts were not to meddle in the affairs of the legislative body.[3]

The framers of the American Constitution held that the function of representation should be strictly limited. The only region in the national government in which representation of a popular sort was to function was in the selection of members of the House of Representatives, and even here the founders did not accept manhood or universal

[1] See *The Histories*, Bk. VI.

[2] American thinkers were divided as to whether the separation of powers was a purely political device or whether it reflected a natural division of society into orders. John Adams, who is perhaps the best defender of the American principle of the separation of powers, believed the separation of powers and the check-and-balance system were mechanical principles of government formation. The separation reflected for Adams the natural orders in the state. Up to Montesquieu, mixed government consisted in the balancing of orders in the state. Adams clearly reverts to the more historic position. See *The Works of John Adams*, Vol. IV, *Defence of the Constitutions of Government of the United States of America*, 1786–1788.

[3] A. Saint Girons, *Essai sur la séparation des pouvoirs dans l'ordre politique, administratif et judiciaire* (Paris, 1881); A. Esmein, *Droit constitutionnel*, 2 vols., 8th ed. (Paris, 1927).

suffrage. The Senate of the United States was to be elected indirectly by the state legislatures; likewise, the executive was to be chosen by the indirect and relatively unpopular method of an electoral college. In the minds of the framers the electors were to be chosen by the state legislatures. Representation meant the expression of public opinion, and, since the excesses of democracy had brought havoc into the commercial life of the country, it was well that safeguards should be placed against the easy response of the national government to the passions of the people. The framers of the American Constitution did, however, have a wholesome respect for the principles of representative government.[1] They believed in government by intelligent and rational consent, and they realized that any system, in order to succeed, must have wide and general popular support. The point to be noted, however, is simply this: the framers of the Constitution conceived of representation of popular opinion in a *direct* manner as extending only to the House of Representatives; it could be granted by indirection in other branches of the government; as for the judiciary, it was to be a body of appointees upon whom the action of public sentiment would be very slight.

The development of democracy in the nineteenth century brought a definite increase in the vitality of representative government. By the growth of the party system the presidency was brought under the control of the mass of voters in almost as direct a sense as the election of members of the House of Representatives.[2] The gradual evolution of party government finally brought the conservative and aristocratic American Senate under the influence of the representative principle, so that the Senate, designed to represent territory rather than popular passions, became a less distinctive element in the American system. The nineteenth century democratic movement brought about the election of practically all administrative and executive officials of the government. Representative government began to function in terms of personality as well as policy to be expressed by the legislature. The industrial revolution made its appearance in a positive sense after the

[1] The eighteenth century in general had a strong belief in indirect election. Alexis de Tocqueville, *Democracy in America*, tr. by H. Reeve (New York, 1899), Vol. I, pp. 127 *ff.*, believed indirect election essential to democracy.

[2] The majority received in the electoral college by a presidential candidate is usually larger than his popular majority because the total electoral vote of a state (owing to the determination of this matter by party leaders) goes to the party securing a state-wide majority vote. The occasional president whose majority in the electoral college is not matched by a popular majority shows that even yet the electoral college as a device of indirect election is not completely adaptable to direct popular election.

American Civil War, and the practice of lobbying became significant. Lobbying, however, has not been limited to influencing the members of the legislatures; in recent years it has been brought to bear directly upon administrative officials whose ever-increasing importance and actual discretion in dealing with the complicated economic problems of government have been carefully observed by interests not adequately cared for by the eighteenth century system of representation.

Thus representation, either through the election of public officials on the basis of their views or by the direct appeal of interested individuals and groups, has three distinct aspects: the first involves the historic idea of representation in terms of legislative policy stated through members of Parliament, Congress, state or provincial legislatures, city councils, and county boards;[1] the second is representation in terms of personality, where the officials elected have limited discretion and have, for the most part, ministerial administrative duties; and the third type of representation is expressed in the choice or influencing of executive and administrative officials whose functions involve discretionary powers and therefore questions of policy.

The rise of the executive as the leader of policy in the national government and the corresponding development of the governorship and mayor's office in large cities have made the selection of these officials, as a matter of policy, of great importance. Because the executive, whether in the national, state, or local government, has discretion and because the executive can announce and carry through policies, the representative character of such officials has been constantly increasing. But this aspect of representation goes further. A bureaucracy that takes orders and never gives them cannot be an agent of popular representation; but the growth of what Dean Pound calls personal government means simply that the bureaucracy in a democracy is being granted more and more discretion to deal with technical and complicated governmental problems. Hence, an appeal to them directly provides a channel of representation. It is often more effective for railroad interests to go directly to the Interstate Commerce Commission than to try and effect their ends through influencing Congressmen and Senators. Furthermore, since the trend in modern government has been to select experts for technical problems by appointment rather than by election, the historic channel of representation by election is effectually cut off.

[1] It has been remarked that the idea that enactment of laws is the most important function of the modern state dates from the Code Napoléon. V. K. Sarkar, *The Political Institutions and Theories of the Hindus* (Leipzig, 1922), p. 78.

The Alternatives to Representation. To avoid representative government means either direct democracy or absolute government. For the most of history government has been conducted on the principle of the absolute power of the ruler or on the oligarchic principle. In an oligarchy or aristocracy participation in government is limited to a few. These few may be selected by the arbitrary choice of the ruler or by pressure from the powerful elements in the state. However, there have been times when absolutism and oligarchy have been overshadowed. The Greek democracies of the height of Greek civilization succeeded in checking the influence of absolutism and tyranny, and in the Roman constitution there were elements, particularly the theory of citizenship by participation, that might have led to the establishment of democracy. But the ancients did not seem to be able to organize a stable democracy, and one of the reasons for this may be that they did not develop fully the principle of political representation. Even as late as Rousseau it was felt that successful democracies must be small city-states in which indirect expression of opinion, such as is involved in representative government, would be unnecessary.

The germinal ideas of representation gradually took root during the Middle Ages and became institutionalized with the rise of democracy during the eighteenth and nineteenth centuries. But democracy, in the Western sense, did not invent representative government; it merely took over the historic system to serve it as the reflector of public attitudes. The structure of representation has been in constant flux, and certainly even at this time there is only partial satisfaction with the system. It may be that in the future other devices for securing representation will supplant the present formal system in which the choice of the electors is supposed to be the only link between the individual and the government.

The suggestions made in recent years for economic parliaments and official councils to advise the government, particularly in economic legislation, may be the basis of the future system. The National Economic Council of the German constitution of 1919 was a step in the direction of important modification. The Russian system of representation is based, not wholly on factitious territorial interests, but upon occupational interests through the system of soviets or functional councils. Fascism is in a sense the absolutism of the corporative state and it is clearly an alternative to historic representative democracy. As for the United States, it has been proposed that, instead of the present federal system of equal representation of the states in the Senate, a system of representation according to popula-

tion, which would give sectional interests in America a clear voice in the government, should be adopted.[1] The proposals of guild socialism as seen in the writings of G. D. H. Cole and others would lead to representation in terms of economic interest rather than according to simple population groups. However, there does not seem to be any likelihood that the principle of territorial representation will be entirely supplanted by other systems.[2]

The Development of Representative Institutions. The concept of representation itself is a product of the Middle Ages. In the first place, the British Parliament, the mother of parliaments and the original of representation in Western democracies, is a product of the late Middle Ages, and the early modern period.[3] Other countries, such as the German states, the Scandinavian countries, France, and Spain, also developed consultative bodies or assemblies to assist by advice in the work of government. It seems that most of the original parliaments were formed on the basis of estate representation, and sometimes as many as four houses might be formed in the national assembly in order to give each estate a separate house. The nobles usually constituted one estate, the clergy another, and the middle class a third, though in Scandinavian countries the lower classes were organized in a fourth estate.[4] In England there were originally three estates, the temporal lords or nobility, the spiritual lords or the clergy, and the commons. The higher clergy and the temporal lords united

[1] See W. S. Carpenter, *Democracy and Representation* (Princeton, 1925), Ch. III.

[2] See in general F. W. Coker, *Recent Political Thought* (New York, 1934), and literature cited. Guild Socialism is discussed in the chapter on The Functions of the State in the present work.

[3] Lord Acton, *The History of Freedom and Other Essays*, ed. by J. N. Figgis and R. V. Laurence (London, 1909), p. 34, makes the statement that the Spanish parliamentary body is the oldest in the world. *Ibid.*, p. 78, Acton sees in the provincial assemblies of the later Roman Empire "the obscure germ of representative institutions." *Cf.* Ephraim Emerton, *Humanism and Tyranny* (Cambridge, Mass., 1925), p. 18; Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), p. 86; Shuckburgh's Polybius, *The Histories* (London, 1889), Introduction, p. lviii, indicates that the council (*boule*) of the Achean League represented the assembly (*sunodos*). It has been customary to say that one of the chief differences between antiquity and modern times is that in the former there was no concept or practice of representative government. Jellinek denies, however, that there was no notion of representation in the ancient city-state. *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), pp. 568–569.

[4] See Charles A. Beard, *The Economic Basis of Politics* (New York, 1922). But see W. E. Hocking, *Man and the State* (New Haven, 1926), pp. 128–129, n. 5. Professor C. J. Friedrich also touches the problem of the development of representation in his introduction to *Politica methodice digesta* of Johannes Althusius (Cambridge, Mass., 1932).

to continue the historic House of Lords, while the lower clergy did not figure in connection with the House of Commons. The British Parliament is the mother of parliaments because it was in that representative body that effective control in the modern period was gathered into the hands of the commons. By the time of the struggle with the Stuarts in the seventeenth century, the House of Commons was able to retain the upper hand. Thus the British Parliament was enabled through historical experience to work out the application of the Western principles of constitutional government and limited monarchy. On the other hand, the centralization of power in the hands of Parliament resulted in the British legal theory of the omnipotent parliament.[1]

During the latter part of the seventeenth century and most of the eighteenth century the French estates were not called together; when they were finally gathered to give advice, power was seized by the Third Estate and the French Revolution was launched. As the revolutionary constitutions of France were not stable, the model of government for the French during the nineteenth century was in fact the British parliamentary system, as it was in Italy and other countries. It is of course obvious that American experience with representative bodies goes back to the British, not directly, however, but through the institution of colonial assemblies which became the legislatures of the independent American states. That constitutionalism might emerge from the historic representative bodies was demonstrated by the British Parliament. It is this fact of limited government which has made that body the model of Western democracies. If it were not for the medieval experience with representation, it is probable that the development of democracy would have been checked for an indefinite period, just as it has been unable to take root in countries where traditions have been against self-government, as in the Orient, in the Near East, and in Latin America. It is a painful fact that there have been more failures in attempts to establish representative government than there have been successes. The more mature social heritage of the peoples of Western Europe, at least in political matters, has enabled the difficult balance of political democracy to remain for a considerable period without fatal disturbance.

The British Parliament. The origin of the British system of representation is, therefore, of great interest to students of democracy, for modern republican government was compounded by engrafting upon direct democracy the principle of representation. This combina-

[1] For the development of the concept of constitutionalism, see C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932); also *The High Court of Parliament and Its Supremacy* (New Haven, 1910).

tion was made possible by British political experience. The older theories of the origin of British representative institutions trace Parliament back to Anglo-Saxon primitive political organization, and from this into primitive Germany and the practices of Teutonic freemen. Recent scholarship has shown that this is an idealization of the history of modern liberty. The records which throw light on the origin of Parliament indicate that the historical continuity which such theories assert becomes shadow and fiction in the early Middle Ages. Henry Jones Ford in his brilliant study, *Representative Government*, contends that such government burgeoned as a bud of monarchy; that it developed first in England, not because the people were freer there, but because monarchy was stronger there than elsewhere; and that in making its start it took its mode and form from the church.[1]

> That representative government should get its original from the church, was as inevitable a consequence of the situation that then existed as that documents should be drawn up by people who can write. The apparatus of government was in the main supplied by the church, Crown authority supplying little more than its power. Kings were always trying to commandeer the offices of the church, with considerable support for their claims in the nature of the feudal system. . . . The church gave form to a constitutional purpose, excited by the events of English history during this period, and it was well able to do so, since in its own organization the principle of election had been introduced and systematized.[2]

Ford sees in the growth of federalized monasticism, and particularly in the Dominican order, the original model used by the British monarchs.[3]

The Middle Ages made a second type of contribution to the idea of representation, and it centers again in the church. Roman law did not develop the idea of the private corporation as far as it developed the

[1] H. J. Ford, *Representative Government* (New York, 1924), p. 88. See also Charles A. Beard, "The Teutonic Origins of Representative Government," *The American Political Science Review*, XXVI (1932), 28–44; Charles A. Beard and John D. Lewis, "*Representative Government in Evolution*," *ibid.*, XXVI (1932), 223–240.

[2] Ford, *op. cit.*, pp. 103–104. By permission of Henry Holt and Company, publishers. Ernest Barker, *The Dominican Order and Convocation; A Study of the Growth of Representation in the Church* (Oxford, 1913).

[3] Ford, *op. cit.*, pp. 109–111. Ford cites, p. 104, a letter of Professor Freeman, the champion of the Teutonic theory, written in 1854 in the following words: "The development of temporal institutions in Europe was very much influenced by ecclesiastical ones, and I cannot help fancying that you will find something like a real representative system in ecclesiastical assemblies earlier than in civil ones." See W. R. Stephens, *Life and Letters of Edward A. Freeman* (London, 1895), Vol. I, p. 168.

theory of the public corporation, such as the municipality or the treasury.[1] The development of canon law in the Middle Ages brought about the application of the theory of the fictitious personality to church corporations.[2] Now it is in connection with the religious corporation that ideas of representation first took firm root. The fact that the church of a particular locality or a religious order continued to hold its property in perpetuity despite the death of particular members fostered the notion of legal personality. But in the monastic orders of the church, when they were viewed as legal persons, it became customary that certain individuals selected for the purpose should act for the total body. The selection of representatives from particular units to meet with representatives from other units grew into a permanent practice in the church corporations. As Gierke has shown, the idea of the corporation in the Middle Ages is not to be underestimated, and it comes into British law through canon and Roman law. Thus we can see the influence of the corporate idea in the selection of the early representatives to Parliament from the boroughs or royally incorporated places.[3] But, as has been shown by Ford, the model for the development of the British Parliament came from the constitution of representation in the religious orders, particularly the Dominican.

In any case, by the close of the Middle Ages the British Parliament had taken shape. In this period it was not democratic in any sense of the word.[4] It remained for centuries the exponent of the dominant classes and corporate groups in the state, *i.e.*, the boroughs. In its evolution it came nearer to the territorial principle, especially with the rising power of the House of Commons. The stage was set after the struggle with the Stuarts for the conversion of Parliament into the depository of constitutionalism, and from this into the instrument of political democracy.

[1] See Max Radin, *Handbook of Roman Law* (St. Paul, 1927), p. 266.

[2] See Otto von Gierke, *Political Theories of the Middle Age*, tr. by F. W. Maitland, (London, 1900), *passim*. But see R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V. *Cf* John G. Heinberg, "Theories of Majority Rule," *The American Political Science Review*, XXVI (1932), 452 *ff*. See Gierke, *Das deutsche Genossenschaftsrecht*, 4 vols. (Berlin, 1868–1913).

[3] See Krabbe, *The Modern Idea of the State*, tr. and introduction by Sabine and Shepard (New York, 1922), p. xvii. See also W. J. Shepard, "The Theory of the Nature of the Suffrage," *Proceedings of the American Political Science Association*, IX (1913), 112.

[4] E. L. Godkin, *Unforeseen Tendencies of Democracy* (Boston, 1898), pp. 100–101, sees the strength of the Roman Senate and the British Parliament in their veto and advisory powers and in their avoidance of the initiative in legislation.

The Nation-state Democracy. Until the formation of the Constitution of the United States it was believed impossible for popular government to exist in large areas. Republican government, while it is government by consent, is, according to the authors of *The Federalist*, representative government.[1] With the practical extinction of direct popular governments (the eighteenth century and earlier idea of democracy), democracy came to mean republican government in the eighteenth century sense. According to Madison:

> The error which limits republican government to a narrow district, has been unfolded and refuted in preceding papers. I remark here only, that it seems to owe its rise and prevalence chiefly to the confounding of a republic with a democracy, applying to the former reasonings drawn from the nature of the latter. The true distinction between these forms was also adverted to on a former occasion. It is, that in a democracy, the people meet and exercise the government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy, consequently, will be confined to a small spot. A republic may be extended over a larger region. . . .
>
> Such a fallacy may have been the less perceived, as most of the popular governments of antiquity were of the democratic species; and even in modern Europe, to which we owe the great principle of representation, no example is seen of a government wholly popular, and founded, at the same time, wholly on that principle. If Europe has the merit of discovering this great mechanical power in government, by the simple agency of which, the will of the largest political body may be concentrated, and its force directed to any object, which the public good requires, America can claim the merit of making the discovery the basis of unmixed and extensive republics.[2]

Accordingly, the natural limit of a republic is at that distance from the center which will barely permit the representatives of the public to meet together to conduct business as often as it is necessary.[3]

[1] The value of the small territory, for instance, was stressed by Montesquieu, *The Spirit of the Laws*, Bk. VIII, Ch. XVI. Confederations of small republics were a means of attaining security. *Ibid.*, Bk. IX.

Americans have felt that monarchical institutions are contrary to the republican idea of government. See Cooley, *op. cit.*, p. 64. Free government in general is regarded as popular and representative government.

[2] *The Federalist*, No. 14. Professor Lord in *The Principles of Politics* (Oxford, 1926), p. 151, has made the interesting point that Madison was distinguishing between republican and democratic government, and that he was not reconciling them as is usually assumed to be the case. Lord's point serves to buttress indirectly the contention that the framers of the Constitution were antidemocratic in spirit.

[3] Sarkar, *op. cit.*, Ch. II, Sec. I, notes that the lack of a nobility and of a royal family in the new nineteenth century American states had much to do with the spread of republican institutions. A problem which might be discussed at some

The Decline of Representative Government. While the eighteenth century did not condemn direct government, the system established in France and America did effectually stop any further developments in direct government until the movement for the initiative and referendum in Switzerland and America. Representative and constitutional government became the accepted political standard in the struggle for liberty. Popular sovereignty, except in the mountain cantons of Switzerland,[1] was thought to be realized in the choice of representatives. The only remaining stronghold of direct government was the popular acceptance or rejection of constitutions and constitutional amendments, and even in this regard not all the states of the United States provided for the constitutional referendum or popular ratification. However, the fact remains that, almost as soon as the work of the nineteenth century in extending the suffrage was completed, the volume of criticism against representative institutions began to swell.

The chronicle of American legislation has many uninspiring chapters. The corruption and the venal character of legislators, the bartering away of the obvious interests of the public, the mistakes and carelessness of legislators, the easy way in which interests have managed to get more than just recognition in the laws, and the decline in the personnel of legislatures[2] all tended to make people distrustful, if not contemptuous. The remedy was hard to find, and in some cases perhaps the remedy has been as bad as the original evil. The most obvious attack on the legislature was to deny its competence in certain fields; constitutional restrictions became prominent about the same time that manhood suffrage became the order of the day.[3] Another device was to increase the power of the governor of the state, to give him a comprehensive veto power. In regard to the administrative aspects of government, in which corruption was easy, it became a

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length is that of the second chamber or the bicameral principle in the organization of legislative bodies. The general principle in liberal states has been bicameralism, though the value of the second chamber has been under constant attack. See J. W. Garner, *Political Science and Government* (New York, 1932), 600–624, for an excellent examination of this problem. Also T. F. Moran, *The Rise and Development of the Bicameral System in America* (Johns Hopkins Studies, Vol. XIII, 1895).

[1] See James Bryce, *Modern Democracies*, Vol. I, Ch. XXIX; R. C. Brooks, *Civic Training in Switzerland* (Chicago, 1930), Ch. V.

[2] It should be remembered that in America there are more legislators in proportion to the population than in any other country. Godkin, *op. cit.*, p. 123. In this connection consult *The Autobiography of Lincoln Steffens.*

[3] See W. F. Dodd, *State Government*, 2d ed. (New York, 1928); A. N. Holcombe, *State Government in the United States* (New York, 1926).

fairly common practice to have as many officials elected as possible so that neither the legislature nor the governor could appoint venal henchmen. The power of taxation was specifically limited, the extent of public indebtedness was also specified, and legislative bodies were limited to short and infrequent sessions.[1]

Complex Equilibrium as a Solution. While England and the countries that imitated the parliamentary system of government were arriving at a fairly simple system of determining public policy and maintaining the responsibility of civil officials and members of parliament, the United States was gradually building up an increasingly complicated equilibrium or deadlock in political institutions. Because of the increase in the number of elective officials in state and municipal government, it became almost impossible to fix public responsibility. A political party might make commitments before an election, but, if it did not control all the branches of the government, aside from the judiciary, it might readily explain its failure to fulfill promises. A governor might demand a given administrative reform, but, if the administrative officials were elected by popular vote according to constitutional provision, he was unable to attain even reasonable improvement. Moreover, the system of short terms in office, designed originally to enable the people to judge the work of their representatives, prevented the representative from being in office long enough to get a program completed, and also required him to be electioneering when he should have been engaged in the study of public questions. The unwieldy system of legislative procedure, under the control of the party leaders, often made it impossible for the individual member to get a fair hearing for the interests of his constituents. An irresponsible and unofficial leadership in legislation, *i.e.*, the committee system under the direction of the speaker, merely enlarged the vicious circle of irresponsibility that had, it seemed, engulfed the American visions of effective republicanism.[2]

By the end of the nineteenth century, a hundred years of distrust of legislatures and a hundred years of failure in tinkering with constitutional provisions had evolved a traditional attitude toward legislative bodies, including also the Congress of the United States. We attained the doubtful distinction of being traditionally distrustful of the representatives elected by the sovereign people. America produced a large crop of political reformers, and, though the reformers failed in many particulars, there was for a time a revival of civic

[1] See E. M. Sait, *Democracy* (New York, 1929), pp. 32–33, for criticisms of representative government.

[2] See G. R. Brown, *The Leadership of Congress* (Indianapolis, 1922); Robert Luce, *Legislative Procedure* (Boston, 1927); *Legislative Assemblies* (Boston, 1924).

consciousness early in the twentieth century.[1] An elevation in the tone of public opinion will in itself be reflected in government. But this seemed to lead to undercutting the principles of representative government. The reforms that had led to simplification in the European sense were excluded because of the character of our permanent public opinion. Thus to the interlocking and complicated system of representative government was added the movement toward direct legislation—the initiative and the referendum on ordinary legislative proposals. As a supplement to this and as a part of the same movement came the movement for the recall of public officials.[2]

While the initiative and the referendum were the fundamental reforms, attendant changes followed. The increasing demand for the popular election of United States Senators was realized in the adoption of the Seventeenth Amendment in 1913. The direct primary, which was widely adopted, curtailed and destroyed the power of the party convention, and corrupt-practice acts attempted to control the amount of money candidates for public office might spend in their campaigns. The conservatives made what stand they could against these rising innovations so characteristic of the period immediately before the World War, but their resistance was doomed to failure.[3] These fundamental modifications of the historic principles

[1] See W. B. Munro, *The Government of American Cities*, 4th ed. (New York, 1926), pp. 431–433. This statement should be limited, perhaps, to the smaller cities. The great metropolitan areas during the first ten years of prohibition showed probably a greater amount of corruption than at the time when Bryce remarked that the government of American cities was the conspicuous failure of our democracy.

[2] See C. G. Haines and B. M. Haines, *Principles and Problems of Government* (New York, 1926), pp. 100–119; A. B. Hall, *Popular Government* (New York, 1921), Chs. VI and IX. It must be observed that the basic theory of modern direct legislation is the assessment of policy, not condemnation of public officials because of moral turpitude. See J. A. Smith, *Growth and Decadence of Constitutional Government* (New York, 1929), Ch. VI, for a discussion of the interference of the judiciary in the functioning of direct government. Sun Yat Sen in his *San Min Chu I* (Shanghai, 1927), espouses the principle of direct legislation—the people's sovereignty—to make effective the notion of democracy. The initiative, the referendum, and the recall are to work in nationalist China along with the five-power constitution—the legislative, executive, judicial, examination, and censorship powers. Under this system there is supposed to be a clear distinction between the power of the public and the authority of the government.

[3] The conservatives regarded the Seventeenth Amendment as destroying one of the basic principles in the national system of representative government—the indirect election of Senators. Direct legislation by popular vote was regarded by them as destroying entirely representative and republican government. C. E. Merriam, *American Political Ideas*, 1865–1917 (New York, 1920), pp. 114 *ff.*, 123 *ff.*

of representative government set up additional machinery, and certainly the process of government could not be any simpler because of their adoption. The attempt to bring government home to the electorate was met with an increasingly lethargic electorate, and the problem of nonvoting has become, accordingly, increasingly difficult for the democratic enthusiast to accept. The elected representatives now faced not only the restrictions in the constitution of the state or the city charter and the possibility that his work would be undone by the judiciary in the review of legislation, but also the chance that direct popular action would disapprove it. The representative of the people would realize also that he was a member of the party and was often bound by an unattainable party platform, either state or national. Within the legislature itself he was likewise relatively helpless, since his intentions might be frustrated by the impersonal control of legislative machinery.

Autonomy and Decentralization as a Solution. The revaluation of representative government after 1900 seems to have led to a reversion to modified direct government, rather than to the reorganization of government which would simplify and centralize the responsibility of the representative. Such a tendency has not been restricted to America. Other countries also have felt the defects of representative government, *i.e.*, its unrepresentative character, and political practice and agitation have tended to undermine the concentration of representative responsibility. This critical feeling has become clear where the multi-party system prevents stability in parliamentary government and where it has enabled party leaders to plead their inability to attain the ends promised in preelection campaigns. The failure of concentrated political representation in France is seen in the movement for regionalism and generally increased local autonomy. The Parisian bureaucracy and its agents in the departments, having formed the habit of looking to the national capital rather than to the needs of the locality, brought upon the French system the criticism of being unrepresentative of the country at large.[1]

In Great Britain the concentrated responsibility of the national representatives has been undermined by two developments. First, the cabinet members, or higher party leaders chosen to conduct the government, loom larger and larger in the public mind as the real representatives of the people in place of the members of the House of Commons. The practice of dissolving the House and "going to the country" on important issues has tended to develop the latent power

[1] See Garner, *op. cit.*, p. 416, and literature cited.

of dissolution in the British constitution. If issues are taken to the people instead of being fought out in Parliament, the members of Parliament can plead popular action to avoid their own responsibility in the House.[1] The increase in cabinet prestige and in responsibility is a result of the practice of going to the country, and this trend can have no other effect than to reduce the significance of the individual representative.

A second factor in the British situation is a movement for devolution of political authority in order to cut down the exaggerated importance of the Parliament at Westminster. It has been suggested that territorial devolution be established in the greater political autonomy of Wales, Scotland, and Northern Ireland. A second type of devolution, which may be contrasted with the territorial, is functional, which would provide for representative bodies with specialized functions. The former German National Economic Council might be duplicated in Britain should functional devolution gain headway. Devolution implies a territorial and functional federalism, and it is curious that the reaction of unitary states such as France and Britain to centralization is a belief in decentralization, while in federal governments it has been toward greater centralization.

The process of centralization in federal states has, of course, weakened the position of representatives in the local units, *i.e.*, the provinces or states. The generalization is often made that the inevitable tendency of federal governments is toward centralization.[2] Economic life particularly has become centralized in the United States owing to the increasing significance of national economic organization. If economics is the final substance of politics, federalism is in itself an idle dream. With the present-day gigantic combinations, the theory of economic federalism seems futile. The integration of world economic life is a further indication that economic federalism is impossible. Normally speaking, this concentration in federal governments should increase the importance of national representatives, but the prestige of members of Congress seems to have suffered in the United States. The more popular body, the House of Representatives, has lost in significance constantly to both the President and the Senate, while both the President and the Senate have been losing to great administrative units, such as the Interstate Commerce Commission, the Federal Trade Commission, and others, and to the

[1] See F. A. Ogg, *English Government and Politics* (New York, 1929).

[2] See in general Walter Thompson, *Federal Centralization* (New York, 1923); H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922).

absorption of economic principles in judicial decisions because of the final control in social legislation vested in the Supreme Court.[1]

In all modern states there has been a loss of power on the part of representatives to administrative agents, and in countries with judicial review they have lost again to the judiciary. In the next chapter we shall discuss some of the problems of democratic government in connection with the rise of "the administrative state," but at present we need note only that administrative discretion has not enhanced the position of representatives. Not that the representatives could have prevented this, for it seems that many of the technical problems of government are unsuited to detailed legislative treatment; the representatives have surrendered their historic functions to the appointive administrative agent in sheer despair of achieving anything constructive in the halls and committee rooms of legislative bodies. The increase in administrative power and discretion can mean only a decline in the significance of legislation, and in the United States, where many of the ordinary principles of legislation are incorporated into constitutions, the decline must be greater than in countries where there is no judicial review. It may be, in short, that the eighteenth century theory of representative government should not be preserved.[2]

What Does the Representative Represent? The exponents of representative government have never been able to answer this question. Different theories have made their appearance, but in fact and practice a number of answers have been given. The answer which would give the greatest vigor and effectiveness to representative government is that the representative should represent his own opinion on public issues and should accept a personal responsibility at election time. The advantages of this would be that competing attitudes would have unambiguous leadership. The public would then have a definite choice of leaders and mobilization of public support would probably

[1] Alfred Leif, editor, *The Dissenting Opinions of Mr. Justice Holmes* (New York, 1929), which in general supports the right of state public opinion to regulate under the police power. Holmes believed in the exclusion of social and economic philosophy from the decisions of the court. See particularly his minority opinion in Lochner *v.* New York, 198 U. S. 45 (1905).

[2] See Coker, *op. cit.*, pp. 518–519, for a select bibliography on autonomous and advisory groups.

See *The American Political Science Review*, XXIV (1930), 1050, for the suggestion that the presidential system offers some opportunity for functional representation in the admission of the lay element to commissions of investigation. In fact, it may be that greater opportunity is presented in the presidential system than in the parliamentary system.

be more rational and more effective in directing government.[1] Only courageous political leadership is willing to stake its career on a judgment as to the good of the state, and only such leaders could be trusted without constitutional and judicial limitations. Sometimes political leaders state their convictions in a positive way on the assumption that public opinion will be stabilized for the length of a political career in favor of a particular type of legislation; should public sentiment change sooner than expected, the politician may be compelled to stand by his views whether or not he wishes to do so. Owing to the controlling force of seniority in American legislative bodies, it is important that members be allowed to serve for several terms, but the electorate may have the choice between policy and the advantages to be secured by legislative seniority.[2]

An alternative is that the representative reflects the effective majority sentiment of his constituency. This has the advantage for the representative of enabling him to serve a longer period of time. His subservience to local sentiment, which theoretically may be justified from the democratic point of view, gets votes. The chief object of the representative of a district is to keep his constituents satisfied with spoil, and to do this in a legislative atmosphere where other representatives are doing the same thing is easy if one resorts to the process of trading support. The obvious defect of such a system of representation is that national interests are neglected, and the advancement of the peculiar interests of one section may in the long run be detrimental to the best interests of the other regions of a state. The choice of representatives by popular vote is inherently weak in this respect, for, while the representative by his contact with government may know the broader interests of the country, he is not permitted to foster and support those interests because of the narrower and more inexperienced point of view of the voters in his district. It is likewise a defect of federalism that the autonomy of the local units may result in the adoption of policies that are short-sighted. The constant tendency in the economic life of federal states towards centralization may be an accurate reflection of the necessity of national treatment of significant matters of policy. The result is that local representatives are rendered incapable of urging local claims to the detriment of broader interests. Experience with representative government indicates that representatives have been generally too greatly influenced by the petty claims of their constituents.

[1] Lippmann's idea in *The Phantom Public* that the public aligns itself behind competing leadership involves this conception of representation.

[2] See the works of Brown and Luce cited above.

A third interpretation of representation is that the legislator is an exponent of the general will of the political community. The fundamental question is, of course, whether there is such an element in the state as the general will. The idealization of harmony in the state in terms of the general will, which is wholly distinct from the will of individual members of the state, was associated in the mind of Rousseau with direct democracy. The modern defenders of the general will have attempted to see in representative institutions a means of expressing the general will of the state.[1] Modern idealism is forced to take this position, and undoubtedly, if the assumption of a general will can be granted, the only adequate or effective statement of it must come through the organized machinery of the constitutional state. A body of representatives which is concerned with the permanent and continuous interests of the state, which is not afflicted with the diseases of representative government, and which has the ability to deal intelligently with the problems of government, would indeed approach a unified expression of the community interests that keep the state in existence.

Professor Lord says:

> We may take the term "General Will" as the most general formula for the spiritual essence of the State. In less advanced communities this may find expression through a monarchy, or an aristocracy of birth, or through an oligarchy. It is the condition of the permanence of any State, and stands in the cruder types of policy for little more than the general acquiescence of the mass of the society in the arrangements and administration provided by the rulers. But, as we have already seen, it grows and gains by conscious expression, and therefore in the higher types of State it involves such participation on the part of the citizens as may be denoted by the terms "Popular Sovereignty" or Democracy in the wider sense. In such higher forms of policy there is more than simple acquiescence. The will which is the basis of the State has become more active and more definite and determinate: it claims more than passive obedience or passive resistance. . . . But of this there may be many degrees, which may be distinguished according as they tend *either* toward Indirect Popular Sovereignty and Representative Democracy, in which the People is a control rather than an active government; *or* towards Direct

[1] See T. H. Green, *Principles of Political Obligation*, *Works*, Vol. II. Lord, *op. cit.*, p. 170, says: "There are two principal conceptions of the essential nature of the representative. According to one he is a senator; according to the other he is an agent or delegate. The former theory holds that he is elected for his superior wisdom or integrity or both, the election signifying that the constituency desires to entrust its affairs and those of the nation to the direction and management of his superior mind." By permission of the Clarendon Press.

and Active Popular Sovereignty, that is to say, Popular Government or Democracy in the narrow sense.[1]

In any case, the representative represents the people. We may consider the people either in an individualistic or a collective sense. The latter emphasis, when connected with the general will, results in an ethical interpretation of the state and a view of the people primarily as a community. The former view reverts historically to the eighteenth century atomic theory of society in which society was viewed as so many individuals. Undoubtedly there should be in the state a harmony of the permanent and vital interests that touch the deeper wells of human aspiration or spiritual life. Whether there is unity in the needs of the moral life, and whether there is any real harmony underlying the actual struggles of politics, is a matter of doubt. There must be fundamental agreements that continue through the history of the state if it is to exist, but any descent from the broader regions of agreement to the specific problems of politics involves actual political struggle and the continuation of the people as a community in terms of a balance of interests. From a realistic viewpoint, the representative is constantly ground between conflicting determinations of individuals of power and groups of power, and it may be more than an incidental disease of representative institutions if the representative fails to perceive clearly the substance of a general will; it may be that the people do not actually have a general will. The general-will theory is on safest ground when it sees the permanent unity of the state in terms of the nation-state; this may involve language or religion, but would certainly involve common history, tradition, territory, and often race. But in the arena of actual struggle over purposes and means, the general will is to be found, if at all, only in scattered fragments.[2]

The Representative System. The crossing of purpose in representative government is to be seen in the many changes in the actual system of representation. The fundamental basis of representation in Western democracy is the territorial unit. A theory of equality leads

[1] Lord, *op. cit.*, pp. 153–154. By permission of the Clarendon Press. Norman Wilde, a recent exponent of a modified political idealism, has said: "Only too often it seems as if it were mere geographical area that he (the representative) represented, rather than men in their living interests; or, as some one has said, it is men in their sleep who are represented, rather than men in their waking activities." *The Ethical Basis of the State* (Princeton, 1924), p. 174.

[2] Lord, *op. cit.*, pp. 179 *ff.* From a juristic point of view, the people, in choosing representatives, may be regarded as a state organization. Jellinek, *op. cit.*, pp. 586–587.

to an equal evaluation of political wills; when government is a problem in counting noses or tabulating wills, all wills are likely to be given an equal weight. The systems of weighted or plural voting, once common in England and Belgium, are fundamentally out of harmony with the equal territorial basis of representation. People are given representation by the simple device of establishing a representative district, and under the American and British system one member comes from a district or a constituency. The effect of this is to focus the attention of the representative on the narrower pressures of politics which may result in the immediate gain or loss of votes. The tendency in other countries, as in France and Belgium, has been, under the pressure of party leadership, to try larger electoral circumscriptions, and in many cases to use proportional representation in order to give the minority some chance of electing members of the legislative body. While an act of Congress of 1911 requires that members of Congress in the United States shall come from districts composed of contiguous and compact territory with approximately equal population,[1] the increase in population and the fact that membership in Congress is not being increased by successive reapportionments have in fact broadened and dislocated the basis of representation. French experience has not, however, shown clearly the advantage of either small single-member or large multiple-member districts. Both systems have been tried, and recently the French parliament passed an act reestablishing the single-member district. Perhaps the unhappy efficiency of proportional representation in maintaining the large number of parties found in the Chamber of Deputies has had as much to do with the change as the evil of short-sighted representatives.

The most difficult of problems in modern representation is whether the territorial-population system is adequate to meet the modern social and economic questions of politics. A different way of stating the problem is to ask whether the present system can, with the aid of informal or direct representation of interests, solve the problems of government without additional machinery providing for functional or occupational representation.[2] It is a fact not to be denied that participation in government by economic interests is often most effective through legislative committees and the arguments of experts before administrative commissions. We have already seen how this type of participation, and therefore, this type of representation, avoids the indirect and roundabout machinery of democracy which functions through the party system and the active electorate. If additional

[1] United States Code, Title 2, Sec. 3.

[2] *Cf.* Esmein, *op. cit.*, Vol. I, pp. 333 *ff.*

channels of representation can be provided by the unwritten constitution without endangering the balance of interests and the general welfare, it is probable that suggestions of reform are unnecessary.[1]

The National Industrial Conference Board speaks in the following words:

> It is essential, in a democracy, that participation in public affairs be not confined to the mere exercise of the suffrage in the selection of public officials. The interests of citizenship, however diverse and conflicting, must be constantly impressed upon the governmental authorities, if political processes are to be representative in action as well as in form. For effective participation in government, it is necessary that the demands of all legitimate interests be definitely articulated and responsibly represented. This means organization. In economic matters it opens up a fruitful field of activity for trade associations.[2]

Thus the political interests of the trade group in the United States demand, in the estimation of business leaders, a direct and responsible approach to government. The chief effort of trade associations is concentrated upon legislation; it has as its end the avoidance of unfavorable legislation, *i.e.*, the prevention of its passage and the securing of legislation that will encourage the development of business interests. Tariff legislation, transportation laws, labor enactments, taxation, and the regulation of business practices naturally constitute the largest fields of concern for the legislative committee of the trade association.[3] The ability of the larger economic groups to assemble data and provide expert counsel for legislative committees in Congress or in state legislatures has secured the greatest result in influencing legislation, and this may be due to the fact that, while the data and the expert advice provided are biased and interested, they are yet not unintelligent and are often the best guidance available to the legislative

[1] *Cf.* W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), p. 156, for a discussion of the various groups that have great influence on the conduct of American government. This may be an attack on the unity of the state, but it may be regarded more properly as the strains and stresses endured because of an archaic system of representation.

Cf. L. L. Lorwin, "A Federal Economic Council," *The New Republic* (April 29, 1931), in which he discusses the economic planning of France and Germany and offers suggestions for an American Economic Council. See the works of G. D. H. Cole for the suggestions of a guild socialist.

[2] "Trade Associations, Their Economic Significance and Legal Status," *National Industrial Conference Board* (New York, 1925), pp. 289–290. By permission of the National Industrial Conference Board. *Cf.* Elliott, *op. cit.*, pp. 211–212, 220.

[3] *Ibid.*, p. 290; see p. 292 for specific examples. Consult also W. B. Graves, editor, *Readings in Public Opinion* (New York, 1928), Chs. XVII, XVIII, XIX.

committee dealing with proposed legislation. Should legislative reference bureaus staffed with experts capable of giving similar information to members of the legislature be established, the representative power of the economic lobby might be weakened.[1]

One phase of representative government not often commented upon is the representative capacity of the economic group before the administrative commission or board. The administrative commission is generally a body of experts who are chosen to carry out policies of general legislation. Owing to the technical character of many modern problems of government, Anglo-American legislative bodies have been forced closer and closer to the continental legislative practice in which the parliament enacts only the broad principles and leaves the functional aspect of policy to executive or administrative ordinance and fact determination. The American theory of little or no legislative and judicial discretion vested in executive and administrative officials has broken down, and in many cases the great administrative commissions of the national governments of Great Britain and America are virtually miniature parliaments in themselves. Representative government in the orthodox sense cannot be applied to the personal government of experts, and the direct contact with the state of interested groups is the only way in which to attain representation.

In connection with this development of government, the National Industrial Conference Board declares:

> The growth of the administrative branches of government, both state and national, has greatly augmented the opportunities for effective activity by trade associations in their representative capacity. Such bodies as the Interstate Commerce Commission, the Federal Trade Commission, the Tariff Commission, and the Bureau of Internal Revenue, to mention only some of the more important federal agencies, prescribe rules and regulations . . . which are frequently as significant for entire trades or industries as acts of Congress. . . . Constant contact with these agencies, therefore, is but a means of supplementing the legislative efforts of trade associations in matters of traffic and transportation, trade practice, import duties, and taxation.[2]

[1] See Hocking, *op. cit.*, p. 122: "Judicature is applied legislation: legislation in turn is prospective judicature. Hence the parties that *ought to be represented* in legislatures (and which in their absence legislators try to imagine) are the parties that are later to appear in court as testing the statute—not the individuals, but the spokesmen of their interests. The state is concerned at each turn not with the abstract resident, but with the interested and occupied self, and this, generally speaking, a group self."

[2] *Ibid.*, p. 293. This publication also cites the practice of trade associations of passing resolutions which, because of the expert knowledge behind them, constitute an additional step in the representative function of economic interests in

The Conflict over Reapportionment. In a complicated and delicately balanced industrial society there can be little objection on principle to admitting the right of interests more profoundly affected by economic legislation to additional means of representation. It is probable that the historic ideas of representative government cannot be made to serve the economic life of society. Conflicts on social standards and on constitutional morality, however, involve other considerations. One of the conflicts of standards which has existed in America from the earliest times is that between urban and rural life. The historic drift of population has been to the city, and this tendency, accelerated by the development of large-scale production, has created what may be called urban, as contrasted with rural, standards. When this situation is equated with the historic theory of representation, that of representation by population-territorial areas, the problem of the reapportionment of representation becomes acute. The urban areas have never been given their proper representation, since the control of legislatures has been held by the rural majorities. These majorities have been unwilling to surrender their place of predominance, and in general a straightforward concession to the urban areas has not been attained.

The Constitution of the United States and the constitutions of the several states provide that representation shall be reapportioned after each decennial census. Because the areas that have had excessive representation in the past are not willing to give up their seats, the unrepresented population areas have been unable to compel reapportionment without compromise. In state legislatures a compromise has sometimes been effected between different parts of the state by giving control of one branch of the legislature to country interests and control of the other branch to the cities.[1] Up to 1912 Congress was

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the state (p. 295). By permission of the National Industrial Conference Board. E. P. Herring, "Special Interests and the Interstate Commerce Commission," *The American Political Science Review*, XXVII (1933), 738 *ff.*, 899 *ff.*

In discussing group representation, it is often forgotten that the people of a territory may constitute a group interest on certain points. On this ground the territorial principle of representation may be defended, but it may likewise be asserted that the territorial representative is more likely to give adequate expression to the historic and traditional ideas and values of a people, since he is chosen without ostensible group affiliation. Wilde opposes functional representation because of the partiality of the representative who must fail to see the whole. Oppositions are accentuated in functional representation, whereas they may become blended in a local community. *Op. cit.*, pp. 178 *ff.*

[1] One distinct advantage of the initiative and referendum is that by petition the unrepresented city districts may force the submission of a reapportionment measure, which, of course, will be adopted if there is a straight majority fight.

reapportioned on the basis of the census by increase in the membership of the House, but by 1920 it was felt that the membership of 435 could not be increased. The census of 1920 will never be reflected in the distribution of seats, and the reapportionment act of 1929 brought about the distribution of the seats on the basis of the 1930 census.

The struggles over reapportionment seem to indicate that historic notions of the population-territorial representation district are passing, and that some recognition of functional or interest representation is being established in the unwritten constitution. It is certainly unfair for country districts to attempt by general legislation to impose on the city social standards that are not acceptable, for this can result only in the nullification of statutes in urban districts. While "selective" law enforcement may be the true interpretation of the urban reaction to rural legislative dictatorship, the situation is generally unsatisfactory. In historic principle the solution is, of course, to follow out rigidly the concept of representative government as it was developed in the latter part of the eighteenth and the early nineteenth century. In practically every state in the United States there are some regulations of conduct which are not enforced in urban regions but which were enacted by the majority of a legislature in which the urban districts did not have an adequate representation. The homogeneous social standards of the rural districts cannot be successfully enforced in the welter of conflict present in the city simply because of the different social structure of urban society.[1]

The Representation of the Minority. The orthodox system of representation makes no provision for minorities. If elections determined in all cases matters of vital importance to the political community, it is certain that the minority would not wait until the next election to attempt to preserve the social principles to which they adhere. But because constitutional government preserves the most important principles of the protection of life, liberty, and property, regardless of the outcome of elections, the minority can generally laugh and accept good-naturedly the results of elections. Political tradition, the stability of the legal system, and the provisions of the written and unwritten constitutions all go toward giving satisfaction to the minority despite the fact that they have lost an election. The

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Reapportionment was successfully attained on this basis in 1930 in the state of Washington.

Cf. John C. Calhoun, *Works*, ed. by R. K. Cralle (New York, 1888), Vol. I., pp. 402 *ff.*, for the South Carolina compromise of 1807.

[1] See H. J. Thompson, *Urbanization, Its Effects on Government and Society* (New York, 1927).

essential balance of the state is not disturbed by elections in America, and the same result is generally attained even in parliamentary countries where the control of the written constitution is actually in the hands of the elected representatives. The tyranny of the majority appears in dogmatic social legislation, and in America most clearly in the nineteenth century development of state and national police power.[1] But as long as legislation adequately reflects the general social standards of the community, there is no great danger that the enactments of the majority will be tyrannical to the extent of forcing the minority into open resistance to a particular law or to the general principles of order embodied in constitutional government.

Some form of minority representation has been agitated constantly, however, since the beginning of nineteenth century democracy. In Anglo-American democracy the Hare system of proportional representation has been given considerable attention. Thomas Hare published his *Treatise on the Election of Representatives* in 1859, and John Stuart Mill in his *Considerations on Representative Government* supported his position. In Chapter VII of Mill's work we read in defense of minority representation the following:

> . . . the majority of the people, through their representatives, will outvote and prevail over the minority and their representatives. But does it follow that the minority should have no representatives at all? Because the majority ought to prevail over the minority, must the majority have all the votes, the minority none? Is it necessary that the minority should not even be heard? Nothing but habit and old association can reconcile any reasonable being to this needless injustice. In a really equal democracy, every or any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives, but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege: one part of the people rule over the rest: there is a part whose fair and equal share of influence in the representation is withheld from them, contrary to all just government, but, above all, contrary to the principle of democracy, which professes equality at its very root and foundation.

Proportional representation according to the Hare system, or the single transferable vote, has been tried with success in some American cities and it has been successfully attacked in other instances before

[1] Cooley, *op. cit.; The Dissenting Opinions of Mr. Justice Holmes.* See J. S. Mill, *On Liberty*, for a powerful statement of the dangers to be expected from a public opinion acting by majority vote.

the courts on the ground of unconstitutionality.[1] But it is on the European Continent, aside from Great Britain, that proportional representation has been given its fullest trial. The system used, however, is some form of the list or party system, which is very different from the Hare system. While the single-member district may give minority views some representation in fact if the district majority is a national minority, the idea of proportional representation requires that the electoral district have more than one or two candidates; the system can then provide at least the opportunity for minorities to elect a portion of the representatives. In the presidential system proportional representation cannot affect the stability of the executive once he is elected, but in the parliamentary system proportional representation fosters and develops the multi-party system, and is instrumental in creating a situation in which the cabinet must represent a coalition of parties. Stability is really out of the question when the executive is composed of different and conflicting political parties.[2] One of the fundamental reasons for the abolition in 1927 of the partial system of proportional representation in France is that it made the executive more unstable by securing representation in parliament for a number of small parties which otherwise would not have been able to control so many seats. Representation must be as fair and equal as possible, but, if experience shows that the system destroys the efficiency and stability of government, or if experience shows that no essential results are obtained from the use of the system, then it is probable that the reform is really injurious.[3]

Representation and the Organization of Government. Ever since the time of Polybius and Cicero the mechanical organization of government has been considered an important problem. The tradition of the separation of powers and the check-and-balance system, which goes back to the greatness of the Roman constitution, especially through the views of these two thinkers, emphasized the fundamental importance of a proper organization of government. The Roman tradition of the balanced constitution comes to American thought

[1] See William Anderson, *American City Government* (New York, 1925), pp. 247–250, 357–364; H. L. McBain, "Proportional Representation in American Cities," *Political Science Quarterly*, XXXVII (1922), 281 *ff.*; J. P. Harris, "The Practical Workings of Proportional Representation in the United States and Canada," *National Municipal Review*, XIX (1930), 337–393; R. C. Brooks, *Political Parties and Electoral Problems*, 3d ed. (New York, 1933), pp. 484 *ff.*, and literature cited.

[2] See Garner, *op. cit.*, pp. 651 *ff.*

[3] Ford, *op. cit.*, pp. 171 *ff.* For a vigorous and largely effective criticism of the principle of proportional representation, see Esmein, *op. cit.*, Vol. I, pp. 348 *ff.*

through Montesquieu, who in part is the intellectual child of Polybius. The authors of *The Federalist* clarified the importance of the organization of government and the significance of good administration in good government.[1] Democracy has become a political force in Western countries largely on the faith that good organization will produce good government. Considering the problem of representative government, is representative government defective merely because the representatives are unfit? Is it to be made effective by getting better men in office and excluding the unfit? John Stuart Mill and Henry Jones Ford, who continued Mill's work in his *Representative Government*, have insisted, almost to the point of conclusiveness, on the proper organization of representative government as one of the conditions of its success. Perhaps water cannot rise higher than its source, but not all systems of representative government rise to the height of the source.

Naturally, representative government cannot be organized in a political community in which the people have no desire for self-government or in which public opinion is responsive only to the deeper norms of ignorance and superstition.[2] It has been suggested of American democracy that the attempted reforms of representative government have accentuated evils rather than cured them. The whole principle has been undermined, and clear-cut responsibility, which is essential for representative success, has been made impossible by twentieth century American innovations in curing the evils of democracy by more democracy. As Ford has shown, "No real improvement can be obtained through change of persons without change of system."[3]

Mill laid down the general social conditions that must be fulfilled before representative government can be attained. He says:

> . . . representative like other government must be unsuitable in any case in which it cannot permanently subsist—*i.e.*, in which it does not fulfill the three fundamental conditions enumerated. . . . These were: 1. That the people should be willing to receive it. 2. That they should be willing and able to do what is necessary for its preservation. 3. That they should be willing and able to fulfill the duties and discharge the functions which it imposes on them.[4]

But the clearest modern statement of the governmental requirements of successful representative government is found in Ford's *Representative Government*.[5] These requirements are:

[1] *The Federalist* (Hamilton) No. 68.
[2] Mill, *op. cit.*, Ch. I.
[3] Ford, *op. cit.*, p. 157.
[4] Mill, *op. cit.*, Ch. IV.
[5] Ford, *op. cit.*, p. 158. By permission of Henry Holt & Company.

1. That the people shall be free to choose whom they will to represent them. 2. That the representative assembly shall be face to face with the administration. 3. That the representatives shall be so circumscribed that they can use their authority only on public account. 4. That elections shall be confined to the choice of representatives.[1] 5. That the supervision and control of the representative assembly shall extend over the whole field of government.[1]

The simplification of the task of the electorate is thus a key problem of successful representative government. This simplification has two distinct angles. In the first place, the mechanical efforts of the electorate must not be great. There must not be too many elections, and the elections that are held must count. The short-ballot principle is essential, and only those officials whose importance and policy-determining power are considerable should actually be elected. In the second place, the responsibility of the elected representatives must be concentrated. Governmental responsibility must converge upon them, and their power to direct the administrative policy and personnel must not be subject to question. The whole field of government must come under the direction of the few officials actually elected by the voters. Whether or not the recall of representatives of the people should be provided for may be a matter of dispute, but the practice of direct legislation, when there are adequate constitutional guarantees, saps the foundation of simplicity and responsibility inherently necessary to successful representative government.[2]

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[1] These two points obviously rule out direct legislation, *i.e.*, the initiative and the referendum, as weakening the responsibility of the representative. A far stronger case can be made out under Ford's principles for the recall than for direct legislation.

[2] It should be remembered that the objection to direct legislation based on Ford's principles must be viewed in connection with a total attitude on representative government. Merely to abolish direct legislation is of little value if the complex equilibrium of the present system of government is maintained. In other words, assuming the present complexity, direct legislation may be a means of cutting the Gordian knot when other devices fail.

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Chapter XV

DEMOCRACY AND ADMINISTRATION

> Very well, then, as an overseer understands the nature of the soil and a steward knows how to write, but as both of them turn away from the delight in knowledge to the performance of useful tasks, so our governor . . . will not permit his duties as a jurisconsult, his researches, and his writings to prevent him from being . . . the steward of the Commonwealth and in some sense its overseer.—Cicero.[1]

The Significance of Administration. If governments of law exist in fact, they must nevertheless be governments by men. The roots of democracy are found in a period when administration was not thought to be so important as legislation, the total repository of governmental discretion. While the theory of democratic constitutionalism has remained almost stationary, and while it still serves the democratic state in important respects, the difficulties of the administrative side of government have developed out of the objective facts of political society. The functions of the democratic state have been increasing in a cumulative fashion, almost in geometrical progression, and at the same time the cost of government *per capita* has increased, especially in municipalities. As Professor Munro points out, the law of diminishing costs *per capita* does not apply in municipal government.[2] The administration of the increased functions of the state and the honest and efficient management of the huge funds raised by taxation and other sources of governmental revenue have, in the minds of some, brought the real meaning of the state down to the facts of administrative life. In the small rural community, or in the urban community that performed only those functions customary in the latter part of the eighteenth century, conventional democratic theory was perhaps adequate. But in the impersonal, scientific, administrative, and efficient state, the question of the value of democratic dogma must be seriously raised. To the student of government devoting his time to administrative problems, questions of political and legal theory, the historic doctrines of the constitutional state, and speculation as to the

[1] *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), p. 245. By permission of The Ohio State University Press.

[2] W. B. Munro, *The Government of American Cities*, 4th ed. (New York, 1926), p. 409.

ends or purposes of the state seem artificial and unconnected with reality.

What Is Administration? Public administration represents a growth in the field of government; administration involves all the possible types of governmental activity, and the fact is that public administration, while being added to the executive as a part of its business, involves a fusion of powers rather than a separation of them.[1] Public administration is the management of men and materials in the accomplishment of the purposes of the state. The process of public administration involves an essential unity, whether it is observed in national, state, or local government. While it may be advisable for purposes of specific treatment to stratify administration, the modern tendency is to insist on the unified and integrated character of the process in whatever level of government. White says:

> Public administration is, then, the execution of the public business; the goal of administrative activity, the most expeditious, economical, and complete achievement of the public programs. This obviously is not the sole objective of the state as an organized unit; the protection of private rights, the development of civic capacity and the sense of civic responsibility, the due recognition of the manifold phases of public opinion, the maintenance of order, the provision of a national minimum of welfare, all bespeak the constant solicitude of the state. Administration must be correlated with other branches of government, as well as adjusted to the immense amount of private effort which in America far more than elsewhere supplements public enterprise.[2]

Willoughby gives two meanings to the term "administration." In its broadest sense it includes the actual conduct of governmental affairs, without regard to the particular branch of the government concerned. It is thus possible to speak of the administration of the legislative branch of the government, the administration of justice, or the administration of the executive power. In the narrower sense it includes the operations of the administrative branch only.[3] In form at least, the making of laws is a fairly simple matter. Carrying out the provisions so enacted has become increasingly difficult, however, in a complicated modern society in which the scope of

[1] L. D. White, *Introduction to the Study of Public Administration* (New York, 1926), Ch. I.

[2] *Ibid.*, p. 4. By permission of The Macmillan Company, publishers. Ever since the state has existed, there must have been administration in the generic sense, but it was regarded in antiquity more as an art than as a science. See E. D. Thomas, *Chinese Political Thought* (New York, 1927), Chs. VIII and XII.

[3] W. F. Willoughby, *Principles of Public Administration* (Washington, 1927), p. 1.

governmental activities has increased without apparent limitation. Furthermore, the increase in the cost of government and the corresponding need of efficiency in its expenditure have made necessary the modern science of public administration, which is a technical science that can be readily appreciated only by experts of various kinds.[1]

The importance of good administration was early appreciated in American political literature. In discussing the election and function of the President of the United States, Hamilton remarks in *The Federalist*:[2]

> It will not be too strong to say, that there will be a constant probability of seeing the station filled by characters preeminent for ability and virtue. And this will be thought no inconsiderable recommendation of the Constitution by those who are able to estimate the share which the executive in every government must necessarily have in its good or ill administration. . . . We may safely pronounce, that the true test of good government is its aptitude and tendency to produce a good administration.

When we remember that the British constitutional struggles, which developed the modern theory of constitutional government, were centered in the liberation of the more popular branches of government from the control of a strong monarchical executive it is seen that even in its origin Western democracy made the effort to secure efficient and responsible administration; with the increase in the functions of the state, it may be said, with a proper understanding of the statement, that the core of modern government is the administrative problem. Even a political speculation interested primarily in the ethical aspects of the political community has to admit the significance of administration. The admission may come either in terms of a broad science of means, which may be denoted the science of public administration, or in terms of the importance of personnel in the operations of the government. It would seem that the problem of personnel is in itself the keynote of good administration, for we must ultimately have a government of men, even if they are limited and operate according to the rule of law. The rule of law is a means of controlling bureaucrats, of making the agents of government act in a public character. "Every political problem becomes a problem of personnel; the best ideas must filter through the perverse textures of those who execute them."[3]

Historical Aspects of the Rise of Public Administration. No matter how simple a form of government may be, there will be problems of

[1] C. P. Patterson, *American Government* (New York, 1929), p. 275.
[2] No. 68.
[3] Hocking, *Man and the State* (New Haven, 1926), p. 49.

public administration. The tribal unit had the problem of administering war and a simple economic life. The preservation of custom and taboo and of religious systems involves the management of men and materials. But in the simple units of political society systematic control of administration is not a necessity. A homogeneous society requires little organization in the conduct of public business, and the same situation prevails when the functions of the state consist primarily in waging war, raising and expending limited amounts of money, and sustaining some system of administering justice. Public administration in the homogeneous and unscientific society can almost carry itself on the basis of tradition.

Public administration in the ancient empires or the city-states of antiquity had much in common with the modern problem of public administration. We find the same fiscal problems that agitate modern states causing disturbance in Athens and Rome; we find the same problems of personnel in the city-state and in the nation-state, the same problems of administering the public services and determining the type of organization that should be used, and also the same general questions that are raised concerning the public properties. But while the problems were much the same as at the present, the methods and materials of administration were different, and two distinct lines of development must be suggested.

The city-state of Greece and the city-state of republican Rome did not develop a suitable administrative organization, either as to personnel or as to control and responsibility. However, the ancient empires made progress, and the example of Egypt probably had considerable influence on the developments in Rome after the fall of the republic and the century of revolution and civil war. Administration as an integrated type of public service is a product of the later Roman Empire, and undoubtedly one of the reasons for the instability of the republican governments of the city-states was their failure to stabilize the process of public administration. The selection of administrative officials by lot in Athens would appear to the bureaucrat of the time of Hadrian as a mere toy, as indeed it appears to the citizen of the modern administrative or bureaucratic state.

The idea of a professional public service with great rewards for the successful man is a later Roman idea. The personnel of the service in republican days was chosen largely from the aristocratic and senatorial families, and there was no distinction between military and civil service. The development of administrative machinery in the republic was uncertain; new magistrates were added to the older ones in order to take care of new functions, and older types of magistracies had

additional functions imposed upon them. The servant of the state was a gentleman doing a public duty, fighting in the armies in time of war and administering affairs at home or outside the city during times of peace. Certainly, there was no concentration or centralization of administrative responsibility. The immature type of administrative organization is shown in the growth of tax-gathering corporations and corporations to exploit the mines for the benefit of the state. Contracts were drawn between these incipient corporate forms and the censors for the collection of the public revenue, and because of such practices the "order of public contractors" became a factor of importance in political life. It was only after a long struggle under the empire that the power of these corporations was broken and the state took over their functions, first by careful supervision to prevent fraud, and next by entering the field of tax collection itself.

Rome was a city noted for its public services to the citizens. There were the public games, the food supply drawn from Egyptian grain, the provision of the water supply for the city and many fountains, the building and maintaining of highways, the regulation of dwellings, and the levying and collection of public revenues.[1] All the functions of the Roman city required administrative organization, and gradually under the empire public administration came under the direct and centralized control of the state. According to H. Stuart Jones,[2] under Augustus,

> . . . a Water Board was set up, with powers conferred by a statute passed in the assembly of the people, and regulations were made for it by a decree of the Senate, which conferred upon the Commissioners the *insignia* of the Roman magistracy. . . . There was also a Highway Board (though here the work of supervision seems to have been distributed), a Board of Public Works, a Tiber Conservancy, the main object of which was to prevent floods by regulating the banks and dredging the stream, and a Board for the distribution of corn-doles.

Under the empire, beginning with the reforms of Caesar and Augustus, the imperial civil service began to take shape. The salary scales were fixed, which was contrary to the older republican tradition of not paying adequate salaries, and ranks in the bureaucracy were established. The older aristocratic element in the state no longer had a monopoly on the public service, and capable individuals from conquered territory, particularly Greece, began to attain important

[1] See Joseph Wright, *Selected Readings in Municipal Problems* (Boston, 1925), Ch. II.

[2] *The Legacy of Rome*, "Administration," pp. 114–115. By permission of the Clarendon Press.

positions in the public service. Under the emperors the military service was sharply distinguished from the civil, and the civil service became a career to the faithful servants of the rulers of the state. Furthermore, centralization and control over financial matters prepared the way for supervision and control over other aspects of the public service. This tendency was fostered by the conception of the empire inaugurated by Caesar and adopted by his successors—equal admission to citizenship and the destruction of the privileges of the historic aristocracy. The republican concepts of the public service gave way completely before the absolute empire in the second period of imperial development. By the time of Caracalla the civil service had become completely differentiated from the military service, and the hierarchy with responsibility centering in the emperor was definitely integrated.

Beginning with Caesar, the system of local government and administration was formed. Republican Rome viewed the subordinate city-states sometimes as allies, sometimes as completely integrated parts of the republic, which meant, of course, exploitation. However, the reforms of Caesar, while bringing the municipalities under the control of Rome in an administrative way, also provided for a certain amount of local control and the preservation of local customs and law. With the progress of the empire the controlling officialdom gained headway, with responsibility centered at Rome. Likewise, the amount of autonomy decreased owing to the development of an inspectorial service and the heavy burdens put on the local *optimates*, or carefully selected aristocratic leaders. In general Rome did not look with favor on the continuance of the city-state democracy, and gradually a vital municipal life became a thing of the past.

It is a mistake to think of Roman administrative centralization as being limited to financial matters. The control of public property, such as agricultural lands and the mines, became centralized with the passing of private exploitation of public property. The regulation of Aljustrel, a mining town in Southern Portugal, is instructive. A tablet found there

> . . . shows the care taken by the government to regulate the details of life in the mining village which was of course its [the state's] property. The local shopkeepers worked, it seems, under contract with the state. The keeper of the public baths has to supply hot water every day, clean his boilers once a month, admit women from daybreak until one P.M. and men from two until eight, and exclude soldiers, children, and the freedmen and slaves employed by the Imperial procurator. The shoemaker must provide footwear of all kinds and sell hob-nails "according to the regulations of the iron-works." The

licensed barber has a monopoly, except that private slaves may shave their masters or fellows. There is but one redeeming feature in this paternally regulated community: *schoolmasters pay no rates.*[1]

Roman administrative practice does not have a continuous life down to modern times except through the administrative system of the Western church. The decline of the Roman Empire, its disintegration through the development of territorial autonomy, broke the chain of continuity. While the terms of the modern civil service go back to Rome, these are merely verbal curiosities. The significant thing about Roman administrative development is that it was a means of holding the state together when other means failed. It may be said that the Roman Empire worked finally toward the progress of civilization and that its fall was not a benefit to the human race, but it may also be stated that the greatest achievements of the imperial age are found in the legacy of Roman law, the transmission of many of the elements of Hellenistic civilization, and the system of provincial administration. Despite the new basis of patriotism made possible by administrative development, its weaknesses were apparent, and, as administrators are prone to do, the Roman imperial agents forgot that the state was made for man and not man for the state.

The administrative systems of Latin countries follow in general the broad outlines of the Roman system. The unitary state with its centralized administrative machinery is perhaps one of the contributions to modern political life that can be traced back to Rome. Although the historical continuity was broken, the system of Rome was the background for the development of the modern national unitary state. Considering the influence of the Western church in the development of political machinery, it is quite probable that the tradition of Roman administration was carried primarily in the example of religious organization.[2] Certainly many of the important figures in the beginnings of modern administrative organization, either in Great Britain or on the Continent, were important in both church and state. But in any case, with the revival of the centralized state in modern times and the development of modern imperialism on much the same model as the imperialism of Rome, along with the problem of municipal organization in relation to the central government, the stage was set for the recreation of the political bureaucracy. Early

[1] *Ibid.*, p. 129. By permission of the Clarendon Press.

[2] See C. J. Friedrich and Taylor Cole, *Responsible Bureaucracy* (Cambridge, 1932), pp. 203, and literature cited. See Marcel Granet, *La civilisation chinoise* (Paris, 1929), pp. 103 *ff.* and 115 *ff.*, for the development of an administrative system in early China.

modern paternalism, as seen in mercantilism, also stimulated the development of the state service, and the period of eighteenth and nineteenth century individualism could have but little effect upon fundamental ideas of the civil service.[1]

Administration and the Principles of Governmental Organization. No very definite ideas as to the proper relation of administration and the remainder of governmental agencies appeared until modern times. For, until legislative capacity in government is unleashed from the control of custom, the administrative and the judicial functions of the state stand out with obliterative prominence. Nor does a theory of the separation of powers develop until there is vitality in the legislative branch. Government in antiquity heeded custom, and its functioning centered around what might be called fiscal, social, and judicial administration.

In Greek political theory we find the idea of a mixed constitution and balance in the state, but this was a balance of classes. Such a balance was thought necessary to preserve the harmony of the state. The balance sought was between rich and poor, and thus we have Aristotle's insistence on the importance of the middle class in the state. In Aristotle's discussion of the arrangement of offices, however, we see the beginnings of systematic ideas on administration in the West.[2] The constitution, according to Aristotle, was an arrangement of offices and magistracies. But the arrangement of offices and magistracies was a function of the balance of orders or classes in the city-state. The balance was preserved by the proper arrangement of the officers of the state. The alternative to the mixed constitution was the unstable pure form, which might be a monarchy, an aristocracy, or a democracy. Each of these forms in the minds of Polybius and Cicero had its peculiar defects which led to perversion and overthrow, and to another logical step in the governmental cycle. Such treatment of the government, as given by Aristotle, Polybius, and Cicero, does not recognize specifically the importance of administration, though Cicero gives a great deal of attention to the system of magistrates or executive officials in his *Commonwealth* and *Laws.* Furthermore, like the Greek theory, the Roman theory of the mixed constitution did not accord to the people any definite system of representation or a free initiation of projects of legislation; the Roman assemblies could only approve or reject what was proposed.

[1] See "Administration, Public," *Encyclopaedia of the Social Sciences,* and literature cited.

[2] *Cf.* V. K. Sarkar, *The Political Institution and Theories of the Hindus* (Leipzig, 1922), Ch. V.

The idea of balance in constitutional structure, however, did not die out, and, when the modern national state made its appearance with a complicated administrative organization, the ancient theory took on new life in a new form. The theory of liberty, the idea of limited government, and the germinal roots of the constitutional state emerge from the religious struggles of the sixteenth century.[1] The object of those who were persecuted for religious views was to limit the government in order to secure their freedom. History was appealed to in order to sustain the notion of the right of the people to control policy, *i.e.*, to legislate if need be. The idea of the superior natural law was not lost sight of at this time, but it was not until the eighteenth century, when the philosophical groundwork of an active public opinion was laid (*i.e.*, some theory of utilitarianism or pragmatism), that the possibility of extensive legislation appeared.

Out of the notion that administrative agents should be limited in the interests of liberty, and out of the theory that legislative assemblies in the state should be active, not only in legislation but in the control of the executive, came the modern theory of the mixed constitution with its embryonic separation of powers, the first great modern exponent of this view being Montesquieu, who published *The Spirit of the Laws* in 1748. To Montesquieu, the British constitution seemed a clear example of the benefits of orders in the state and of the partial separation of the legislature from the executive. Frenchmen generally admired the liberty of Englishmen in the eighteenth century; while Voltaire found it in the science of Newton, Locke, and others, and in the freedom of speech found in England, Montesquieu traced it to the organization of government, a factor generally overlooked by Voltaire. Cicero was not clear as to why the Roman republic developed a mixed constitution, and neither could Montesquieu explain the cause of the separation of powers in England except on historical grounds. Needless to say, he was incorrect about the British constitution, since that country was rapidly evolving toward the supremacy of

[1] See R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V, p. 104, for an explanation of the weaknesses of the Holy Roman Empire, especially through the weakness of its administrative system. See J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 365 *ff.*, for a suggestion as to administration in Rome; pp. 377 *ff.* for a description of it in the Frankish monarchy; p. 388, for a discussion of administration in late medieval monarchies; and p. 528 for the fact that Constantine first clearly distinguished between civil and military personnel. R. H. Murray, *The History of Political Science from Plato to the Present* (New York, 1926), p. 83, notes that in the *Defensor pacis* of Marsilio "there is a sharp line drawn between legislation and administration."

Parliament, which would make his theory untenable. British constitutionalism is based on the limitation of the executive and judicial power, and it has been achieved through representative parliamentarism which arrogated to itself the control of all branches of the government. Under such a system there can be no checks and balances, either by a mixed constitution or by a separation of powers.

That the limitation of the executive and not the separation of powers in general is the significant element in constitutional protection of liberty is seen clearly in the United States, where Montesquieu's doctrines received considerable attention. While one of the fundamental principles of American constitutional law is the separation of powers, the chief result of it is the limitation of the executive, and this in turn means an administrative system controlled and responsible in a democratic sense, while at the same time it remains as the extended arm of the executive power in the government. The framers of the American Constitution feared most, aside from the excesses of popular passion, the uncontrolled power of the executive. As a commentary on this statement, it may be said that one of the most difficult problems of the Constitutional Convention in 1787 was the construction of the executive and the assignment of its powers. Not only was the executive dangerous because of its ability to draw support from among the masses, but the actual powers of the executive in connection with military authority were exceedingly dangerous. Thus the safety of liberty was discovered in the separation of powers, the blocking off of the executive and administrative power from the legislative and the judicial powers of the government.

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there is no liberty if the judicial power be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with violence and oppression.[1]

According to the traditional theory of the separation of powers, there are three distinct branches of governmental power—the legislative, the executive, and the judicial. The administrative function of the state, the securing of the ends of the state as defined in legis-

[1] Montesquieu, *The Spirit of the Laws*, Bk. XI, Ch. VI.

lation, is the chief work of the executive. While the party system has made the chief executive in the United States a leader of legislative policy as well, the president is still the chief administrator of the nation through his control of the Cabinet and the civil service.

The theory of the separation of powers has not withstood criticism. It has not been necessary in British constitutional practice to prevent the abuse of power. In France the theory of the separation of powers has not given rise to the practice of judicial review, and the parliamentary system has created a situation similar in essential respects to the British situation, although the development of the ordinance power of administrative officials has gone farther in continental parliamentary countries than in England.[1] But on speculative grounds also the doctrine has been attacked. Thomas Paine in his *Rights of Man*[2] argued that there were only two functions of government, the legislative and the executive or administrative. The people may make and unmake constitutions, and through their representatives they may declare legislative policy. The judicial function becomes, in this view, part of the executive or administrative power, and it takes a distinctly subordinate place in comparison with the legislative branch. Frank J. Goodnow in his *Politics and Administration*, published in 1900, takes the same position. Politics is the determination of public policy through the representatives of the people, while administration includes the execution of the policy. The judiciary again is merely a part of the administrative machinery of government, since the function of the courts must not be considered as legislative. A check-and-balance system, which is the means adopted to make the separation of powers effective, finds no place in the duality of governmental powers. Administrative branches of the government may have discretion, but such discretion is a concession of the legislative body or the agency that forms the constitution. The superior and controlling position of politics will prevent the abuse of

[1] A body of French support for the doctrine of judicial review has developed in jurisprudential literature. Judicial review on the American model has been supported as a means, in addition to the system of administrative courts in France, of checking the power of the administration. See Léon Duguit, *Droit constitutionnel*, 3d ed. (Paris, 1930), Vol. III, pp. 729–738. It was also proposed in the Chamber of Deputies in 1903 as an amendment to the Organic Law of February 25, 1875. See Duguit, *Law in the Modern State*, tr. by H. Laski and F. Laski (New York, 1919), pp. 93–94; Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), p. 271; C. G. Haines, "Some Phases of the Theory and Practice of Judicial Review of Legislation in Foreign Countries," *The American Political Science Review*, XXIV (1930), 583 *ff.*

[2] Part II, Ch. IV (Everyman's Library), p. 198.

executive or administrative powers, and a democratic application of the rule of law will be secured.[1]

Another possible view of principle is to consider the administrative branch of the government as a fourth division of power. The legislative, the judicial, the executive, and the administrative might be the approved classification. Such a view would leave to the executive the formation and leadership of policy, while administration would include the discretionary powers of governmental agents involving legislative activity, judicial activity, and enforcing activity. Such powers are quasi-legislative and quasi-judicial in American terminology. However, the importance of administration is not in the classification given to its powers, but in the service it renders to the political community. There seems little need either to defend vigorously the dogmatic theory of the separation of powers or to condemn it utterly. On the other hand, there are differences in the types of governmental power necessary to the effective state, and it is perhaps going too far to insist that all the powers of government are one.[2]

Administrative Law. Administration should be distinguished from administrative law. Administrative law is that branch of public law which deals with the powers and legal responsibility of administrative officials. Goodnow defines it in the following words: "Administrative law is that part of the public law which fixes the organization and determines the competence of the administrative authorities, and indicates to the individual remedies for the violation of his rights."[3] The objective of public administration is the efficient conduct of public business, while the chief concern of administrative law is actually the protection of private rights, *i.e.*, giving a definite content to the rule of law in the constitutional state. Administration is, of course, limited by the rules of administrative law, but the objectives of the two may clash, as efficiency may go counter to the adequate protection of the rights of the individual. But with the increase of administrative powers there is need for added safeguards to the individual. From the standpoint of administrative law, the protection of private rights

[1] Haines, *op. cit.*, pp. 583 *ff.*, 589; A. Saint Girons, *Essai sur la séparation des pouvoirs* (Paris, 1887), *passim* and pp. 135–143; A. Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I, pp. 493 *ff.*

[2] It is doubtful whether, on logical grounds, any inherent difference exists between the powers of government; a division of powers such as we have been discussing is a functional division, to be justified as a means of making government responsible.

[3] F. J. Goodnow, *Comparative Administrative Law* (New York, 1893), Vol. I, pp. 8–9. Also C. G. Haines and Marshall E. Dimock, editors, *Essays on the Law and Practice of Governmental Administration* (Baltimore, 1935), pp. 24–43.

is as important as the efficient conduct of government.[1] Woodrow Wilson viewed the relation of administration and public law in the following light: "The field of administration is the field of business. . . . The object of administrative study is to rescue executive methods from the confusion and costliness of empirical experiment and set them upon foundations laid deep in stable principle. . . . Public administration is the detailed and systematic execution of public law. Every particular application of general law is an act of administration."[2]

Administrative law until recent years has been considered in the United States as a branch of constitutional law, though recently recognition of its importance has brought about its separate study. It could hardly be otherwise, since the constant increase in the number of boards, commissions, or officials who have either quasi-judicial or quasi-legislative power has built up a body of cases on a multitude of legal questions arising in connection with ministerial and discretionary acts of public officials. Perhaps the real test of the effectiveness of constitutional government is to be found in the legal control of public officials. Without such legal control, the acts of the executive and administrative agents become arbitrary and violate constitutional liberty. This control rests with the judiciary and the right of the individual to bring to the attention of the courts circumstances which may indicate that a violation of right has taken place. We have already discussed the fundamental issues connected with administrative discretion in connection with the theory of the rule of law in the constitutional state.

While there is little likelihood that a separate set of administrative courts will be established in Anglo-American countries to try cases involving public officials, there is no doubt that administrative law will become increasingly important in the future. The surest indication of this is that legislative bodies are tending to pass laws in more general terms, leaving the duty of promulgating enforcing ordinances to administrative or executive officials.[3] The administrative courts in France have reviewed adversely many such administrative ordinances, and this function of the administrative courts makes the practice of judicial review as seen in the United States hardly necessary for the preservation of the rule of law. Also the fact that the French

[1] See Ernst Freund, *Proceedings of the American Political Science Association*, VI (1909), 58 *ff.*

[2] Woodrow Wilson, "The Study of Administration," *Political Science Quarterly*, II (1887), 209, 210, 212. Cited in White, *op. cit.*, p. 2.

[3] See James Hart, *The Ordinance-Making Power of the President of the United States* (Johns Hopkins Studies, Vol. XLIII, 1923).

constitution is easily amended by Parliament lessens the significance of judicial review.[1] In the United States the judicial review of the administrative ordinance is not the review of the acts of the legislature, either of Congress or of the states, but it corresponds closely with the function performed by the continental administrative court. As long as the legislative body attempted to put all the details of legislation into the statute in order to prevent administrative discretion, judicial review was of great significance. The modern trend will no doubt equate after a fashion the situation in countries which have administrative courts and in those which do not. The fundamental difference, therefore, between continental and Anglo-American countries will be that the former admit in one form or another responsibility for the torts of the agents of the state, while the latter do not, unless specific exception is made by providing for such responsibility.

It is contrary to the principles of American constitutional law that powers be delegated to agents other than those designated in the Constitution. The issue is most pointed when the legislature delegates to an administrative commission the rule-making power. The constitutional law of the United States has grown more liberal with the passage of time, and delegations now held constitutional might in the past have been held contrary to the fundamental law.[2] It is not a question of whether a delegation has taken place, but of whether it is an unconstitutional delegation. The rigid constitutional doctrine which would prevent the growth of the ordinance and judicial powers of administrative agents springs from the concept of the separation of powers, and these administrative delegations constitute an essential modification of this doctrine of American constitutionalism.

Administration and the Function of the State. The development of the science of public administration is coincident with the modern increase in the functions of the state. Eighteenth and nineteenth century individualism regarded the state as a necessary evil. On one occasion Thomas Paine penned the following words:

> Society in every state is a blessing, but government, even in its best state, is but a necessary evil; in its worst state an intolerable one: for when we suffer, or are exposed to the same miseries *by a government*, which we might expect in a country *without government*, our calamity is heightened by reflecting that we furnish the means by which we suffer. Government, like dress, is the badge of lost innocence; the palaces of kings are built upon the ruins of the bowers of paradise. For were the impulses of conscience clear, uniform and irresistibly

[1] See Haines, *op. cit., passim.*

[2] See *Ex parte* Grossman, 267 U. S. 87 (1925); U. S. *v.* Grimaud, 220 U. S. 506 (1911); U. S. *v.* Ju Toy, 198 U. S. 253 (1905).

obeyed, man would need no other lawgiver; but that not being the case, he finds it necessary to surrender up a part of his property to furnish means for the protection of the rest; and this he is induced to do by the same prudence which in every other case advised him, out of two evils to choose the least.[1]

Paine's position was essentially that of Thomas Jefferson. The prevailing view of the functions of government in the liberal thought of the eighteenth century was that government is best when it governs least and therefore permits the freest functioning of natural law.[2] Moreover, the preservation of property was viewed in conservative thought of the same period as the fundamental object of government.

While the doctrine of natural law and natural rights was the basis of liberal and progressive thought in the eighteenth century, its fault in the nineteenth was that it prevented the state from accepting new functions made expedient by the evolution of economic society. While the industrial revolution has brought about the further application of natural-law principles of capitalism, it has also brought about results that have revived interest in the paternal and humanitarian state. The growth of science, the development of business method, and the development of tremendous wealth that can justly be tapped by taxation have all tended to increase the functions of the state. In a word, these developments have made it possible for the state to function in fields that formerly would have been closed to it because of the lack of technique. Perhaps also, quite independent of the results of the industrial revolution, the nineteenth century saw a development of humanitarian thought which translated itself into social legislation. In any case, the industrial revolution and the wage and factory systems made further legislation necessary. Thus, nineteenth century humanitarian thought, nineteenth century industrial development, and nineteenth and twentieth century industrial technique have all conspired together to increase the function of the state.

Administration as a science is interested in efficiency; it is interested in the integration of means and methods whereby the action of government can be more effective. It has drawn upon the improvements in industrial method; it has drawn on the results of science in many fields; and it has fallen heir to the increased revenue of the state made possible by the growth of wealth and improved methods in taxation. Administration per se is not interested in greater or less functions to be undertaken by the state; it is interested only in a public

[1] *Common Sense* (Conway), Vol. I, pp. 69-71.

[2] See, in general, Kingsley Martin, *French Liberal Thought in the Eighteenth Century* (Boston, 1929). But *cf.* Charles M. Wiltse, "Jeffersonian Democracy: A Dual Tradition," *The American Political Science Review*, XXVIII (1934), 838 *ff.*

job well done. Administration is merely the science of means which has developed in answer to the increased activity of political society. In later chapters we shall have occasion to evaluate the increased functions of the state as a problem in state purpose, but here it is sufficient to note the increase and the corresponding development of the science of public administration. It is a natural evolution of state function that the state should take advantage of the results of science and that in matters of technique it should follow in many cases the lead of private enterprise.

If the sciences of biology and medicine show that diseases are equated with sanitary conditions, what is more natural than that the state should, in the interest of general welfare, foster the application of science in the problems of health? If the state can afford more schools, what is more inevitable than the support of education by taxation? If private business uses the expert, what is more natural than the public use of experts whenever they can improve the efficiency of government? If by cutthroat competition the essential means of national communication are destroying themselves, what is more reasonable than the regulation of construction, rates, and the transportation of passengers and goods? Not only do developments demand the impartial arbitrament of public policy, but the development of the science of public administration, in the hands of men who know their business, makes the interference of the state reasonable and effective. The simple, intimate, and communal life of the city-state or of agricultural society must give way before the impersonal, efficient, scientific, and industrial nation-state.[1]

The Administrative State. By the accumulation of results, on sheer pragmatic grounds, the science of public administration breeds a concept of the state. Such an idea of the state is not the historic, ethical, or juristic interpretation of the political community; it is rather that of the expert state, the administrative state, or the state as a public-service corporation engaged in rendering to human beings a multitude of essential services. In America this movement is represented in the tremendous attention that is being given to the science of public administration, and many research organizations and universities are taking a leading part in its development.[2] In France public law tends to include many questions of administration. The works of Duguit, a distinguished French jurist, show the influence of

[1] See R. M. MacIver, *The Modern State* (Oxford, 1926); Joseph Wright, *Selected Readings in Municipal Problems* (Boston, 1925), Ch. XXVI and following for the discussion of municipal functions. C. A. Beard, *The American Leviathan* (New York, 1931), discusses the national government from the standpoint of technology.

[2] As an example of this, see the publications of the Institute of Government Research, Washington, D. C., and various bureaus of government research.

the administrative and public-service idea of the state. Public administration is fundamentally pragmatic, since it is interested primarily in the results of state activity. While in America the growth of administrative science has brought not so much an attack on the theory of sovereignty as an evasion of the issue, we find that Duguit's theory of the state as a public-service association leads directly to the repudiation of the doctrine of sovereignty as a traditional survival from the system of absolute government overthrown in seventeenth century England and eighteenth century France. The heart of the modern problem of applied government becomes the effective rendering of public service. But as we shall see, it is not at all certain that political democracy can accept without qualifications the administrative idea of the state.

Issues of the Science of Public Administration. a. The Selection of Administrators. Strictly speaking, the problems of public administration are two: the scientific selection of the bureaucracy, and the proper organization of administrative services. The object of administration is, of course, to secure efficiency—efficiency in organization and operation, efficiency in personnel, and efficiency in enforcing responsibility for particular technical tasks. The chief conflict was and still is the recruiting of individuals for the bureaucracy. Perhaps it is here that the conflict between conventional democratic ideas and the needs of public administration is most clear. America has not had a traditional governing class, as has Great Britain. With the onrush of democratic ideas during the nineteenth century, it was felt that any individual who had an interest in public affairs was capable of holding a government position; not only this, but it was felt that democracy implied that each individual, if he so desired, should at some time in his life have the right and opportunity to serve the state. The most convenient method of securing this end was to elect all public officials, whether or not they had any policy-forming function.[1] Such a theory of the meaning of democracy in relation to the public service is called "Jacksonian democracy" since Andrew Jackson was the first President to adopt emphatically the policy of appointing his supporters to political offices.[2]

Such a theory of the public personnel gave rise to the "spoils system," and its political slogan seemed to be, "To the victor belongs

[1] Godkin observes that it has been the democratic tendency to confuse representation and administration by electing administrative officers and by considering all elective officers as representative. *Unforeseen Tendencies of Democracy* (Boston, 1898), p. 45.

[2] See C. R. Fish, *The Civil Service and the Patronage* (New York, 1905).

the spoils." It is needless to point out in detail the results of such a system. While the English were developing during the nineteenth century a carefully trained and relatively permanent body of administrative officials to operate the government at home and in the empire, while the traditions of the permanent and socially significant French bureaucracy were crystallizing, and while Germany was also achieving permanence and stability in its public service, American government, especially after the Civil War, was entering a carnival period of corruption, inefficiency, public waste, and general administrative irresponsibility. Our cities descended into what Professor Munro has called the "dark ages" of American municipal government, and Lord Bryce in his *American Commonwealth* could point to American municipal government as the conspicuous failure of American democracy. Public sentiment was aroused at times, but its efforts seemed ineffective in coping with the problem. There was a period of the "great bosses" in state and local government who led their "machines" to inevitable victory at elections. The risk was great but the prizes in terms of personal income and political power were also great.[1]

Reaction set in in the late seventies and early eighties of the last century. The assassination of President Garfield by a disappointed office seeker lent prestige to the visionaries and reformers who had urged the choice of public servants on the basis of their ability to hold the office they sought. At the same time there seemed to be a determination in public opinion to root out the system. The results go in several directions. Civil service acts were passed by state governments, beginning with the Pendleton Act of 1883, which put a portion of the national civil service on the classified or merit basis; indictments and successful prosecutions brought many of the political bosses within penitentiary gates; and public regulation of the party system brought either the abolition and control of the convention system or the establishment of nonpartisan elections in municipalities. The civil service reform movement spread to the states and to municipalities, and in the national government the classified service was extended to more and more classes of public servants.[2]

[1] The literature on bossism is almost inexhaustible, but the following are suggestive: S. P. Orth, *The Boss and the Machine* (New Haven, 1919); H. F. Gosnell, *Boss Platt and His New York Machine* (Chicago, 1924); W. L. Riordan, *Plunkett of Tammany Hall* (New York, 1905); F. R. Kent, *The Great Game of Politics* (New York, 1924), and *Political Behavior* (New York, 1928).

[2] Fish, *op. cit.;* Dodd, *State Government*, 2d ed. (New York, 1928), pp. 262 *ff.;* M. Conover, "Merit Systems of Civil Service in the States," *The American Political Science Review* XIX (1925), 544–560.

But even with all the progress of the merit system in American democracy, the creation of the public service as a career has advanced slowly in the state and municipal governments. If a chemist or an engineer is needed in the government service, there is little reason why, if he is a good chemist or engineer, the results of a party contest should affect his position. As long as he renders effective public service he should be retained and in old age he should be retired on a pension. The vast number of employees of the national government has made the permanent selection of minor employees the easiest course, even for the political leaders who might desire to reward party loyalty. Of course, owing to the provisions of the national Constitution, it has been impossible to increase the number of elective officials of the national government.

In Anglo-American countries two theories of the merit system have prevailed.[1] The British system has been based on the general intelligence and training of the person seeking to become a civil servant, while the American system has been established in general upon the specific qualifications of the person for a particular position. The British examinations have been designed to exclude, it would seem, all but those trained in the universities, since their examinations for a civil service post include history, philosophy, and languages, both ancient and modern.[2] When an applicant can pass all the requirements under the British system and has received an appointment, he becomes immediately a career man, and it is expected that his active life will be given to the state. Because the American system was applied first to the lower ranks in the civil service and has gradually worked upward toward the more significant positions, the examinations have been specific and technical. The individual who seeks a clerkship in a government department must pass an examination that will show his ability to perform the duties of the position he seeks. Another reason for our unwillingness to stress general training is that American democratic sentiment would look on the British system as undemocratic in that it places a premium on the educational and social opportunities of the individual. Moreover, in America the aristocratic tradition in the public service has been frowned upon; there has never existed a professional class of rulers, aside from political bosses and

[1] *Cf.* J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), Bk. VII, Chs. IX, X, XI.

[2] See A. L. Lowell, *The Government of England*, 2 vols. (New York, 1909). M. R. Lambie, *The British Civil Service Personnel Administration* (Washington, D. C., 1929), p. 415, indicates, however, that in the lower ranks of the service the British frown on too much education.

party leaders. Even at the present day in Great Britain the civil service is in the control of the upper classes.[1]

There is much to be said for both systems. The American system produces immediate efficiency in the civil service; the British system might tolerate a certain amount of unskilled work because of the general qualifications of the individual. The American system is certainly more suited for the lower ranks of the civil service and for positions that ordinarily do not lead to important promotions. On the other hand, the generally high quality of the British civil service has shown the results of their merit policy. If the higher ranks are to be chosen by examination, certainly the examinations should test intelligence and training and should make possible a fairly accurate guess as to the future usefulness of the individual in the public service. The British civil service, however, took shape in the middle of the nineteenth century before the modern emphasis on technical and scientific training appeared. Future developments will show, no doubt, the value of placing scientists in responsible positions, and the American system of selection is better suited for the recruiting of scientists and experts in the public service.[2]

b. The Organization of Administration. The organization of public administration presents problems that are only beginning to be solved. It has been observed that the Roman republic failed to solve its administrative problems. Under the empire responsibility and organization became the keynote of the bureaucracy along with the development of an efficient class of civil servants. The same problems have been presented to modern governments. Not only did the development of a trained civil service come late in the evolution of the modern state, but the reorganization of administrative departments was hardly envisaged. When new functions were assumed by the state, as in Rome, they were added to already existing departments, boards, or officials. The result in America has been a lack of coordination in administrative work, overlapping of functions and duplication of effort, the expenditure of funds that could have been saved, unneces-

[1] H. J. Laski, "Aristocracy Still the Ruling Class in England," *Current History*, XXXII (1930), 666–673.

[2] One of the most pathological symptoms of American democracy is the general disregard by the educated youth of the public service as a career. Aside from the consular service, which has a peculiar prestige value, educated young men and women regard education solely as a means of advancement in private activities. The public service in popular estimation is a residual deposit of human scrap. André Siegfried explains the lack of prestige of the state in America by the lack of a bureaucracy. The chief source of state prestige, he says, is the bureaucracy. *America Comes of Age*, (New York, 1927), p. 241.

sary increase in the number of public servants, and an unreasonable decentralization of government work. Responsibility is hard to enforce in such circumstances, and the people are really prevented from passing judgment on the administrative policy of elective executive officials; efficiency is, of course, out of the question.

As a consequence of the above-mentioned conditions, a movement for administrative reorganization has appeared in recent years. The students of public administration have attempted to observe carefully various types of administrative organizations, both as to their effectiveness in dealing with public questions and as to the amount of responsibility for public policy that can be enforced. State administrative systems have been reorganized in several states, and administrative codes have been passed by state legislatures to increase government efficiency. Functions of a similar nature have been grouped in the same department, and the lines of administrative responsibility have been drawn inward toward the governor of the state, who can be made responsible to the electorate. Overlapping of function has been curtailed, and often the number of administrative departments has been reduced. Letting of public contracts has been subjected to responsible inspection and statutory control; the auditing of public accounts has been made systematic; and in general the handling of public funds has been made more efficient. The purchasing of ordinary government equipment has been centralized and standardized by centralized purchasing through a purchasing agent. Certain types of services common to government departments have been reorganized. All departments need legal advice at times, but one legal department can serve the entire state or municipal government; all departments need stenographers, bookkeepers, and clerks, but this can be centrally controlled. All departments must have their accounts audited, but this service can be performed by one department specializing in auditing or other "staff" services. All departments need stationery, for instance, but this can be purchased in large lots and stored pending the needs of the departments. There is no need for various public agencies to have separate engineering staffs, since one group of carefully selected engineers can serve the entire unit of government more cheaply and assure a greater uniformity in engineering standards.[1]

c. The Organization of Systematic Expenditure. One phase of public finance comes properly under the science of administration, and that is the systematization of public expenditure. Under presidential

[1] See White, *op. cit.;* Willoughby, *op. cit.;* J. M. Matthews, *Principles of American State Administration* (New York, 1917); W. B. Munro, *Municipal Government and Administration* (New York, 1923), Vol. II.

government in national and state governments, no provision was made originally for integrated financial leadership. While the president or the governor might propose financial measures to the legislature, that body was under no obligation to take executive advice. Until a few years ago there was little balancing of revenue and appropriation measures. The obvious principle of executive leadership in the drafting of the budget, which should present a rather complete financial picture of the condition of the government, came naturally in parliamentary government. But from colonial times American political experience has been a constant struggle between the executive and the legislative branches for the control of the purse. Systematic budget making is a new experience in American government, but in 1921, after long insistence by the Chamber of Commerce of the United States of America and government experts, a national budget act was passed and some integration was attained in national affairs between expenditure and revenue. Likewise, in state governments budget reform has been attained with resulting efficiency in those states where budget laws have been enacted. But the principle of presidential government, based on the separation of powers, makes it impossible, even if it were desirable, to remove control from the legislature, and political tradition as yet has not established firmly the principle of executive leadership with regard to the budget. In most states, however, the executive does present to the legislature an organized budget proposal.[1]

Administrative Responsibility. The question of responsibility has been a very difficult one. Should an executive official have a free right of removal, even if the public servant is chosen after careful examination by a civil service commission? What agency should be employed to acquaint each department with the work of the other departments? Should there be boards, or single individuals at the head of a department? The chief principle of administrative science is that as few individuals as possible should be elected, preferably one only; he should have the right to select the heads of departments and remove them for good reason so that he cannot evade public responsibility for the conduct of public work. The question of the right of removal remained unsettled as far as the national government was concerned until 1926, when the Supreme Court decided on historical and general grounds that the President of the United States might remove, without the consent of the Senate, officials of the executive department appointed by him

[1] See C. G. Haines and B. M. Haines, *Principles and Problems of Government*, 3d ed. (New York, 1934), Ch. XXI.

with the consent of that body.[1] While there have been state decisions which held that no such right of removal might be enjoyed by state governors unless it was specifically granted in the state constitution, the result of the Myers Case may be that state governors will be given this right by judicial interpretation in the future; this, combined with adequate administrative reorganization, will make the American state governor the responsible head of the public administration. Furthermore, it has been found generally that the single-headed department is more effective than the board type of organization. This is especially true of the unpaid ex officio administrative board. However, for certain matters, such as the control of public education, it has been found better to have an independently elected board rather than an ordinary member of the administrative hierarchy at the head of the local educational system.[2]

Administrative centralization and responsibility are to be contrasted with legislative centralization. The national government may not legislate on matters reserved to the state, but, with the grant of subsidies to the states under the condition of federal administrative supervision, the process of federal centralization has moved forward rapidly. In the states, also, the distinction must be made. The late nineteenth century practice of legislative interference with municipal government is generally condemned, but this interference was not ordinarily accompanied by intelligent administrative supervision of city government. Aside from the municipal home-rule movement, which is in fact a grant of legislative autonomy on certain matters, state administrative control should grow more definite in the future, owing to the fact that city problems cannot be separated in an administrative sense from the general problems of the state.[3] State administrative control over local government areas is especially important in those types of government activity in which expert knowledge rather than public opinion must be followed in order to secure efficiency. City health and educational conditions, for instance, must conform to general state standards, and state auditing of municipal accounts is reasonable and necessary.

[1] Myers *v.* U. S., 272 U. S. 52 (1926). But *cf.* Rathbun *v.* United States (the Humphrey Case), 295 U. S. 602 (1935), in which the Myers Case was restricted and the President denied the right to remove at his own discretion a member of the Federal Trade Commission.

[2] This conclusion rests more on American practice than anything else. Where education is a national matter, as in France, the control of education becomes a part of general public administration. Recently in Scotland the independent educational boards were abolished and education was brought directly under the control of municipal or local government.

[3] William Anderson, *American City Government* (New York, 1925). Ch. III.

Conflicts of Democracy and Administration. The administrative state demands results; its god is efficiency. Its efficiency becomes impersonal and knowledge renders it contemptuous of public opinion. The democratic movement in America has shown a fundamental hostility to expertness; in Italy and Russia at the present time, where economic efficiency is the goal both of the Fascist and the Communist dictatorships, democratic respect for public opinion is at a discount. The expert is confident of his judgment, and in general he considers it futile to subject the solution of a technical problem to the hazards of an election. Up to the present time, a solution of the conflict between democracy and the science of public administration has not been found. To be sure, the conventional democratic dogma of popular sovereignty and the rule of the people have given way to a certain extent before the demands placed upon the modern state. It may be possible, even in the United States, so to undercut democracy that an American version of Fascism or of the five-year plan of Russia will dominate the state. But the interest of students of public administration leads them to a defense of the ideals of the democratic state, for, unlike the Fascists or the Communists, they believe in liberty and representative institutions and they have no confidence in the permanence of the political dictatorship. Since public administration, to be worth the name, must be scientific, there must be a reconciliation between effective government and popular control. Those who believe in effective government have little time for the platitudes of Jacksonian democracy, and they are not willing to assume that a professional class of rulers should be created where historical forces have not already established one. While the conventional democrat may fear the bureaucracy, the *democratic* bureaucrat believes that a responsible civil service is possible.

"Many problems, however, remain unsettled," declares White at the conclusion of his study of public administration.

In a humorous mood, a British civil servant recently remarked, "We are the ultimate repositories of a dark science, and it is a brave or well-instructed man who will challenge our oracles without a foreboding of disappointments to come." This *bon mot* hints at a perplexing problem. With the constant evolution of special technique and the increasing complexity of organization and function, how can a working connection be maintained between the official and the public? Lacking such a connection, the danger of mutual misunderstanding and misconception is great. . . . To maintain popular confidence in a vast bureaucracy far removed from popular control and increasingly required to interfere in the personal life of the individual is a far more difficult and important question.[1]

[1] White, *op. cit.*, pp. 475–476. By permission of The Macmillan Company, publishers.

Through a trusted political and administrative leadership the confidence of public opinion may be held. The historic institutions of democracy, of the legal state, may be retained, but with modifications. The fundamental modification is a recognition of the proper scope and the reformed expression of public opinion. Man is a purposive animal, and public opinion itself must seek to control little more than the actual formulation of the ends and ideals of political society. A competent and effective organization of government, held responsible through a clear-cut political leadership and safeguarded by the watchful eye of the judiciary, must be the means used by the state to achieve its ends. The bureaucracy itself must be responsible, not to public opinion directly, but to the established leadership of the electorate. Such a result can be attained only by making a part of the organization of government the fruit of the science of public administration.[1]

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[1] See Friedrich and Cole, *op. cit.*, p. 28: "Not only must we reject the idea that democracy is opposed to bureaucracy, but we must recognize that the future of democracy depends upon its ability to maintain a fully organized bureaucracy. . . . If a popular government is incapable of maintaining a bureaucratic hierarchy, it is bound to give way to a form of government which will accomplish that, whether it be the dictatorship of an individual or of a small group in the name of the nation, the people or the proletariat." By permission of the Harvard University Press.

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PART V

DEMOCRACY AND THE INTERNATIONAL COMMUNITY

CHAPTER XVI

NATIONALISM AND INTERNATIONALISM

> Although, therefore, the theory of nationality is more absurd and more criminal than the theory of socialism, it has an important mission in the world and marks the final conflict, and therefore the end, of two forces which are the worst enemies of civil freedom—the absolute monarchy and the Revolution.—Acton.[1]

The Modern State System. A citizen of the ancient world or of medieval Europe could not understand the meaning of the term "state system." In the first place, the word "state" itself would seem strange, for the Greeks, the Romans, and the church fathers used the term "city" or "republic" rather than "state." The term "city" survived even the rise of the Roman Empire, and the expression "imperial city" is often employed. Nor can it be forgotten that those who lived during the fall of the Roman Empire knew little about it; there might have been a gradual consciousness of change in the personnel of the ruling aristocracy, but there was no thought of the fall of the empire. In the mind of the medieval citizen the hovering shadow of the successors of the Caesars was ever present; the Roman Empire was a continuing reality even in the mind of so great a thinker as Dante.[2] There might be a recognition of various grades of authority from immediate overlords to the more remote; but the idea of state in the modern sense did not exist.

The rise of the modern state system may be dated from various periods. We may note the rise of the conception of the united state in the fourteenth century struggles of nascent nationalities against the traditional temporal power; we may skip ahead to the Treaty of

[1] Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), pp. 299–300. By permission of The Macmillan Company, publishers.

[2] See his *De monarchia*, tr. and ed. by Aurelia Henry (New York, 1904). See also C. N. S. Woolf, *Bartolus of Sassoferrato* (Cambridge, 1913).

Westphalia of 1648 and say that here is the beginning of the family of nations; or we may start with the united nationalities of Europe that appeared during the nineteenth century. Whatever period is taken for the beginning (and it seems we may take the fourteenth century, in the middle of which came the Black Death and the breakdown of medievalism), the idea of a family of nations is a distinct contrast with previous notions of political organization. Illusions sometimes die harder than actualities, and this is certainly true of the lingering Roman Empire which continued, in spite of the rising nations, until its disruption by Napoleon.[1]

What, then, is the modern state system? It is so much a part of our ordinary thinking that we are hardly conscious that a great revolution was launched in the world by the rise of nationalities. We may think of the Reformation as ultimately leading to democratic and libertarian ideas, but we seldom think of the breakdown of medieval authority resulting in the substitution of one absolutism for another. For absolutism certainly did come with the organization of Western nationalities. We may count the sovereign states of the world, and there may be as many as sixty in a genuine sense. We accept the state system as an established fact, that is, unless we are internationalists of the more extreme sort or unless we are reminiscent of a period of great advance in Western culture when the Roman eagles were carried above the Mediterranean world. Now we see a double type of political life; we see the political life of the individual and the group within the state, and we see the life of modern states which together constitute the family of nations, a concept denoting an established system of relations.[2] We think of the state as sovereign when it acts in relation to those who owe it allegiance, and we think of it as independent when it deals with its neighbors.[3] In relation to its subjects the state can make legal what it pleases, at least we are so told by the defenders of sovereignty, but in relation to other states it is a member of a legally organized system, the society or family of nations.

The mere idea of a state system connotes order; it signifies customary or moral limitations upon the freedom of action of states. Whether we like it or not, international law is as necessary to the

[1] See James Bryce, *The Holy Roman Empire* (Home Library, 1886), Ch. XX.

[2] R. B. Mowat, *The European States System* (New York, 1923), Ch. I. See F. L. Schuman, *International Politics* (New York, 1933).

[3] W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924), p. 315.

continuance of civilization as law within the state. Without law for the individual or group we might have what Hobbes, Locke, and Rousseau called the state of nature, and the chances are that such a condition would be very much like the state of nature pictured by Hobbes, for "the life of man" would be "solitary, poor, nasty, brutish and short."[1] Evidence of this is the actual condition between organized political units when the control of law and order breaks down, *i.e.*, when international war occurs. It has sometimes been said that states are in relation to each other as men in a state of nature, but not even the most ardent nationalist has been willing to face the destructive logic of international unsociability. For international law itself is coeval with the modern system. Bodin, who stands as a leading exponent of the doctrine of the sovereignty of the state, wrote his masterpiece, *The Six Books of the Republic*, less than fifty years before Hugo Grotius wrote his masterpiece of international law, *The Law of War and Peace*, in 1625. Thus, coincident with the acceptance of the sovereignty of the national state was the acceptance, on grounds of natural morality, of the duty of Christian states to live with each other as Christians, even if they are forced to the painful necessity of fighting unchristianlike wars.

Until late in the nineteenth century it was thought that only Christian states could be members of the family of nations since only they knew the proper standards of morality. But such a view is little more than a rationalization of the fact that then all the stronger and leading states of the world happened to be nominally Christian. The rise of Japan to a place of world power and the development of contacts with the Near and Far East made it necessary to extend the system of international law to non-Christian states. This situation entailed the reluctant surrender of the idea that international morality was Christian morality, but it may be said, indeed, that the morality of Christian temporalities was none too good. For wars became less humane instead of more so, and the Christian states discovered a weapon of expansion that is none too Christian at the core—imperialism. The modern world is eager to accept in the society of nations all states that are willing to admit they are part of an international community, a part of the state system, whether their ethics are Christian or otherwise. It may be contended that modern international morality is largely pragmatic; it is more a matter of live and let live than anything else. In such an atmosphere of international contact the lawyers have conceived of the legal equality of each sovereign

[1] *Leviathan*, Ch. XIII.

state with every other, though it must be admitted that the facts often belie this interpretation of the character of international society.[1]

The surrender of the theory of a Christian society of states in no way undercut the idea of international order. Then, as now, the concept of the system of sovereign states implies order, and in general the constant effort of the present age is to develop more fully the common bases of understanding and action. International order means in its final logic a peaceful, ordered world. It need not be based on a metaphysic of the Stoics or of the early Christian fathers, who viewed all parts of the world as working finally in harmony, but upon the actual contribution made to human life and the development of culture by international stability. In the next chapter the various modes of developing international solidarity will be discussed as a part of the general movement for international government. To call the state sovereign does not make it more self-sufficient than it is without this juristic attribute; to admit that statehood is a problem of interdependence takes nothing away from the dignity of the sovereign state. The state represents the principle of cohesion within a particular group; international stabilization represents the idea of an integrated world.

In addition to the implication of solidarity found in the notion of the state system, there is another principle that is disruptive. The idea of the state as sovereign implies that each state is uncontrolled in certain aspects. From an ethical standpoint, sovereignty allows the moral right of destruction between states. A society of independent equals implies the possibility of conflict; in international society it connotes war. Thus cohesion and disruption walk side by side in the international world, and it is a matter of emphasis which point of view we will take, that of solidarity or that of conflict.[2]

The Nation. The word "state" in itself does not imply nationality. The state may be composed of one nation, or several nations, or parts of nations. Nationality itself is a principle of unity, just as the

[1] E. D. Dickinson, *The Equality of States in International Law* (Cambridge, Mass., 1920).

[2] See A. S. Hershey, *The Essentials of International Public Law and Organization*, rev. ed. (New York, 1927), p. 22. The question may be raised whether the state as we know it is not inherently incompatible with international order. Internationalists content themselves generally with an attack on nationalism but not on the state, but it may be necessary to go further and deny that the state as an institution should exist at all. Government may be compatible with law, while the state idea is not. See Kenneth C. Cole, "The State Idea and World Peace," *Proceedings of the Institute of World Affairs*, Riverside, California, XI (1934), 183 *ff.*

state represents the principle of unity, but the state embodies political unity while the nation embodies cultural and spiritual coherence.[1] Whether moral unity must be assigned exclusively to one or the other is a debated point, but it would seem that the state is capable of expressing moral unity in its legislation setting forth political purpose. Should each nation have a right to form a state? Is moral violence done to man if he is compelled to be a citizen of one state when he would prefer to assist in forming another? As a theoretical proposition, it might be admitted that, when cultural unity strives to express itself in statehood, there is the moral right of self-determination, as the coercive state is drained of its moral qualities. But the nation, as the state, is the product of history. Neither a state nor a nation is made by the casual determination of a number of men, and, while it might be conceded that unity may be given to historical evolution by uniting the nation and the state, history itself answers the practicability of this solution in the negative.

What is the nation? The answer depends primarily on the point of emphasis, for nationality has been based on various factors.[2] Is

[1] See Georg Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), pp. 117–121, especially, p. 120.

[2] See C. J. H. Hayes, *Essays on Nationalism* (New York, 1926), pp. 4 *ff.* While "national" has come in general to refer to the citizens of a sovereign state, a nationality is a distinct cultural society (p. 5). "A nationality may exist without political unity, that is, without an organized sovereign state of its own, and, vice versa, a political state may embrace several nationalities, though the tendency has been pronounced in modern times for every self-conscious nationality to aspire to political unity and independence." A nationality that acquires statehood becomes a nation, or becomes a "national state," says Hayes. Nationalism refers to: (1) the historical process by which the national state was established, (2) an ideal of the historical process, (3) the activities of a particular political party combining an historical process and a political theory, (4) the loyalty of the citizen to the national state above other loyalties. The last meaning is the most significant. By permission of The Macmillan Company, publishers. Lord Bryce, *South America* (New York, 1912), p. 424, takes the same position as Hayes. See C. E. Martin, *The Politics of Peace* (Stanford, 1929), Ch. XVII, for a recent criticism of the views of Professor Hayes.

The more valid meaning, perhaps, is that the nation is the cultural society; nationality is (1) the quality of a member of a nation, (2) citizenship, or (3) the politically conscious nation; the national state is the state relatively coincident with the nation; and nationalism is the intellectual or emotional defense of the national state. See J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 88, 90, 99, 103. See also Willoughby, *The Ethical Bases of Political Authority* (New York, 1930), p. 338.

One earlier use of nation is that which speaks of tribes as nations. De Lolme referred to the German tribes as the "German nations." J. de Lolme, *The Constitution of England*, ed. by John MacGregor (London, 1853), p. 14.

Cf. J. Leclercq, *L'État ou la politique* (Bruxelles, 1929), pp. 53 *ff.*, 95 *ff.* Alfred

nationality always political, *i.e.*, is it the genuine expression of nationhood found in the realization of statehood? This again is a matter of diversity, and some writers insist that nationality means political aspiration, while others are content to see it as cultural unity.[1] Two questions in relation to the meaning of "nation" must be sharply distinguished. The first is the basis upon which national integration depends, and the second involves the right of a national group to self-determination in a political sense. Let us first investigate the bases of national unity.

The Bases of Nationalism. The importance of nationality in the state lies in the fact that it is in the end the basis of political coherence. The character of the nation, traditionally and otherwise, determines in large measure the form and vitality of the state. Burgess regards a nation as "a population of an ethnic unity, inhabiting a territory of a geographic unity."[2] This definition takes race as the starting point and insists that political aspiration must be present for the organization of a state. But other writers believe that a nation need be neither an ethnic nor a political unit.[3] Race as a basis of nationality is peculiarly subject to misconception. It is very difficult to determine just what a race is in other than a very broad sense, and, when the concept is applied to particular portions of the earth's surface, one finds so many mixtures of stock that it can hardly be said there is racial purity in any Western country. That the sense of race or ethnic unity may be a basis of national feeling is not to be denied; the race may exist, however, without the actual fact of racial unity.[4]

Weber, *Die Krise des modernen Staatsgedankens in Europa* (Berlin, 1925), pp. 53–54, suggests that in origin the modern use of the word "nation" developed in medieval universities to designate a student's place of birth or the land from which he came. The students were incorporated under the name of nations in these universities.

See also Johannes Mattern, *Concepts of State, Sovereignty and International Law* (Baltimore, 1928), p. 156, and note contrasting uses of the term "nation"; Robert Michels, *Der Patriotismus* (Munchen und Leipzig, 1929); R. A. Jones, "Taine and the Nationalists," in F. J. C. Hearnshaw, editor, *The Social and Political Ideas of Some Representative Thinkers of the Victorian Age* (London, 1933).

[1] The synonymous use of "state" and "nation" in international law is not to be confused with the distinction between state and nation used here. It will be noted that the definition of the state given earlier in this volume makes no reference to nation. Nation and nationality are discussed here because of the contrast between nationalism and internationalism.

[2] J. W. Burgess, *Political Science and Comparative Constitutional Law* (Boston, 1898), Vol. I, p. 1.

[3] A. N. Holcombe, *The Foundations of the Modern Commonwealth* (New York, 1923) p. 131.

[4] F. H. Hankins, "Race as a Factor in Political Theory," in Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. XIII; G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), p. 327, note.

Language is probably more of an integrating factor than race.[1] Language is a common historical heritage; it springs from the evolution of a particular group of individuals and is an expression of culture in a definite sense. Whether community of language is absolutely essential for the existence of national feeling may be doubted. Those who seek to maintain national feeling are justified, no doubt, in insisting that the common language shall be spoken and taught, but in some cases where national feeling must be admitted there is a lack of linguistic unity, as in the case of Switzerland where French, German, Italian, and Romansch are spoken.[2]

Religion was once thought to be more important in national unity than language. On the whole, it may be said that certain peoples are predominantly of one religion; the English and Americans tend to be Protestant; Germans tend to be Lutherans; the French, Spanish, and others are generally Catholics. But the belief that national sentiment is impaired without religious unity is no longer held. Language and religion have been of great importance in connection with literature and art, but in the modern world both literature and art are cosmopolitan rather than narrowly national.

Common historical experience and tradition are the most fundamental bases of nationalism.[3] Nationalism is primarily loyalty to traditions; these traditions may be of military valor or cultural accomplishment, or they may be associated with the feeling of statehood. Of course, associated with this common historical experience is the relation of a people to a geographical area. Claims to territory,

[1] Hayes, *op. cit.*, p. 13. Among cultural characteristics of nationality, language is and always has been preeminent, says Hayes.

[2] See R. C. Brooks, *Civic Training in Switzerland* (Chicago, 1930).

[3] *Cf.* A. E. Zimmern, *Nationality and Government* (New York, 1918), pp. 53, 96. What matters is the tradition of a common past; nationality rightly regarded is not a political but an educational concept. (Cited Catlin, *op. cit.*, p. 333, note.)

McIlwain speaks of the "sentiment of nationality." "The complete expression of this sentiment is not to be found before the sixteenth century but its beginnings and much of its growth fall within the later medieval period and they are its greatest contribution to our modern stock of political ideas. As we trace this growth backward to its beginnings, we come at length to a time in the depth of the feudal period when scarcely any signs of a true national feeling can be discerned at all." C. H. McIlwain *The Growth of Political Thought in the West* (New York, 1932), pp. 392–393. By permission of The Macmillan Company, publishers.

See Ernest Renan, "Qu'est-ce qu'une nation?" *Discours et conférences* (Paris, ed. of 1922), pp. 277–310, for the belief that the nation is founded on common historical experience. José Ortega y Gasset, *The Revolt of the Masses*, tr. from the Spanish (New York, 1932), pp. 185 *ff.*, 189, suggests that the national state has a common purpose in the future rather than in the past.

as at the Paris Peace Conference in 1919, may be based as much upon the fact that a given group has once held it as upon the fact that the present inhabitants have a loyalty to the traditional experience of the group. "Nationality regarded as a force in modern politics," declares Holcombe, "is a corporate sentiment, a kind of fellow feeling or mutual sympathy, relating to a definite home country, and binding together the members of a human group, irrespective of differences in religion, economic interests, or social position, more intimately than any other similar sentiment."[1]

If the above is true, certain conclusions immediately follow. The first is that nationality is a subjective fact. As Lincoln suggested in his first inaugural address, it is found in the "bonds of affection" and the "mystic cords of memory." The second is that the nation does not become of significance to politics until there is a desire for statehood upon the basis of national unity. While it may be said that certain peoples have certain peculiarities as nations which express themselves in domestic politics, such differences create no serious problem until there is an issue of destroying an already existing state or forming new states on the basis of nationality. In other words, when nationality is important it is so in connection with the problem of national self-determination. There is ample proof that nationality has received attention only because of this fact. If the Scotch-Irish or the Jews have a certain cultural unity and desire no radical change in political status, no political significance ordinarily is to be attached to this cultural unity. As a problem of politics, nationality must be considered in relation to a desire for political unity, whatever may be its basis. It has been suggested that common historical experience is the most important basis of unity. For politics, therefore, a nation is a group of people having certain historic bases of unity who wish to secure recognition of their subjective desire for unity by the organization of a state.[2]

[1] Holcombe, *op. cit.*, p. 133. By permission of Harper & Brothers, publishers. Heinrich von Treitschke, *Politics*, tr. from the German, (New York, 1916), Vol. I, Ch. VIII, asserts that every healthy nationality tries to form a state. See also J. S. Mill, *Representative Government*, Ch. XVI, for the position that a nationality requires a desire for independent statehood. Acton, *op. cit.*, p. 295, remarks, for instance, "The vanity and peril of national claims, founded on no political traditions but on race alone, appears in Mexico."

[2] Catlin, *op. cit.*, p. 334, states that the secret of the strength of nationalism of the last century is the customary identification of national and administrative areas, and hence the fusion of the sentiments of nationality and loyalty. But see also Acton, *op. cit.*, p. 287, who states that its strength came from the triumph of the democratic principle. "The theory of nationality is involved in the democratic theory of the sovereignty of the General Will."

While the Scots and the Jews have reconciled themselves to their particular political situations,[1] the Irish have not, and the Irish Free State is the tangible result of their centuries of struggle for political autonomy. As a result of the World War, the Austro-Hungarian monarchy was broken into the succession states, which partially express the spirit of national independence. Poland is another illustration of the tenacity of national tradition, and the present nationalistic movements of the Near and Far East are based on the most ancient of cultural survivals. The national group retains the possible means of disintegrating a state, and, with the formulation of the national aspirations of China, India, Egypt, and other tender spots on the map of imperialism, the process of disintegration of state unities, in order to create new ones, seems to be gaining headway rather than diminishing under the integrating pressures of a modern and interdependent world. The national minority, however, is a part struggling against the whole, and the whole has a tremendous advantage over the dissentient group.[2] A world catastrophe, such as the Great War, may bring to realization many national aspirations; revolution and war in the eighteenth and nineteenth centuries did likewise, though a substratum of sentiment in the revolutionary movements in Western Europe was universal rather than nationalistic in scope. In theory at least, the American and French revolutions were movements to secure the recognition of rights rather than national unity. While the national unity of the United States was to be the product of blood and iron in the middle of the nineteenth century, as was the case with German and Italian national unity, this was not so with French revolutionary idealism, which oscillated between the imperialistic attainment of freedom and the maintenance of national unity.[3]

[1] While the Zionist movement for the establishment of a national home for the Jews in Palestine might seem an exception to this, the movement itself is apparently chiefly cultural and only indirectly political. Most Jews have no desire to settle in Palestine.

[2] See O. I. Janowsky, *The Jews and Minority Rights*, 1898–1919 (Columbia Studies, 1933).

[3] Acton, *op. cit.*, p. 275, in referring to the partition of Poland says: "This famous measure, the most revolutionary act of the old absolutism, awakened the theory of nationality in Europe, converting a dormant right into an aspiration, and a sentiment into a political claim." *Ibid.*, p. 277, in speaking of the French Revolution, he says: "In this manner the idea of the sovereignty of the people, uncontrolled by the past, gave birth to the idea of nationality independent of the political influence of history." See Hayes, *op. cit.*, pp. 30 *ff.*, "The Rise of Nationalism," especially, p. 44. It was Mazzini, however, who finally made nationality the keystone of a political system. See C. E. Vaughan, *Studies in Political Philosophy*

The Principle of Expansion. The state system at any stage stands as the product of historical evolution, and within each state there are forces seeking greater integration and forces demanding disintegration. The national state has grown in *stability* in terms of the amount of integration or self-determination possible internally, but it has also generally sought greater *power* by means of expansion or imperialism. Self-determination stands as the opposite of imperialism.[1] Both imperialism and self-determination became important in the modern world, but coincident with the increasing political significance of nationalism in the nineteenth century we find an increasing significance attached to imperialism. National sentiment has grown, and opposition to the state system as it has existed has also developed. But it has been the national state itself which, acting inconsistently with its principle of being, has raised the issue of imperialism. The first period of colonial expansion during the sixteenth and seventeenth centuries did not raise the issue, except as it produced conflicts between the major powers seeking the control of sparsely populated areas. During the eighteenth and nineteenth centuries, however, a renewed interest in expansion led to parceling out the rest of the world. Africa, parts of the Near East, and Asia were divided among the powers, and it is in these areas that the issue of self-determination *versus* imperialism has become most acute. Recent conflicts have been produced, not in terms of struggles between the imperial powers, but in terms of the rising tide of national sentiment among the peoples under imperial tutelage.

(Manchester, 1925), Vol. II, Ch. VI. In discussing Russia, it should be remembered that the basis of country or nation is neither language nor history: it is social organization. Bolshevism can thus at the same time be both nationalistic and internationalistic. For this reason, also, Russian federalism resembles no other form. See William Martin, writing in the *Journal de Genève*, January 13, 1933.

For the modern German theory of the nation, see Erich Keyser, "Die Volkische Geschichtsauffassung," *Preussische Jahrbucher*, Band 234, Heft 1, October, 1933, pp. 1 *ff.* Also Adolf Hitler, *My Battle* (New York, 1933); Carl Schmitt, *Staat, Bewegung, Volk* (Hamburg, 1935).

[1] It must be remembered that, while imperialism is one of the chief issues of the twentieth century, self-determination of minorities in larger states was the chief issue in this respect during the nineteenth century. Self-determination as an absolute principle is disruptive of the state. As Acton remarks, "the greatest adversary of the rights of nationality is the modern theory of nationality." *Op. cit.*, p. 297. J. S. Mill feels that, for effective free government, "the boundaries of governments should coincide in the main with those of nationalities." But *cf.* Acton's condemnation of the small state, *supra*, Ch. IV. He regarded it necessary to progress that different nationalities be held under one state. *Ibid.*, pp. 289–290, 298 especially. The true theory, according to Acton, is to divorce nationality from political aspiration.

World peace cannot be secured merely on the basis of agreement between the major powers. It will be possible, probably, for those powers that have been left out of the scramble for colonies providing raw materials, markets, and territory for surplus populations to reach some agreement with those powers that were early in the field and shared the benefits of expansion. But no such agreement can be reached in the conflict between self-determination and the imperial claims of the great world powers. The struggle between these two principles was limited to Europe during most of the nineteenth century, but the center of conflict has shifted to the Near and Far East. With the social progress of those who have so long been counted among the backward peoples of the world, over whom the imperial states have exercised their control for what they considered to be mutual benefit, and with the formulation in the minds of the masses of definite nationalistic claims already recognized in part by political arrangements in Western countries, the struggle has become inevitable.[1] The Western countries, it would seem, must lose in the long run. They must retire from certain fields of geographical control. The old form of imperialism which consisted in the occupation and annexation of backward areas will no doubt appear to the future as a passing phase in the history of international relations, but whether a newer form of imperialism which consists in the exploitation of natural and market resources will soon become a thing of the past is doubtful. Industrialization and mass production have stimulated the need of foreign markets, and without much hesitation it may be said that the industrial stability of such countries as Great Britain, Germany, and the United States depends on the amount of goods that may be sold abroad.

It may be said that Western countries are so deeply involved in economic development that they cannot retire from the field. They must seek foreign trade; they must seek investment opportunities abroad; they must, in the interest of their own prosperity, seek to maintain a dominant position in the world market.[2] But this circumstance leads to the further necessity of demanding the protection of investments and of commercial emissaries who have carried with them the economic interests of the home country. That Great Britain and the United States can ignore the economic possibilities of the Far East or Latin America is not within the realm of possibility.

[1] See Sun Yat Sen, *San Min Chu I* (Shanghai, 1927), for the Chinese point of view on national self-determination; C. F. Andrews, *Mahatma Gandhi's Ideas* (New York, 1930).

[2] Max Winkler, "Investments of United States Capital in Latin America," *World Peace Foundation*, Vol. XI (1928).

However, should national economic planning secure a balance that would enable production to maintain itself in the home market, it might be possible for national expansion to be curbed. But given the present economic system of Western countries, it does not seem possible. Nor is this the whole story. For those countries, having occupied an economically subservient position, are not content; they wish to attain the same productivity for their labor and capital as other countries. The battles for expansion in the future are to be economic—not so much for the annexation of territory as for the advantages that economically controlled territory can afford.[1]

While we say that the dominating motive in nationalistic expansion has been economic, other factors have played a part. The idea of natural boundaries has been stressed, but largely in connection with the military necessities of a country. At the conclusion of the World War the French were not willing to concede the ultimate friendliness of Germany. Therefore, they insisted, unsuccessfully, upon extending the boundary of France to the Rhine. In the expansion of America westward little regard was paid to the existing and traditional claims of Spain and Mexico. It was thought to be the destiny of America that our boundary should extend to the Pacific Coast. Land hunger itself seems to be a motivating factor whether or not there is actual economic need, though it may be that the land hunger of Americans is now largely satisfied. On the other hand, strategic claims to territory will be heard again should there be further wars. The nineteenth century was convinced in general of the advantages of having colonies, but with the newer forms of economic expansion the value of annexations is in doubt; few people are willing to expand national territory merely for the sake of Christianizing the natives, as was the case early in the colonial movement and later when nations sought nobly to carry the "white man's burden."[2]

The Principle of Conflict. However one may analyze the causes of war, the fact of international conflict is one of the most prominent in the history of the nation-state system.[3] As has been noted, wars have become increasingly costly and dangerous to both victors and vanquished. As long as wars were fought by mercenary troops, as long as they did not involve the mobilization of every ounce of energy

[1] P. T. Moon, *Imperialism and World Politics* (New York, 1926); R. L. Buell, *International Relations*, rev. ed. (New York, 1929); G. H. Stuart, *Latin America and the United States*, 2d ed. (New York, 1928).

[2] See Bluntschli, *op. cit.*, p. 74, for acceptance of the idea that the political races rule the nonpolitical.

[3] Hayes, *Essays on Nationalism*, (New York, 1926) Nos. V and VI.

of which a state was capable, war could be tolerated, even justified on certain grounds.[1] At the present time it is generally admitted that the principle of conflict is unsound; nevertheless it is certain that the possibility of war has not been eliminated. This is one of the curious anomalies of contemporary politics. It may be considered a sign of unhealthiness in the present political organization of the world. On the other hand, the condemnation of war itself is pragmatic, for statesmen did not look unkindly upon it so long as they thought gain or expansion was possible by resort to conflict. But experience has shown that the costliness of war is far in excess of any possible gains. Perhaps the supreme test of the capacity of the human race to organize and attain purposes is the elimination of war.

War has been thought an inherent expression of the state system. Treitschke, following in the footsteps of the German idealists, exalted the state.[2] He rather gloried in the conflict latent in political life, for he contended that so long as there were states, *i.e.*, sovereign states, there would be war. But war to Treitschke was a spiritual experience in the life of the state; it was a time when the moral as well as the material reserves were mobilized. In the supreme expression of the national spirit called forth by war, it was the highest good to lay down one's life for the safety of the state. The love of the state becomes the consuming passion of each individual, and, as each individual is spiritually purified by the experience of war, so is the state exalted and made more conscious of its right to exist and its mission among the nations.

[1] War became an issue when warfare became a conflict between peoples rather than between professional armies with a sense of "the rules of the game." With the French Revolution the idea of war changed; from a duel between sovereigns it became a duel between peoples, and to involve the people completely it was necessary to hold before them an ideal and to intensify their passions.

This viewpoint, however, may be overemphasized. Mr. William Martin, the late distinguished Swiss journalist and historian declared, in writing in the *Journal de Genève* (May 25, 1932), that other war situations are similar to that which developed between 1914 and 1918. "It is not necessary to find an analogy to go back to Alexander the Great or to the great wars which desolated the Roman Empire. . . . Modern Europe has been shaken at least each century by great convulsions: the Thirty Years' War (1618–1648), the Wars of Louis XIV (1667–1713), and the Wars of the Revolution and the Empire (1792–1805). By their duration, by their amplitude, by the number of people concerned, these wars are exactly comparable to those of our time."

[2] See Treitschke, *op. cit.;* L. T. Hobhouse, *The Metaphysical Theory of the State* (London, 1918), p. 100, for Hegel's use of nationality as the basis of the rejection of a league for peace; pp. 102–103 for Bosanquet's failure to see the logic of the state system.

Treitschke is merely one of a number of apologists of the necessity of warfare.[1] It must be noted that extreme nationalists always insist that the individual may be called upon at any time to defend his country. The claim is that the country is being defended, not that the unjust claims of the state are being supported by force. For ever since the time of Cicero it is the just war that has been defended. The suspicion may be aroused that all wars have been just wars for both sides, but that any single generation will be suspicious enough of the state to doubt the justice of its cause is more than can be assumed. The World War may mark a turning point in our thinking, since the destructiveness and duration of that war were far beyond any expectations, and the various claims made for conflict were disproved in the most complete fashion.

That war can advance culture in a nation is to be doubted. The question is not whether past wars have benefited the human race, but whether future wars will be of any value. Before the World War there were some biological arguments for conflict. The argument was that in the crucible of struggle the biological fitness of a nation was tested and those nations most capable of carrying forward the higher standards of civilization not only survived but were made more capable. Owing to the adaptation of science to the needs of war, it has been seen that biological fitness has little to do with victory; also states are biologically weakened by it since the best of the race has to be used in fighting. As to the economic aspects of war, the world has been so well partitioned that little gain is to be expected. To annex territory does little good if war has destroyed the economic system of the victorious and the vanquished powers.

But the most conclusive argument in principle against war, aside from the sheer destructiveness of it, is that war has not been an agent of justice.[2] It may be questioned in the first place whether conflict in the impersonal manner of war can be ethically justified; it involves

[1] See E. Mulford, *The Nation* (New York, 1892), for an American version of the German tradition. F. A. J. Bernhardi, *Germany and the Next War*, tr. from the German (New York, 1914).

[2] We might admit that the war imposed upon an unwilling state is an agency for repressing injustice by the other party. As Green says, however, killing in war cannot be considered murder since the soldiers have neither malice nor intention against particular individuals of the enemy. T. H. Green, *Works*, Vol. II, Sec. K. But in any case, we may say that, in view of the weaknesses of war as an agent of justice, the party or parties responsible are morally culpable. *Ibid.*, p. 472, Green remarks that national vanity has become a greater menace to peace than dynastic ambitions were in the past. "Where the latter is dangerous [dynastic ambition] it is because it has national vanity to work upon."

attributing to states moral qualities that may be attributed to individuals alone. In addition, war has not been successful in settling disputes in a civilized way. The disputes that have started wars have often been insignificant, and the facts upon which national morale has been established have often been false. The world may be approaching an attitude of mind which will hold that war does not produce justice in its results, and therefore is not justified in the first place. Western thought has attempted to construct the idea of the just war, and Grotius' attempt to systematize international law centered on this problem.[1] Until near the end of the nineteenth century international lawyers stressed the idea of the laws of war, and the theory was that international war fought according to the laws of war would be humane to a degree and that war declared under the restraining influence of international law would be just. But war itself, which is the use of force and destruction to attain the ends of political society, is greater than law. Nowhere has the inconsistency between force and law been more apparent than in the treatment of war. Conflict where other means than force are used is, by experience, subject to the regulation of law, but conflict that involves the use of force primarily is in itself a negation of law.[2]

The ideal of conflict as an agent of justice, as a means of biological improvement, as a means of advancing culture, as a source of economic gain and as a basis of national expansion, stands repudiated by the thought of this century. Such an intellectual repudiation does not by any means assure its elimination. As in other matters of politics, the formulation of purpose does not of itself insure its attainment. The organization of means presents the final test of the state system to adjust itself to the regulation of law. Liberals generally believe that, should this effort to organize the peace of the society of nations fail, a further war might destroy the vigor of Western civilization. The elimination of war does not mean, however, that conflict without force will cease. Conflict is not contrary to human progress, but the use of unrestrainable force in international war is. Progress represents a certain amount of order and system in human relations, and war has shown itself an ineffective agent for this purpose.[3]

The judgment of past wars is a most difficult matter. It is, of course, impossible to say what would have been the result if any

[1] See Hugo Grotius, *De jure belli ac pacis libri tres*, Vol. II, the translation, particularly the *Prolegomena* (Oxford, 1925).

[2] It must be admitted, however, that law in relation to war is a subject of acute present-day controversy.

[3] See J. T. Shotwell, *War as an Instrument of National Policy and Its Renunciation in the Pact of Paris* (New York, 1929).

particular war had not been fought. The chief argument for the wars of the past is that without them beneficial changes would not have taken place. Thus, the changes brought about over a century ago by the American and French revolutions stand in a favorable light; but whether the results of the Russian Revolution will also stand in such a light remains as a future judgment of history. In general, however, the various religious wars cannot be said to have been advantageous to the human race. The debate on the results of the World War is much the same. For the benefits of it are recounted in the rise of political democracy in Western Europe and the overthrow of the monarchical system in a number of states. When we balance the advantages of a system of international organization produced by the World War against the danger of dictatorships also produced by the war, and we also bear in mind that the ultimate success of international government remains to be demonstrated, the case is not so clear even here. The discussion of publicists is already reverting to prewar terminology, for the danger spots and potential war areas are becoming clearer with the gradual advance of international cooperation. While the value of past wars may be an academic question, the destructiveness of future wars is not.[1]

The Principle of Cooperation. The principle of cooperation is not negative alone;[2] it is also positive and seeks more than merely the elimination of international war. It involves the concept of international solidarity just as the organization of cooperation in terms of the political state involves the solidarity of the traditionally united group, the national state. Behind the justification of war lurk the idea that the state is the most complete organization for the good of man which can be conceived and the thesis that world cooperation can add nothing to the life of the individual. The deification of the national state naturally carries with it the diminution of the principles of cooperation in international life. Cooperation is the principle of internationalism, but the notion of international unity and solidarity does not imply that the national state has no ultimate place in the scheme of things. It means merely that a state as a member of the society of nations is not complete within itself; it means that conflict is not an inherent principle of the state system. The acceptance of

[1] It may be observed that certain of the historic motives of war have been disappearing. Thus religion is no longer a cause, migration has become a peaceful process, and the belief in war as an agent of justice has been diminishing.

[2] One of the best defenses of peace of the ancient world is that of St. Augustine in *The City of God*, Bk. III, Chs. IX, XVIII; Bk. IV, Ch. IV; Bk. XIX, Ch. XII. The evils of war are specifically discussed by St. Augustine in Bk. III, Ch. XVIII.

the national state so characteristic of internationalism makes a sharp contrast to cultural internationalism, which may be called *cosmopolitanism.* Internationalism itself should be limited probably to the political phases of world solidarity, and within this interdependence to those means of cooperation that are less than the idea of a world state or global superstate. Superstatism is the extreme of cooperation, and it is the logical contrary of sovereign isolation. Those who propose any form of political cooperation may be considered internationalists if they do not reject the state system, but "internationalism" itself has, by the force of circumstances, taken on specific meanings, which we shall consider in the following chapter, *i.e.*, the League of Nations system.[1]

Cooperation in the sense of internationalism seems to be the most fruitful field of contemporary activity. Those who propose the political isolation of the state in the face of the economic and cultural interdependence of the society of nations are visionaries along with those who propose the assumption of sovereign powers by a superstate. If, on the other hand, a pluralistic conception of the superstate is presented, the superstate itself would be devoid of sovereignty, for logically to the pluralistic mind world government without sovereignty is the superstate. A pluralist can logically contend that a superstate exists at the present time if all forms of political cooperation, *i.e.*, internationalism, are grouped together as one integrated expression of the unity of the world. But such an interpretation is, after all, merely a battle of words between the pluralists and the monists. The weakness of the pluralistic conception here is simply that the pluralists are not satisfied with international control vested in the organs of international government that now exist. The issue is really whether a greater amount of international political control is demanded by the conditions of the modern world. The position of the internationalist, regardless of the implications of the doctrine of

[1] See Bluntschli, *op. cit.*, Bk. I, Ch. II, for a discussion of the idea of the universal state; Burgess, *op. cit.*, Vol. I, p. 50.

Potter distinguishes three forms of world policy: empire, international organization, and cosmopolitanism. The last "is the merging of the individuals of otherwise distinct nations in one society on the basis of interests common to them apart from nationality." P. B. Potter, *International Organization,* 3d ed. (New York, 1928), p. 14. *Ibid.*, pp. 47–48: " . . . it is supernationality. The individuals join together for cooperative action in associations which do not greatly take into account the otherwise distinct nations. Such cosmopolitanism is, of course, quite distinct from internationalism. If completely developed, it would supersede internationalism entirely." By permission of D. Appleton-Century Company, publishers. *Cf.* Sun Yat Sen, *op. cit.*, p. 68, for the view that much of the weakness of China is and has been due to cosmopolitanism, which destroyed the vitality of potential Chinese nationalism.

sovereignty, is to support the present extent of international government without attempting to destroy the national state, and to secure a greater amount of effective international action. If cultural interdependence, or cosmopolitanism, leads to political action, the internationalist stands for such cooperation also. But it will be admitted that, since the spiritual attrition of states resolves itself largely into forms of competition (colonies, raw materials, markets, surplus population, armaments), political internationalism must look to these matters for effective fields of activity.

It was thought in the early stages of international cooperation that the desideratum was the avoidance of war by the peaceful settlement of international disputes and the codification of the laws of war and neutrality.[1] The breakdown of these forms of internationalism during the World War indicated that cooperation must be positive rather than merely the negative avoidance of war. Internationalism must function, therefore, in much the same sense as government within the state. While it may be said that the state is negative in that it is a substitute for disorder, this has long since ceased to be a legitimate interpretation of state function. Order itself is still fundamental, but the modern state contributes more than a negative prevention or amelioration of disorder to the life of the citizen; it strives in a definite sense to make life better. So internationalism seeks to maintain world order, and, since the war and the organization of world government in a concrete sense, the theory of peaceful cooperation has been tremendously expanded. It may be said that anything which confronts all states is suitable for international treatment if there is a desire for cooperation. A mere listing of the functions of the League of Nations, the International Labor Organization, the World Court, and the various international administrative unions indicates that the activity of international government, though embryonic in many cases, is not very different from that of the national state. The feeling has grown that a dynamic peace must be the creation of daily effort in the ordinary aspects of peace; it is felt that such activity may remove the sting of international friction and develop the work of peaceful relations until war itself will be unthinkable.[2]

While the activity of internationalism must be consumed largely in the political and economic problems mutual to states, the purposive aspect of international cooperation is not to be lost. As the state must meet with purpose and organization the blind forces of historic and

[1] See J. B. Scott, *The Hague Peace Conferences of* 1899 *and* 1907 (Baltimore, 1909); J. H. Choate, *The Two Hague Conferences* (Princeton, 1913).

[2] See A. Thomas, "The International Labour Organization," *International Labour Review*, I (1921), 7.

economic consequences, so must internationalism insist that economic interdependence be organized. Economic interests themselves have proved disruptive in international life, just as economic struggle has proved disruptive within the state. Economic interest leads to both interdependence and disintegration, and it may be insisted that the disintegrative aspect of economic conflict is more prominent than its cooperative side. The theory of class struggle indicates that at least for some men the disintegration of economic competition is greater than the harmony produced by industrial society. That the situation should be different in the field of international politics must be sharply denied. Internationalism, in order to be successful, must be greater than the force of economic interest. Being greater than the economic forces and being able to bend motives to the formulation of purpose require the most careful organization. Purposive internationalism is on a moral plane, involving highly organized cultural and political cooperation. The theoretical basis of international action must be its appeal to men, not only in terms of preventive medicine, but also through a moral positiveness that equals the moral positiveness of the state. Constitutional morality is generically the same in international affairs as in domestic affairs; if peace is to be attained as well as progress, the former must be as vital as the latter. For international constitutionalism is the statement of a world ethical and legal order, just as state constitutionalism is the formulation of an ethical and legal order. Both require the highest appreciation of the value of social existence, and both admit the necessity of institutional bases of life. The mere negation of war because it is destructive is not sufficient to establish a permanently valuable international system.

Nationalism versus Internationalism. We are now in a position to inquire in greater detail as to the implications of internationalism for the national state system. In the first place, it must be borne firmly in mind that the denial of conflict and the positive statement of world solidarity within limits are not in themselves an attack on the state. It is a denial that conflict in terms of force is inherent in sovereignty and nationalism.[1] It is not the denial of conflict,

[1] Democratic nationalism as well as dictatorial nationalism may be regarded ultimately as antagonistic to peace. As Professor A. E. Zimmern is quoted in the London *Daily Telegraph* of October 28, 1931: "One reason for this degeneration of public opinion is to be found in the composition of modern political communities. By the theory of self-determination, associated with the doctrine of popular sovereignty, the State becomes identified with the nation. . . . Men have become accustomed to claim the right of having a State to their liking."

but its reordering. The state does not eliminate conflict within its territory, but it establishes the canons of conflict. It takes force away from the private individual or group purpose and insists that the claims of groups must be determined by other types of appeal. This fact has been called to our attention with great emphasis by modern pluralistic thinkers. The ordering of conflict makes for progress; it does not enervate the creativeness of society as does the use of force. There is only so much energy available to any group, and, if this energy is consumed in the employment of force, little is left for the realization of the purpose for which the group exists. The analogy of internal conflict in the state to the ordering of international conflict may be stressed. The state faces other states, and the implications of statehood are never exhausted entirely within a national territory, for the texture of institutional and social life is not limited by the computation of political boundaries. It is these external implications of statehood that concern the internationalist, especially where conflict may be generated by competition between states.

If internationalism is not a denial of conflict, but an ordering of conflict, the national state stands to lose little by international cooperation. If progress is a balance between statements and organizations of purpose, the principle of support, so important in domestic politics, may be extended to the external aspects of state life. And just as the elimination of force in domestic politics is not a loss to those groups seeking support, it is hardly possible that the elimination of force, *i.e.*, war, in international conflict would be any more of a loss. Thus it cannot be said that ordered international relations are a denial of nationalism, for, just as group purposes are organized within the state, so may they be organized in terms of interstate relations. Under a developed system of internationalism the state system would be liberated in fact from the burden of psychological and material armament which the possibility of war imposes. Just as in state life the monopolization of force by the state makes it necessary that group purposes be expressed by appealing for support, *i.e.*, for votes in a democracy, so the elimination of force in international life would have the same effect. Internationalism does not stand, in general, for a force-using or monopolizing organization above the state. Such an organization would be a superstate and it would necessitate the destruction of the state system as it now exists. But merely to eliminate force as an "instrument of national policy" does not mean that some organization other than the state has the right to exercise it.

This conclusion springs from the organization of the state system itself. Without the state system as it exists, it would be impossible to throw force aside without granting it to some organized unit. For war itself, as it is known to the modern world, is impossible without the state system, and it is only the states themselves that can eliminate war. Such a proposition does not mean that competition and conflict without the use of force are done away with; it merely means that the claims of states will be sustained in terms of international support rather than by the argument of bullets. This proposition is elementary enough, but it is extraordinarily difficult of realization, as modern history shows. If the more highly organized states have eliminated civil war, there is no valid reason why, during the process of state evolution, the concept of international peace should not become as stable as the domestic life of each state. Conflict of force between states is no more inherent than conflict of force within a state.

In the second place, internationalism implies an ordering of imperialism. Imperialism is the argument of force applied to backward peoples.[1] It is obviously true that less highly developed civilizations can urge their claims neither in terms of rational appeal nor on the field of battle. The Western nations have, in justification of their imperialism, urged its benefits, and it may be contended that there are benefits in terms of social progress in a limited policy of imperialism. The "white man's burden" as a justification of imperialism, whether it is stated in terms of evangelical effort or of general social progress, seems entirely hypocritical to the backward peoples with an adumbration of national consciousness. Imperialism results not in order but in conflict when we consider the fact that India, China, Egypt, the Philippines, and other areas have adopted the Western principle of national integrity. These peoples have insisted upon the right of self-determination in the light of their national aspirations. Imperialistic power puts forward as the first value the realization of social progress, while the backward state insists first on independence from imperial domination.

If internationalism means the ordering of conflict between the members of the family of nations, it means also the ordering of conflict between the members of the family of nations over peoples subject to their tutelage. The old principle of conquest and annexation, the monopolization of the economic resources of such areas, and their use for the development of military supremacy seems unsuited for a world in which the growth of international morality may be signifi-

[1] Imperialism is limited to backward peoples because the concept of international war covers conflicts of force between members of the family of nations.

cant.[1] The conflicts arising from imperialism may be as costly to the world in the long run as conflicts between members of the family of nations; as the use of force in conflict must be avoided in the one, so must it be eliminated in the other. One fundamental indication that the time for the regulation of conflict has arrived is that the habitable and economically profitable areas of the world have been divided. Another is that the Western powers are beginning to realize that it is possible to attain economic advantages from backward peoples by less drastic means than annexation and the complete denial of the right of self-determination.[2] If the backward peoples are willing to concede the economic unity of the world which industrialized powers assume, the mere fact of political self-determination becomes of little importance to the dominant powers. While the principle of cooperation considers the interaction of the political and the economic, when it comes to the relations with less civilized peoples it is quite possible to concede political freedom if the economic integration of the world and the international political aspects of this economic life are not endangered. Objectively, the Western powers have little interest in the internal politics of an "exploited people," for they are interested only in the economic relations and in their place in the international scheme of the world.[3]

Does the ordering of imperialism so that it no longer produces conflicts of force imply the insignificance of political relations? It means merely a separation as far as possible of domestic and international politics. It means that backward peoples, however nationalistic they may be, must recognize that Western civilization must survive on the basis of international economic relations; they must not throw their nationalistic aspirations into the scales against the economic need of the rest of the world. All that is necessary for the economic relations of countries is cooperation, and Western powers are gradually recognizing that the control of the domestic politics of backward peoples is not necessary for the preservation of their economic interests, provided there is sufficient cooperation and ordering

[1] The peoples subject to Western imperialism are probably more interested in international morality than the Westerners. As an example see Sochin Sen, *Political Philosophy of Rabindranath Tagore* (Calcutta, 1929).

[2] Benjamin Gerig, *The Open Door and the Mandate System* (London, 1930); Q. Wright, *Mandates under the League of Nations* (Chicago, 1930).

[3] The proof of the above argument as far as the United States is concerned may be found in the Central American and Caribbean policy of the United States. See Secretary of State Stimson's address in May, 1931. It may be seen likewise in the willingness of the United States to grant Philippine independence subject to somewhat harsh economic guarantees.

of international political relations. At the heart of internationalism is the recognition of the legitimate claims of nationalities under the tutelage of Western powers, but internationalism as the creation of Western states does not carry with it any element inimical to the economic progress of an industrialized world. Imperialism is fundamentally a denial of cooperation, and, as cooperation is fundamental in internationalism, the latter carries with it the demand for an alteration of the imperialistic system of the nineteenth century.

The limits of imperialism in the history of the state are clear if we remember the insufficiency of available backward areas. Imperialism itself will be seen in the future as a passing phase of the modern state system, for if the use of force in conflict is to be avoided imperialism must be avoided. At the same time the nationalistic claims of exploited peoples run counter to the modern movement (however weak) away from a rigid nationalism. Applied science and the interchange of culture should bring the world closer together, and this integration of the world must be based on far-reaching cooperation. In the nature of the case, the leading powers of the West must offer resistance to the nationalistic claims of formerly subject races. If they are left alone to work out their aspirations, the necessities of the economically and culturally unified world would be sacrificed to the demands of inexperienced nationalism. And while such nationalism might not be so dangerous to the peace of the world as to that of the stronger Western countries, the sacrifice involved in conceding such claims need not be made by the West.

In the third place, therefore, internationalism demands the ordering of nationalism, not its destruction. Concerning cultural, ethnic, linguistic, religious, or traditional bases of nationality, internationalism has no opposition to offer. Internationalism, as contrasted with cosmopolitanism, presumes the existence of nations, but it does insist that the nations of the world must live in ordered relations with each other. As far as nationalism implies the right to use force in international affairs, internationalism offers a denial; but internationalism does not in any sense demand that nationality be submerged in world government, for world government must be based on the principle of solidarity and voluntary cooperation.

The Ethical Bases of Internationalism. In previous discussion it was maintained that the state ought to represent a community of purpose voluntarily accepted by the citizen, and it was held that this association is given moral content by such acceptance. In like manner the international community of states may be seen as a world recognition of community purpose. As long as national purposes are con-

ceived as the only ones worth recognition, the inevitability of conflict is clear. Internationalism insists that it is impossible to separate and enclose behind political boundaries the sense of community interest. The idea of community life implies similarity or identity of purpose and a conscious recognition of this fact; it is more than interdependence, for the community exists by an act of will; it is the acceptance of mutual effort toward the good life. The idealists or absolutists in political theory are inclined to view the state as the highest possible expression of community spirit,[1] and they do not therefore emphasize the significance of the incipient international community.

The internationalist will not say that the state by itself constitutes a complete expression of the purpose of life as conceived by human intelligence. He insists that the international community exists as a fact insofar as there is interdependence, and that the good life, the attainment of justice, require a recognition of the broader community. The internationalist does not deny the value of the state in developing human personality, but he insists that on the basis of history the state is an imperfect instrument of the good life, for the good life must come on the international scale through international collaboration.[2] Such a broad statement of the ethical basis of internationalism will be generally admitted, but the practical means of working it out, as we shall see in the next chapter, involve heated resistance at many points. By the evolution of the state certain conclusions are generally accepted as to the means that should be employed in the attempt to add to the content of life. Yet conflict regarding means is much more violent than the conflict regarding ends, for ends are significant ultimately only as they are translated into means. So it is with the international community. The history of the twentieth century shows concerted efforts on the part of Western powers to develop the structural and functional side of internationalism, and this development has involved a surrender of the claim that the state is the sole agency for the definition of the good life. In the field of ends the real conflict arises over the determination of the internationalist to place the function of international cooperation on an equality with the state itself.

It may be said that to attach such importance to the external side of state life is in reality to attack the state system, since the state

[1] See Bernard Bosanquet, *The Philosophical Theory of the State* (London, 1899); A. R. Lord, *The Principles of Politics* (Oxford, 1926).

[2] For instance, the use of war by the state system as it exists is certain proof to the internationalist of the defectiveness of the state as an agent of the good life. As Green would say, war comes from the imperfect organization of the state as an ideal organizer of rights. Green, *op. cit.*, Vol. II, p. 485.

system, as a system, is based on the greater and superior importance to the individual of the state. In support of this contention the general dislike of internationalism for the concept of state sovereignty may be noted. But while it is true that those primarily interested in international cooperation do minimize the function of the *sovereign* state, they do this because the defenders of sovereignty, as a part of an *ethical* philosophy of the state, minimize the importance of the international community. The jurist in defending sovereignty simply insists that the state as a final focal point, or coordinator, of function cannot be escaped. The juristic position in itself carries no implications as to the value either of the state or of the international community. What the internationalist is interested in is international cooperation and definite recognition of the moral claims of the Great Society, and he is not interested in the destruction of sovereignty as an end in itself. It is true that the internationalist is seeking a modification of the more conservative theory of the state, but this is not to imply that he is trying to erect a superstate upon the ruins of the family of nations. The internationalist is determined to view the politically organized world as a community of communities, just as Figgis and other pluralists are determined to view the state itself as a community of communities.

Centuries ago Aristotle traced the development of the family from the natural needs of procreation and subsistence to the development of the village as an extension of these needs, and finally to the state as the ultimate expression of the material wants of men. But coming within the purpose of each of these types of associations, founded first on material hungers, is the implicit social and spiritual aspect of man. The family arose from the lower reaches of existence, but it flowered in love and friendship; the village supplied indefinitely expanding wants, but it also taught the value of society; the state provided many material satisfactions, but the chief purpose of the state is to unfold the life of virtue, to protect and cherish the good life.[1]

But Aristotle was looking at the society of his day. He did not envisage the formation of great empires in his ideal of state life or the rise of national states in the modern period. The city-state to him was the final expression of the rational and ethical reaches of which the soul of man was ordinarily capable. The modern state may be considered as the development of Aristotelian theory along lines of larger unities. Small groups of people became communities because of needs and the rational evaluation of these needs. Though founded on necessity,

[1] *Politics*, Bk. I, Ch. II.

the national state did not decay in time of peace; it continued in the nurture of the good life, as modern nationalism sees it. There is a faith that there is something of virtue in the large communities we call nations.

If there is anything undying in the doctrines of Aristotle, it must certainly be that there are higher purposes in the associations of men than just the satisfaction of material wants. Moreover, there is no logical reason for stopping the application of this principle at anything less than the totality of humanity.[1] National states found from sheer necessity that they must come into relations with one another. To be sure, modern trade and industry are the most international aspects of modern life. They spring as logical or natural necessities from the wants of man. Thus, following Aristotle, we may say that the modern community of states has come from the recognition of the material bases of their relations. Even as the city-state of Aristotle, founded on material necessity, continues as a necessity from a social viewpoint, we may say that the modern community of states, founded on the same necessity, has been trying since the time of Grotius to justify itself upon an ethical basis, upon a recognition of social values, and upon the protection of the good life of mankind.

Thus it may be confidently asserted that the international community is a community, since there is a definite ethical basis, *i.e.*, purpose in international cooperation. It is not a denial of this position to assert that material want and material advantage were the fundamental motives involved in the development of internationalism. The first principle of importance is that the international community cannot be maintained on a basis of stability without some ethical foundation. The ethical foundation of internationalism is derived from the concept of purpose evolved from the normal development of international relations, and the international community arises from the voluntary acceptance of such values.[2]

The Legal Bases of Internationalism. The first step in the organization of means designed to express in a concrete sense the evolution and acceptance of purpose is, logically, an international legal order. The family of nations is both ethical and legal. As an ethical world it is the consciousness of the value of international action for the attainment of purpose. As a legal proposition it involves the concept of stabilized order in the relations of states; it involves the notion of international law. International law is a body of rules and principles accepted by the civilized states as a basis of their relations with one

[1] See Bluntschli, *loc. cit.*, and Burgess, *loc. cit.*

[2] See Josiah Royce, *War and Insurance* (New York, 1914).

another. It is not law in the same sense as municipal law, *i.e.*, law within the state, for municipal law has behind it a potential exercise of power for its enforcement. The sanction of international law is not force; it is international opinion. While we may agree with Willoughby that international law is not positive, as it does not derive from the enactment or command of the state,[1] this is not to admit that international law cannot be law based on the acceptance and custom of the states in the family of nations.[2] The fact that the rules and principles are accepted as between *states* makes them different from the rules or principles acted upon by private associations in their respective relationships. The acceptance of a rule by a state is much more serious and permanent than acceptance by a private association. The modern world recognizes that international law is law, though it may not be positive law.[3]

International law rests upon several bases. In conservative interpretations, at least, its effectiveness depends on its acceptance by each member of the family of nations. The content of the law springs from custom or international practice, from treaties that define and establish principles of relationship, and more remotely from the comity or friendliness of nations, which is not, strictly speaking, international law but which may become so with the crystallization of practice into custom. Early international law was considered a rational explanation of natural-law principles that should govern the relations of civilized states, but during the nineteenth century the Anglo-American writers on the subject, especially, rejected the natural-law basis and drew international law from custom and treaty. International law in itself represents a prevailing concept of justice between states; it is an expression of the actual and systematic organization of purpose existing at any one time in the relations of states. Since the World War the earlier emphasis on the international law of war has been replaced by a more positive and expanded content of the international law of peace.

The Limits of International Law. International law, it must not be forgotten, is only a partial and fragmentary ordering of the relations

[1] Willoughby, *op. cit.*, Ch. XVI.

[2] C. G. Fenwick, *International Law*, rev. ed. (New York, 1934); Hershey, *op. cit.*, Ch. I.

[3] See Carl Schmitt, *Verfassungslehre* (München und Leipzig, 1928), pp. 363–364, for the distinction between *zwischenstaatlich* (between states) and international. International law, he says, is between states while international means going beyond the state without taking account of it. Also Carl Schmitt, *Der Begriff des Politischen* (Hamburg, 1933).

between states. On every hand it is recognized that political cooperation, not included in international law, must be resorted to, as well as the general and continuous development of international law itself. Let us turn to these considerations in the following chapter.[1]

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[1] Perhaps the real question for modern international society is: what should be done when state interest or policy conflicts with international law? When there are gaps in international law, we may admit that international jural principles are not superior to the state, but, when there are no gaps, what then?

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Chapter XVII

THE STATE IN AN ORGANIZED WORLD

Les nations ne sont pas quelque chose d'éternel. Elles ont commencé, elles finiront. La confédération européenne, probablement, les remplacera.—Ernest Renan.[1]

Why International Government Is Necessary. A concept of international society has been developing since Grotius wrote his great work in 1625. The fundamental proposition laid down by Grotius is the controlling significance of morality and law in the relations of states; his first interest was in the guiding principles that should be accepted by Christians. The influence of Machiavelli in Western diplomacy was beginning to be felt when Grotius published his work, and, as in the case of Machiavelli, the full significance of Grotius' contentions was not immediately realized. Lord Acton remarks of the work of Grotius:

> From that time it became possible to make politics a matter of principle and of conscience, so that men and nations differing in all other things could live in peace together, under the sanctions of a common law (*i.e.*, natural law). Grotius himself used his discovery to little purpose, as he deprived it of immediate effect by admitting that the right to reign may be enjoyed as a freehold subject to no conditions. When Cumberland and Pufendorf unfolded the true significance of his doctrine, every settled authority, every triumphant interest recoiled aghast.[2]

If Acton is right, both national and international society, *i.e.*, community, rest upon the acceptance of principle rather than of expediency. Modern internationalism most certainly exemplifies the importance of principle. Principle and conscience in international

[1] "Nations are not eternal. They began, and they will end. The confederation of Europe will probably replace them." "Qu'est-ce qu'une nation," *Discours et conférences*, pp. 308–309. Address delivered in March, 1882, at the Sorbonne.

[2] Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), p. 46. By permission of The Macmillan Company, publishers. But *cf.* James Brown Scott, *The Spanish Origin of International Law: Francisco de Vitoria and His Law of Nations* (London, 1934); *The Spanish Conception of International Law and of Sanctions* (Washington, D. C., 1934).

life are defective, since a mere statement of principle is powerless without organization to make it usable in the ordinary relations of men and states. The effort of modern students of internationalism has been concentrated primarily upon the development of organization, and the growth of international organization has stimulated the development of the international society. If international government may be said to exist at all, it must exist by virtue of the work of the Peace Conference of Paris of 1919. More optimistic thinkers may contend that an international federation of states has been created, or that the League of Nations system is the most significant confederation in the world today, aside, perhaps, from the British Commonwealth of Nations. In any case, the League system represents the organized association of states for purposes commonly recognized as governmental. At the present stage, international government is political simply because it is an official organization of governmental structures erected by states for their use. The states of the international society have created the system, and it exists for their benefit. But international government is not a state since it does not possess finality or any of the attributes associated with the conception of sovereignty.

The present system of international government arose from the defects of the prewar system. The experience of states during the nineteenth century demonstrated the inability of the concert of powers to prevent war,[1] and the same fact appeared in the failure of the Hague to prevent or humanize war by judicial or legal means.[2] What were the defects of the prewar system which aroused the framers of the peace to such activity in developing international government? In the first place, the prewar system was legally incomplete. International law, aside from some major multilateral treaties, such as the Briand-Kellogg pact, does not yet provide rules for the settlement of all possible controversies between states. The greatest need of international law is that political or nonjusticiable questions, such as those involving national honor, territorial integrity, and independence, should be made subject to the effective control or adjudication of the law of nations. Any question arising between states may be interpreted unilaterally to involve some question that the states concerned may settle, if necessary by resorting to international war. The most fundamental defect in international law was the recognition of war. The postwar efforts at codification conducted by the League, the efforts

[1] R. B. Mowat, *The European States System* (New York, 1923), pp. 51 *ff.*

[2] W. Schücking, *The International Union of the Hague Conferences*, tr. from the German (New York, 1918).

to provide means for the peaceful settlement of disputes, and the outlawing of war, put on paper by the Briand-Kellogg pact, all lead in the direction of the legal condemnation of war and the establishment of machinery that will make the condemnation effective. The reign of law in international society before the war was more fictional than factual, but future events may still demonstrate the failure of postwar efforts to secure in a complete sense the supremacy of law between states. The experience of neutral countries during the World War indicated that the century-long struggle to develop a stable concept of neutral rights was ineffective, both from the standpoint of the British blockade and from the standpoint of the use of the submarine by the Central Powers. The laws laid down for the humanization of war gradually disintegrated in the melting fury of conflict, and every means of destruction that could be created by science was used.

In the second place, international government before the war was structurally fragmentary and incompetent, just as the organization of principles and rules of conduct was incomplete and functionally defective. There was no means whereby the nations could be called together for regular consultation, and in the consultations actually held the dogma of international state equality made agreement difficult for both the stronger and the weaker powers of the society of nations. There was no international executive organization, and there was little development of international fact-finding and fact-distribution organizations. True, in the case of the scientific or administrative unions there was organized collection of information, but not upon those questions that threatened war. Both political consultation and judicial organization were poorly organized.[1] No power was able to call other states together, and, once they were assembled, the principles of unanimity of decision and equality of voting power made it difficult to attain worth-while results on issues at all controversial.

Thus it may be said that the very fundamentals of international cooperation were lacking, despite the universal agreement that international cooperation was necessary. Diplomacy was not equal to the needs of the organized world, for diplomacy was singularly sheltered by its traditional dignity and secretiveness. Without disparaging the achievements of enlightened diplomacy, it cannot be said that this was or is adapted to the cooperative needs of the modern world. The professional diplomat has given place again and again to the technician and the expert as consultation on such matters has become increasingly

[1] In pointing out that war arises from the imperfect organization and recognition of rights, T. H. Green, *Works*, Vol. II, p. 485, makes a plea for a court to settle disputes between nations. This was in 1879–1880.

important.[1] International organization before the war was clearly incomplete in function, and, as long as national isolation and the determination of national policy without consulting other powers prevailed, this incompleteness could not be overcome.

Postwar international government represents the concerted drive of the Allied and Associated Powers to stabilize their international society structurally and to establish machinery for the expansion of international principles and rules of conduct. It seems that the relatively discredited principle of confederation is to be effectively revived on a world scale.[2] The theory of the confederation is peculiarly acceptable to the present state system since it makes no attempt to establish world sovereignty, *i.e.*, a superstate in the monistic acceptance of the term. The future course of events must indicate whether the present League of Nations system is capable of preventing a major European conflict, and also whether it is capable of development along the lines indicated by the failure of some of its attempts.[3] Still the fundamental proposition that international government is the alternative to war in the modern world can hardly be contested. Those who oppose the present system are curiously divided in their condemnation. Some venture the opinion that the League system is a positive menace to the integrity of the national states now existing, but most of its critics contend that the weaknesses of the League make it useless to the national state seriously desiring to foster peace. The defenders of the League system, of course, make no claims of perfection, but they do insist that it has within it the capacity for development so that, should the states be willing, greater crises may be met in their time.

[1] However, with the withdrawal of Japan and Germany from the League of Nations, announced in 1933, it may be that the older principle of diplomatic relations between states will resume much of its prewar character. A declaration of withdrawal becomes effective in two years.

[2] J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), p. 33, note, remarks that "the basis of international law is also the basis of the Universal State." But he says, "We may find a model [of the Universal State] in the form of a federal state or a federal empire, in which common federal matters are cared for by a common legislature, administration and judicature, while in matters affecting each country the sovereignty of particular states is still recognized." Bluntschli's idea is much the same as that later propounded by some American scholars, that the formation of the American union gave suggestions for international organization. J. B. Scott, editor, *The Declaration of Independence, the Articles of Confederation, The Constitution of the United States* (New York, 1917), introductory note; also *The United States of America: A Study in International Organization* (New York, 1920).

[3] W. E. Rappard, "Nationalism and the League of Nations Today," *The American Political Science Review*, XXVII (1933), 721 *ff.*

International Organization before the League System. International organization before the war had the following distinct aspects: (1) the consular and diplomatic service, (2) international legal principles and treaties, (3) international conferences, (4) international administrative unions, and (5) the Hague system for the settlement of international disputes.[1] Each of these aspects of international organization remains active in the present system, and it may be said that the postwar League of Nations system is merely a development and organization of principles involved in each aspect of prewar organization.

a. The Consular and Diplomatic Service. Each state maintains a consular and diplomatic service. The foreign service of each country thus has two distinct divisions. Consular agents of various grades are sent to leading commercial centers to protect national interests and to gather and report information valuable to the commercial elements of the home country.[2] While the diplomatic service is not clearly separated from the commercial side of international relations, it may be said that in general the diplomatic service is concerned with the political interests of the home country. Diplomatic relations first developed on a permanent as opposed to a casual basis during the time of the Renaissance. As the suspicion that attended the presence of the foreign diplomatic officers was dissipated, and as diplomatic agents became permanent officials rather than personal representatives of the individual monarch, the importance of diplomacy in international organization developed materially. The diplomatic service is peculiarly associated with the traditional dignity of the state, though in the past it was associated with the personal dignity and honor of the ruler or sovereign. Republican states at first had difficulty in accepting the principle of absolutist diplomacy, and in America it was felt in the early years of the republic that it was inconsistent with our principles to appoint ambassadors who were traditionally the personal representatives of a monarch. The reconciliation between republican principles and monarchic tradition has been easy, and this is especially true since monarchic countries have become constitutional and democratic in their forms of political control.

The average citizen of a democratic and republican country has difficulty in accepting the significance of diplomatic rank. These ranks were determined in the early part of the nineteenth century by the Congress of Vienna and the Congress of Aix-La-Chapelle in 1815

[1] See, in general, P. B. Potter, *An Introduction to the Study of International Organization*, 3d ed. (New York, 1928).

[2] T. H. Lay, *The Foreign Service of the United States* (New York, 1932); G. H. Stuart, *American Diplomatic and Consular Practice* (New York, 1936).

and 1818. The regulation of diplomatic rank was made necessary by "the inconveniences which have frequently occurred, and which may still occur, from the claims of precedence among the different diplomatic characters."[1] Diplomatic characters were divided by the "crowned heads" into three classes. The first class consists of ambassadors, legates, or nuncios; the second class of envoys, ministers, or other persons accredited to sovereigns; and the third class of chargés d'affaires accredited to ministers of foreign affairs.[2]

There are certain immunities that are granted to consular and diplomatic officials. The immunity of the consular officer is relatively slight in comparison with that of the diplomatic representative. The consular officer has immunity as to his archives and records, but he is subject to the laws of the country in which he is living, while the diplomatic representative is not subject to the laws of the national territory in which he is stationed.[3] While the accrediting of a diplomatic representative to a foreign country is subject to the approval of the foreign country, the only way in which the foreign country can control the diplomatic representative is to dismiss him or to ask for his recall by the home government. To do this, however, generally constitutes a severance of diplomatic relations between the governments. Despite the fact that diplomatic immunity became crystallized in the formal relations of states because the diplomat was the representative of the sovereign, republican governments and democratic countries have shown little inclination to destroy the system of immunities which is associated with the diplomatic relationship.

It cannot be denied that diplomatic practice constitutes a great advance over the informal system of relations that existed in the early years of the state system. Diplomacy has not been without value in preserving the peace of the world, and, even if it is assumed that war will break out periodically, the times of peace in European history might indicate considerable success attending diplomatic efforts. Diplomacy is connected with the institution of good offices and mediation. In case of struggle between two countries, a third country may, at a proper time, offer its good offices and mediation to settle the dispute. Furthermore, the diplomatic commission of inquiry into

[1] United States Diplomatic Instructions, Sec. 18. Cited by Potter, *op. cit.*, p. 455.

[2] The *Register* of the Department of State gives lists of the diplomatic and consular representatives of the United States.

[3] See I. Stewart, *Consular Privileges and Immunities* (New York, 1927); A. S. Hershey, *The Essentials of International Public Law and Organization*, rev. ed. (New York, 1927), Chs. XVIII and XIX.

matters of conflict, if handled with fairness to all sides, is also an instrument for avoiding international conflict. With all its weaknesses, such as its formality, its extreme rigidity, its secretiveness, and its extreme sensitivity to national dignity, diplomacy itself is the basis of the League of Nations system. For the representatives of states or governments, not of peoples or interests, constitute the machinery of the League of Nations. The outstanding defects of the old diplomacy, such as its secretiveness and its inability to compromise after taking a position, because of national honor, have been minimized in the assembly of the League. Yet it must not be forgotten that diplomatic organization is still of fundamental importance to the state and that there is little chance that the League system can make unnecessary the maintenance of diplomatic agents.[1]

b. International Legal Principles and Treaties. The second type of international organization before the war is seen in international law. While custom between states is generally inflexible, the international treaty is not. In recent years the subjects of international negotiation have been expanded immeasurably. Treaties may now deal with any subject of interest or possible agreement between states, rather than with the narrow political questions of alliance and military strategy. One development in modern times is particularly significant, namely the use of the treaty for agreement as to the peaceful settlement of international disputes. The modern treaty of arbitration, such as the Jay treaty of 1794, the general treaty of arbitration, and finally the postwar agreements and the Briand-Kellogg pact which include all questions as a matter of principle, indicate the flexibility of the older treaty system.[2] The modern "permanent alliance," to use the phrase of George Washington, is one of peaceful purpose. It can hardly be said that any country of the world is not in alliance with other countries, for the basis of alliance is a common recognition of the value of peaceful agreement on matters of conflict as opposed to warlike threatening. But with the modern treatment of armaments by international agreement and the regulation of international social evils, such as labor exploitation, the white-slave traffic, the traffic in drugs, and the allocation of economic interests on

[1] The method of informal conference between the actual heads of states while both countries know at the same time nearly all of the content of their discussions, indicates the flexibility of the traditional system of diplomacy.

[2] It must be conceded that in general even at the present time international arbitration or peaceful settlement as an obligation is restricted to "justiciable" disputes. See J. H. Ralston, *The Law and Procedure of International Tribunals* (Stanford, 1926).

the basis of agreement, the international treaty seems to be becoming the great modern instrument for the creation of international law by legislation.[1]

While the codification of international law is not more significant as yet than the total content of specific treaties covering points of possible conflict, the future may show that the treaty is capable of expansion until the international law of the future will make possible the creation of great treaties accepted without question by all the members of the family of nations. Not all treaties, of course, are international law in a general sense. While it may be said that a treaty between two countries makes law for those countries, it certainly does not make law for all countries. During the nineteenth century the number of treaties to which were appended the signature and ratification of the more important members of the society of nations increased very rapidly. The League of Nations, in building on the codification precedents of the nineteenth century, such as the Declaration of Paris of 1856, is attempting to use the international treaty as the binding instrument for creating further international law. But combined with the treaty as the means of codification, one must note also that the international conference is becoming a potential legislative body for the world.

c. International Conferences. In the third place, therefore, the international conference is one of the most important developments of the nineteenth century in international organization. One may readily admit that the international conference was at first the instrument of legitimacy and despotism in the reaction from the ebullient forces released by the French Revolution. But this does not mean that the conference cannot serve the interests of international order, any more than the narrow use of diplomacy and treaties condemns them as instruments of progress in the present century. The nineteenth century is the century of international conferences. It is the time of development of the private, the semipublic, and the official international conference to deal with common problems. The rise of the international conference has made uncertain the actual bases of international action, and it has become the fashion, according to some, to hold international conferences on purely national questions.

[1] See M. O. Hudson, *International Legislation*, 4 vols. (Carnegie Endowment, 1931). The self-consciousness of the international community is most clearly shown in the development of international legislation, just as the proof of the self-consciousness of the national state appeared in the development of legislation. *Cf.* Bluntschli, *op. cit.*, p. 63.

Perhaps the private international conference has made a contribution to international organization in that peoples have become accustomed to international meetings on a varied number of questions where public issues are immediately or ultimately at stake. It is, of course, the public and official international conference that has made the greatest contribution to a legally organized world. In such an international conference, the official, *i.e.*, diplomatic, representatives of the powers gather in semiopen diplomatic negotiation to consider carefully organized agenda. The press of the world follows the activity of such a conference; the crises of negotiation are eagerly chronicled by the journalists; and the members of the publics of the various states concerned have a chance to formulate judgments on international policy. Each international conference prepares for the next one, and the experience of the last century and of the first quarter of this one indicates the permanent place this institution is to occupy in the future solution of international difficulties. While the international conference of the nineteenth century was used primarily to liquidate the aftermath of war, the conferences of this century are being used to prevent future conflict. It is still necessary, of course, for the participants in such an official conference to be cautious of the public knowledge gained as to specific national stands, but the results of the international conference are now generally a matter of public knowledge. The treaties now initiated in such conferences are not secret, but become officially and publicly a matter of foreign policy.[1]

d. The International Administrative Union. A fourth form of international organization before the war was the international administrative union. The administrative union was composed of members of the state system, and its origin was in the necessity of managing or administering certain constant international problems, largely of a scientific or technical nature. The union is generally composed of an assembly and an executive board or committee to which is delegated the immediate conduct of affairs included in the purpose of the union.[2] A large number of international unions were formed before the war to deal with questions such as the international carriage of mail, sugar, health, and the exchange of scientific information. While the narrow scope of each international union has prevented the formation of international confederations of states, the

[1] See N. L. Hill, *The Public International Conference* (Stanford, 1929); E. Satow, *International Congresses and Conferences* (London, 1921); F. S. Dunn, *The Practice and Procedure of International Conferences* (Johns Hopkins Studies, 1921).

[2] See P. S. Reinsch, *Public International Unions* (Boston, 1911); F. B. Sayre, *Experiments in International Administration* (New York, 1919).

confederate principle is clearly inherent in the administrative union. The union is significant in that, in addition to treaties and regular meetings of representatives who are experts in technical subjects, there is the international executive agent, by which the historic principles of state equality and the delicate issues of diplomacy are avoided. Some of the executive agents of these unions have had a certain amount of discretionary authority granted to them, and in such cases there is no issue of state precedence to decrease the effectiveness of the international union.[1]

The development of the international union, according to Reinsch, brought about the development of international administrative law. International law, so long concerned with the rights of belligerents and neutrals, had to accept as part of its corpus the practices developed in the international administrative union. While the sanction of international law is public opinion or international morality, the sanction of the practice of international unions, hid from the public eye and the interest of foreign policy, rests primarily upon efficiency in dealing with international problems. Its tenure of existence is in terms of results; it is pragmatic. The continued existence of the unions and their development of a body of international practice which may be called international administrative law are added evidence of the practicability of international cooperation. Since the founding of the League of Nations, many of these unions have come under the supervision and assistance of the League, for most of the members of these unions are also members of the League. The League has represented to these states the integration of international cooperation. Under the aegis of the League of Nations the growth of international administrative law and practice is certain despite the political failures of the League.

e. The Hague System. In some respects the weakest and yet the most striking form of international organization before the war is the fifth type—that of the Hague Conferences.[2] The Hague Conferences of 1899 and 1907 represent the culmination of nineteenth century efforts to organize the world. While the Hague Conferences were interested primarily in developing the laws of war and neutrality, they were also interested in the development of international judicial machinery. The nineteenth century international conference repre-

[1] Potter, *op. cit.*, pp. 176–177, notes this type of action in connection with the International Sugar Union (1902). See A. Rapisardi-Mirabelli, "Théorie générale des unions internationales," Académie de Droit International, *Recueil des cours*, 1925, II (Vol. VII), pp. 345–390.

[2] Schücking, *op. cit.* See also Scott, *op. cit.*, and Choate, *op. cit.*

sents the beginnings of international legislative development; the administrative work of the international unions represents the executive side of international life; and the system of the Hague Conferences suggests the development of the international judiciary. Before the Hague Conferences it had been one of the significant anomalies in the legal organization of the world that international law was not enforced by clear-cut judicial means.[1] It was recognized that, if the system of states really had an international law, it should be interpreted in a judicial manner, yet in the Hague Conferences the obstacles to the establishment of a real international court were insurmountable. It was a new idea that sovereign states might submit questions of international right to a court when war and negotiation or arbitration had for so long been the chief means of settlement. We have already observed that, despite the growth of international law, the gaps in international law, *e.g.*, political questions not subject to judicial settlement, were at least as striking as the types of questions that could be settled by adjudication.

Insofar as the Hague Conferences established a system of peaceful settlement of international disputes, they are the nineteenth century termination of the movement for international arbitration begun in part by the ancient city-states of Greece[2] and revived, after varying fortunes during the Middle Ages, in which the papacy was the leading arbitrator, by the national state system. The Jay treaty between the United States and Great Britain in 1794 was one of the first important modern treaties providing for the peaceful settlement of international disputes. Since the time of the Jay treaty the practice of arbitration, led largely by the United States and Great Britain, has resulted in the ratification of many treaties of arbitration. These treaties were, for the most part, bilateral, *i.e.*, there were two parties only, and the signatory states agreed that disputes not involving their independence, territorial integrity, or national honor (and these questions include nearly all possible disputes, of course) should be submitted to international arbitration. The logical development of the nineteenth century arbitration treaty is the multilateral arbitration convention and the establishment of an international court for the settlement of disputes submitted to arbitration.

Even with the Hague system there were two outstanding defects in the international judicial settlement of disputes. While the

[1] J. H. Ralston, *International Arbitration from Athens to Locarno* (Stanford, 1929).

[2] C. Phillipson, *International Law and Custom of Ancient Greece and Rome* (London, 1911).

intentions of states as expressed in their treaties were elevating, yet the issues of national honor, territorial integrity, and independence were excluded. The second defect, that of not having a definite and permanent machinery for settlement, made international arbitration almost insignificant when real crises arose. The gap in international law not covering "political questions" was a fundamental stumbling block to international settlement, but it might be said that even more fundamental than this was the lack of machinery. Arbitration itself may be viewed as the nonlegal settlement of issues between states, but it has always been a principle of arbitration that the standards of international law should be applied as far as possible. The arbitrations of the prewar era by the Hague Tribunal with casually formed arbitration boards shade imperceptibly into international judicial settlement. The practice of arbitration, of course, accustomed the world to the peaceful settlement of disputes, and it also expanded the principles of international law. The chief objection to a permanent system of arbitration was not to its permanence, but to the arbitration of disputes. By the time of the Hague Conferences it was felt that experience had shown the feasibility of arbitration and the utility of international legislation for the development of international law. The framers of the Hague system did not believe it to be perfect, any more than the proponents of the present World Court and League of Nations system conceive them to be perfect, but they did believe that it was a step in the direction of international adjudication.

The Hague Conferences attempted developments along several lines. They attempted to codify the laws of war, to humanize war, and to define in detail the rights of neutrals on the high seas during war.[1] But from the standpoint of international organization, the attempts to establish an international court were most interesting. The court established by the Hague Conferences was in fact a board of judges who might be called in by the states signatory to the treaties when it was desired to settle a dispute by arbitration. The cases settled by the powers were not insignificant, either in number or importance,[2] but it was plain that the machinery was defective. The existence of a panel of judges instead of a court of judges required that, before any single case could be submitted, a special treaty or com-

[1] J. B. Scott, editor, *The Conventions and Declarations of* 1899 *and* 1907 (New York, 1913); *The Proceedings of the Hague Peace Conferences*, 5 vols. (New York 1920–1921).

[2] This is true, for instance, of the Pious Funds Case which involved the United States and Mexico and which was one of the earliest cases before the court. See J. B. Scott, editor, *The Hague Court Reports* (New York, 1916), pp. 1 *ff.*

promise had to be ratified defining the issue to be settled and the selection of judges for the case. There was no permanent court in the sense of a definite membership, and there was no permanence of jurisdiction, since each party submitting a case could define the conditions of submission. The system itself placed little emphasis on international law, with the further difficulty that international law could not be definitely expanded by arbitral decisions that did not follow as precedents from other similar settlements. Had the Hague Conferences been able to organize an international legislative assembly, *i.e.*, an assembly meeting at stated intervals for the purpose of codifying international law, and had they been able to establish a court with a relatively stable membership and permanent tenure, the story of international justice might have been advanced by at least twenty or twenty-five years. A serious attempt was, indeed, made to establish an international prize court to care for the interests of neutrals, but the question of appellate jurisdiction from national courts was a great obstacle, as well as the fact that the actual definition of contraband of war proved to be impossible.

To evaluate the work of the Hague Conferences is a most difficult task. It may be said that there is nothing really revolutionary about their work, inasmuch as everything that was accomplished can be fitted into the conventional theories of the international legal order. On the other hand, a more favorable interpretation insists that the work of the Hague Conferences established in fact a weak but real international confederation. That it was a federation for the settlement of disputes does not, from this point of view, make an essential difference. It is the principle of confederation which stands out as the result of the Hague Conferences, and it may be noted further that the bureau established by them for the management of the court has some of the elements of an executive agency in international government.[1] It cannot be argued that the Hague system destroyed the sovereignty of states any more than other multilateral treaties have destroyed it. There is little doubt that the Hague system, which is still in operation, prepared the way for the more effective organization of international justice under the League of Nations system.

The Peace Conference and International Government. With the Peace Conference of Paris beginning in January, 1919, a new era opens for international government.[2] The experience of the world

[1] See Schücking, *op. cit.*

[2] See H. W. V. Temperley, editor, *History of the Peace Conference of Paris*, 6 vols. (London, 1920–1924); D. H. Miller, *The Drafting of the Covenant*, 2 vols

with international organization before the war, the failure of the prewar system to preserve peace, the high point in international idealism reached just at the conclusion of the war, the demands of various groups for effective international organization, the danger of world revolution presented by the specter of communism, and the desire to establish machinery for the perpetuation of the Peace Conference settlement all combined to lead the thought of the negotiators toward the League of Nations system. The structural side of the League system includes the League itself, the International Labor Organization, the Permanent Court of International Justice, and the various other international unions and organizations grouped under League supervision.

While it is unfortunate in a sense that the Covenant of the League of Nations, the constitution of the International Labor Organization (Part XIII of the Treaty of Versailles), and the general system of international organization became a part of a peace settlement which has been subject to constant alteration since the time of its formulation and which may be the cause of future war in Europe, it may be doubted whether the establishment of the League system would have been possible if it had not been grafted on to the peace settlement. In the course of time the League system may be independent of the peace settlement of 1919–1920, but at present the separation is in no sense complete. It was owing to President Wilson's insistence that the Covenant of the League was incorporated into the treaties of peace with the Central Powers. There is little doubt that the vengeful attitude of Allied leaders would have been satisfied with a peace preventing any effective recuperation of Germany. But the public opinion of the Allied and Associated Powers was not to be ignored, and it seems that the ideas of the American President gave leadership to those demanding some sort of League of Nations. Early in its sessions the Peace Conference established a commission to formulate plans for a League, just as one of the first commissions was established to consider the question of an international labor organization. The insistence of President Wilson finally brought about the incorporation of the draft of the Covenant in the various treaties of peace which the defeated powers, with the exception of Turkey, were compelled to accept.

The distorted imagination of the plenipotentiaries assembled in Paris for the negotiation of the peace pictured the League of Nations

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(New York and London, 1928); G. Bernard Noble, *Policies and Opinions at Paris*, 1919 (New York, 1935).

as an international policeman preventing war from being waged against the members of the League. The famous Article X of the Covenant, now a dead provision,[1] established as a principle of the League the guarantee to each state of protection against territorial aggression. To maintain this would require, of course, international economic blockades and punitive measures. This militaristic stain on the League was the greatest objection to it, but the proponents of the League in 1919 and 1920 could not see the inevitable failure of such a theory of international organization. International government to them was largely punitive; it was to consist of international police, particularly against the defeated powers. Few defenders of the League system today defend it on these grounds, for the world is obviously beyond or has not yet reached the acceptance of international punitive measures. Insofar as peace is to be maintained, it must be supported by peaceful methods, for war is war no matter what form it takes. Future generations will find it difficult, no doubt, to understand how the intense idealism of the war could produce an idea of international government based on the sanction of force. It can, in fact, be understood only by remembering that the framers of the treaties of peace were overcome with the self-righteousness of their cause, and that the penal sanctions they envisaged were to be directed against the Central Powers in case they resisted the peace settlement.

The history of the League since its inception in an atmosphere of international military victory has been a constant evolution away from punitive sanctions. The League system stands at present for international cooperation and not for international coercion. As a consequence of the evolution of the functions of the League, there has been an increasing emphasis placed on the peace-time aspects of international organization. It takes the stand that peace is the product of intelligent effort and organization; accordingly, we have the work of codifying international law, settling disputes by mediation, developing international aspects of economic and social relations, and fostering international relations of a scientific character. The international social policy of the League system will probably be its most enduring contribution to the international life of the present century. But the development of international social policy has an immediate and obvious relation to the tasks of peace. The League assumes that the best way to prevent political conflict is to solve the issues that produce social and economic friction.

[1] The failure of the League in the Sino-Japanese dispute beginning in 1931 is clear evidence of this. The powers felt no need of risking their own peace in defense of the territory of another member of the League.

Structural Aspects of the League System: a. The League. The League of Nations as an organization is composed of member states.[1] Interest groups and peoples are not members, since it is only the independent dominion and sovereign state which can take a place in the counsels of the League. All members of the League have an equal place in the Assembly, which meets annually, usually during September in Geneva, the location of the Secretariat of the League. Each state has one vote in the determination of matters before the Assembly, though it may have a variable number of delegates and advisers. The Assembly is the popular branch of the League; it is a forum in which the claims of any state may be presented in an open and challenging manner. The opening days of the Assembly are devoted to the addresses of the representatives of the various states. In these addresses a French delegate may propose a United States of Europe, a Chinese delegate may demand the intervention of the League in favor of the nationalistic aspirations of China or against Japanese oppression, and other delegates may propose amendments to the Covenant to bring about a reconciliation between the Covenant and the Briand-Kellogg pact. Much of the important work of the Assembly is done in the commissions appointed to consider the reports of the Secretariat on matters included in the agenda, and out of such discussions may come proposals for conventions or treaties on various matters. On all important issues before the Assembly the vote must be unanimous, but on certain procedural questions less than unanimity is sufficient for a decision.

The Council of the League may be called, in a sense, an executive. There has been a swing between the Council and Assembly for a predominant place in League affairs. It seemed at first that the Council, composed of the leading powers of Europe and the Far East, would dominate, but from the outset the Assembly has made definite claims to superiority. If a controlling power were not vested in the Assembly, the smaller nations would find little value in being members of the League; as it stands, the Council may deal with matters that have been referred to it by the Assembly, and it must be remembered that both Council and Assembly have the same jurisdiction over any matters that concern the peace of the world. The committees of the League Council have proved to be among the most effective agents of international cooperation. A division of function is being worked out in practice whereby the Assembly will consider the general matters of policy, while the Council considers definite action in view of the general

[1] F. Morley, *The Society of Nations* (Washington, D. C., 1932); C. Howard-Ellis, *The Origin, Structure and Working of the League of Nations* (London, 1928).

policy of the League. It would not have been satisfactory to small states to assign definite executive functions to the Council, and the more or less ambiguous relation between the two bodies will enable international practice and experience to define the functional areas of the two organs.

The question of membership in the Assembly has raised no problems, owing to the common membership of all members of the League. However, the question of permanent membership in the Council nearly disrupted the League organization in 1926 on the occasion of Germany's admission to the League. Brazil, Spain, and other countries contended that, if Germany were to have a permanent seat, they should be accorded a like privilege. However, Germany was given her place and only Brazil carried out its definite intention of withdrawing. In view of the dissension caused by this question, it has become the policy to rotate membership on the Council among the members of the League, while at the same time leaving permanent seats to certain of the powers which are conceded to have the greatest interest at stake. Thus, the League combines the recognition of the interests of the great powers with a recognition of the rights of the small state.[1]

In some respects, however, the Secretariat of the League is the most important element in its structure. The Secretariat first began to function in London and moved later to Geneva, the present and permanent home of the League. The neutrality of Switzerland and the generosity of the Swiss government and the city of Geneva helped to make the selection of Geneva a happy one. The Secretariat works throughout the year, and its staff, though selected from most of the nationalities composing the League, is supposed to be nonpolitical in attitude. Theoretically, it is composed of individuals who are experts, and it is their duty to gather and organize information for the Assembly and Council, the committees of each, and the special committees of the League, which are given particular problems for investigation. The Secretariat constitutes an international civil service, and it has in it the germs of a future international bureaucracy. While members of the Secretariat are appointed with some regard to national prestige, it cannot be said that the effectiveness of the Secretariat has been sacrificed in order to attain national diversification of personnel, since most of its members are of French and British nationality.

[1] The withdrawal of Japan and Germany from the League, which was announced in 1933, had nothing to do with structural questions.

There are five permanent members of the Council and nine nonpermanent. Three of the nonpermanent seats on the Council are filled annually by the Assembly. The nonpermanent members may be changed as the Assembly decides.

But in addition to these definite bodies making up the League of Nations, the various special committees or commissions must be given due emphasis. It is often true that in drawing up international agreements special experts are needed, and when such is the case a committee may be appointed either by the Council or by the Assembly to investigate and formulate conclusions. The various interests involved in the settlement of the issue will be represented, and thus national and group representation are combined. Furthermore, in addition to official and group representatives, the interests of other international bodies, such as the International Labor Organization, may also be included. The expert commission has proved particularly valuable in drafting international conventions, and the League has submitted to its members a large number of conventions or treaties, securing also a relatively effective ratification.

b. The International Labor Organization. The International Labor Organization was established under Part XIII of the Treaty of Versailles.[1] It is independent of the League of Nations in many respects, though its budget must be passed by the Assembly each year as part of the general League budget. It is composed of an International Labor Conference, a Governing Body, the International Labor Office, and various committees which may be appointed to study definite problems. It works in cooperation with the League of Nations on all matters that concern the conditions of labor, as for instance with the International Economic Conference of 1927 and in dealing with native labor and slavery. The International Labor Conference is composed of four representatives from each member of the organization, and, nominally speaking, the membership of the League and of the labor organization is the same. Two representatives in the conference from each state are government representatives; one is selected by the government in consultation with the most representative employers' organization and one in consultation with the most representative workers' organization; there may be as many advisers and experts as are needed by the agenda of the conference. As in the case of the Assembly of the League, much of the most important work is done by committees appointed to debate in detail the proposals before the conference, which have been prepared by the International

[1] On the International Labor movement see L. L. Lorwin, *Labor and Internationalism* (New York, 1929); The International Labor Organization, *The First Decade* (London, 1931); F. G. Wilson "The International Labor Organization," *International Conciliation*, No. 284 (November, 1932); *Labor in the League System* (Stanford, 1934).

Labor Office. One of the most revolutionary facts in contemporary international organization is that each delegate votes individually and not by a majority vote in each state delegation; furthermore, the adoption of conventions and recommendations requires a two-thirds rather than a unanimous vote. The International Labor Conference is definitely legislative, as its object is to pass draft conventions, recommendations, and resolutions for submission to the member governments.

The Governing Body is composed of thirty-two members, sixteen from the governments and eight each from the workers and employers. Of the sixteen government representatives, eight are from the states of chief industrial importance; the eight workers' and eight employers' representatives are not selected by states. The conference employers' and workers' representatives choose their Governing Body delegates by name, but the government delegates are selected by the governments given the right of nomination. The Governing Body serves for three years. It is clearly an executive body for the labor organization. It has charge of drawing up the budget submitted to the League of Nations Assembly and it considers the projects that will constitute the agenda of the International Labor Conference. It controls matters of policy and can institute investigations.

The International Labor Office staff is chosen on the principles used in the selection of the Secretariat of the League. While the Secretary-General of the League is at the head of the Secretariat, the Director of the International Labor Office heads the latter. As many nationalities as possible are represented in the International Labor Office, and they are selected because of their ability to investigate and report on particular problems of international labor regulation. The International Labor Office does the preliminary work of investigation and submits proposals to the Governing Body and the International Labor Conference. The annual *Report of the Director* to the conference is a discussion of some international problem concerning labor which is of vital interest to the organization. The annual debate on the *Report of the Director* is one of the outstanding events of international discussion on economic matters.

The method of dealing with international questions adopted by the labor organization is defined in the treaties of peace. Its work naturally culminates in the proposal of draft conventions and recommendations to the member governments; while the members are not required to adopt the conventions they are required to submit them to a competent authority, *i.e.*, Parliament, for careful consideration.

Federal governments unable to adopt the conventions, owing to the decentralization of social legislation,[1] may treat the conventions as recommendations which are not ratified as international treaties but which are to be embodied if possible in domestic labor legislation. The progress of ratification of conventions has been rather slow, and the convention providing for the eight-hour day and forty-eight-hour week, the keystone of the program of the organization, has not been generally accepted even by Western countries definitely committed to the eight-hour-day policy. There are various reasons for this, but the most fundamental would seem to be the general economic depression of Europe since the war and the fear by certain members of the organization that it might be disadvantageous to be bound for a period of ten years by this convention. The ratified conventions of the organization are treaties, but they do not require the diplomatic signature of the states, as was the case with labor treaties before the advent of the International Labor Conference. Ratifications are deposited with the Secretary-General of the League of Nations. The League itself has become more and more interested in drawing up treaties, though the League began as an organization to prevent war. The labor organization, by its independence of the more political body, has been able to secure a larger number of ratifications for its conventions than has the League for its own.

The labor organization is founded on the principles that international social justice is necessary for the peace of the world and that the conditions of labor constitute one of the major items in social justice. While the labor organization looks to international agreement to foster social legislation, inasmuch as competition based on varying labor costs in different countries will be avoided, humanitarianism seems to be the sustaining force. The postwar economic uncertainty has made competitive factors less stable than before, and the work of the organization in stimulating social legislation in the Near and Far East is one of its outstanding accomplishments, despite the large number of ratifications secured from Western powers.[2] The United States became a member of the organization in 1934 as a result of the

[1] See F. G. Wilson, "International Labor Relations of Federal Governments," *The Southwestern Political and Social Science Quarterly* (September, 1929); W. L. Tayler, *Federal States and Labor Treaties* (New York, 1935).

[2] See *Industrial and Labor Information*, published by the International Labor Office, for information on the ratification of conventions. *The Annals of the American Academy of Political and Social Science*, CLXVI (March, 1933), deals with the labor organization. *The Report of the Director* and the *Final Record* of the conference should also be consulted. "Industry, Governments and Labor," *World Peace Foundation*, Vol. XI (1928).

passage of a joint resolution by Congress which authorized the President to accept membership for this country.

c. The Permanent Court of International Justice. Both the League and the labor organization represent efforts at international legislation and execution. The sanctions of the League and the labor organization consist finally in publicity and opinion. One of the distinct advances made in the League system is that machinery is provided whereby publicity and comparative data can be secured as a basis of judgment as to whether a state is carrying out its assumed obligations. The Permanent Court of International Justice, or World Court, on the other hand, is a continuation of the Hague principle of the peaceful settlement of judicial disputes by arbitration and international law. The World Court, however, is not an arbitral body. The statute of the court, drawn up originally in 1920 by a representative body of jurists, defines the types of questions that may come before the court and establishes international law and equity as the basis of its jurisdiction. As the court has a permanent personnel elected by the Council and the Assembly of the League acting separately, it is more than a panel of judges from which disputants may select their court. The World Court represents the legal systems of the world and its opinions are reasoned statements of the international legal basis upon which their decision rests.[1]

Two types of jurisdiction are offered the state seeking membership in the court. One is voluntary jurisdiction, by which the state consents in each particular situation to submit the case to the court, and the other is compulsory jurisdiction, by which the state agrees that all questions or issues between it and other states involving an international legal matter will be given to the court for resolution. A number of powerful Western states have accepted compulsory jurisdiction, a most revolutionary departure in the ordinary practice of international relations. In addition to judgments, the court may give advisory opinions on matters submitted to it by the Council of the League of Nations. The advisory opinion is not binding, for it may be rejected by those involved, but the mere fact that the opinion is given establishes a strong presumption in favor of its acceptance.

The World Court sits at the Hague in the Peace Palace erected for the Hague Tribunal. It is gaining in prestige, for the many judgments and advisory opinions it has given have demonstrated the practicability of an international court distinct from a mere international arbitral commission. Since the court represents the judicial aspect of international life rather than the political, it has been the desire of

[1] There are now fifteen judges of the World Court. All have nine-year terms.

the members of the League to induce other states not members of the League to join the World Court. There is no denying that the court is an integral part of the League of Nations system, for it not only carries out an essential phase of League work, but the judges are elected by the Council and the Assembly, and it was established under Article XIV of the Covenant of the League. Yet in international practice the separation between the political work of the League system and its judicial efforts can and should be made. The idea of reservations to the statute of the court introduced by the United States and accepted by the other members of the League should make it possible for any state, however hesitant about the European connections of the League, to be a member of the court.

The authors of *The Federalist* observed that the judicial branch of the national government was the weakest and least dangerous of its three branches. This seems to be true in a general way of the international judicial system. One of the causes for this weakness is the scarcity of legal material with which the court has to work, and another is the novelty of a genuine international court, though political cooperation internationally is as old as the state system. With the growth of international legislation the judicial branch will grow stronger and take to itself more and more the settlement of disputes now regarded as political.[1]

The Functions of the League of Nations. The League of Nations has not been of such universal interest as was thought would be the case at the time of the Peace Conference. In much of the work it does or fosters it is largely a European institution, though it cannot be that wholly, since Asiatic and American governments have participated officially and unofficially in numerous League activities.[2] Furthermore, the League must evolve both in structure and function to make itself adaptable to the needs of the modern world. As it is an association of states, it cannot be greater than its members, just as a confederation cannot be greater than its component parts. The failures in the activities of the League must be attributed to the weaknesses and strengths of its members, rather than to any trend inherent in the League itself. The League is as strong and active as its members

[1] P. C. Jessup, "The United States and the World Court," *World Peace Foundation*, Vol. XII (1929); M. O. Hudson, "The World Court, 1922–1928," *World Peace Foundation*, Vol. XI (1928); *The Permanent Court of International Justice* (New York, 1934).

[2] The United States has participated in a considerable number of the different activities of the League. Up-to-date information on American cooperation with the League may be obtained readily from the Information Section of the Secretariat or the League of Nations Association in New York City.

desire it to be, that is, the portion of its membership which is of world political importance.[1]

The functions of the League, as distinct from other portions of the League of Nations system, can be classified under two heads: the promotion of international cooperation and the achievement of world peace and security. The latter may, in fact, be regarded as the peculiarly political aspect of the cooperation fostered by the League. Much of the actual work of the League in the field of cooperation is performed by "technical organizations" consisting of representatives of the members, a technical committee, and a portion of the Secretariat of the League which devotes time to gathering information. Thus the League has an economic and financial organization with the object of securing greater and more beneficial economic cooperation. Under the auspices of the League, world economic conferences were held in 1927 and 1933. The League has also investigated and in many cases proposed treaties dealing with import and export prohibitions, customs formalities, arbitration of commercial disputes, unfair competition, the unification of economic statistics, and the economic reconstruction of Austria and Hungary. A second technical organization deals with communications and transit, and with the assistance of this organization the League has held conferences, proposed treaties, and gathered information on a variety of subjects. The League has fostered international cooperation of press experts, freedom of transit, the regulation of posts and maritime navigation, inland navigation, transport by rail, and road traffic, and it has considered calendar reform and other matters. The health organization of the League has been very active. The League has engaged in the struggle against epidemics; it has stimulated the interchange of health officials; it has studied the standardization of serums, the malarial problem, infant mortality, cancer, health insurance, and tropical diseases.

In the field of intellectual cooperation an international institute has been founded in Paris, and League committees have considered university relations, science and bibliography, intellectual rights, the instruction of the young, and other matters. As to the opium traffic, the League has taken active steps to encourage the international control of this social evil. It has held conferences to revise old treaties, and it has considered the question of production and the opium traffic and certain problems of administrative control. The

[1] By 1933 a general feeling that the League was a failure seemed to prevail in League circles. This feeling was produced by the League failure in regard to the Sino-Japanese dispute (1931 and after), in regard to disarmament, and in regard to the World Economic Conference of 1933. See Rappard, *op. cit.*

League has attempted to establish bases of international action to stamp out the traffic in women, and it has supported measures for the protection of children. One of its most distinctive pieces of humanitarian work has been undertaken in connection with Greek and Bulgarian refugees in the postwar displacements of population in the Near East. The system of mandates incorporated in the Covenant has at least held in check the tendency toward the annexation of the colonies of defeated countries, and under the League a certain amount of international responsibility has been enforced by the Permanent Mandates Commission. In connection with backward peoples, the League has attempted to regulate the contemporary slave trade and to prevent the exploitation of native labor, especially in the mandated territories. A phase of the League's humanitarian work fraught with the most grave political implications is the protection of minorities under the treaties negotiated at the Peace Conference and shortly after. As this question involves the sensitiveness of newly formed national states, the League's work is quite naturally less effective than in other directions. In general the League has attempted to avoid the open consideration of a dispute raised by a minority population.

The work of cooperation conducted by the League has a more direct governmental character in some lines than in the work suggested above. It has shared in the administration of the Saar, which in 1935 was subject to a plebiscite to determine whether it should be returned to Germany, remain with France, or continue under the treaty regime. In connection with the Free City of Danzig, maintained largely for the benefit of Poland, the League is charged with administrative supervision. The administration of territory vested in the League is part of the burden imposed upon it in connection with the peace settlement. There is little doubt that when the League is no longer associated with the peace settlement it will be stronger and command greater respect from all governments.

While it is hoped that the decisions of the World Court will develop the content of international law, the League itself has before it the definite objective of encouraging the progressive codification of international legal principles. The method of procedure is to assemble conferences on special phases of international law considered ripe for codification, with a view to proposing multilateral legislating treaties that may be ratified by the members of the society of nations.

The second phase of the League's work, that of attaining peace and security, has not been so successfully prosecuted as its work in the field of general international cooperation. Almost from the beginning the League has been working on the reduction of armament, but the work

is still to see its fruits; non-League conferences, in part sponsored by the League and generally by its members, have attained some success, such as the Washington Conference in 1921–1922 and the London Naval Conferences of 1930 and 1936. But the criteria of army reduction and limitation have proved to be an almost impassable stumbling block, as the disarmament conference beginning in 1932 demonstrated. It has been admitted that security must go hand in hand with the reduction of armament, and the most obvious means of attaining security is by treaties that either eliminate war as a principle or establish means for the peaceful settlement of disputes. While the League has settled a number of international political disputes, there is little belief that it can control a major political crisis.[1] Not only have regional agreements, such as the Locarno treaties of 1925 been brought into effect, but the League itself has formulated a series of agreements for the members to ratify which provide means for the peaceful settlement of disputes. In addition the Briand-Kellogg pact has secured the general renunciation of war as a national policy. This treaty is viewed in Europe, contrary to the American point of view, as an integral part of the League system; since the League sanctions punitive war, it is felt that the Covenant should be changed so that not even a war for the preservation of peace will be sanctioned by the League. To Europe the juridical implications of the pact are found in terms of the expansion of the machinery of the League of Nations.[2]

In a broad sense the League of Nations system stands for the ordering of international cooperation and for international administrative integration. It must not be forgotten that the League is not a superstate but a broadly flexible international confederation in which, as

[1] The work of the League of Nations in the settlement of political disputes must be evaluated in the light of long-run trends of European diplomacy. While the League Council and Assembly tried to check during 1931 and 1932 the Japanese invasion of Manchuria, there was no application of sanctions. The Italian invasion of Ethiopia late in 1935 produced another major political crisis for the League. Under British pressure the Council and the Assembly condemned Italy as the aggressor and voted to apply economic sanctions. See Articles XI and following of the Covenant. The basis of the action of the Assembly against Italy was Article XV, Sec. 10, and Article XVI. Friends of the League can point to the action against Italy (though hardly to the treatment of Japan's policy of expansion) as showing the vitality of the League, while critics may stress the difficulty of separating the play of the diplomatic interests of the leading powers from the application of League procedures.

[2] See D. P. Myers, "Nine Years of the League of Nations, 1920–1928," *World Peace Foundation*, Vol. XII (1929). The publications of the League of Nations deserve the most careful study by the student of international relations and organization.

in a confederation, each member retains its sovereignty and its right of withdrawal. Europe of tomorrow is unthinkable without the League system, but whether it will survive even in Europe or prove to be necessary and invaluable to the rest of the world remains to be seen.

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PART VI

CITIZENSHIP

CHAPTER XVIII

MODERN CITIZENSHIP

Tsze-kung asked about government. The Master said, "The requisites of government are that there be sufficiency of food, sufficiency of military equipment, and the confidence of the people in their ruler." Tsze-kung said, "If it cannot be helped, and one of these must be dispensed with, which of the three should be foregone first?" "The military equipment," said the Master. Tsze-kung again asked, "If it cannot be helped, and one of the remaining two must be dispensed with, which of them should be foregone?" The Master answered, "Part with the food. From of old, death has been the lot of all men; but if the people have no faith in their rulers, there is no standing for the state."—Confucian Analects, Bk. XII, Ch. VII.

The Nature of Citizenship. The citizen of a state stands in a relation to that state which is distinct from his relations to any other sovereign political unit. The nature of this relationship may be viewed in different lights, but in general it may be said that its primary aspect is legal—that of legal subjection or allegiance. The citizen of a state may be defined as a natural person who is legally subject to the state. This legal subjection carries with it the legal duty, as distinct from moral duty, of obedience to the laws of the state, and in turn it implies that the protection which the individual secures against other governments must come from the country of his allegiance. During the hegemony of the social-contract theory of government it was possible to say that the relation of the individual to the state was contractual, *i.e.*, it was a result of consent manifested primarily by continued residence and reliance upon the state for the external protection of life. But with the fall of the contract theory as an explanation of either the origin of political society or the fact of membership in the state, the air was cleared for a more precise theory, that of legal subjection and allegiance.[1]

[1] W. W. Willoughby, *The Fundamental Concepts of Public Law* (New York, 1924), p. 354, and note citing R. T. Crane, *The State in Constitutional and International Law* (Johns Hopkins Studies, Vol. XXI, 1907), pp. 329–330.

The distinction between the legal and the moral, which has been adverted to on a number of occasions in this volume, must be emphasized again. Whatever the moral connotations of citizenship may be, they are to be derived from the general social and political philosophy of each period, and not from the more rigid and legal aspects of this relationship. It may be contended that the legal and the moral should coalesce in the treatment of this subject, if anywhere, but the system of positive law in each state clearly recognizes the distinction. For instance, the moral argument for the obedience to law is one thing, and the legal penalties that may be imposed for disobedience are quite another. The state presumes that the individual, citizen, or non-citizen, will obey the law while resident in the state, but it also prepares for those cases in which there is resistance. The moral nature of citizenship is clearly superimposed upon the legal, yet this is not to say that the legal is more important than the moral. For it may be asserted with some confidence that the moral is, in the long run, far more significant in terms of the content of life than is the legal. The legal is the formal and relatively effective statement of the objective criteria of citizenship, while the moral reaches to the very depth of the meaning of the state to the individual.

That the legal nature of citizenship is limited and formal may be seen by another approach. The citizen is a person who is subject to the laws of the state. He is one who has been born of parents of a particular citizenship or one who has been born in the country to which he owes allegiance. The law of blood (*jus sanguinis*) and the law of the soil (*jus soli*) are the two broad tests of the existence of citizenship.[1] But the fact of citizenship and the political rights of an individual are, generally speaking, different. Children are citizens, yet they are not allowed to vote, for voting is a matter of state legal regulation rather than of United States citizenship. A citizen of the United States may not vote in elections unless he qualifies under either a state law or a national law relating to the territories, and in the latter case he may not vote for Congressmen or Senators of the national government. All members of the family of nations draw this distinction between political participation and the fact of legal subjection, including the right of international protection.

[1] U. S. *v.* Wong Kim Ark, 169 U. S. 649 (1898); C. K. Burdick, *The Law of the American Constitution* (New York and London, 1922), Ch. XI. See also "A Manual on Citizenship for Registrars of Voters," *Bureau of Governmental Research*, University of Washington, Seattle, Report No. 18 (1936), for a complete examination of the question.

While the practice of modern democracy insists that a person, in order to have the right to vote, must be a citizen, the converse is not true, for a person may be a citizen and yet not qualify under positive law for the right of political participation. The law, however, has not been able in most democracies to insist that the right to vote, or the privilege of voting, carries with it the enforceable duty of voting. While a number of countries have compulsory voting laws, most modern democracies have felt that whatever moral qualities might be associated with the suffrage would be drained away were it made as compulsory as the payment of taxes. The grant of political participation to the individual citizen carries with it the hope of the state that there will be *intelligent participation* in the affairs of government and that those who have the right will maintain a high level of political interest. Thus to refrain from voting generally means no violation of the law; whether it involves the moral inadequacy of the individual citizen is a question of political philosophy.

The Decline of Citizenship. The legal concept of citizenship carries with it no political ideals per se. The modern ideals of citizenship must be built outside the legal conception of the relation of individual subjection to the state. If we would inject into citizenship high moral ideals, it may be contended that the modern legal idea is inherently antagonistic to this, unless indeed the law should attempt to define more carefully the rights and the duties of citizenship.[1] The definition of the rights of citizenship, which seems to particularize the legal scope of the concept, tends to make citizenship a pragmatic affair. The individual is less likely to think of his relation to the state in terms of duties than in terms of self-interest. It may be suggested, however, that the factors tending to diminish interest in voting have also tended to diminish the idealism of citizenship. The essential characteristic of modern citizenship seems to be a lack of enthusiasm for public service, which, on the contrary, was a distinctive element in antiquity. It might at first sight seem that the ancient ideal of public service would find a larger field of expression in modern political democracy. That it did find such a field in the aristocratic democracy of the ancient city-state should give the defenders of modern democracy some ground for concern. The fact, which is clear enough, is that the ancient democratic and city-state ideal of public service and disinterested citizenship has not been carried over into modern democracy —the democracy of the large country-state with infinitely more

[1] See A. J. Lien, *Privileges and Immunities of Citizens in the United States*, (Columbia Studies, 1913).

freedom of political participation than was dreamed of in the classical political system.

Let us examine more closely the idea of antiquity. Wherever we touch the political speculations of republican Greece and Rome, the individual who merited the highest reward was the servant of his country. Being a servant of the state meant holding creditably public office, serving in the armies in time of danger, and in general standing as a public model of interest and intelligence. Connected with this ideal of service was another notion of antiquity, that of the ideal statesman or the ideal legislator whose work would not need minor or frequent revision. It was the hope of political writers that they might serve in such a capacity. But always the highest rewards to human effort both in this world and in the next went to the statesman, the disinterested public servant. We find Plato discussing the ideal republic with its philosophic rulers who would devote their most mature abilities to the service of the state; we see him developing a theory of the perfect statesman and a complete code of *Laws* based on Greek jurisprudence. The Greek ideal was service to and life in the state. The greater days of Roman tradition likewise stressed public service and citizenship. Those who have read Scipio's dream at the conclusion of Cicero's *De re publica* will recall that the highest rewards in heaven are reserved for those whose service to their country is outstanding. The Middle Ages stressed in turn the value of justice and moral virtue; with its emphasis on asceticism, service to the state shares honors with the service of God. Perhaps it is true that the world has never seen a period in which the ideals of active citizenship exerted such a force on the aristocracy, or significant leaders, as in the ancient city-states. The large state, from the days of the Roman Empire on, has vitiated the practicability of this ideal.[1]

The revival of absolutism after the end of the thirteenth century and the consolidation of the country-state in terms of national allegiance carried more the ideal of submission than of service. It was only with the development of democracy in the latter part of the eighteenth century and the beginning of the nineteenth century that the ideal of public duty was revived, and then it was in terms of individual and ordinary participation in the affairs of the people. It must be remembered that the first principle of liberty is that of participation in government. Cicero identified liberty with a share in the government, and the medieval theory of the community as the source of law and the authority of the rulers held in a germinal

[1] The decline in citizenship coincides with the increase in the size of the state and with the expansion of political participation.

sense the flowered theories of modern political democracy.[1] Modern political liberty, the concept of free government, rests upon this presupposition of participation, for without participation government cannot be regarded as free in any historic sense of the word.

While democratic citizenship has not responded fully to this ideal of participation, the ideal of public service, relatively dormant in a country such as the United States, is very active yet in the British aristocracy.[2] The British aristocracy still occupies most of the important posts in the executive branch of the government, at least those in which permanency of tenure exists. There is little doubt that the people of Britain have no serious intention of dislodging this aristocratic control; it is not even part of the democratic program worked out by the radical parties. One of the reasons for the relatively indifferent attitude of the American people toward the public service is found in our democratic dogma itself, for we have accepted the opinion that office holding should rotate among the members of the community. Since the members of the community are busy with their affairs, a partial interruption of their normal activity by public service is not welcome. While the best of the population, generally speaking, takes little interest in politics, they nevertheless condemn the public servant. A thoroughgoing democratic principle in politics robs the public service of the prestige which might be attached to it, and which was attached to it in the semidemocratic government of the ancient city-state. It is hardly too much to say that the vigor of citizenship cannot be revived without a revival of the prestige of public service, but whether this revival can take place without bureaucracy and public professionalism is also doubtful.

But deeper than democratic traditions is the modern revolt against the state. While we can say with confidence that in war the body of citizens are capable of loyalty and sacrifice, the same cannot be said in the normal times of peace.[3] A public crisis may bring volcanic public enthusiasm, but the passing of the crisis means the end of dynamic loyalty. While there may be a feeling of national individuality, this feeling is not sufficient to create the ideal of citizenship service and citizenship interest, which would lead people to desire at

[1] R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West* (London, 1903–1928), Vol. V, p. 447.

[2] J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 423–24.

[3] This is a point of great importance. If the end of the state is the welfare of each individual only, then loyalty in time of war for the mere preservation of the state might be out of place. The indifference in peace time and the loyalty in war are a profound paradox of citizenship.

all times to serve the state and to sacrifice personal interest for social interest. Modern individualism was a sign of revolt against political authority, since it was based on a distrust of the state as a social agent. There may be a fundamental inconsistency between the intense loyalty of the patriot in war and the intense dislike of the state in time of peace. It might seem that, if the state is worth dying for, it would also be capable of great service to the individual. The individualistic state, apart from empire building, offers little attraction in the public service aside from those positions that bring fame or notoriety. The revolt against state function which began in the eighteenth century is certainly one of the fundamental causes of the failure of those standards of citizenship which lead to prestige in the public service.

How strong citizenship-individualism is at the present time can be shown by pointing out that a certain amount of state centralization, a certain amount of inclusion of social functions in the political arena, has produced the modern movement of state repudiation, *i.e.*, political pluralism. The "discredited state" of 1914 had a short period of worship during the war, but with the conclusion of peace and the failure of postwar governments to grapple successfully with the problems of reconstruction, criticism of the state took on new life. Pluralism is a movement of the philosophers; the ordinary citizen can express his pluralism largely in civic disgust and by a willingness to evade duly enacted laws. This condition, this hardly expressed resentment against the state, may be called the "atmosphere of nullification." Beyond resistance to law and the appreciation of the failures of the state in the economic and moral realms, resistance to the state in the present age is expressed in less reverence for and more criticism of the historic forms of state organization which have been so important in preserving the liberties of the individual. We see this in the repeated failures of postwar constitutionalism, whether in Latin America or in Europe; in America there is less respect for the bill of rights and for the minority with its dissentient opinions. Disregard of the constitutional state, covertly or otherwise, is simply a bid for power by a particular group. It evidences an unwillingness to be bound by the impersonal arbitrament of the law.

Is it possible in such an atmosphere to create a vital citizenship? Can democratic citizenship exist and function by the standards of Plato and Cicero? Of course, it may be said that the amount of social and political integration possible in the city-state is unthinkable in the great modern territorial state. Perhaps the revolt against the state, which brings an inevitable concomitant in the decline of the standards of citizenship, is a sound protest against the overcentraliza-

tion of the modern state. The pluralists at least would be willing to say that a vital citizenship is impossible under the present system of political organization. The defenders of the conventional ideas of the democratic state are not willing to concede defeat. They insist that it is possible to revive something of the prestige and social value of citizenship and to overcome the pragmatic attitude of the mass toward what may be conceived to be their moral duties as members of the community, *i.e.*, the democratic state.

The Ideal of Creative Citizenship. Since democracy as a form of government rests on the principle of full participation, it cannot surrender the ideal of good citizenship without surrendering the moral and rational basis of its existence. Most defenders of democracy concede the grave defects of modern citizenship, but they contend that it is not necessary to scrap the ideals of democratic government in order to make accommodations for the present failure. The good state may be analyzed in terms of an organic relation among good citizens, *i.e.*, the good citizen is good because he is a citizen of a democratic state and the democratic state is good because of the quality of its citizens. Democracy must be an element in the moral make-up of men if its justification is permanent, for merely to give a broader right of participation in the affairs of government is not an end but a means. Democracy as a form of government is simply an expedient which can, perhaps, attain certain ends that other forms of government cannot. While it is possible to defend democracy on such a ground as greater order and harmony in the state, it cannot be justified clearly and rationally unless there is a definite contribution to the moral competence of the individual citizen.

Yet it is not sufficient to say that the end of citizenship in a democracy is moral advancement. Such a statement is valuable as an ultimate guide, but the real problem is the practical content of citizenship at a given moment. The means the democratic state adopts must have some relation to the good life as an end. While it may not be able to define in all cases the concrete elements of the good life, the experience of the past, a knowledge of humanity, and the purposes held by human beings in general as to the good life should give some indication to democracy of the means that should be employed in developing a vital, creative citizenship. What then are the objectives of the good citizenship? What are the conditions of the good state? For we must say, it seems, that the good state is a product of the organic relationship of good citizens.

To state dogmatically the content of good citizenship is to state the major theses of a political philosophy. And this, of course, can

be done here only in a broad outline. In an age of pragmatism which considers more than anything else the results of conduct, in an age when mechanical efficiency occupies most of the waking thoughts of the average citizen, in an age which worships economic breadth rather than cultural or spiritual depth, it is difficult to correlate the historic ideals of the good life with contemporary action. Pragmatism is itself an evasion of the question, for, while it may be the solution of the problem of means, it can hardly be satisfactory when the ultimate estimate of political communities is concerned. If we are pragmatic, then, we are content not to face the issue of the meaning of the good life. If we are individualistic, or if we accept the nimbus of anarchy carried by modern pluralism, we are not greatly concerned with the relation of the state to the citizen and the good life. Social justice tends to become the product of private cooperation and not the work of the politically organized community. If we are utilitarian in our views of the good life, we may concede some importance to the state, but we can hardly be greatly concerned with the abstract content of virtue. It might be said, however, that few people seriously contend, in the present age of so much social cooperation, that the state has no function to perform for the good life; this being the case, *the fact of good citizenship is an immediate gateway to the progressive, evolving concept of the good life.*

We cannot reestablish the city-state ideal of the morally organic state; we can hardly accept the Hegelian principle that the free will of the citizen is completely identified with the rationality of the concrete universal, *i.e.*, the state. Yet, on the other hand, we cannot insist that the moral life of the individual is unrelated to citizenship. While Locke, with his theory of natural law binding men and legislatures, might contend that the morality of the individual was absolute and before the fact of citizenship, and while his ideas may be essentially valid with regard to a government that considers its sole function to be to preserve the rights of life, liberty, and estate, it cannot follow that this is true of the modern community of vast proportions and conflicting interests which seeks to guarantee to the individual that which is morally and culturally useful in his life. On the other hand, the contention of Rousseau that the moral and corporate body called the state absorbs the intellectual and moral personality of the individual, and, correspondingly, that the moral personality and interest of the individual are the moral personality and interest of the citizen, does not fit the facts of the diversified state existing in the present day.[1]

[1] The political absolutism of Rousseau's political theory is stressed in Duguit, "The Law and the State," *Harvard Law Review*, XXXI (1917), Ch. II.

If we could admit that a general will is the essential and real characteristic of the state rather than its legal unity, we might concede that a man lives the good life in proportion as he is a good citizen. Locke might admit that the good man could nevertheless be a poor citizen, but Rousseau and those who are influenced by him must insist that a man is good because of his good citizenship.[1]

The conflict is not to be resolved easily. We do not insist that the state is unmoral and entirely outside the moral life of the individual or that the moral life of the good man is absorbed in the ethical aspects of citizenship. The disintegrating forces at work in the modern world, the "atmosphere of nullification," and the strength and vitality of groups in the state all indicate that the state is not *the* moral unity. Yet when we consider that the health of the individual, his morals, his standards of living, his economic life, and his very opportunity to develop his capacities often depend upon the state, we cannot be too sure that the state has no general or "real" will (*i.e.*, permanent common or social interests) to present to the citizen for his guidance. Perhaps the modern state must wander as a lost soul between these conflicting points of view; perhaps the solution is not to be permanent, but varying with the circumstances of time and situation.

Nevertheless, the object of the state is to contribute to the life of the individual. By its existence in terms of a responsible and constitutional state, by its approval of the idea of community participation, which is basic in democracy, it stands for the definite and close correlation of good living and good citizenship. The state is clearly a failure if living up to its standards of citizenship does not tend to produce a fuller life of the individual. The state is no conception of limited duration; it is in theory a permanent factor. It is the most enduring of temporal institutions and associations, and its claims in this sense give it a definite right to speak on the nature of the good life. On the other hand, the state does not attempt to create the good life for itself, but for its members, for its citizens. And the state must work in the light of the judgment of its members, since it is inconceivable that the individual could be either a happy man or a good citizen by surrendering his right of judgment or all that is ultimately moral in him. The state must work in terms of authority through the limitation of liberty, but, paradoxically enough, this authority of the state is valid only when it produces a more vital liberty in the citizen. Authority, therefore, exists for liberty; but liberty in the mind of the individual is often antithetical to authority.

[1] R. H. Murray, *The History of Political Science from Plato to the Present* (New York, 1926), p. 225.

We come again to the idea of balance as the keystone in the arch of the political process. The good life is clearly a matter of gradual production; it is a matter of history and of the ethos of a generation. In the course of time the efforts of the state should bear fruit, and, with the past behind as a guide to the future, the modern community should be more effective than the state of the past in assisting the individual to the good life. One thing the state has learned, and that is that the individual is a holder of rights; the state provides only the incentive or the conditions to be utilized by the individual. The balance of authority with liberty must continually be shifting, as experience dictates the wisdom or unwisdom of state action; but the object remains fixed—that of the good man in terms of the good citizen. No state can find a permanent solution of the problem, though the accumulating experience of a nation is a good indication of what may be done by the state as an instrumentality for good citizenship.

If the state, for instance, assumes that good citizenship consists in the good life in a broad sense (and it hardly seems that any other conclusion may be adopted), the state must also admit that it does not have complete control over the elements of good citizenship. The state, as we have seen, is not an omnipotent agency in the life of the individual. It can work most effectively with certain external conditions in life, and, though it may be vitally interested in the internal moral consciousness, it can touch this aspect of good citizenship only indirectly. A man's thoughts, it is said, are not subject to the control of the law. Those states which have the longer history and tradition and which have the greater experience in dealing with the weaknesses of men use more caution in seeking to improve the citizen. They are not addicted to heedless change or sterile conservatism.[1] The balance they establish in attempting to create the good citizen as an equation of the good life is deeply rooted in the traditional past. For all the experience of the state, its impotence looms as clearly as ever. It seeks, by its recognition of the moral values of life, to create the good citizen by creating the good life, and yet it is incapable of assuring itself definitely that these ends will be attained. For some of the conditions of the attainment are clearly outside the control of the state.[2]

[1] Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), p. 204.

[2] According to Irving Babbitt, "No amount of devotion to society and its supposed interests can take the place of this inner obeisance of the spirit to standards. The humanitarian would seem to be caught here in a vicious circle. If he turns

Religion and Citizenship. The good life must be the moral life; it can never be merely the successful or efficient life. Culture is not defensible in terms of consequences such as the production of the *übermensch;* it is justifiable in terms of the life of the individual of ordinary capabilities. Likewise the morality of action is a judgment on ordinary and habitual conduct. The state must be interested continually in its mediocre citizens. Its tests of citizenship as good or bad must relate to the ideals of civilization believed in by the ordinary man. There is no necessity of giving a narrow interpretation to the word "moral." We cannot escape the notion in morality that the individual must share in an appreciation of the better as distinguished from the worse or of right as distinguished from wrong, for conduct in the moral sense of the word, as Aristotle long since pointed out, is not compulsory but voluntary. The conduct of a man under compulsion may be neither moral nor immoral; the realization of great ends by the state is fundamentally a matter of choice and it is therefore a moral matter.

However, the state itself is not a positive creator of moral values, though it must deal with such values constantly.[1] Moral values are a product of history when viewed externally; they are relatively permanent and unchanging. Viewed internally, moral values have been formulated as to the individual by the religious forces of society. No issue in the problem of creative citizenship is so acute as the relation between the state force and the religious force.[2] The relation of the

from the inner life to serve his fellow men, he becomes a busybody. If he sets out again to become exemplary primarily with a view to the benefit of others, he becomes a prig. Nothing will avail short of humility. Humility as Burke saw, is the ultimate root of the justice that should prevail in secular order, as well as of the virtues that are specifically religious." *Democracy and Leadership* (Boston, 1924), p. 256. By permission of Houghton Mifflin Company, publishers.

[1] This was Treitschke's position when he argued that the state is external and uncreative intellectually and morally, yet profoundly interested in civic morality. See *Politics*, Vol. I, Ch. I. An integral liberalism presupposes a large development of the individual and collective conscience. In order to avoid demagogic adventurers the state has need of a moral complement which is extrajuridical and extrapolitical.

[2] If we admit that the moral obligation is superior to the political, the question arises: where do we get the moral obligation? Organized religion has in the past made many successful claims on the individual conscience, for finally it is a matter of conscience. Treitschke, *op. cit.*, Vol. I, Ch. X, has observed that the struggles between church and state will never cease, and since both state and church make claims to judge morality he is probably correct. Modern religious lobbies indicate that religious leaders believe with the Reverend S. Parkes Cadman in his Geneva sermon of 1929 that the church "has surrendered too much to the state." See L. T. Hobhouse, *The Metaphysical Theory of the State* (London, 1918), pp. 88 *ff.*

political motive in human conduct as organized in the state and the moral force as organized in institutional religion is one of the ineluctable issues of history. It is as fundamental in modern politics as it was in the past, though the forms may have changed, both as to the state and institutional religion. The ancient world was organized in terms of the state, and religion itself was more or less noninstitutional among the Greeks and the Romans. There could be no conflict between religion and the state since the state was the religion of the Greek and the Roman. The gods evolved coevally with the state. The rise of Christianity brought about a conflict between religion and the state for the first time in history, primarily because it established an institutionally exclusive and nonpolitical society. It may be said that no state ever had more reason for persecution than the Roman, since the Christians denied one of the historic and fundamental bases of its life.[1]

As Lord Acton has pointed out, the Middle Ages brought about a fundamental contribution to the thinking of men on the relation of religion to the state. Though the ideas of the Middle Ages were lost in the development of modern absolutism, it could not be forgotten that the previous age stood for an independent existence and sphere for religious points of view. While Lutheranism demanded that the church be subordinate to the state, which was the classical pagan, Byzantine, and Erastian position, and Calvinism demanded that the state be subject to the church, which was another form of the advanced papal claims of the thirteenth century, the ancient and thoroughly medieval position was that advanced by Pope Gelasius I—*i.e.*, the dualism of religion and the state.[2] Both spiritual and temporal authority were derived from God, but in the world they are distinct authorities, however they may have been united in the past. In the single commonwealth and under the one king (*i.e.*, government) there are two peoples, two modes of life, two authorities, and a double jurisdiction. The two modes of life are the spiritual and the carnal, the two authorities are the church and the kingship, and there are two systems of law, the divine and the human. But give to each his due, said Stephen of Tournai, and there will be harmony and agreement.[3]

[1] C. H. McIlwain, *The Growth of Political Thought in the West* (New York, 1932), pp. 145–148.

[2] Acton, "The Protestant Theory of Persecution," *op. cit.;* Carlyle and Carlyle, *op. cit.*, Vol. I, pp. 184 *ff.*

[3] Carlyle and Carlyle, *op. cit.*, Vol. II, pp. 198, 225; Ephraim Emerton, *Humanism and Tyranny* (Cambridge, Mass., 1925), p. 4. It is not suggested that medieval dualism is identical with the modern separation of church and state, since the latter

There is little doubt that the latter Middle Ages, especially the eleventh, twelfth, and thirteenth centuries, saw a great development of churchly claims to control over the temporal power. But as the Carlyles have shown, such claims were steadily repudiated in their day and had little effect upon the normal life of the period. It was the earlier ideal, the Gelasian dualism, which really counted. The claim of ancient Catholicism or modern Protestantism is little different in fundamentals when it faces the state through its influence over the citizens of the state. The moral law in either case is supreme, and the individual must draw his moral consciousness in a practical sense from the pronouncements of organized religion. The methods of Catholicism in the past may have been the powers of deposition and excommunication, rights claimed by the church as a feudal lord or under the Donation of Constantine, but in modern times, as far as citizenship is concerned, Protestant method is little different from Catholic. For Christianity is social, and it has always been social. Protestantism, therefore, is no exception to the historic interest of the church in the conduct of political affairs.[1]

The Gelasian dualism has been realized with a vengeance, for the separation of church and state not only takes from the church the financial support of the state, but it in general asks the impossible—that the church have no interests in the ideals of citizenship.[2] The

goes much farther—it denies the Christian-political commonwealth. The emphasis of this discussion falls upon the medieval and reformation idea of duality or the dichotomy of church and state. *Cf.* C. N. S. Woolf, *Bartolus of Sassoferrato* (Cambridge, 1913), p. 266.

[1] See Walter Rauschenbusch, *Christianity and the Social Crisis* (New York, 1912). One factor which must be noted, however, is that Catholicism has never accepted the factitious or social-contract theory of the origin of the state (*i.e.*, of Milton, Locke, and others) which was the sixteenth and seventeenth century Protestant theory of the origin of political authority. The Catholic is bound, at least by majority theology, to hold that earthly power comes from God, though it may come through the people, *i.e.*, the governmental contract. R. F. R. Bellarmino, *De laicis*, or *the Treatise on Civil Government*, tr. and introduction by K. E. Murphy (Fordham, 1928). The historic Protestant theory of the state can easily be adapted to the idea that it has no other purpose than to serve as a legislative organ for religious bodies. The Hegelians assert a spiritual character of the state, but on different grounds than are used by the Catholic theologians. *Cf.* G. S. Morris, *Hegel's Philosophy of the State and of History* (Chicago, 1887), pp. 88–89.

[2] The problem that always arises is simply this: who is to determine the independent sphere of the state and the church? The church itself *must* claim this right, but the state defines this sphere in fact. The idea of the eighteenth century of freedom of conscience involves *excluding* the state from religious interference on the basis of natural rights; the modern problem, and in fact the prevailing historic struggle, is to *exclude the church* from the state. See J. E. Ernst, *The Political*

separation of church and state is a product of the rationalism of the eighteenth century and the absolute necessity of avoiding religious strife. It gives the church its centuries-old demand for an independent life of its own, but it retains for the state much that the church, by its very nature, must likewise claim. The modern state cannot say that its policy of directing the morals of citizens has been a success, since the church has constantly fought against this inherent tendency in the modern rationalistic theory of the separation of church and state.[1] Protestantism has been drawn into an interest in the content of legislation because of the inevitable claims of the Christian religion. Both Catholic and Protestant bodies now have their primary interest in just this phase of the relation of the spiritual and the temporal; both maintain their lobbies and both instruct their members as to the duties of citizenship, in terms of both practical political duty in a democracy and the moral evaluation of public opinion.[2]

However, public opinion, viewed from the standpoint of secular control, must finally be pragmatic. Political society submits itself to the control of public opinion; but can political society admit the tremendous entering wedge of religion contained in the claim of a

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Theory of Roger Williams (Seattle, 1929). See Acton, *op. cit.*, pp. 186–187, for a comparison of Protestant and Catholic theories of intolerance. C. H. McIlwain, *The Political Works of James I* (Cambridge, Mass., 1918), introduction, p. xxx, argues that a utilitarian basis of democracy is necessary to divide religious and political jurisdictions, and that the divine right of kings and of the people had to be discarded before a settlement was possible. See also J. W. Allen, *A History of Political Thought in the Sixteenth Century* (New York, 1928), p. 230. *Cf.* Otto Koellreutter, *Grundriss der Allgemeinen Staatslehre* (Tübingen, 1933), pp. 200 *ff.*

[1] The state may be (1) supreme over the church (Erastianism), (2) subordinate to the church (the Calvinistic position), or (3) separate from the church. This separation may rest on (1) toleration, *i.e.*, rights granted to the church *by* the state, (2) a repudiation of religion, *i.e.*, the Russian solution, (3) the inherent right of the free conscience, *i.e.*, the rationalistic solution which carries with it the right to reject religious belief, or (4) the mutual right of the church and state to exclusive spheres of activity. The last seems to be the attempted modern solution of the problem.

[2] It must be borne in mind that lobbies or influencing *opinion* in a democracy is but the most recent of the methods adopted by religion to control the state. Morally speaking, it is not different in principle from the ideas behind a union of church and state. See J. A. Ryan and M. F. X. Millar, *The State and the Church* (New York, 1922), *passim.* According to Siegfried, American protestantism, which is the religion of the majority, is the national religion and is subject to the classic temptations of all state churches. *America Comes of Age* (New York, 1927), p. 39. He also observes that the Protestant conception of the state is that it is the guardian of the morals of the community and not superior to the body of citizens as a whole. *Op. cit.*, p. 239.

religious body to direct the opinion of its members when state action trenches upon matters on which religious bodies have elected to pronounce? What religion has lost in actual control over the sentiments of its membership it has gained in effectiveness of organization. Protestantism and Catholicism were never better organized or more financially able to influence public opinion, and whatever may be said of the influence of religious ideas it cannot be argued that they are on the highroad to limbo. As far as citizenship is concerned, the church claims as its province the deeper meanings of life, and by and large the claim has been made good. The church, moreover, insists that these deeper meanings of life are to be translated into the facts of citizenship. Yet the state cannot well retire to a sterile legal conception of the relation of the individual to government; democracy indeed makes this impossible, for democracy is, presumably, the ultimate government of public opinion.

The separation of church and state has not solved the problem of the ethical and moral significance of citizenship.[1] It has little more significance than the mere denial to religious bodies of the economic support of the state. The moral content of citizenship is being fought for continually, for the church cannot leave to the state complete freedom in the regulation and education of the conscience; it cannot ignore the problems of civil liberty and freedom of speech; it cannot ignore the economic exploitation of its members when the exploitation is a danger to morality. In fact the whole economic and political structure of society is of fundamental interest to the church. Modern social Christianity is a direct challenge to the state, and the development of this type of program in Protestantism will, no doubt, in the future shake the American community, as it has already shaken it in connection with modern prohibition and birth-control legislation. Social Catholicism and social Protestantism have their eyes upon capitalism and have not forgotten the potency of the doctrine of police power. Slowly but surely religion in the modern world is evolving an attitude on the economic order because of its implications for the moral order. When this attitude is developed, the real struggle between religion and the state in modern times will begin, for the capitalistic system is the crown of pragmatism and utilitarianism. The battle itself will be fought around the moral content of citizenship.

The Reformation was motivated in part by a desire on the part of the secular power to rob the church of the wealth it had accumulated during the centuries. The modern struggle in Mexico can be seen largely as a desire on the part of the secular authorities to control the

[1] J. K. Bluntschli, *The Theory of the State* (Oxford, 1892), pp. 219–220.

wealth of the church. Yet Protestantism itself is beginning to gather wealth, and with time this ownership of economic goods will increase. If the policy of exemption from taxation continues, there is little doubt that the holdings of religious bodies in new countries, such as the United States, where church organizations are beginning to make themselves owners of business property, will constitute a serious handicap to the economic strength of the state. Such a conflict will give religious bodies all the more incentive to direct the moral evaluations of citizens. It cannot be said in any sense of the word that the present balance of the modern world between the religious and the temporal is permanent. The state may find to its cost that the concession to religion of an independent place in society has been the germinal force which, when grown, will in turn control the state. In any case, the battle will not be between the hierarchy of the state and the organization of the church; it will be for the control of public opinion, for political support, and for votes, the essential counters in the process of politics in the democratic state.[1]

The Education of Citizens.[2] When we consider the fact that the democratic state stands in considerable discredit by those who control the economic power of the modern world and that the citizens themselves are not entirely confident of its future vitality, and when we also consider that the weakening of the state permits the development of its opponents, such as organized religion and those who control economic interests, the future of the political education of citizens as conducted by the state may seem uncertain. The state has laid great emphasis on the educative value of the process of democracy. The citizen has been called upon to vote, and the chance of holding public office is dangled before his eyes. The claim is not that all citizens actually vote or that many of them really hold public office, but that such elements in the social structure stimulate interest in public affairs and therefore bring about citizenship education. The failure of the educative argument for democracy is all too apparent, at least in the United States. Practically all modern states have definite programs of civic training. Of course, any program of civic education is directed toward the preservation, continuation, and development of the civic ideals embodied in constitutional morality. While we

[1] For an important discussion of the relation of church and state in the United States, see Alfred E. Smith, "Reply to the Letter of Mr. Charles C. Marshall," *Atlantic Monthly* (May, 1927), pp. 722–728. See also Smith's *Up to Now* (New York, 1929), pp. 366 *ff.*

[2] See Professor C. E. Merriam's series on civic education, of which most of the volumes are cited in the list at the end of the chapter.

might say that civic education is sometimes directed toward constitutional immorality, this must be admitted merely as a subjective judgment.

The teaching of history, religion, and patriotism of various types constitutes the core of civic education. Naturally, the school is the central point of conflict, for what has been taught the young will no doubt be carried into practice in later life.[1] The preservation of national tradition is the most fundamental means of developing the proper civic spirit, for national tradition is the foundation of loyalty.[2] Loyalty to the past is easily transferred to current issues when it is related by propaganda to the present. The struggles of political parties are conducted within the limits of national and ecumenical tradition, and therefore the amount of electoral education is slight. The movement of world populations to newer countries has brought about the clear necessity of national education. In the United States "Americanization" work is a basic effort of the hour. Americanization is essentially adult education, and primarily preparatory for taking out citizenship papers. The government, owing to the postwar hue and cry against disloyal persons and to its desire to stamp from the context of citizenship certain types of economic criticism, has stiffened the requirements for citizenship considerably, and this has given a large and fruitful opportunity of service to persons interested in adult education and Americanization.[3]

However we may consider education for citizenship, its purpose is ulterior. From the civic education of the grade schools to compulsory courses on the Constitution in the universities, and in most forms of adult education where publicly sponsored, the object is not essentially the improvement of the individual but the preservation of the country from dissentient doctrines and citizen malcontents. Such a statement is not by any means, a judgment of condemnation on civic and social education for it must be conceded that a country has a legal right and within limits an ethical duty to preserve its institutions and loyalty to its traditions. America has been faced with a generally difficult problem because of the great amount of immigration to the United States from countries of non-Anglo-Saxon culture. Language is one of the primary difficulties, but even deeper than this is the culture

[1] See W. Lippmann, *American Inquisitors* (New York, 1928); B. L. Pierce, *Civic Attitudes in American School Textbooks* (Chicago, 1930).

[2] *Cf.* D. C. Holtom, *The Political Philosophy of Modern Shinto* (Chicago, 1922), p. 300. For the conservatives in Japan, good citizenship is equivalent to the acceptance of the national mythology of the state religion.

[3] Seba Eldridge, *The New Citizenship* (New York, 1929).

background of the immigrant. To object to Americanization work or to object to the efforts of adult and citizenship education to instill in the minds of our "uncultured" members an appreciation of American points of view is simply to deny the right of Americans living here to their nationality.

A consciousness of nationality in the sense of loyalty to political traditions is fundamental in the life of any state, and no foreign government in objecting to our immigration or Americanization policy would conceivably admit that they do not claim the same right for themselves. The citizen born in the United States and living in an atmosphere of what is commonly called *Americanism* does not need this hypodermic injection of traditional values. As a member of the community, the individual to whom such training has been given profits by the greater ease of economic and social adjustment, but the object of such training is, of course, the creation of like-mindedness. Such training is, however, fraught with danger. The need of moderation and strict accounting of ends is paramount, for such training can easily degenerate into a mere traditional defense of public policy which may favor the groups who are in charge of the training of adults and immigrants. The controversy in recent years over the content of American history textbooks, the Protestant demand for religious education in the public schools, the use of economic conservatism as a part of the civic curriculum, and the struggle over the use of scientific theories such as evolution all indicate that the path of the civic educator is fraught with dangerous turns. It is certainly an abuse of education to demand the rewriting of history so that all national leaders are made heroes and it is also an abuse to teach as truth only one side of fundamental modern economic issues. While we may concede that those persons who desire to become citizens should understand American political and social institutions, it cannot be said that persons of distinct American lineage should also be moulded in terms of specific interests.

The education of citizens is one of the primary concerns of political democracy. The "rights of man" are extended to those who are capable of appreciating their significance, and it has long been recognized that only the culturally developed can make representative democracy function.[1] Nationality itself cannot develop without cultural concomitants. Democracy is a type of public order, and without a sense of public order there can be no democracy. While it

[1] See J. S. Mill, *Representative Government*. In *On Liberty* (Everyman's Library), p. 71, Mill recognizes that liberty must be restricted to those of mature judgments.

may be said that there have been successful democracies without literacy, there is much truth in Jefferson's belief that newspapers are to be preferred to government, if the newspapers are really read and if the government is sufficiently bad. It seems that only the educated can appreciate the difference between the trivial and the essential in public order. The educated citizen can do much for himself without the aid of the government, and democracy has often claimed as its virtue what has been the result simply of ordinary and progressive cultural attainment. We cannot say that the educated citizen is always one who thoroughly appreciates the complexities of the state, but democracy must desire, in order to be true to itself, only intelligent public discussion and participation.[1]

If a time is to come when democratic government is efficient and responsible without qualification, if we are to reach a stage when crime and public disorder are nonexistent, if our cities are to be without bosses, political machines, and those multitudinous deterrents to the intellectual, moral, and physical development of the individual, if those cities are in the future to be beautiful, if we are to have a rural civilization that is based, not on frustrated opportunities, but on a contented and confident rural population, if the workers in industry are to feel a confidence in their status and are to be without the fear of unemployment, accident, or old age, the basis must be in a citizenship capable of rising to a high peak of self-realization. It is true that Utopia is always around the corner, for one step forward in progress brings the vision of another step to further progress. It may be true that no democratic citizenship is capable of such a degree of rational scientific cooperation. But whatever the ultimate limitations upon progress, democracy is bound to see in education for citizenship the immediate foundation of organized and scientific effort for the attainment of the good life through the action of the state. Democracy may not be able to provide the good life in a positive sense, but it can, granted the development of an intelligent and educated citizenship, remove the obstacles to such a life.[2] It can provide the milieu in which human capacity is free. This, after all, is the yardstick for the measurement of political culture.

[1] The modern emphasis on discussion, especially group discussion, as a means of education for citizenship is a continuation of the earlier theory that discussion is the road to true opinions, as stated by Milton in *Areopagitica* and by Mill in *On Liberty*. *Cf.* Eldridge, *op. cit.*

[2] It must be recognized that the state is not the only means of educating the citizen. However, it is clear that the state has not really attempted what may be called genuine civic education. *Cf.* Joseph Wright, *Selected Readings in Municipal Problems* (Boston, 1925), pp. 439 *ff.*

But if we concede that citizenship education is the fundamental premise of such potential progress, if we believe that the state must be unified by means of education, we are also bound to concede that in democracies at the present time public opinion itself is the fatal stumbling block to that cooperation which may produce scientifically the conditions of the good life. This is, indeed, a harsh judgment, but it is nevertheless true. We have already seen that the individualist believes the individual able to see clearly his own interests, but the utilitarian view upon which such an assumption is based does not realize the tremendous conservatism of public opinion. It is always easier for the demagogue to make his case from the conservative appeal than for the liberal to urge successfully a new form of political and social cooperation. Mencken has contended in his *Notes on Democracy* that men vote against proposals, but not for them. If this is true, the exploitation of conservatism inherent in the democratic citizen is the staple of politics.[1]

Not only is public opinion generally conservative, but its conservatism may be made specific as to new issues. The defenders of democracy must wrestle manfully with the fact that there is no correlation between rectitude and public judgment, and that public activity is thus weak because it may be manufactured in a short time as a result of intense stimulation by interested groups.[2] If public opinion were merely conservative, and this conservatism an expression of the value of human experience, and if public opinion were clearly a product of evolution in which survival means social utility, propaganda would be nonexistent. But propaganda is based on two assumptions; that the conservatism of opinion is not always critical of itself, and that public opinion does not understand its conservatism. To be conscious of the force of propaganda is not to admit defeat, but, if we could be convinced that public opinion will always be the plaything of organized and interested effort, it would be better to concede the destruction of democracy and to form immediately an aristocracy of interests with propaganda experts as their representatives in Congress. If the single atom of the community, the citizen-individual, has no real judgment, no real freedom, no real moral consciousness, elections are, of course, a silly procedure. It would be less expensive, much simpler, and much more effective to go directly to those who actually dictate public opinion.

[1] The potential loyalties in Fascism, communism, and oriental nationalism may indicate that positive loyalties can make up the content of the attitudes of citizens. See E. M. Sait, *Democracy* (New York, 1929), p. 29.

[2] See Norman Angell, *The Public Mind and Its Disorders* (New York, 1927); Peter Odegard, *The American Public Mind* (New York, 1930).

On the other hand, a clear distinction must be made between issues over which the propagandist has control and those over which he has little influence. The citizen is the product of his age; he is saturated from the cradle to the grave with the intellectual atmosphere and morality of his culture. The propagandist is not greater than history, or than moral judgments expressed in institutions. Over the issues which are already settled or which have been before the people for a long period of time, he has little influence. The propagandist must work intensively, for his success depends upon a lack of competition, upon being the first in the field, and upon having an interest regarding which popular judgments have not already been crystallized or been reflected in institutional activity. His issue must have interest to the average atom of democracy. The manufacture of opinion, when observed, seems more significant than it really is in terms of history. The pernicious element in propaganda, however, is that it operates on those new issues before the public concerning which there is immediate danger of socially disadvantageous judgments. New issues decided correctly make for progress without the retracing of steps.

Science and the Citizen. Has the average citizen really been given a chance? Clearly the discovery of propaganda is the beginning of wisdom, for the state can be an agent of propaganda as well as other organizations. The state has fundamental advantages. It is permanent and the formulation of its objectives is not limited by time; it has a command of wealth for purposes of education which private groups cannot hope to control. Citizenship education is, finally, merely propaganda conducted by the state, but no one would contend that political democracy has made any serious attempt to use its advantages for the development of more intelligent citizenship. Like private associations, the state must concede that the fundamental elements in national culture are beyond its immediate shaping, but over the issues where propaganda itself is most powerful it should have a most effective power of direction.[1] What propagandist or educational purposes should political democracy accept?

The answer to this question should not be difficult to find. The purposes of the state stand above the immediate issues of economic organization and social philosophy, and in indulging in education of citizens the state should remember that it will last longer than current issues. The good state can find its most elevated expression of propagandist effort in assisting the individual to form a sound judgment. But the recognition of a sound judgment is in itself a perilous

[1] The state may be as worthy an agent for the formation of opinion as companies publishing newspapers, whose primary aim is to make a profit.

judgment. Science, however, can at least give a method. As Lippmann has shown, the fundamental difficulty of the citizen is understanding the political world beyond his personal observation.[1] The citizen forms impressions of this world with the aid of whatever sources of information he obtains, and this information is very often that furnished by the expert propagandist. It is, therefore, not the citizen's judgment that is primarily at fault, but the basis of the judgment. Should the state seriously enter the field of furnishing the citizen information that is gathered and distributed without the personal interest of the lobby or the propagandist group, it might face the judgment of its citizenship with a degree of equanimity. Facts by themselves are not judgments, and the state should hesitate to provide the citizen with ready-cut judgments. To do this would defeat its own historic impartiality. Nor is this to say that furnishing facts is an easy matter, for in the first place a fact is only a step removed from surrounding metaphysical conceptions, and there must be a selection of facts which the prevailing political power could easily pervert to its own advantage. Fact finding and fact distributing might easily degenerate into propaganda used by the party in power that it may stay in power.

However, this much is certain, the democratic state has never seriously engaged in the business of presenting facts for consideration by the public; it has not appropriated money as an ordinary part of the budget for this purpose. The war chests of political parties have regurgitated untold sums for popular "education," but the impersonal quality inherent in the state, democratic or otherwise, has never been applied to the scientific problem of selecting the relevant facts on a public issue for submission to the public. It is not enough that the citizen be taught to read and write at state expense, for his very ability to read may make him all the more the prey of the interested manufacturer of opinion, whose influence extends to all present members of the public and to all potential members. The adult and civic education movements, which attempt to educate the young in the ideals of the country, the immigrant in the understanding of his adopted government, and the adult in the critical foundations of citizenship, must proceed on a larger scale than in the past. Perhaps in the future the observer of politics will note the importance of the impartial governmental expert whose duty it is to gather the facts and submit them to the people. Such a service to the country might be organized with the same independence as the judiciary; it might be

[1] Lippmann, *Public Opinion* (New York, 1922).

organized so that it will be above party lines and the interests involved in a current conflict. Part of the budget of every democracy should be devoted to supporting the activities of the government in providing a basis of judgment for the citizen. Social science is capable, let us hope, of releasing the ordinary citizen from his bondage to propaganda. In such a situation part of the activity of the state will be neither conservative nor radical, for it will be scientific.

Still, the citizen can hardly be expected to devote the time necessary to a clear understanding of current issues unless his judgment on those matters is likely to count. No one can deny that in the present organization of democracy the government and its actions are not readily apparent to the ordinary citizen. We have already seen how the route to the doorway of state action is long and circuitous, and how the individual and the group which expresses his interests have found it necessary to avoid the cumbersome machinery of democracy organized in the principle of representation. We have also seen that constitutional government in the United States is so organized that the citizen can rely on the government, generally speaking, for the protection of his "life, liberty, and estate," as Locke phrased the objectives of government. To give the citizen a basis of judgment is one step only, and the next and perhaps even more significant step is to make that judgment count in the process of politics. We must recognize, with the pluralistic criticism of the modern state, that the nineteenth century democratic machinery is not adequate to express the complexity of citizenship; because of its ineffectiveness in really representing the interests at stake, it is not capable of developing the type of citizenship needed by modern democracies. Public opinion may be expressed in many other ways than through the ballot, and the state should organize and stabilize the additional means of representation and expression.

Laski has generalized this problem by saying that "the recovery of citizenship" depends on the development of adequate means by which the government may consult the citizen.

> And here wisdom begins by the recognition of the value in government of advisory bodies. The possibilities they embody are not now a mere matter of faith. Sir Arthur Salter is probably the most distinguished European official of the post-war period. "Advisory committees," he writes, "are an invaluable instrument for breaking administrative measures on the back of the public. Modern government often involves action affecting the interests, and requiring the good-will, either of large sections of the community, or of the community as a whole. . . . In such cases, the prior explanation and the assent of committees of representative men who, if convinced, will carry

the assent of the several sections of the community, will be of the greatest possible value."[1]

In America there are significant informal organizations whose advice to the government is of great importance, but modern political democracy has neglected an opportunity in not organizing the channels of expression of opinion available to the citizen.

Again, democracy may associate with citizenship many activities that are now associated with private enterprise. Without endangering the economic system, a conservative state may encourage and develop the cultural activities of the democratic citizen. If the state may foster health, it may foster cultural achievement; if it may develop science, it may also develop the socialization of art activities and appreciation. But in these matters the participation of the citizen is essential, for cultural advancement is impossible when only a bureaucracy has control of state activities moving in this direction. If the cultural standards of democracy have been neglected, if the government has taken little interest in the problems of citizenship except in terms of voting and getting opinion on current legislative measures, there is no reason why this neglect should continue in the future. In all cultural activities, as in all political activities, the means of consulting the citizen body should be carefully developed.

Conclusion. With Aristotle we may insist that, ideally at least, the virtues of the good man are the same as those of the good citizen in the most perfect state, and we may do this without also insisting that the moral life of the individual is to be lived wholly within the directive functions of the state. The ties between individual and individual, the associations, and the interests, however real, have in them an element of citizenship. Citizenship is an ingredient in all other groups; it is, perhaps as Hocking says, "a condition of the possibility of all group ties whatever."[2] But if the state provides the conditions of the good man and his associated life, the best state must

[1] H. J. Laski, "The Recovery of Citizenship," *The Century Magazine*, CXVIII (1929), 263–264, 257 *ff.* The function of consultation is different, of course, from that of investigation, but they both suffer from the generally recognized impossibility of being impartial when evaluations and subjective judgments are concerned. The prohibition report of Mr. Hoover's Wickersham Commission shows that agreement on a body of facts, may result in little agreement in interpreting them. In his dialogue on *The Statesman*, Plato distinguishes the statesman from the politician or the sophist. The sophist lacks the knowledge that is essential to the perfection of government. See Jowett, *The Dialogues of Plato*, Vol. IV, p. 507.

[2] W. E. Hocking, *Man and the State* (New Haven, 1926), p. 132. See Cicero, *De legibus*, ed. by Keyes, Bk. I, Ch. II, p. 375.

be that which most clearly accomplishes this end. As Montesquieu said in the eighty-sixth of the *Persian Letters*,[1] "the most perfect government is that which guides men in the manner most in accordance with their own natural tendencies and inclinations." Laski would surely agree with such a test of the good state, for good citizenship is possible only in an atmosphere of economic security and cultural development. But to say that the theory of the conditions of the good life is met in one country and in no other is to desert the essential relativity of political affairs. Good citizenship consists primarily in an attitude of mind toward the social order, and secondarily in action which realizes the benefits of social order.[2]

In any case, however, the relation of the individual personality to society is not simple.

When we are modest and reasonable, we recognize that we can no more define this today in easy terms than men could have done formerly. We are, indeed, really more conscious of the extreme complexity of these relations than men were in the past. The freedom of the individual, and the authority of society, these are principles which we recognize as fundamental, but their relations to each other we are unable to define. The generous assertion of the necessary liberty of the individual man by John Stuart Mill has a profound truth and value, but it does not carry us very far. The ideas of authority and of liberty baffle all attempts at definition, and the historian, at least, must content himself with tracing some of the stages through which these ideas have passed, and the successive apprehension of the significance of each.[3]

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[1] Murray, *op. cit.*, p. 233.

[2] In the theory of nineteenth century liberalism there was no doubt as to the best form of government. The best form for an author was usually the liberal form in his own country. The catholic optimism of John Stuart Mill is shown for example in his conclusion to Ch. III of his *Representative Government*. For this and other citations, see J. Leclercq, *L'État ou la politique* (Bruxelles, 1929), p. 387 n. 2.

[3] Carlyle and Carlyle, *op. cit.*, Vol. V, pp. 443–444. By permission of Wm. Blackwood and Sons, Ltd., publishers.

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PART VII

THE EVALUATION OF THE DEMOCRATIC STATE

CHAPTER XIX

THE CRISIS IN LIBERALISM

Und so bleibt als Dauergestaltung, welche in eigentlichen Europa vorstellbar ist, nur das, was ich eben als Führerdemokratie bezeichnet habe, die in Effekt nicht mehr egalitäre, sondern oligarchische Massenorganisation auf demokratischer Basis.—Alfred Weber.[1]

Democracy in the Postwar Period. The fruits of a war must be looked for in the following generation. It may be time now to consider in a somewhat realistic way what may be the major results of the World War between 1914 and 1918. From the standpoint of politics it may be said that one of the most unexpected of all its results is that the war, fought in part to make the world safe for liberalism and democracy, has brought about a most unprecedented crisis in the democratic and liberal foundations of society. It is true that the liberal point of view is not very old, since it arose in the eighteenth century, and democracy may be regarded properly as a phenomenon of the nineteenth. Because of the youth of liberalism as a dominant movement one would not expect a crisis so soon, as older and alternative forms of the state have endured a much longer time. But the crisis in democracy is upon us, and therefore the first problem of the evaluation of the democratic state is to inquire into the reasons for this disturbance.

It is often said that one of the finer fruits of the war was the establishment of the League of Nations system. But is this correct? It may with equal propriety be said that the idea of the League is a nineteenth century concept that came to seeming maturity in the peace settlement merely because of the stubborn insistence of President Woodrow Wilson. It arises as a matter of probable fact out of the

[1] "And so there remains as the permanent political form conceivable for Europe, only that which I have just called the *Führer*-democracy, which is in effect no longer an equalitarian, but rather an oligarchic mass-organization on a democratic basis." *Die Krise des modernen Staatsgedankens in Europa* (Berlin, 1925), p. 139.

principles of nineteenth century liberalism, and it is attacked, just as is the liberal state, by the present uncertainty. As a structure the League is new, but as an idea its roots are in the past. Should the crisis in liberalism bring its death, future historians would regard it more as an expression of the period before the war than as a manifestation of the spirit of wartime idealism.[1] On the other hand, it may be asserted with some show of truth that communism and Fascism, considered as generic attitudes toward political life or *Weltanschauung*, are the genuine results of the war. Or, more broadly speaking. the most disturbing consequence of the war is the crisis in liberalism. The fortune of political forms and national spirit is always on the lap of the gods. The Western liberal is still confident that his faith is sound and that the present crisis is nothing more than a crisis. Only the future can speak of the outcome of communism in Russia and authoritarianism in European countries.

Parliamentarism, or government by conference,[2] is under attack in almost every country. The principle of pragmatism, of political action rather than political discussion, has gained an enormous following. But behind the attack on government by discussion is the more profound feeling in the postwar world that the machinery of democracy is ill-adapted to the defense of the values that powerful elements in the state support. The tide of imitation of British political institutions is again receding, as it receded for a time during the latter part of the eighteenth century.[3] Instead of trusting the legislature, men are today placing their hope in the strong executive, in the man on horseback. Political forms per se are considered less important than the policies of government. This attitude is in sharp contrast with the political spirit of liberalism in the nineteenth century, which sought to create political institutions that would have, ultimately, universal application. The retreat from parliamentary government began during the war and it has not been checked decisively in any country.

In addition to the distrust of parliamentary democracy, there has been a marked decline in the respect for civil and political liberty. In many states the traditional liberties of speech, press, and assembly have been abridged. A clear issue is presented to the modern world as to whether these liberties are worth preservation. But just as there has been a profound disillusionment as a consequence of the

[1] W. E. Rappard, "Nationalism and the League of Nations Today," *The American Political Science Review*, XXVII (1933), 721 *ff.*

[2] M. J. Bonn, *The Crisis of European Democracy* (New Haven, 1925), pp. 5–6, Bonn notes carefully that parliamentarism does not per se stand for democracy.

[3] Paul Janet, *Histoire de la science politique*, 5th ed. (Paris), Vol. II, p. 405.

hesitations and contradictions of parliaments, there is also the deeper feeling that political liberty and civil liberty have not served the purposes for which they were established. Free speech and free journalism cannot be regarded as ends in themselves, for they must serve ultimately the general well-being of the community. If they have become the means by which intransigent minorities press a hopeless and perhaps in the end revolutionary case, it is natural that the traditional liberal should begin to take stock of the situation. The notion that free speech will assist in the development and reception of truth is more than dubious. Centuries of discussion on certain questions has created no more agreement than before. The plain fact is that civil liberty and political liberty are tolerable so long as they do not disturb social peace and order, for when liberty is a weapon by which public order is disrupted the great conservative masses of the population begin to lose interest in the freedom of their opponents. We have, in fact, a crisis in civil and political liberty because those who take opposite sides in public questions are becoming less willing to be bound by the decisions of the majority and the orderly processes of government. Discussions may not settle points at issue, but votes may if the will is present.

What we have, therefore, is a crisis in the form and function of the state, and more specifically of the democratic state. The historic issues of church and state, tolerance and intolerance, and interracial harmony have not been settled. But in the postwar period the Western state system itself has been questioned by the rise of communism, which is unwilling to offer or accept a compromise from the bourgeois societies of the liberal world.

The Nature of Liberalism. Before we proceed further in the present discussion, we should examine briefly the nature of liberalism. Liberalism is an historical movement or social structure, just as were feudalism and the ideal of a universal empire and a universal church in previous epochs. The rise of liberalism may be dated conveniently from the latter part of the eighteenth century when the bourgeoisie succeeded in overthrowing many of the grosser forms of privilege that had supported the aristocracy and many of the hindrances to trade so characteristic of the planned economy of mercantilism. In the deeper historical sense liberalism represents the inherent individualism of the middle class; it represents theoretically the equality of property and rights which that class must inevitably demand. Constitutional government, political democracy, and civil and political liberty are merely logical appendages to the broader individualism that found expression in the eighteenth and nineteenth centuries.

As a spiritual force liberalism stands for the recognition of the value of the individual in all phases of social relationship. Privilege or inequality based on fortuitous and nonessential circumstances is repugnant to the liberal mind because it repudiates the essential respect that should be accorded the individual conscience.

Liberalism, as Professor De Ruggiero understands it [declares his translator] begins with the recognition that men, do what we will, are free; that a man's acts are his own, spring from his own personality, and cannot be coerced. But this freedom is not possessed at birth; it is acquired by degrees as man enters into the self-conscious possession of his personality through a life of discipline and moral progress. The aim of Liberalism is to assist the individual to discipline himself and achieve his own moral progress; renouncing the two opposite errors of forcing upon him a development for which he is inwardly unprepared, and leaving him alone, depriving him of that aid to progress which a political system, wisely designed and wisely administered, can give.[1]

To the liberal, the state is but the organ by which a people may express whatever political capacity it may have; it implies representative and responsible government, though not necessarily democracy. It is democratic in that it has a respect for liberty and is unwilling to accept the authoritarian society. It is no enemy of skilled administration. Thus many forms of government and political spirits may be called liberal. British and German constitutionalism during the nineteenth century are forms of liberalism, as likewise are French and Italian constitutionalism. In spirit it is individualistic; in one respect it may support the individualism of the strong, the superman, which means that the functions of the state must not stress equality at the expense of liberty. In another respect it stresses the liberty of the many, which in turn requires that the functions of the state shall be numerous and active in defense of the weak.[2] Liberalism is the universalization and the constitutionalization of the reasonable liberties claimed by the middle class.[3]

Just how liberalism shall be constitutionalized is a small matter. The progress of political invention has brought to light all the devices

[1] Guido de Ruggiero, *The History of European Liberalism*, tr. by R. G. Collingwood (Oxford, 1927), p. vii. By permission of the Oxford University Press.

[2] Marcel de la Bigne de Villeneuve, *Traité générale de l'état* (Paris, 1929), pp. vii–viii, preface by Louis Le Fur.

[3] One curious phase in the modern European crisis in the middle class is that the crisis is most acute in those countries that have the youngest and least developed middle class, *e.g.*, Germany and Italy, and less acute in those countries with a long-dominant middle element, *e.g.*, France and Switzerland. The point is simply that in those countries where the middle class is most deeply rooted the proletarian mind has the greatest difficulty in gaining followers.

so common to democratic government. That which is important is the spirit, or *Geist*, of the society concerned. Perhaps the one essential in the liberal scheme from the standpoint of structure is that there shall be representative institutions and that these institutions shall tap the diverse currents of thought and interest. Open difference of opinion and the discussion of controversial subjects are essential in the liberal state. Discussion leads to a decision that shall be the judgment of all. The traditional systems of representation are peculiarly valuable in bringing to light the ethical sense of the community; professional representation which is supported by the corporative or dictatorial state may secure only the expert representation of interests within the limits imposed by the prevailing and orthodox views of the party in power. Perhaps it is for this reason that postwar dictatorships have set about reorganizing the traditional system of representation; this may also explain why democracies have been so reluctant to embark on professional or group representation. Without recognized political opposition the liberal state withers away, and in the same circumstances the authoritarian state is nurtured.

Liberalism seeks ultimately to reconcile through its historical political machinery the conflicting currents of attitude in the state. The middle class has believed that its claims when properly understood are universal and that they are suitable for every stratum of society. In liberalism there are no irreconcilable conflicts, for a proper recognition of the claims of all can be attained. Any group, therefore, which makes demands of an exclusive character has automatically placed itself outside the liberal fold. But in these conditions the attitude of the liberal is very difficult. If he does not recognize political opposition, he is denying the birthright of his political faith, and, if he does admit into the public councils an irreconcilable and intransigent political force, he is preparing the way for the ultimate extinction of liberalism itself. The right to toleration has always depended upon the recognition of a mutual right of toleration. Any group which refuses this reciprocity but which at the same time demands civil and political liberty must certainly find itself in a situation that is objectively contradictory. The communist is an outright revolutionist, but along with the invisible preparation for the revolution he may still demand the right to be a member of an opposition party.[1]

As long as all the political forces in a state are willing to abide by the arbitrament of constitutional processes, liberalism is possible. When any group refuses to take this position, the whole liberal conception is endangered, and, when such uncompromising groups, or groups

[1] See Adolf Ehrt, *Communism in Germany* (Berlin, 1933).

which resort to violence, become sufficiently strong, the days of liberalism are numbered. It may be said, therefore, that so long as communism is a force there is no hope for liberalism in the state where communists are a considerable minority. It should be observed, of course, that the modern conception of class struggle is completely antithetical to the principles of liberalism. Liberalism is a denial of the rational validity or the social necessity of war between the classes. As the notion gains ground that the process of politics is a conflict between those who have and those who have not, it is clear that any reliance on parliamentary government, on government by discussion, or on the machinery of the democratic state is pernicious and futile.

The march of liberalism toward the democratic ideal of the state seemed for a few generations to indicate the final equilibrium that a liberal society might reach. The criticism of democracy is, therefore, a criticism of liberalism. Those who deny that intelligent public opinion can exist must perforce deny that the masses can use their rights in an intelligent way. The use of civil and political liberty for the good ends of society is, indeed, a problem of public attitudes. Perhaps the aristocrats and the middle class, which accorded the general right of suffrage, believed that the masses would never use their liberty for any other than community ends. Education likewise is valuable and socially feasible only so long as men do not use their education to overthrow the evolving society that gave them this opportunity. What many conservatives cannot understand in these chaotic postwar days is that the liberal can sit by with praise and no blame for those proletarian movements which would destroy liberalism itself, and at the same time condemn so violently those movements, such as Fascism, which are a desperate attempt in some countries to preserve the social forces that gave rise to liberalism in the first place. The answer may be found in a general swing of those who believe in civil and political liberty away from another phase of liberalism, which is economic individualism. The proletarian-minded liberal has clearly lost his confidence in the middle class, and in these circumstances it may not be illogical if the middle class with its capitalistic sympathies should become distrustful of civil liberties used for proletarian ends. In any case, liberalism hangs in the balance. In fact, it may be said that the future of all political faiths is in the balance.[1]

[1] Paul Janet remarked in the last quarter of the nineteenth century that "there came a time in which the socialist and the democratic schools met, recognized themselves as sisters, and embraced each other. This meeting, this alliance, was one of the most grave events of the century. Separated the one from the other, the school of the social revolution and the school of the political revolution

The New Process of Politics. The process of politics for the moment has changed. Political conflicts run deeper than mere constitutional provisions and structures; they reach to the very roots of society. These disputes are to all purposes irreconcilable, and no means of compromise has appeared on the horizon. In the postwar world there has been a decline in the general will that existed; there has been a disintegration of the common purposes which made nations what they are and which made governments stable. Under liberalism and constitutional democracy it has been assumed that certain common purposes were coextensive with the state; now most common interests seem less comprehensive than the state. Citizenship may not even signify a permanent and impersonal tie between those who compose the state. Instead of discussion and government by conference, violence has become increasingly characteristic of the political process. Leadership has taken the sword rather than the toga. Political faiths that were once argued are now announced, and mass intolerance has accompanied mass democracy under mass leadership. Interests in conflict may be synthesized or balanced, or one may dominate another. In the postwar world the liberal synthesis seems to be losing ground even in parliamentary countries; there is less balance and compromise, and there is constantly more domination.

In self-defense liberalism must deny the validity of this interpretation of politics, but this is more of an aspiration or a wish that reconciliation will come in the future. It seems reasonable, on the other hand, to assume that the present situation of the world did not spring full-grown upon the stage, but that it is rather the newest expression of historical conflict. The war brought to light these latent and irreconcilable divergences in the European state system as one disease will sometimes bring into active malignancy a disease that has been dormant. The elimination of violence and the reign of cooperative justice have been the dream of the political thinker since the inception of political inquiry. In liberalism it seemed that the final synthesis had been reached, but the war destroyed for a certainty any possibility of an immediate reconstruction of the liberal scheme of European states.

The liberal interpretation of the process of politics is distinctly European, or at most it is Western. It sprang originally from the historic feeling that Europe constituted a spiritual unity, though there

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offered but small danger to the adherents of an ordered liberalism. But united together and associating their passions and their hopes, they can overthrow everything." Janet, *op. cit.*, Vol. II, p. 733. The translation is by the author of this work.

might be within the totality of the European political scheme a healthy diversity in national form and spirit.[1] The historic spirit of Europe and of liberalism is unity in diversity and difference without violence. The problem that is now present is whether Europe can accept violence as characteristic of internal politics but have cooperation and peace between states. The old notion of violence as existing between states and not within states has been sharply reversed; the internal policy seems to be an attempted stabilization of areas of violence because of the inability of the peoples to agree among themselves; the external policy aims at restoring the tradition of unity among the states of Europe. In other words, there is no necessity of assuming that regularized violence within a state must lead to the destruction of the principles of international liberalism, though this may well be the case.

The Irreconcilable Conflicts. Let us now turn to an examination of the irreconcilable conflicts that agitate the Western world. As noted above, these conflicts are the forces that make the liberal ideal of the state difficult, if not impossible, of realization. It must be recognized that the tradition of unity and totality in Europe is older than the forces which now attack that unity. The ideal of the European system reaches back to the illusion of the Roman Empire continued in the Middle Ages, and it comes into the modern period as a theory of balance and equilibrium between the members of the family of nations, which was, of course, distinctly European in origin. Even before the World War, however, certain tendencies in the state system had appeared which in the long run would make liberalism impossible. In the nineteenth century the healthy growth of nationalism in Europe was perverted to a theory of national exclusiveness, and it was made in turn the tool of imperialism and international war. At the same time the economic forces of each country deserted the eighteenth century liberal viewpoint and demanded protection by the state from the economic forces of other countries. The healthy spirit of a Europe distinct from the rest of the world had thus been corrupted from the outset.

The irreconcilable issues of the present day, which demand the use of violence for stability, may be listed as three: those which arise out of capitalism, those due to war, and those due to imperialism.[2] It has been observed that one of the pristine ideas of liberalism was economic freedom, and no doubt this notion of economic liberty did much to

[1] *Cf.* Alfred Weber, *Die Krise des modernen Staatsgedankens in Europa* (Berlin, 1925), p. 162.

[2] Weber, *op. cit.*, pp. 65–74, 82–83.

stimulate the nineteenth century growth of the capitalistic society. In fact, it may be said that capitalism and liberalism grew up together and always have been fundamentally interrelated. But the spirit of a growing capitalism is hardly that of liberalism. By its very strength it must seek to control the process of political life. Capitalism becomes interested in the formation of opinion, and by its largess it has conquered the political party and the press, with the exception of the modern proletarian parties and newspapers. The growth of capitalism brought with it in the nineteenth century its Hegelian antithesis—the proletarian mind and the notion of the class struggle.

From the standpoint of liberalism, capitalism is today significant primarily because of the existence of the struggle of the possessed and the dispossessed. Perhaps there is no more bitter conflict than for bread, but the bitterness of this conflict is peculiarly vitalized by the capitalistic structure and the proletarian criticism. Not only are the capitalists and the middle class profoundly conscious of what they are driving at, but also the aims of the working population have, to a degree, been crystallized by the rise of communism. The publication of the Communist Manifesto in 1848 marks the beginning, indeed, of the modern era. It sowed the seeds of liberal decay just as liberalism was achieving realization. Since capitalism arose from the beginning as a prominent factor in the social structure of the modern state, the proletarian denial of the state as a capitalistic instrument has in it much truth. The class struggle is important politically because of the uncompromising attitude between the contestants; in the class struggle the state faces an issue that seemingly cannot be compromised. The liberal believes that all the legitimate claims of the class-conscious worker can be met by the internal reformation and historical evolution of the state; the proletarian insists that to destroy capitalism one must destroy the state, or that by destroying capitalism the state will lose its historical *raison d'être.*

In a state where the class struggle has been given clear expression, there is a marked decline in the area of common purpose. The war of the classes becomes the most important of political issues. The technique of the proletarian revolution develops, and in response the technique of the middle classes in self-defense also appears. Communism and Fascism thus find themselves face to face in a struggle to the death. In either solution the old individualism fades away, and political energy is increasingly socialized. In those countries where the radical parties have gone into parliament, there is a constant whittling away of revolutionary energy through the conservative absorption of the leaders of the left. Once accepted, the universality of the parlia-

mentary method conquers the irreconcilableness of the proletarian. If parliament could work as it did before the class struggle, the general will might gradually be reconstructed in these circumstances. But the usual situation is that just enough of the proletarian mind remains to prevent a thoroughgoing national cooperation.

In the second place, there is a crisis in the state over the issue of modern national war. Liberalism is clearly international as well as national; to realize the liberal world there must be machinery of international cooperation and constitutionalism just as there is within the state. It is here that the exclusiveness of nationalism has lent itself to an illegitimate cause. The modern war is a war between peoples animated by intense group hatreds. It tends to destroy the foundations of liberalism because it repudiates discussion and voluntary cooperation within the state as well as between states. That war is inherent in the state system is often regarded as axiomatic. As Treitschke declared, the state is power, and as a sovereign entity it has the right to use its power in the settlement of international disputes. War is the ultimate weapon of the state in making its claims. But war means the acceptance of violence rather than law; it may be regarded as a denial of law. Such a view is cogent as soon as the unity of the historic European system is lost. The attempt to see in the states of Europe the expression of a civilization that is finally a unity signifies that cooperation and discussion, *i.e.*, diplomacy, shall be used to resolve conflicts. European liberalism is a spiritual context for the rule of law in international relations, but war, as such, is a denial of the rational universality of purpose.

One of the complicating factors in the relation of the state to war springs from an aspect of capitalism. The war industries are capitalistic in outlook, and they demand as other industries the support of the state. As groups with tremendous economic power, the manufacturers of armament seek, like other capitalists, to influence the course of public attitude. The press and the political party give them an opportunity to shape the policies of government; likewise they may use the influence of a considerable portion of the bureaucracy. The result of the power of the military groups in the state, the economic interests of the manufacturers of arms, and the far-flung economic interests of private citizens and corporations all lead in the same direction: the repudiation of the liberal principle of international constitutionalism. To reject international government and conference means that violence and power must give temporary settlements of issues, and the use of violence means *that until domination has been* reached there is no possible compromise. If, at the end of a war, there

is a compromise peace, it indicates the mutual exhaustion of the contesting states. War is, after all, the logical method of those who insist that their interests cannot be shaped to the wind; this is true internationally, as it is also true of the class struggle on the municipal scene. Internally, the class struggle delivers the conflicting groups to the principle of "reason of state," and the acceptance of international war does the same for interstate relations.

In the third place, liberalism has been undercut by the practice of imperialism. Nationalistic liberalism early accepted the doctrine of self-determination against the older idea of legitimacy. Liberalism implies the existence of free nations in a free world, and it accepts the rights of peoples, whatever their level of culture, as well as the rights of the individual. The modern state has been driven into imperialism because of the nature of economic organization. The struggle between states becomes in part a struggle for markets and raw materials. Prosperity comes to depend in a large degree on the international opportunity of national industry. The principle of European unity and coherence is certainly contrary to the idea of Europe dominating the world rather than living within itself. Imperialism has thus distracted Europe from its more fundamental and lasting problems. The time may have come already when the earth is divided between rival imperialisms and when the conquest of markets is slower and more difficult.

Imperialism is a form of violence which leads to the open use of power, and it involves the denial of liberalism, not only in this sense, but also in that the imperialized peoples are denied a just consideration because of the needs of the dominant state. No doubt imperialism is a peculiar and passing expression of the principle of violence, but it did much in the prewar years to break down the force of the liberal ideal. In the postwar period much of the latent logic of imperialism has been applied in Europe to the military hegemony that the Allied and Associated Powers attempted to establish. While the war itself was violence and all but extinguished the liberal states during hostilities, the peace is the incarnation of violence. The conference of Paris in 1919 settled the problems of Europe in terms of power rather than cooperation and discussion. In many ways the treaties of peace are mere passing attempts to constitutionalize for the whole of Europe a deliberately vindictive spirit. Of course, such a solution cannot last; the nemesis of such politics seems to be that it will be destroyed by the same means by which it came into existence—violence. The relation of the defeated powers to the victors has been in many respects analogous to that existing between some of those same powers and their subject

peoples. Like the settlements of the legitimist era, the postwar Europe we know is but an area of stabilized violence, which is now defended in the name of liberalism.

We have pictured the crisis in liberalism in terms of irreconcilable issues. It has been shown that any irreconcilable issue is a grave danger to the liberal and democratic principles of modern constitutionalism. The presence of such issues indicates the disintegration of the forces that in the past have united, at least formally, in the support of the liberal conception of society. We are living now in the full tide of the liberal crisis, and there is little hope that the coming generation will see its end, *i.e.*, the reconstruction of the unity of European culture. As Hegel might say, this is the period of antithesis; the synthesis of the future Western world is yet to emerge. It may be the restoration of liberalism, or it may be either communism or Fascism. Present experience seems to indicate that the possible choices must fall under these heads. The counterpoise to the total European idea is communism; the Western state faces communism as liberalism once faced legitimism. But within Europe itself there is struggle and violence between the skeleton defeated states and those which are rich in the power of victory. To many, liberalism is like a lonely voice crying in the desert.[1]

Fascism, National Socialism, and Communism. The irreconcilableness of politics has produced new political forms based on the principle of domination and the rejection of the liberal interpretation of the state. It has been the fashion to say that communism and Fascism are purely transient and that a few years will see their end. The modern dictator, it is said, cannot last. On the other hand, there is no apparent reason why the new political structures and these caesaropapalistic faiths should not last. It is just as reasonable to assume that we have come to the end of the liberal era, and that the World War marks the beginning of the new. To the student of politics the new forms should offer the same interest as the old, for surely there is

[1] See Weber, *op. cit.*, in connection with the above discussion. The clerical criticism of liberalism has always been active because of the anticlerical position of the liberal parliamentary leaders. Thus, it is claimed that only in the economic sphere have the liberals carried liberty to its logical conclusions. It is the early liberal denial of the liberty of groups, *e.g.*, religious groups, which has brought about religious opposition. The clericalist notes that liberty is supported by the liberal until religious freedom is involved. See Abbé J. Leclercq, *L'État ou la politique*, (Bruxelles, 1929), pp. 138, 338 *ff.*, 367–376.

For an interesting analysis of the present *malaise* of representative government, see H. J. Laski, "The Present Position of Representative Democracy," *The American Political Science Review*, XXVI (1932), 629-641.

no reason why the political scientist should be a propagandist for liberalism in a world in which liberalism is on the retreat. The scientific spirit must attempt to understand the deep-seated and perhaps rational causes that have produced the dictator and the repudiation of liberalism, parliamentarism, and democracy.

Fascism and communism are diametrically opposed to liberalism and democracy; but Fascism and communism constitute perhaps the true antithesis in politics in the postwar world.[1] The failure of either should give the liberal forces sufficient recuperative energy to overcome the remaining contestant. But the existence of both in constant conflict deprives liberalism of its touch with reality, for it is clear that liberalism has no solution and no machinery for the solution of the questions that divide the Fascists and the communists. In effect, the Fascist is now the champion of the middle class and the economic structure to which its aspirations gave rise. The rising hatred of the proletarian for Fascism is, perhaps, a barometric indication of how effective the Fascist is. The communist has never hated liberals as he hates the Fascist. On the other hand, the antagonism of the Fascist toward the liberal political system is incidental to his major concern over the tide of the red revolution.

We must thank the communist for the reintroduction of the idea of dictatorship into modern politics.[2] Both communists and Fascists accept the dictatorship as the only effective political weapon. Both are willing, the event bespeaking, to use violence to acquire political power. Fascism reorganizes the broken battle line of the *bourgeoisie*, and communism inspirits the poor in their age-old search for economic equality as the keystone in the arch of justice. The communist rejects the state, as the West has known it, as the instrument of the *bourgeoisie*, and the latter accepts with pride the charge. He declares that the principles of social structure found in the middle class still are the true foundations of the state.

The rise of executive power and virtual dictatorship goes back to the war. During the war the principle of responsible government

[1] Until the rise of Fascism, the fundamental conflict was between liberal democracy and proletarian authoritarianism. Now the conflict seems to be between the radical and the conservative forms of authoritarianism. Weber thinks that Fascism and communism have taken the place of legitimism in Europe as the antidemocratic forces. *Op. cit.*, pp. 116 *ff.*

[2] During a great part of Western history dictatorship has been associated with republican institutions owing to the influence of the Roman republican constitution. See in this connection Cicero, *On the Commonwealth*, tr. and edited by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929); Carl Schmitt, *Die Diktatur* (München, 1928).

broke down in the parliamentary countries; there was in fact, as Léon Blum, the French socialist said, a "vacation for legality." For a short time after the war the principle of the strong executive receded into the background and parliamentary criticism and party life resumed their normal course. However, the imperial prosperity that was expected as the aftermath of war did not materialize. Instead there began a decade of economic disintegration which has left little charity in any political group. Communism attained its foothold in Europe on the basis of present conditions of capitalism and the expected realization of a high standard of living in Russia. Inflation and disorganized economic life have all but bankrupted the middle class. It remained for the national reaction to reassert the inevitable continuity of history and national culture. This reaffirmation was not in terms of liberalism, but in terms of action, of political pragmatism, and of confidence in the executive power of the state.

In Fascism the nation and its history are symbolized in the leader of the government. Nationality is not a mere utilitarian calculation of the needs of the present, but it is an acknowledgment of the organic relationship between those who are dead, those who live, and those who are yet to come. With Edmund Burke, the believer in "statolatry" may say that

> . . . the state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee, calico or tobacco, or some other such low concern, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence; because it is not a partnership in things subservient only to the gross animal existence of a temporary and perishable nature. It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.[1]

Fascism is an apotheosis of the nation, of the total community, while communism performs the same service for the proletariat. But in neither case are they to govern themselves. If idealism indicates the ends of these new philosophies of the state, the conception of means to attain ends is realistic and pragmatic. Duty and obedience are stressed rather than liberty, and no one must be allowed to be either a traitor to the working class or to the nation. Since the ends

[1] Edmund Burke, *Reflections on the French Revolution and Other Essays* (Everyman's Library), p. 93.

are clear, action is required; power and ruthlessness must be used to crush the minority. The strong executive alone is capable. As a matter of political form, oligarchy explains more nearly the nature of modern dictatorship than any other possible term. It represents in some respects the profound controversy between democracy and oligarchy which is characteristic of the process of politics.[1] It may be something like Aristotle's combination of democracy and oligarchy, and, if so, it may have something of the stability that Aristotle attributed to this political combination. The right to vote has not been destroyed under any of the European dictatorships, but the right to vote against the regime has been denied in practice. Dictatorship denies the right of an opposition to express itself except within the limits of political orthodoxy. These oligarchical tendencies may be considered, however, as a logical development of the oligarchical tendencies already found in the "leader democracies" or mass democracies that preceded dictatorship.[2]

The Function of Violence. We have seen that liberalism denies, in effect, the validity of violence as a political means; it seeks to found the state upon reason and persuasion which will lead men to believe and act upon the principles of the liberal state. Dictatorship, on the other hand, recognizes that when there is an irreconcilable issue violence must be used, but, as with the liberals, an attempt is made to stabilize the conquests that have been made. So long as the conflict of parties and principles is so bitter that it cannot be settled by agreement, the use of power must characterize the process of politics. The function of violence in contemporary politics is to stabilize an area of agreement that is less than the total citizen body. Within the area that is stabilized there is a tendency for the older liberal conception to revive, but a toleration of this growth is dependent upon the degree of stabilization that has been reached. As long as fundamentals are not questioned, a timid use of the liberal point of view can be permitted. Violence acts as the preservator of the synthesis that has been reached; it is the defender of the common interest which a part of the state considers of supreme importance. Yet the maintenance of this synthesis requires that the whole be under the control of the group exercising power; otherwise there is civil war. The association or group in support of violence is larger than the ordinary association that seeks to influence politics, but the characteristic of importance is not size but the value placed upon the principles involved. In the nature of the situation, those who adopt the

[1] R. M. MacIver, *The Modern State* (Oxford, 1926), pp. 342–343.

[2] Leclercq, *op. cit.*, p. 488; Weber, *op. cit.*, pp. 137–38, 142.

standpoint of politics as violence must be pragmatists. Their test of means must be the success of those means in attaining the ends sought.

It may be said that for the most part the present-day situation is not new, and that violence and the suppression of opposition are two of the oldest devices of politics. While this may be admitted in part, it is a fact that the technique of dictatorship is receiving such a development that it is in reality a new political form. The technique of dictatorship is one of the newest parts of the science of politics. One must, therefore, study the technique of violence in relation to the conservative and radical forces that are making use of it. But in addition to this, the new spirit of politics is far from the liberal in that the eclecticism of this point of view is rejected; a new age of political faith has dawned for good or evil. The historical judgment on the events of the postwar generation remains for the future, for the scientific spirit cannot be limited any more by the ideology of liberalism than it can by Fascism or communism. The defenders of the new spirit and of the new technique of violence quite naturally assume a historical mission of no little importance.

The decisive days of the year 1933 was a peculiar historical drama in Germany— the clashing of two revolutions, a renaissance and an insurrection, the violence of the collision of which crushed and destroyed the hitherto existing form of government. The nation remained triumphant on the field. It had not fought for itself, for its freedom and future; it felt it was bearing arms for all western Christian nations in a war against Bolshevism. The decisive battle between faith and godlessness, between national consciousness and internationalism, between spirit, honor and character on the one side and bestiality, dishonour and crime on the other, was fought on German soil. The Communist Internationale suffered a crushing defeat in Germany; the world revolution had collapsed. The offensive of the Internationale was to have begun in Germany, but it found its untimely end here. Herein lies the world-wide historical significance of the events in Germany in February, 1933.[1]

The Technique of Violence. To the man who has a profound faith or a political creed, violence does not seem unreal or fantastic as a device to secure that point of view. The scientific question that the philosophy of violence faces, whether it is conservative or proletarian, is how to develop this technique to such a point that some degree of stability can be assured. In the first place, the idea of violence in international affairs has long been used with success. There can be

[1] Ehrt, *op. cit.*, p. 177.

little doubt that for a considerable length of time the political position of the Allied and Associated Powers is assured; if unity of front could be attained among the powers that drafted the peace treaties of 1919 and 1920, there would be little doubt of their continued vitality. Division among those resorting to violence is the beginning of the end. In the second place, violence in the hands of those who look to historical continuity has a greater power to draw to it those who want preservation. In the third place, the technique of dictatorship has shown an enormous development since the war, both in Russia and in the Fascist countries.

It is striking to the casual observer that the contemporary dictatorship has a very broad basis. It does not appeal to a limited and privileged class as did the older forms of absolutism; its appeal is to the masses and to the whole nation. It submits itself to the ultimate historical test of its success in providing for the welfare of the community. This appeal is primarily economic in both Fascism and communism. The communist government asserts that the results of communism will be, finally, the establishment of a high standard of living for all members of the state. Communism, like Fascism, asks present sacrifice for the attainment of future reward. The principle of economic planning has evolved in both Russia and in the Fascist countries; in fact, it may now be said that in many ways the planned economy of Russia will not be vastly different from that found in the Fascist states. The one, however, is rooted in the mass repudiation of capitalism and all its works, while the other is founded upon the principle of reform within capitalism. Both Fascists and communists contend that the masses must rely upon the dictatorship, the one of the nation and the other of the class, existing or to be in the future. Both look to normalizing the regime, the communists by ultimate communistic anarchism and the Fascists by the creation finally of the corporative state.

But the fundamental aspect of the technique of violence that has been worked out in these countries is the one-party system.[1] Liberalism has defended the two- or multi-party system as the best means by which to achieve political and social progress. The dictatorships

[1] The American observer of Fascism should not forget that in many sections of the United States there is in practice a one-party system. In the "solid south" the Democratic party is dominant and in many cases the sole active party. To the Southerner the single party is important in maintaining the whites as morally and politically supreme; this is a phase of the technique of violence in race conflict. See André Siegfried, *America Comes of Age* (New York, 1927), p. 258; Oswald Spengler, *The Decline of the West*, tr. by C. F. Atkinson (New York, 1928), Vol. II, pp. 385 *ff.*

reject the opposition party as an incident of the espousal of violence.[1] Chinese nationalism, Russian communism, Italian Fascism, and German National Socialism all take the stand that there should be one party leading the state, and that this party is little short of being the state. The liberal principle of political opposition is rejected in the demand for action and in the quaffing of the strong wine of patriotism. When the one party has succeeded in attaining a position of dominance, opposition is branded as unpatriotic. After all, the idea that opposition can be patriotic is a very young and perhaps superficially rooted principle. Most of the history of the state has been lived under the standard of loyalty to the prevailing regime. The open adversaries of the group in power have been exiled or executed. But what is new in the present situation is that the single parties which control or seek to control the countries we have mentioned are constantly striving for mass support, while the membership of the party itself is limited to the faithful whose willingness to obey is unquestioned. The national parties in Germany and Italy are essentially semimilitary organizations whose leaders constitute the government. The rank and file of the party are the pillars of the government and the means whereby the opposition is stamped out. Ultimately, however, the modern dictatorship rests upon the support of the masses, and the para-military oligarchy and party performs its great function in the early days of the change that brings them to power.[2]

Under the one-party system the machinery of democracy is preserved in large part. There are still elections and the suffrage is broad, including most of the adult population. But the single party has in its control all the means of forming public opinion. The radio and

[1] It is interesting to observe that the single parties which characterize the modern dictators are charismatic, *i.e.*, they idolize or virtually deify the chief. The program in each case is clear, but it is even more clear that the chief is the soul of the party—Lenin in Russia, Mussolini in Italy, and Hitler in Germany. Robert Michels, "Some Reflections on the Sociological Character of Political Parties," *The American Political Science Review*, XXI (1927), 753 *ff.*

[2] The necessity of appealing to the masses is constantly emphasized by Hitler in his *Mein Kampf*. In speaking of the National Socialist storm troops, Ernst Röhm, former chief of staff of the troopers, declared to the diplomatic corps in Berlin on December 7, 1933: "The Storm Troops were created as a protective and fighting force for dealing with the internal political opponents of National Socialism namely, Communism and Marxism. For fourteen years the Storm Troops waged the moral fight to obtain power in the state. Their prime task is now to secure the victory of the National Socialist Revolution. The Storm Trooper is the exponent of the National Socialist conception of human existence and its apostle who conveys the principles of National Socialism to the remotest cottage and to all his fellow-countrymen without exception."

the press serve the national cause, and meetings and demonstrations of the opposition cease to occur openly. The dictatorship makes the single party the symbol and the agency of the oligarchical leadership that is necessary in the stabilization of areas of agreement on the basis of force or violence. Furthermore, when the oligarchy wishes to show that the people are solidly behind it, an election may be held in which the greatest pressure is exerted to make people vote. Voting becomes a patriotic duty, and it is also a duty to vote for the nation. By propaganda and by the control of the sources of power, the dictatorship can attain a much greater security of tenure than was expected immediately after the war. Even bitter opponents of national oligarchies will admit that the disarmed opposition is in no position to overthrow the dictatorship.[1]

The critics of dictatorship have noted that the dictator must keep the people filled with patriotic hope; politics must be breath-taking with excitement in order that opposition will not have time to become articulate. Such may be the case in the early stages of the destruction of liberalism, before people have become convinced of the necessity of surrendering certain civil and political rights in the interests of the state. With the consolidation of a regime that has as its objective the preservation of the middle and peasant classes, the conversion of those classes to the principle of dictatorship may be relatively complete. Naturally, the proletarian wing of the population must be watched carefully, and any sign of leadership throttled, if necessary by force. Since a brutal dictatorship in Russia has been able to convince a large part of the people that their situation is better than that in capitalistic countries, there is no reason why a government that seeks to maintain the continuity of culture and to invigorate national traditions cannot accomplish the same thing in less time. Thus dictatorship finds its fundamental technique in the formation of opinion, and its duration will rest on the permanence of opinion, once it has been formed. The technique of propaganda is much the same whether the communists or the Fascists are concerned, for the pomp and glory of power are used to overawe the people.

The propaganda of action, which is fundamental in the pragmatic dictatorship, requires the control of the customary institutions of social decentralization. Opposition can never be crushed completely, but it can be disarmed, and this disarming makes violence less necessary within the limits of its stabilized areas. Thus political parties of the

[1] Frederick L. Schuman, "The Third Reich Votes," *The New Republic*, November 22, 1933, p. 39. "It may safely be predicted that Hitlerism will govern Germany at least until the closing phases of the next war."

opposition must be suppressed; the army as well as the semimilitary political party in power must be on the side of the government; the trade unions, centers of socialism and discontent, must be disorganized and the workers brought within the national movement; the church cannot be allowed to foster counterrevolution, and it must be suppressed or reorganized along nationalist or ideological lines; all means of propaganda must be in the hands of the government; the school and social science must be made to serve the dominant currents of thought; the newspapers and newspaper writers must be brought within the cadre of the movement; and the radio must be used exclusively, so far as it is a political force, in the interest of the government. As we have mentioned, the right to hold public meetings and organize parades must be restricted to those whose opinions are in favor of the dominant trend. Rights will exist, of course, but only for those whose political opinions are not dangerous to the dictatorship.

All this, of course, is a work of time. It cannot be done in a day. We know from experience that such movements do not always have to have a majority of the people in their favor. The small and determined minority may seize power, and then proceed to recast the public mind. Violence is naturally very prominent in the early stages of such a political change, but as the opinion of the masses is remoulded the exercise of force becomes less necessary. There is, therefore, a tendency on the part of dictatorships to rest upon the acceptance of areas of stabilized violence and to free itself from the necessity of active defense of the synthesis that has been reached. The regime may become normalized for those by whom it is accepted or to whom participation is allowed. Under liberalism the particular group must be watchful lest the opposition bring about its overthrow; in communism and Fascism the whole state assumes the burden of repressing the opposition and keeping it sapped of strength.

It is early, of course, to generalize about the modern technique of violence. Yet one may point to the more significant developments so far and observe the assurance with which the dictatorship has been consolidated. The political scientist and all students of political conflict must keep abreast of the developments in the national and proletarian dictatorships. The present promise of the technique of violence is great, and, should it succeed in overcoming the previous mistakes made by historic dictatorships, it may be that the future will come to recognize in Fascism a genuine alternative to the liberal state.[1] The irreconcilable choice may be between communism and

[1] Perhaps the most difficult problem in dictatorial technique is that of organizing, *i.e.*, constitutionalizing, succession to power. Russia seems to have solved

Fascism on the one hand, and liberalism and democracy on the other. The important question that history must answer is whether democracy is capable, owing to its liberal tradition, of defending itself against the onslaughts of communists or Fascists. As communism grows stronger, undoubtedly a larger and larger number of persons whose normal allegiance has been to democracy and liberalism will turn toward Fascism as a bulwark against the proletarian tide.

Some Dangers in the Technique of Violence. There are dangers in all forms of government. Liberalism is weak in that it permits to grow within the state the very forces that seek in the end to destroy it. The dictatorship, because of its power, may be diverted from the purposes that secured for it in the beginning the allegiance of the masses. The dictatorship, whether proletarian or national, is a mass movement and is, therefore, subject to the mistakes of action that deliberation might avoid.[1] The greatest danger comes probably after the consolidation of areas of violence. Domination may be attained easily in the state, as contemporary history shows, but between states the story is different. The dictatorial state is interested in action and it does not want to engage in tedious political discussion; when it faces a stubborn opponent with regard to the existing international settlements, its task is infinitely more difficult. Now, a curious phase of world relationships is that, despite the growth of so-called international liberalism, violence is always in the background. The relation between states is somewhat similar, on this account, to that which exists between groups within the dictatorial state. States that have the balance of power have no desire to give it up; they desire above everything else that the arrangements which have been made shall endure. The issue between the dominant and the inferior political powers is irreconcilable, as the League of Nations has discovered since September, 1931, in its attempts to deal with the Sino-Japanese and other conflicts, the problem of disarmament, and the issue of international economic war.

Peace is in part a condition of latent conflict; open conflict means international war. And war, as we know, is likely to wreck the social

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the age-old difficulty in dictatorship, and there is no reason why the nationalist dictatorships cannot do the same. The single dominant party seems to be of utmost importance in providing for the succession to power of dictators. If the oligarchy itself is sufficiently coherent, the leadership of the group may be changed without upheaval.

[1] Yet it must not be forgotten that one of the lessons of the post-war world is that a small group may seize power and hold it. Holding power, however, may depend upon converting the minority action of the rulers into a mass movement.

structure of both the dominant and the dominated. The profound interest in peace of the present dictatorships arises from the fact that international war gives an opportunity for the proletarian revolution to succeed. Especially is this true in case international conflict is of long duration. No matter how Germany may be interested in revising the Treaty of Versailles, she must remember that international war would mean probably the end of the dominant internal regime and the rise of communism. The Russian theory, which emphasizes class warfare, naturally would find an opportunity to sharpen its own weapons in case of international war. But this might occur in both the dictatorial and the liberal countries. The primary end of the dictatorship, the preservation of the traditional and middle-class society, cannot be served by international conflict. In international affairs it is almost foregone that the dictatorships must discuss their problems, and this signifies the application internationally of one of the basic liberal principles, even if the principle is not used within the state.

Diplomacy is not a new weapon of the authoritarian state. Perhaps open diplomacy is. The authoritarian societies are mass governments under close-knit leadership, and as a consequence foreign affairs must be discussed and subjected, in a sense, to the pressure of the masses. The German election of November, 1933, is an example of this mixing of diplomacy and mass support. As a result of the election the German people declared their faith in the leadership of a government that demanded an equal place for Germany among the nations of the earth. Mass participation in foreign affairs, much more characteristic of Germany than the other dictatorships, carries with it the principle of implacable conflict. Even though issues were difficult, suppleness of diplomacy was found in secrecy of negotiation and agreement. An example of the dangers of mass participation, which may be avoided under the authoritarian state in the period after consolidation, can be found in the postwar national hysterias. Each people had something to say about the peace settlement, and the cry for vengeance was primarily a popular explosion.

It should not be assumed that there is any necessary sympathy between those countries which are dictatorial. Each country has its own interests and it must foster these interests at any cost. Just as the liberal state has engaged in illiberal foreign policies, *i.e.*, has accepted international war and military domination as inevitable, so the dictatorial state has been forced to use the liberal method of discussion in order to avoid the outbreak of open conflict. Internationally, the dictatorships must seek peace, though internally

there is no need to offer any peace terms at all to the enemies of the regime. In these circumstances, it is difficult to assume that per se the dictatorship is any more dangerous to peace than is the liberal state. The root evil of war probably goes deeper to the idea of the state itself, whatever its ideology, since states have been generally willing to use force on each other, whether liberal or otherwise. The existence of the state as a separate political entity has in the past, no doubt, prevented international law from developing a complete system of legal relationships.

The Ethical Problem of Violence. To the liberal attitude in its totality it is clear that the prominence of violence means the submergence of rationality in politics. For the liberal, the rational part of the process of politics is the peaceful aspect. This is true both internationally and internally. Yet the liberal point of view is contradictory from the international standpoint, since the liberal state has sanctioned warfare and even regarded it as a means of maintaining the liberal spirit in the world. Thus the World War, which was fought in the name of liberalism and democracy, did not result in the strengthening of liberalism, but rather it weakened or all but destroyed the possibility of liberal politics. Internationally also, the liberal attitude has permitted a certain amount of violence to be used. Violence is legitimate in the suppression of crime, and there have always been limits to the civil and political freedom of the individual. The defenders of liberalism have never been able to state clearly the line between liberty and authority, though their attitude is that a proper balance may be and must be discovered. In practice, liberalism is a balance between freedom and coercion. The liberal believes that forces used in the interest of the good life may be justified; it is important, as the idealists have admitted, in creating the proper external conditions of the good will. No absolute liberty has ever been defended in the name of liberalism; only a relative freedom under the law has been approved.

The defender of dictatorship points to this limitation, and he believes that the difference between liberalism and authoritarianism is one of degree only. The liberal is willing to use coercion and external pressure in order to preserve what is regarded as inherently valuable; force is a means to the good end. The Fascist or the communist takes the same position. The community and the power at its disposal must serve the good end; they must work for the preservation of the permanent and valuable. A differentiation in standpoint may arise in the difference of attitude toward the minority. The liberal regards an intransigent minority as a temporary phenomenon;

the dissentient voice must be stilled by persuasion and the use of reason. The Fascist declares that the minority that will not compromise must be regarded as permanent, for no persuasion, however skillful, will ever succeed in converting the hardened heart. The minority of this character is dangerous to the good ends of the majority or the dominant power, hence the intransigent group must be suppressed. The application of violence simply comes earlier under Fascist rule than it does under the liberal rule.

The difference between liberalism and Fascism is demonstrated most profoundly in their attitude toward the community. The Fascist follows the idealist tradition of the individual discovering his moral self in the group, in the national society. The national society is the condition of the good life. It is the larger group that is capable of rounding out the aspirations of the single individual to the potentialities of personality. The liberal regards the national society as constructed from a vast mass of originally unconnected human atoms. Society is primarily a matter of agreement, or at least it is limited profoundly by the rights of the individual. The liberal morality is finally the morality of the individual, while the Fascist morality is in the end the morality of a society or a culture. The rebellious minority must be suppressed because it has rejected the community that is the veritable necessity of the good life. Freedom to destroy the happiness of the nation cannot be granted, so it is said, even on liberal grounds.

From a detached point of view, we may ask whether the irreconcilable issue, so clearly present in contemporary politics, throws any light on the principle of moral suasion. If the disaffecting issue makes a difference, then it may be necessary for the die-hard liberal to modify his political dogmas. The liberal feels that revolution must be suppressed, but, once suppressed, the old civil liberties may be allowed again. It is striking, however, that, once the danger of revolution has become real, most liberals are inclined to seek a defense in the name of force and necessity. The Fascist feels that the old political ethics can survive only within the group which has a common purpose and in which there are only conflicts that can be settled by discussion and intelligent leadership. The crisis in liberalism is finally a crisis in the thinking of men as to the place of power in political life. The liberal has a technique of discussion and deliberation, while the communist and the Fascist have a technique of violence.

It is well to reaffirm, however, that irreconcilable issues are the product of history. No such issue arises overnight. The nations that militantly oppose each other across international boundaries

are the product of culture evolving through time. The economic classes that war with each other within the state have been created by the seven-league boots of cumulative technology. Government, whether liberal or absolutist, may be the response of historical spirit to changing circumstances. The rationalist thinks of liberalism as eternal and universal, but is this more than artificial when there are profound and irreconcilable issues? The liberal believes that the balance of power in the forces that move the state can be found outside the general application of the technique of violence. But in contemporary circumstances can this be done?

Conclusion. An attempt has been made in this chapter to indicate the motives that have given rise to modern dictatorship, whether communist or Fascist. It is no doubt true that democracy and liberalism are on the retreat from the onslaught of both these forms of political control and purpose. It is clear that Fascism arises from deeper causes than expert propaganda, and that it is not so irrational as racial or proletarian irritation might indicate. It is clear that communism voices an attitude that is weary with the hope that liberalism will arrive at a larger measure of economic justice. Both proletarians and nationalists in many countries are turning to the technique of violence to secure their ends, and democratic liberalism seems to take refuge in hoping that the contradictions of these philosophies with the world as it is will bring about the reestablishment of the liberal attitude. The preachments of the liberal seem to be lost in the din of battle that arises from the class struggle and the articulation of national aspiration.

One must remember that there are democracies in the world yet, though they may have to defend their existence as did republicanism in the latter years of the eighteenth and the early years of the nineteenth century. True, the fate of democracy and liberalism hangs in the balance, but they have not been lost. There is yet some usefulness in the calm discussion of the less electrifying problems of politics. Let us turn to these problems in the further evaluation of the democratic state.

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Chapter XX

PROGRESS, LAW AND MORALS

Juda and Israel were innumerable, as the sand of the sea in multitude: eating and drinking and rejoicing.—3 Kings, 4:20.[1]
And he (Solomon) made silver to be as plentiful in Jerusalem as stones: and cedars to be as common as sycamores which grow in the plains.—3 Kings, 10:27.[1]

Change and Progress. The idea of political progress is realized in the attainment of the ends of the state. In the life of the average citizen and in reaction to the action of the government, the primary question likely to be asked is whether the proposed measure is progressive. If it is progressive it is worthy of political support, the counters of which are generally votes. Progress, therefore, plays a fundamental part in the actual appreciation of the content of citizenship.

Change is objective; it is observable in the experience of the individual citizen. He can see new means of communication being developed; he can experience new comforts of life; and he can see in part changes in the attitudes of individuals, in their standards of conduct, and in their outlook on life. Observations by a single individual, of course, have their limitations, and it is only by the organization of knowledge that measurement of change can take place. It is no doubt true that one's ideas of change are affected by attitudes toward life, and this fact often prevents an individual from making accurate observations on the course of change in his environment. Each new material addition to the environment constitutes a change in the character of civilization; each new idea accepted and acted upon also constitutes a change in culture. That change is constant is readily admitted; that it is slow or fast in certain respects is a matter to be discovered in a scientific sense; and that it is good or bad is subjective, *i.e.*, it depends on the attitude of individuals toward the change. If the change is good in this subjective sense, progress has been attained. Progress is an idea rather than a fact or set of facts; it is the moral quality of a changing civilization.

This idea of change as a constant and objective process is fundamental to clear thinking about the more important question of prog-

[1] From the Douay version.

ress. Those who would reject the ethical quality of politics would no doubt insist that progress itself should be as objective as actual living, as the continued functioning of government, or as the fact of change. It may be insisted that what is measured is change and not progress, that change in itself is morally neutral, and that whatever moral qualities are attributed to change come not from the change but from the evaluations of human intelligence. Without the moral judgment of change, all change is equally good. The extreme form of instrumentalism is logically bound to accept what is workable as progressive; the stern determinism of economic forces is the final test of progress for its supporters.[1] But if we assume that one of the chief purposes of political society is to take cognizance of the fact that economic forces are blind and yet strong, and that it is the function of the state to direct or limit the determinism of forces, whether or not economic in character, we are thrust back upon purpose as the elemental moral quality of the citizen. Change is simply change, and progress becomes a civilized and intelligent judgment about it.[2]

The above statements are not argumentative, but they are an attempt to state the facts of the case. Scientific attitude rejects all forms of ideologies as unscientific, but that they may be unscientific does not demonstrate that they can be avoided or that they serve no useful purpose in the life of the citizen. It may not be possible either to exclude moral judgments from human life or to measure them as the cubic content of a box or the height of a building might be measured. Progress is not a concept of science, though it is often built on the results of science. The indictment of subjectivity can be brought not only against progress but against the ideas of justice, equality, the brotherhood of man, democracy as an end, evolution as a source of improvement, and other concepts that seem inescapably near to the desires of the human heart.[3] It will be admitted readily that the scope of the subjective is flexible and is determined really by the extent of scientific knowledge. What we may think about the stars may be changed by the findings of the astronomer; but what we may think about our relations with our fellows has not to any appreciable extent been reduced to objective standards. Progress is an inherently rational concept, and without it the labors of the state would have

[1] See W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), p. 256, and note, with reference to Duguit's rejection of the idea of progress.

[2] See W. F. Ogburn, *Social Change* (New York, 1922); R. E. Park and E. W. Burgess, *Introduction to the Science of Sociology* (Chicago, 1921); P. Sorokin, *Contemporary Sociological Theory* (New York, 1928), p. 41.

[3] Sorokin, *loc. cit.*

infinitely less meaning. Civilization to be worth preserving must have moral appeal to the conscience of the individual.[1]

Progress is a concept of discrimination; it is not unified in the sense that one standard of judgment or one technique of judgment is to be applied to all changes or all desired reforms. It is the role of educated and intelligent citizenship to judge on distinct grounds the various types of changes that may be brought about. The evaluation of change is one of the most difficult of human tasks, and this is so since human will is an important instrument of change. In some types of change, such as mechanical inventions or the exploitation of natural resources in a novel way, the individual will and genius may count for a great deal; but changes in social structure and in the moral and intellectual environment can be produced only by the active cooperation of a multitude of wills. Change on a large scale involves at least the passive acceptance of many wills, even if little active support is required. In the field of material environment change is readily accepted as beneficial when comfort and convenience are brought to a larger number of individuals, but economic change involves social change and it is here that intelligent support of a reform often fails.

Reform and Progress. Change in the economic sphere is absorbed as fast as it is produced. An industrial revolution is a total consequence of a multitude of small changes in ways of living. It comes so gradually that it is clearly seen only in retrospect. The amount of conscious will that enters into its achievement, as an achievement, is extremely small.[2] The real problem of will is concerned where social evils that it has created become apparent as incidental results of the revolution. Where change is based on a conscious attempt to alter the conditions of life on the theory that life will be better as a result of the change, the idea of reform appears. Every citizen who is educated sufficiently to realize that conditions can be improved and that life can be more creative in terms of individual experience is at heart a reformer. The conservative is a reformer in his way, as is the radical in his. The social scientist who protests that he is neither radical nor conservative but scientific is also a reformer. If the conservative prevents social tinkering which he thinks unwise, the step is progressive; if the radical

[1] See C. E. Vaughan, *Studies in Political Philosophy* (Manchester, 1925), Vol. II, p. 153, for Hegel's idea that progress is rational and is the gradual realization of the idea of freedom. *Ibid.*, Vol. I, p. 244: "Progress, however, there has certainly been; even the blindest must admit it. And if we ask, How has that progress come about? and what is the instrument by which it has been accomplished? the only possible answer is that . . . it is the work of reason which . . . has risen to a fuller consciousness of itself." By permission of the Manchester University Press.

[2] G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), p. 180.

secures a reform in social relations, he calls the change progress; and if the scientist insists that a consciously sought reform is grounded in careful investigation of facts, its acceptance constitutes an item in progress. Every educated citizen in the rapidly changing modern world is constantly evaluating change; if it is approved it is progress, and if it is not approved the change is a reactionary step.[1]

Where change is dependent upon the acceptance of moral values, a general understanding of conflicting points of view is important in making the path of social policy smooth. Where change is dependent upon knowledge of facts after agreement as to values has been reached, the investigator holds the key position and the state should make possible the widest distribution of the facts so found. In any case, a technique of evaluating change is needed in order to make progress a rational and scientific element in citizenship. The state has neglected this aspect of its function, which is pedagogic and scientific. Few states have succeeded for very long in dictating the content of public attitude, but they can influence materially the circumstances under which attitudes are shaped and reshaped. The state has never seriously entered the field of fact finding and fact distributing; this has been left to private enterprise.

It is easy to overemphasize the element of change in social relations. The fact that we have a new kind of automobile or radio does not mean that our theories of democracy, of education, of property rights, or of the types of freedom with which the state should not interfere have been changed in the slightest degree. The creative aspect of living revolves around our standards, in other words, our subjective evaluations.[2] It has been asserted that our genial theory of political democracy is a failure because of the stability of social attitudes. It is pointed out that changes in the material environment do not produce in terms of thinking the changes that ought to follow. This indictment is stated in other ways. While science has made rapid progress since the days of antiquity, while we have overthrown much of the science of the Greeks and Romans, we are still adherents of the moral ideals and ethical standards of antiquity, and Americans especially are Stoics of the later and Ciceronic type. So it is said that, when ideas

[1] See A. B. Wolfe, *Conservatism, Radicalism and Scientific Method* (New York, 1923); Frederic C. Howe, *Confessions of a Reformer* (New York, 1925). A provocative bibliography is given by Graves, *Readings in Public Opinion* (New York, 1928), Ch. XXII.

[2] To say that our standards are subjective does not mean that they are unrelated to reality or that they have no foundation in the objective world. Our standards are what the objective world means to us in our daily conduct.

do not respond intelligently to the social changes suggested by changes in the environment, there is a cultural lag; in such circumstances the human mind rationalizes instead of being rational.[1] The mere fact that reformers as a class stand out with distinctness from their fellows indicates the force of conservative tradition. The force of education is generally on the side of conserving things as they are, and this is particularly true of religious education, which has for its object the preservation of faith in particular creeds. Nonreligious and secular education has not been a force for social change, except in a long-run way. The education paid for by the taxpayer is education that is generally agreed to by the taxpayer. It conserves public order and carries on political and social tradition as its primary function. In a few instances propagandist interests have secured a hearing in the schools, notably in the case of agitation for prohibition and total abstinence from alcoholic beverages. Education tends to shape the public opinion of each generation, and that opinion remains fixed within rather broad limits. In general it may be said that the state historically has been engaged in securing social stability. One of the means is the use of force in the case of resistance; another is the persuasion of individuals through the content of general education.

The Idea of Progress. a. The Ancient Contribution. We have grown so accustomed to "progress" that it is hard for the Western mind to conceive of a condition in which there was neither progress nor a definite consciousness of it. The eyes of Western countries, especially those which do not have a long historic tradition, are toward the future in which the conditions of life will be better. We see progress in terms of material improvements, and since the industrial revolution the citizens of the West have been so busy with material improvement that essential questions of social organization and attitude have escaped their attention. While there is no denying recent progress, let us say, in the material equipment of civilization, this should not be an excuse for ignoring the fact that in the past there have been periods of rapid intellectual and moral progress. In fact it may be said that in one of the periods of intellectual progress material evolution was slow and the very idea of progress itself was almost lacking. Inasmuch as change was not emphasized as of value in itself in Greek civilization, the problem of rational judgment of change was not acute. Thus a distinction must be made between periods in which actual progress is made and periods in which the philosophy of progress is dominant. The acceptance of the philosophy

[1] See J. H. Robinson, *The Mind in the Making* (New York, 1921); Ogburn, *op. cit., passim.*

of progress is a modern and Western development, and in general its common acceptance as a social and political religion is a result of the actual material development of civilization.

Progress itself in terms of the functional development of human capacities is not the usual condition of society. While it must be admitted that at no time has human society stood still, yet in general we may point to the sixth, fifth, and fourth centuries B. C., and to the late eighteenth, nineteenth, and twentieth centuries as the periods in Western society in which change in a cultural sense was achieved on a wider and more magnificent scale than at any other periods of civilized history. These changes have become part of our civilization, and, just as it is impossible to think of our educational and social ideals without Hellenic influences, so we are the children of the post-French Revolution period, intellectually and materially. Yet there is a fundamental difference between the cultural development of the Greeks and of the present. The notion of ever-increasing and accumulating advancement in society was not seen in Greek thought as a product of the future; such developments were to take place, to be sure, but the realization would be that of a rational and absolute ideal which was viewed in terms either of a past Golden Age or of philosophical attainment. In other words, progress itself was not a fundamental concept in their thought. For the progress of the nineteenth and twentieth centuries, however, we developed a body of explaining concepts. Progress is to be the result of distinct human effort, and the perfections of progress, while not clearly envisaged, are certainly a part of the future.

The static or utopian ideal of society, the attainment of a condition in which the chief energies of society will be devoted to preserving what has been achieved, tends to drive human thinking deep within the intellectual resources of humanity.[1] There is little tolerance for the imperfections of the present since the intellectual visualization of what can be attained is too intense. On the other hand, the notion of society as continually moving forward to a greater development of human capacities brings about a reliance on the improvements of the future, which in truth are often poorly outlined in social thinking. In such circumstances there is a greater tolerance of the evils of the present, *i.e.*, in an intellectual sense, because of the hope of future perfection, which in turn will suggest progress toward further per-

[1] Utopian ideas are both progressive and static. They are static in that a condition of society is pictured in which progress is no longer necessary. For an excellent discussion of the course of utopian thought, see J. O. Hertzler, *The History of Utopian Thought* (New York, 1923).

fection realizable because of past improvement. Our theories of progress are time conscious, while Greek thought attempted to rise above this element in the good life. Our progress, being wrought primarily in terms of the material, can be thought of only in connection with time. The idea of the Golden Age, lost in the dim past and to be regained in the future, stresses not the passage of time but the elements in culture that remain without change. Perhaps the Greeks would also have developed a time-conscious and materialistic theory of progress had they possessed the mechanical power of the present. But as it was, their contribution is aesthetic and intellectual, and the atmosphere in such circumstances is that of conservatism rather than future developments in experimental terms.[1]

The Greek contribution to the liberation of the human personality, however, was very broad. It has been the fashion to minimize the importance of Greek scientific thinking. It is said that, while the problems of ethics and philosophy were canvassed with striking completeness by Hellenic thinkers, science was not developed. This is disputed by many scientists. That the Greeks developed mathematics to its highest possible point within the range of their equipment may be conceded, and that Euclidean geometry had stood the test for over two thousand years is conclusive proof of this Greek development. That Aristotle's biology is sounder than was at first thought in the light of modern biology is also conceded. That Greek art and literature, though plain and unimaginative in their treatment of nature, are a part of cultural education today in the West is likewise not denied. Greek moral philosophy has stood the rigid test of survival, to which the pragmatist appeals, with amazing vigor. Greek ideas of government were so well developed that Aristotle and Plato are part of the modern education of political science as surely as Greek geometry is basic with the modern mathematician.

In such a period of development it is strange that a full-fledged doctrine of progress did not take shape. But Greek stress on the inherent and lasting qualities of man prevented it despite their emphasis on organized knowledge. The modern belief in progress as based on the inexhaustible resources of science owes a large debt to Hellenic fidelity in scientific and factual investigations and to the belief that all facts, however insignificant they may seem, are yet worth organizing as a part of the general body of knowledge. With the exception of mathematics, modern science developed in comparative independence of Greek science, and the modern correlation between the two in the

[1] Gilbert Murray, "The Value of Greece to the Future of the World," in *The Legacy of Greece* (Oxford, 1921).

field of biology is still being worked out. It is in the field of the aesthetic, the religious, and the intellectual that the continuity is most distinct.

The religion of progress is a product of modern times, and various suggestions for improvement in antiquity do not materially alter the case. While in Greek and Roman sources there is some suggestion of the doctrine, it was not clearly formulated until the eighteenth century. Sabine and Smith remark:

> The Greek investigators, while acutely aware of the constant changes that occur in actual states, felt that if the perfect state could be attained, it could be preserved unchanged through a wise and appropriate constitution. They placed an excessive and unjustifiable emphasis upon the form in which political life was to be cast and in this way sought to make static the fluctuating and passionate nature of man. Polybius, perhaps more than any other, believed that the external form of political society was in reality the state itself. It is clear that Cicero had a glimpse of the profounder truth that states are always changing and that experience stored up in the course of successive generations is of greater value than the judgment of any individual, however wise. But he did not realize the consequences of his conception of progress. . . . Apparently, he believed that a proper arrangement of the various elements of the state will insure a permanent and unchangeable form of political life.[1]

[1] Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), pp. 63–64. By permission of the Ohio State University Press. One phase of the ancient treatment of change and improvement is the prevailing doctrine of the *cycle*, which in various forms has come down to recent times. Properly speaking, the ancient world had doctrines of change but not doctrines of progress. Plato in *The Republic* (see Jowett, *Dialogues of Plato*, Vol. III, pp. cxxvi, ccxii, ccxiii; also p. clxxviii, where Jowett's position is given) thinks of a cycle of governmental forms, as does Aristotle to some extent, and as do Polybius and Cicero. The recognition of change in the ancient world produced the doctrine of cycles rather than the doctrine of progress. *Cf.* A. K. Rogers, *A Student's History of Philosophy* (New York, 1907), pp. 130–131. Machiavelli, Detmold ed., Vol. I, p. 213, believed that things change from good to bad and then from bad to good. Vico almost attained a doctrine of progress, but he could not emancipate himself from his traditional background enough to repudiate the cyclical theory. Vaughan, *op. cit.*, Vol. I, p. 249. See *ibid.*, Vol. II, p. 132, for Fichte's analysis of change in "ages" in contrast to analysis by cycles. *Cf.* Elliott, *op. cit.*, p. 83, for a modern version of laws of change. The idea of *laws* of change underlies both the "cycle" and the "age" or "stage" theory; the viewpoint is teleological, generally speaking. For J. S. Mill's theory of progress, rejecting all thought of cyclical ideas, see William Graham, *English Political Philosophy from Hobbes to Maine* (London, 1907). The great modern exponent of the cyclical theory is Oswald Spengler in *The Decline of the West*. In this theory each distinct *culture* goes through a cycle of birth, growth, and death.

b. The Christian Influence. While the Greeks stressed an absolutism of moral and political standards derived by the use of reason (in connection with the observation of political life by Aristotle), and while the Romans followed the Stoic tradition of a universal natural law dictating correct conduct, favoring also the "stable" mixed constitution, we cannot say that the ideals of Christianity were much different until the advent of "social Christianity" at the present time. St. Paul came from Tarsus, a center of Stoic thinking; he preached the doctrine of obedience and controlling force of law written in the heart. Christianity, which stressed revelation, natural law, other-worldly asceticism, and absolutism in morality, could not well grant that human standards are to be worked out and improved by human experience. It must not be forgotten that Christian standards are cultural as well as moral. It may be said in general that absolute standards or natural-law theories of political life are contrary to the positivistic modern doctrine of progress. Natural law and other-worldly morality, according to the Christian view, are counsels of inner perfection that can be realized in the next world if not in this. It is not contended that the natural-law version of Christianity is irreconcilable with progress, but that the logic of it leads to a contempt for the defects of earthly living. The doctrine of progress does not hold up a standard that is final in any sense; the achievement of a better condition of human existence leads to a still better condition on the principle of the indefinite expansibility of human wants. Man creates from his own experience the standards of progress both as to the ideals to be sought and as to the means to be used in attaining them.

Modern social Christianity lays less stress on the other world and more on the immediate conditions of living. The inspiration of such a religious conception of progress is intimately connected with the ideas of the Hebrew prophets with regard to the realization of earthly justice, the social principles of the New Testament, and the modern humanitarian point of view, which can be traced to the later stages of Hellenism as expressed in Stoic ideals.[1] Those who view Christianity as a

[1] "Origen accepted the Neo-Platonic theory of pre-existence (which was condemned by the church in 543) and added a Christian optimistic touch which had a long future history,— to wit, that at the end of time all evil would disappear and all souls be saved. This progressive betterment of things, including, by the way, even the transcending of the New Testament by an 'eternal gospel,' is an early Christian foreshadowing of what later became the theory of progress." George Boas, *The Major Traditions of European Philosophy* (New York, 1929), p. 116. By permission of Harper & Brothers, publishers. Ernest Renan, *Histoire du peuple d'Israël* (Paris, ed. of 1923), Vol. I, preface, has suggested that progress consists in the development of what the Greeks, the Romans, and the Jews have left as a legacy

means toward the good life on this earth go to Greek thought for their inspiration and for their views on the continuity of these ideals in Christianity. It cannot be denied that Western views of progress have been associated with religion. It is not unreasonable that humanitarian and egalitarian views which constitute a theoretical foundation of progress should seek to establish continuity between the higher points of the ancient culture and the present. "The unity of the human race, the equality of man, the equal worth of men and women, respect for the rights of wives and children, benevolence, love, purity in the family, tolerance and charity toward our fellows, humanity in all cases, even in the terrible necessity of punishing criminals with death—these are the fundamental ideas which fill the books of the later Stoics."[1]

The above version of the Hellenistic contribution to humanitarianism is, of course, the product of the eclectic choice of philosophical doctrines by the Stoics. It is a very different type of Stoicism from the original form which insisted that men were either wise or foolish and that man might be rational in a complete sense. But it cannot be said that this later form of Stoicism is un-Hellenic, and, as it was fundamental in early Christian ideals, we can say that it is part of the humanitarian inspiration of the present and one of the intellectual roots of the belief in the unlimited capacity of man for improvement. Reason becomes a law for all men and not merely for the wise; they are equal in the possession of a common humanity. According to Dean Inge:

> The Christian Church was the last great creative achievement of the classical culture. It is neither Asiatic nor mediaeval in its essential character. . . . Judaism ceased to count for much after the destruction of the Holy City in A.D. 70, and the second century of apologists appeal for toleration on the ground that the best Greek philosophers taught very much the same as what Christians believe. . . . "The teachings of Plato," says Justin . . . "are not

of principles and ideas. See this work in general for an analysis of the views of the various prophets. Carl Becker, "Progress," *Encyclopaedia of the Social Sciences*, Vol. XII, p. 496, emphasizes the Messianic conception as a formative element in the doctrine of progress. "It was in this time of revolt against ecclesiastical and secular authority [Renaissance and Reformation] that the Christian doctrine of salvation was gradually transformed into the modern idea of progress." Walter Rauschenbusch, *Christianity and the Social Crisis* (New York, 1912); Harry F. Ward, *The New Social Order* (New York, 1923), and *Which Way Religion?* (New York, 1931).

[1] Denis, *Histoire des doctrines morales de l'antiquité*, quoted by Paul Janet, *Histoire de la science politique*, 5th ed., Vol. I, pp. 249 *ff.* See Cicero, *op. cit.*, p. 31, n. 62.

alien to those of Christ; and the same is true of the Stoics." Augustine, much later, finds that "only a few words and phrases" need to be changed to bring Platonism into complete accord with Christianity.[1]

The Religion of Progress. a. The French Liberals. Those who call themselves liberals at the present time are the intellectual children of the *philosophes*, of the rational enlightenment of the eighteenth century, in which the doctrine of progress becomes the religion of human perfectibility.[2] A liberal believes that by the use of reason he can conceive of a society produced by human effort through the passage of time in which the elements that contribute to human frustration and misery are eliminated. There is something magnificent in the liberalism of eighteenth century France and England, and Americans must remember that French and English liberal ideas were the philosophical groundwork of the eighteenth and early nineteenth century American thinkers. But the liberalism of progress comes to us through the Jeffersonian and revolutionary tradition rather than through the more conservative intellectual leadership of John Adams, Alexander Hamilton, and John Marshall.[3]

The distinctive feature of European thought since the French Revolution, according to Martin, has been its attitude toward time.[4] The broad doctrines of liberty, equality, democracy, internationalism, etc., had been discussed before the French Enlightenment, but the eighteenth century saw a combination of the belief in the goods of this world and in terrestrial happiness with the belief that they were to be judged good only if they contributed to a better future. Reason became the standard of progress rather than dogma or authority, and the means of utilizing reason was the increase of knowledge through science and its wide diffusion to all classes and conditions of men by education. While Voltaire, Turgot,[5] Rousseau, Condorcet, and others

[1] W. R. Inge, "Religion," *The Legacy of Greece* (Oxford, 1921). By permission of the Clarendon Press.

[2] The Renaissance was a period of progress, but its intellectual temper was reactionary rather than progressive. *Cf.* Ephraim Emerton, *Humanism and Tyranny* (Cambridge, Mass., 1925), pp. 104–105; R. H. Murray, *The History of Political Science from Plato to the Present* (New York, 1926), p. 105.

[3] V. L. Parrington, *The Romantic Revolution in America*, 1800–1860 (New York, 1927), pp. 10 *ff.*

[4] Kingsley Martin, *French Liberal Thought in the Eighteenth Century* (Boston, 1929), p. 277; J. B. Bury, *The Idea of Progress* (London, 1920).

[5] In speaking of the doctrine of progress, Janet observes, "Ce sera le couronnement natural de ces études que de signaler en terminant, une grande doctrine née au XVIII[e] siècle, et dont la France a eu principalement l'initiative et l'honneur, la doctrine de la perfectibilité humaine du progrès, doctrine appelée de nos jou.r

might debate whether the history of man had shown steady and consistent progress, they could all agree that the improvement of which the human race was capable was not limited by any evidence at hand. Social purpose was to be the work of reason and the peak of benevolence and good living was in the rational and scientific future. While Lucretius might emancipate himself from the legend of the Golden Age of the past, his views were not part of the thinking of his day, and, while the Renaissance was to revive the Golden Age theory in the form of admiration for Greek civilization, the children of the Enlightenment looked to the future for the spread among all men and all races of the good things of progressive civilization. A charmed circle surrounds antiquity and the Middle Ages, and none may enter who are preoccupied with the religion of progress as were the thinkers of the eighteenth century. In the integration of this period, progress combines a belief in science, the habit of judging the past and the present by the standards of the rational future, a belief in the capacities of man if liberated from ignorance and superhuman authority, and a belief in the political state motivated by the highest purposes of social justice.[1]

Before the writings of Voltaire, Turgot, and Condorcet, the history of man had been pictured generally as a process of degeneration. Even Rousseau, one of the eighteenth century prophets of political democracy, believed in his younger days that the condition of man in an original state of nature was superior to that produced by civilization. Christianity had imposed the burden of original sin, the punishment of which was experienced in part in the sufferings of the short temporal existence of man. The doctrines of progress or decay are philosophies of history, and the important element in history becomes its integration in relation to the conditions of human life. In a strict sense the philosophy of history is a product of the theory of progress, and it may be said in general that eighteenth century liberalism was committed to the belief in human historical improvement rather than in decay.[2]

à une si puissante fortune. Le penseur qui paraît l'avoir énoncée avec précision l'un des premiers, sinon le premier, c'est Turgot dans ses *Discours* de Sorbonne, en 1750." Janet, *op. cit.*, 5th ed. (Paris), Vol. II, p. 671.

[1] Martin, *op. cit.*, Ch. XI. This optimism, which gave birth to the religion of progress, may easily lead to philosophical anarchism as in William Godwin's *An Enquiry Concerning Political Justice* (1793).

[2] The importance of the doctrine of progress in political theory after Rousseau occurs again and again in Vaughan, *op. cit.*, Vol. II. In a sense it may be said that the concept of progress is one of the fundamentals of political theory since Rousseau. As moderns we are forced to think of the state as an agent of progress.

The ideas of Condorcet are probably the most systematic and the most interesting to an American in view of his influence upon American liberals. Condorcet's *Prospectus for an Outline of the Progress of the Human Race* is a refutation of Rousseau's early essays. The progress of the race must be seen in the progress of the individual; as the individual regulates his conduct by a growth of knowledge and experience, so does the race, which has its progress only in the cumulative progress of its component parts. The story of progress, as with Turgot, is the story of the progress of knowledge; it is the long struggle of the intellect with error, superstition, and prejudice. In the slow progress that man first attains, he is averse to accepting new ideas, and enlightenment is the privilege of the few. As Martin says in relation to Condorcet:

> The discovery of printing at the close of the medieval period created a new tribunal of public opinion. The authority of the priesthood was undermined and men were able to accumulate knowledge and profit by experience. The revival of classical literature and the discovery of America completed the foundations of the new era. The Reformation, instead of leading to a general destruction of Christianity, was seized upon by kings for their own advantage and a new form of state tyranny instituted. Science, however, made great strides in spite of persecution. . . . Moral, political and economic sciences were in process of formation; International Law came into existence, founded unhappily "not on reason and nature," but "on established customs and the opinions of the ancients." Science, reason and humanity grew in isolated places.[1]

It is the picture of the future rather than Condorcet's analysis of historical epochs which attracts the student of the present day. Condorcet's "reason" theory of progress outlined most of the broad movements of the present which have as their object the betterment of the social environment. To Condorcet nature set no limits to progress, and, with the accumulation of knowledge which he observed, he believed that man's happiness was within his immediate grasp. First, he could not see why all nations should not reach the same level

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Kant's philosophy implied the doctrine of progress—the progress of man toward rational necessity—and no doubt his influence had much to do with spreading the philosophy of progress. See W. Hastie, *Kant's Principles of Politics* (Edinburgh, 1891), "The Natural Principle of the Political Order Considered in Connection with the Idea of a Universal Cosmopolitical History," (1784). Hastie (p. xxii) remarks, "It is really to Kant that the world owes the first scientific conception of human progress." See also Janet, *op. cit.*, Vol. II, p. 685, n. 1.

[1] *Ibid.*, pp. 289–290. By permission of Ernest Benn, Ltd., publishers. See John Morley, *Critical Miscellanies* (London, 1898), Vol. II.

of advancement; while he looked to rapid development in backward cultures under the humane and rational direction of the French and Anglo-American peoples, he was no defender of imperialism. Second, there was no reason why most of the inequalities of his time should not be removed. Differences in education, opportunity, and wealth were not the product of nature and man might overcome them by his effort. Third, Condorcet hoped for indefinite improvement in man himself. "May it not be expected that the human race will be improved by new discoveries in the sciences and arts and, as an unavoidable consequence, in the means of the individual and general prosperity?"[1] Condorcet and his school did not believe that heredity might still prevent man from attaining a general progress; they did not conceive that science might produce misery as well as happiness, and it was beyond their comprehension that an individual might be enlightened and still act as do the ignorant.

Condorcet was a reformer, as indeed are all enthusiasts for progress; he looked to the abolition of slavery and to economic freedom that would permit the functioning of natural economic harmony;[2] he believed in international good will and friendly relations, in the destruction of trade monopolies and tariff barriers, in education without dogma which would encourage free thought, in social insurance for the socially unfortunate, and in general in the increased functioning of the state in the interests of human development. Good law and a free educational system would destroy inequalities and classes that militate against happiness. The only final authority should be science functioning in the clear cold light of reason.

b. Nineteenth Century Views. As progress was the religion of the eighteenth century liberal, so it was the religion of the nineteenth century liberal. The use of reason in attaining progress found its theory of means in the principle of utility advanced by Jeremy Bentham, a contemporary of the great French liberals.[3] The logic of the doctrine of progress is the theory of legislation. The principle of utility, the greatest happiness to the greatest number, could be realized only by social and political reform, and reform to the late eighteenth and nineteenth century practical British mind was to be

[1] Cited in Martin, *op. cit.*, p. 292.

[2] For the development of the doctrine of natural economic harmony, see Charles Gide and Charles Rist, *A History of Economic Doctrines*, tr. from the French (Boston, 1915).

[3] Bentham published *A Fragment on Government* in 1776. It must be remembered that while expediency was the doctrine of means of the *philosophes*, it was in England that utilitarianism received its full development. Vaughan, *op. cit.*, Vol. II, Introduction.

attained by legislation.[1] As the twentieth century student of politics stresses administration, national and international, as an agent of the good life, so did the late eighteenth and nineteenth century observer stress legislation. While the French liberals were individualistic in theory, the practical result of their social reform was to undercut political individualism; while the beginnings of utilitarian thinking in England were individualistic, the practical result was social utilitarianism. As French liberalism provided the justification of the French Revolution and the destruction of the *ancien régime*, so utilitarianism provided the rational justification of the bloodless revolution, social and political, of nineteenth century England.[2]

The influence of biology on the theory of progress must not be forgotten. It has been said that the nineteenth century theory of society was biological, owing to the influence of the Darwinian hypothesis as to the origin of species and man. Evolution became the keyword of the nineteenth century system of progress as reason had been the symbol of the eighteenth century.[3] Progress was inevitable, for society as well as nature was ruled by the survival of the fittest, and the fittest were the ones who were willing to break the "cake of custom" and permit free discussion and curiosity about society.[4] The influence of biological thinking, however, led in the direction of individualism, except where the collectivist position, *i.e.*, the reformist position, might be supported by analogies of the social and biological organism.[5] As a matter of fact, the theory of the social organism was put into the service of individualism by Herbert Spencer, who perhaps came closer to anarchism without being an anarchist than any other social and political thinker. The progress of evolution to Spencer was from the homogeneous to the heterogeneous, and any attempt of the state to prevent this progress was ineffective and contrary to the types of survival that would actually be found.[6]

[1] See Bentham, *An Introduction to the Principles of Morals and Legislation* (1789); Graham, *op. cit.;* H. J. Laski, *Political Thought in England from Locke to Bentham* (New York, 1920). See in general Crane Brinton, *English Political Thought in the Nineteenth Century* (London, 1933).

[2] See Guido de Ruggiero, *The History of European Liberalism* (London, 1927), pp. 93–154.

[3] See D. G. Ritchie, *Darwin and Hegel* (New York, 1893); *Darwinism and Politics* (London, 1895); Inge, *op. cit.*, p. 86; Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), pp. 321 *ff.*

[4] See Walter Bagehot, *Physics and Politics*, rev. ed. (New York, 1900).

[5] See F. W. Coker, *Organismic Theories of the State* (Columbia Studies, Vol. XXXVIII, 1910).

[6] Herbert Spencer, *The Man versus the State* and *Social Statics*, gives the

Science was, thus, a fundamental element in the nineteenth century theory of progress. However, it has been only during the last forty or fifty years that the potentialities of science have been clearly observed by the ordinary individual. To the twentieth century citizen science means material comfort produced by engineering science; since mathematics is fundamental, not only in engineering developments, but also in widely discussed but little-understood scientific theories such as relativity, it is probable that the concept of progress of this century is destined to be, if it is not already, mathematical in nature. Yet the relation of reason to progress must remain the same in essential traits in the twentieth century as it was in the eighteenth or the nineteenth century. The authority of science, of mathematical and engineering science, is not an arbitrary authority, but an authority based upon reason, whose claims can be rationally examined and rationally supported. Contrary to the French liberals, however, the claims of engineering science can be examined by the few only, and there is little hope of developing among the masses an intelligent appreciation of the significance of modern science. The citizen may observe a gigantic bridge, but he cannot tell how to build one; he can use his radio, but he cannot reproduce it; he can operate an automobile, but he cannot repair it intelligently; he appreciates the need of spectacles, but he does not know the principles of refraction. He may know that factories make cloth in such large quantities and so cheaply that he can dress well on a moderate income, but he cannot make his clothes.

These circumstances may lead to a curious result. Before science had developed to a great extent, an appeal to reason in all men was possible in order to get them to rely on science. But since, in this century, man has become a passive subject of the benefits of science and since he does not have to understand its processes, he may come to the conclusion that the resources of science are unlimited and that each need will automatically produce new machines to satisfy them. The very obviousness of scientific developments and the multitude of comforts that they produce do not stimulate the active use of reason. The moral and spiritual qualities of progress may be clouded. If reason is neglected, it is no doubt true that the machine can make the man, rather than the man make the machine. The present unlimited series of inventions may be classed as progressive and a pure accelera-

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theory of individualism; *Principles of Sociology* explains the organic theory of society.

Cf. Duguit, *L'État, le droit objectif et la loi positive* (Paris, 1901), pp. 42–43. The writings of John Fiske, the American popularizer of Spencer, should also be consulted. See his *Outline of Cosmic Philosophy* and *The Destiny of Man*.

tion theory of progress may result, but this can be accepted only if the rational faculties are numbed into a childlike responsiveness to all *mechanical* change.

The fundamental value of the eighteenth century theory of progress was that it emphasized reason; in using reason the appeal goes directly to the problems of social change, which is not the case when engineering science has produced an overwhelming acceleration of cheap material advantages. The liberal of the eighteenth century who relied on science and reason might find today that the ordinary man can accept the results of scientific change and yet at the same time refuse to apply reason to the social relations of men. Mechanical acceleration may in fact breed indifference to the function of reason in social relations; it may be the cause of an irresistible amoral conservatism. The eighteenth century concept of science in relation to progress leads to social science, while the modern engineering theory of progress ignores or rejects it.[1]

Theories of Retrogression. Contrasted with the brilliant promises of the future which were bred by modern confidence in science are theories which admit of progress in the past,[2] but which insist that the future outlook is gloomy. A concept of the universe as a great impersonal body of matter and space reduces the importance of man. In antiquity and in the Middle Ages, despite a certain amount of scientific progress and knowledge, man was viewed as the center of the universe. These periods were teleological, *i.e.*, nature existed to serve man and man himself had a distinct moral purpose to which nature was a minister. Providence and divine guidance are traits of both Hellenic and Christian thought. Science, however, has attempted to explain the nature of the universe. In place of an egocentric view of the world in which man is the central fact, man becomes one of the incidents of cosmic evolution. A mechanical universe that will finally run down or be destroyed by future cooling of the sun excludes the influence of Providence or final purpose in man. This

[1] Another way of stating this problem is to emphasize the issue of prediction and social control. Social control for and toward what? The problem of values is certainly always the most fundamental in a theory of progress. It is possible, in fact, to state the objectives of social control in an objective way only in a most general manner. See W. E. Spahr and R. J. Swenson, *Methods and Status of Scientific Research* (New York, 1930), pp. 22–25 and notes. *Cf.* Maxime Leroy, "La crise du concept d'avenir et l'art du gouverner," *Archives de philosophie du droit et de sociologie juridique*, Nos. 3 and 4 (Paris, 1934).

[2] Thomas suggests that man first knew a theory of regress and later developed a theory of progress. E. D. Thomas, *Chinese Political Thought* (New York, 1927), pp. 24–25.

fact, however, does not make it impossible for the humanist to find value in life, for man can create his own intellectual and moral world because of its meaning to him.[1] Progress in such a view is of limited effect and duration, and its opponents rightly point out the difficulty of maintaining moral and spiritual values in the face of such conceptions. Science itself as a means of progress has been undercut by astrophysical speculations. Science has made its claim because of its definiteness and finality, though at the present time under the influence of modern astrophysical speculation the moral purpose of the universe is not excluded. Just as man has become accustomed to accepting the findings of science, modern theories are beginning to doubt the observable stability of the objective world.[2] If such speculations are to characterize the science of the present, the claims of scientific method in treating human and moral relations will not be taken seriously.

Many thinking individuals have become uncertain of the value of science in the modern world. It is felt that science stresses the material side of civilization and neglects moral and aesthetic aspects. It is claimed that mere additions to material comfort do not add to the individual's ability to live a good life. Science shifts the attention of men from the moral qualities of conduct.[3]

Other Theories of Progress. The explanation of progress and decay has been one of the most troubling questions in the history of thought. That civilizations do not endure is an easily observed fact. Greek civilization declined, as did the Roman; there were periods in which Egyptian civilization demonstrated a capacity of leadership, and there was a time when Moslem culture led the world.[4] Oriental civilization has shown its power of endurance and great development, and recently in the case of Japan a fundamental ability of adaptation in material culture has been in evidence. Assyrian, Babylonian, and

[1] See Walter Lippmann, *A Preface to Morals* (New York, 1929); Bertrand Russell, *The Free Man's Worship* in *Mysticism and Logic and Other Essays* (New York, 1918); A. S. Eddington, *The Nature of the Physical World* (New York, 1929).

[2] Eddington, *op. cit., passim.*

[3] It may be suggested that at the present time thinkers who are less under the influence of Darwinism and the idea of the inevitability of progress are turning back to the eighteenth century notion of deliberate purpose and the conscious use of knowledge to attain ends. Others such as Spengler support the idea of a cycle of cultural stages with the Hellenic notion of inevitable decline. See Oswald Spengler, *The Decline of the West*, tr. from the German, 2 vols. (New York, 1926–1928); *Man and Technics*, tr. from the German (New York, 1932).

[4] See Ameer Ali, Syed, *The Spirit of Islam*, rev. ed. (London, 1922); Spengler, *op. cit.*

Maya civilizations have passed out of the picture completely. Many explanations of these facts have been offered.

One explanation is in terms of race. Gobineau in the middle of the nineteenth century tried to demonstrate that the only factor which could explain the rise of civilization was racial genius, and that the fall of cultures was due to a corruption of racial stock which destroyed the genius of the people. Racial inequality was viewed by Gobineau as the fundamental fact in human progress.[1] There have been also apologists for particular races. The Nordic and Teutonic school of thinkers consider the Nordic races as the only people capable of carrying the lamp of progress, and they draw conclusions unfavorable to a mixture of races produced by the immigration, assimilation, and amalgamation of non-Nordic types.[2]

Emphasis on heredity and the selection of superior types as a factor in progress has not been lacking. During the nineteenth century theories of heredity and inequality between individuals took shape. Progress was viewed as the production of superior types of individuals, and its continuance depended upon the proper selection of the survival types. As a means of preserving itself, a state would be justified in eliminating in a humane way by sterilization or preventive means the birth of the unfit; this has been considered by eugenists to be fundamental in the progressive development of civilization. The eugenics program has found some support in recent years, and a number of state laws provide for the sterilization of the mentally unfit, though the logical conclusion that birth control is an element in progress is receiving strong opposition from certain religious bodies, notably the Catholic church.[3]

Geographical factors have been offered as explanations of progress since the dawn of history. For instance, it has been the custom since the Greeks to explain in part the superior civilization of a people

[1] Arthur de Gobineau, *The Inequality of Human Races*, tr. by A. Collins (New York, 1914); Sorokin, *op. cit.*, Ch. V; Paul Radin, *The Racial Myth* (New York, 1934).

[2] Sorokin, *op. cit.*, p. 262, gives a full bibliography of the literature of this subject. See Merriam, Barnes, and others, *op. cit.*, Ch. XIII.

Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), p. 240, takes the position that certain races are "progressive," *i.e.*, the Persians, the Greeks, the Romans, and the Teutons who are "the only makers of history." *Ibid.*, p. 204.

[3] Sorokin, *op. cit.*, pp. 252 *ff.*

The simpler idea of the Old Testament and of Rousseau, for instance, was that the good state or good condition in life was objectively known by an increase in population. The theory of Robert Malthus in his *An Essay on the Principles of Population* (1798) was a turning point in the theory of progress.

because of the favorable climatic conditions in which they live. Climate and soil have received considerable study in the past, while in modern times economic resources and geographical location are considered more important as factors in progress. The most dramatic name in this interpretation of the progress and decline of civilizations is Ellsworth Huntington, who has suggested the concept of an ideal climate for progressive civilizations and who accounts for the decline of civilizations by a theory of climatic cycles and changes. The evidence for great climatic changes is not generally believed conclusive. Huntington maintains, however, that, when the Near East and the Mediterranean were the seats of great states and highly developed cultures, the climate was more suited to such development, being wetter and milder.[1]

While it is probably true that environment has tremendous effect on the activities of men, and that soil, climate, the types of food, natural resources, and the development of wealth influence definitely the social organization of society, it cannot be said that the evidence is conclusive enough to warrant the exclusion of other factors as more important in human development. The environmental theories disregard *social* environment and hereditary differences in human beings. In view of the lack of conclusive evidence, it cannot be said that all great civilizations have existed in anything like ideal climates or that climatic or general geographic conditions are definitive as to the potential progress of a people.

Law and Morals. The "religion of progress" strikes deeper than material progress. If the state is to be justified by its contribution to the lives men live, it must view itself as an agent of moral progress. Morality itself may be a matter of convention and agreement, but it may be doubted whether the state is capable of establishing a conventional morality on the basis of coercion.[2] As we saw in the discussion of political obedience, the state must reckon with the conscience of the individual citizen in the practical measures it adopts. Such a judgment implies in general that the moral functions of the state, which must be expressed through law, are limited; yet it must never be denied that the purpose of the state is ethical. It is the chief instrument man has developed for the preservation and the development of the conditions of useful living. Material progress is to be

[1] Merriam, Barnes, and others, *op. cit.*, Ch. XII. Franklin Thomas, *The Environmental Basis of Society* (New York, 1925); A. H. Koller, *The Theory of Environment* (Menasha, Wis., 1918); H. T. Buckle, *History of Civilization in England* (1857), Vol. I.

[2] Cicero, *op. cit.*, pp. 10–11, 32.

judged by its effect on the social attitudes of the members of society in terms of the historic and cultural purposes of the group. In general the state must limit itself to the removal of conditions that hinder the good life, and certainly human misery and exploitation are relatively objective; these are sufficiently objective to be condemned by enlightened modern morality. The ends of moral development are seen in a remarkable agreement among all moral thinkers, but the divergence as to the means of attaining progress is overwhelming.[1]

Whenever the state enters the field of morality, whenever it approves a given standard as constitutional morality, it must speak finally in terms of law. Law in a formal sense may be the command of the state under the caption "be it enacted," but the social thinker must probe deeper into the morality involved in legislation and court adjudication. One need not deny the positive and formal aspect of law, since some formality and stability are necessary, it would seem, in the legal system of a state, but it is worth while to insist that the spirit of the law, the essential morality it approves, is of greater significance to the future of the state than the formal enactment. The state is comprehensive of all the purposes to which the support of the members of the community can be drawn, and the only limits to the function of the state are those of a pragmatic character. If state action can bring results, if it can be supported, and if society has organized the means to attain a given moral standard, the interference is objectively sound. The state is morally different from other associations and organizations in the comprehensiveness of its aims. Its aims are the product of human will working through time, and in the course of history the purposes of the state have been recognized as extremely broad and important to human beings, overlapping in many respects nonstate associations. As the moral purposes of the state are produced by its history, they represent survival values, in general workable ones; therefore effective constitutional ethics is a pragmatic

[1] J. S. Mill in his *On Liberty* (Everyman's Library), p. 128, points out clearly the relation of progress to individuality. When individuality is repressed or when a people ceases to possess it, its day of progress is over. Individuality as the essence of progress is drawn by Mill from W. von Humboldt, but, in any case, Mill regards the interference of the state in the self-regarding acts of the individual as a violation of liberty. In general Mill condemns the idea of moral legislation, such as prohibition, blue laws, etc., as futile and illegitimate attempts on the part of the state to interfere with liberty. *Ibid.*, pp. 127, 141.

The individualistic position here sketched is, of course, fundamentally different from the idealist or philosophical theory of the state which seeks the moral elevation of the individual in his submission to the community, *i.e.*, the state. *Cf.* Sun Yat Sen, *San Min Chu I* (Shanghai, 1927), pp. 296–297, for the modern Chinese view of progress in relation to the state.

matter. This comprehensiveness of purpose in the state makes it reasonable to think that judging a particular policy of the state is not judging the existence of the state itself. To deny the moral validity of an act of the state is in no sense an attack on the legitimacy of political organization, as history has shown in many cases. Were the functions of the state reduced to the merest protection of life and property, it might be conceded that an attack on either of these fundamental purposes would be an attack, not only on the policy itself, but on the state also. Such a position is presented as being in accord with the facts of political history. Aside from the anarchists, attacks on state policy have not in the past carried the implication that the state itself should be destroyed.

The central problem of political theory is the relation of the individual and the state.[1] As Vaughan says:

> The central problem of political philosophy, the first and chief aim of political action, is, without doubt, to secure the right relation between the individual and the State. Conditions alter; new elements constantly force their way into the reckoning. But experience proves that, in the end, each in turn receives its value from the place it wins in regard to the more primitive elements; that, in the last resort, everything depends upon the rightness of *their* relation to each other, upon the courage and wisdom with which that relation is established and maintained.[2]

The core problem has two sides: the relation of the state action, *i.e.*, law and administration, to moral progress, and the ethical basis for political obedience. While it may be said that the heart of political obedience is the ethical justification of the existence of the state, yet it has been argued that the comprehensiveness of the state association demands, on historical grounds, a separation between the ethical justification of the existence of the state and the ethical basis of a particular action by the state. In another sense it is the conflict between liberty and authority, *i.e.*, rights and order. In a democracy the supremacy of popular sovereignty represents the principle of authority, and the freedom of the individual represents the principle of liberty.[3] Progress itself represents a balance in terms of specific governmental action between conflict or liberty and solidarity or authority. "Progress involves the effective overriding of the wills of the weaker portion of society, although progress is proved to be such by the fact that the acquiescence of this minority can be converted

[1] Vaughan, *op. cit.*, Vol. I, Ch. I.

[2] *Ibid.*, p. 2. By permission of the Manchester University Press.

[3] Lippmann, *American Inquisitors* (New York, 1928), p. 37.

into support."[1] This balance, which involves the effective control of those opposed, is to be clearly observed in most of the actions of the state, though it can scarcely be said that all actions of the state at any time succeed in eliminating all effective opposition. A balance in society springs from the fact of obedience, and resistance is a sign of lack of balance between the state and the individual.

Thus the state as an agent of moral progress comes face to face with the immoral necessity of coercion. Coercion is practicable because individuals cannot always successfully object to the public policy that arouses their resentment. The state as an agent of progress must be active, and state activity implies more and more suppression of opposition and consequently more and more suffering on the part of the minority. Progress by political action must always be balanced against political resistance. Giddings has pointed out the limitations of progress in terms of this suppression of those who cannot accept freely the action of the state. "First, there can be no social progress, and therefore no development of personality, except at the price of absolute, but not necessarily relative, increase of suffering. Second, if the increase of social activity, which is one phase of progress, becomes disproportionate to the constructive reorganization of social relationships, with the complementary phase, the increase of suffering will become degeneration."[2] Such a statement does not avoid the subjectivity of progress, which was noted early in the chapter, for "suffering" and "degeneration" are not to be viewed as purely scientific and objective when values and purposes of humanity are involved as they are in progress. If action of the state is based in part on repression of opposition in order to be effective, the only means of such repression is coercion. Moral values in conduct are those produced by the voluntary acceptance by the individual of a standard because it is deemed to be right, not because of a fear of punishment.

A distinction must be made between the monopoly of force by the state and the use of force by the state. The monopoly of force tends to bring about a situation in which all groups or individuals seeking to move the state must resort to persuasion and not coercion. It tends to make action moral to the extent that it is voluntarily accepted as the best or right policy, and thus politics may be raised to a higher level than stabilized violence. The use of force by the state, however, is a

[1] Catlin, *op. cit.*, p. 170.

[2] F. Giddings, *Studies in the Theory of Human Society* (New York, 1922), pp. 231–232. By permission of The Macmillan Company, publishers. Cited in Catlin, *op. cit.*, p. 115. *Cf.* R. M. MacIver, *Community*, 3d ed. (New York, 1924), Bk. III, Ch. I.

different matter, for it involves repression, suffering, and resentment on the part of the dissentient minority. No really satisfactory justification of force in state action has ever been expressed, for all who stress the moral agency of the state realize also the ultimately internal and individual character of morality. It is only the extremist who is willing to assume that those who need force are immoral to begin with, and that therefore the application of force makes no real difference in their inner citizenship.

The anarchist has had the most to say concerning the coercive state, and he is thoroughly unwilling to admit that even democracy attended by the *fasces* of authority is an instrument of human betterment. On the other hand, the anarchist points to the growing needlessness of government because of the gradual conversion of resistance into support. For instance the possession of personal firearms has ceased to be a live issue because of the effective action of the government, and the individual has little desire to fight. On the other hand, the anarchist points to the fact that law as coercion and repression breeds lawlessness and an artificial standard of conventionality. As Kropotkin said: "Three quarters of all the actions which are brought every year before our courts have their origin, either directly or indirectly, in the present disorganized state of society with regard to the production and distribution of wealth—not in the perversity of human nature."[1]

To the anarchist the state cannot be an agent of moral progress in terms of law because it restricts liberty, *i.e.*, moral freedom, and liberty is the chief of human political goods—not authority and coercion. Society is bound to lose in individuality and development by every repression of liberty. Secondly, the state must fail to gain moral progress through law because what the state requires of men it takes from the field of moral value. Morality can come only from free choice. Thirdly, the state fails because its history has often been a tale of the abuse of power. As a result, the anarchist claims "that enforced law shares the fate of all abnormalities—it undermines its own position."[2]

Yet few have been willing to trust the anarchist position that moral progress must come entirely from nonpolitical association. All groups tend to do something that the state is accused of doing. They all

[1] P. A. Kropotkin, *Anarchist Communism*, p. 31, cited by W. E. Hocking, *Man and the State* (New Haven, 1926), p. 92. See Hocking, *op. cit.*, Ch. VII.

[2] Hocking, *op. cit.*, p. 99. See P.-J. Proudhon, *Idée générale de la révolution au XIX^e siècle: oeuvres complètes* (Paris, 1923), p. 53, n. 2. Proudhon remarked that he was a friend of order but that he was, in the full sense of the word, an anarchist.

restrict the individual's liberty and submerge to some degree his personality; they all perform for the individual part of the work of his conscience, for membership in a group involves, for maintenance of such membership, some coercion, or, let us say, effective pressure. Finally, every group is tempted to exploit its position for its own benefit; the story of the abuse of power may be written for groups in terms of the abuse of pressure, and even in some cases the actual abuse of power. On the other hand, in the group, despite the external evils that may be associated with its existence, moral self-control is not absent; for the most part its continuance is based on voluntary and moral choice.[1]

In regard to the state, much the same may be said. Governments continue to exist and function effectively as the agents of progress, not through coercion, but by virtue of consent and a general recognition among the masses of men of the vital service that the state performs. Truly, liberty is restricted by the state, but the object of the state must be in part to preserve liberty rather than destroy it, if it desires to create continued and active support. Liberty is not inconsistent with moral self-control or with a legal order,[2] and the state can, it would seem from history, provide an atmosphere in which the choice for less liberty can be made, with, of course, the resulting social advantage when the problem of conflict does not arise. Democracy need not be seduced by power, and it cannot if it is to be an agent of progress.

The continued existence of a humane and tolerant democracy is little different in actuality from the development of human progress, *i.e.*, the attainment of higher but voluntarily accepted standards of life. It is a question of the capacity and the moral future of the human race, but it is also a question of the supremacy and comprehensiveness of the state. Progress is subjective and change is objective, but as a statement of ethical principle it may be said that progress consists in the liberation and development of the capacities of the human personality.[3] Whether the state is to be active in the struggle for this

[1] The anarchistic view is weakened also by the fact that it is extremely difficult at times to distinguish groups in their action from the state. It may be argued that groups unrestrained by the state would begin to take over the functions commonly associated with political society. The critic of the anarchist believes that the state cannot be replaced.

[2] A legal order may be said, in fact, to be inconsistent with the anarchist position. A legal order in itself implies limitations on the use of power. See Georg Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), p. 477.

[3] Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), p. 63: "Sir Erskine May is persuaded that it is the tendency of modern progress to elevate the masses of the people, to increase

emancipation of humanity depends on our theories of its function and its position in relation to other social groupings. To these questions we must now turn our attention in the next two chapters.

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their part in the work and the fruit of civilization, in comfort and education, in self-respect and independence, in political knowledge and power." *Cf.* Catlin, *op. cit.*, pp. 241–242.

Chapter XXI

THE FUNCTIONS OF THE STATE

So merciless is the tyranny of economic appetites, so prone to self-aggrandizement the empire of economic interests, that a doctrine which confines them to their proper sphere, as the servant, not the master, of civilization, may reasonably be regarded as among the pregnant truisms which are a permanent element in any sane philosophy.—R. H. Tawney.[1]

. . . the dream of the Socialists has become the necessity of us individualists. —From an address by Edward A. Filene of Boston.

State Function as a Political Issue. At first glance it might seem that the actual functions of the state would not be an important political issue, since there is general agreement as to the broad purposes for which it exists. But such is not the case, for nearly all the disturbing conflicts in politics involve somehow the question of whether or not the state shall undertake or continue a function. There is little difference between undertaking a program requiring the performance of new functions and the effort to stamp out a general habit. In both cases positive action by the state is required so long as there is popular resistance. In the case of the prohibition of conduct, however, general acceptance cuts the cost of enforcement practically to nothing. Thus the abolition of slavery is generally accepted, and the cost of preventing slavery today is nothing; but the regulation of the liquor traffic required heavy expenditures because it was not uniformly supported by the citizens.[2]

The real meaning of the state to the individual is derived from what the state does for him, and therefore a conflict over state function often touches public opinion to its depths. Nowhere in politics is the permanence of public opinion more clearly demonstrated than in

[1] *Religion and the Rise of Capitalism* (London, 1926), pp. 61–62. By permission of Harcourt, Brace & Company, publishers.

[2] Mr. Elihu Root in arguing for the appellant in the National Prohibition Cases, 353 U. S. 362 *ff.*, stated that there was a fundamental difference between the Thirteenth Amendment abolishing slavery and the Eighteenth Amendment. The Thirteenth Amendment abolished slavery, which was not legal until sanctioned by positive law, while the Eighteenth Amendment prohibited a business otherwise legal. The Eighteenth Amendment is, therefore, a police regulation and not a legitimate *part of a constitution*, while the Thirteenth Amendment is. However, the Supreme Court did not accept this distinction.

such political issues, and it may be said that in general the ethos of a political society is accurately reflected in the permanent attitudes on the proper functions of the state. Some of the most important conceptions of political theory in Western democracy revolve around ideas of state function. The reason for this is not hard to find, since every new commitment of the state involves either an increase in the liberty of the subject, *i.e.*, freedom from political restraint, or a diminution of that liberty, *i.e.*, an increase in the application of the principle of authority. In an age of unenlightened opinion it is possible that government may adopt new functions or increasingly restrict the liberty of the subject without resentment, but in a democracy it must be admitted that the addition or dropping of functions is a matter of constant political battle. The actual functions of a state represent a balance, stable insofar as the force of political tradition controls, and unstable insofar as a generously experimental public opinion is dominant.[1]

Tests of State Function. Concepts of political theory have in the past been among the factors that have controlled the function of the state. But no political society has had a unified public opinion on function, and, broadly speaking, three attitudes have been in conflict for supremacy. These attitudes may be designated as the conservative, the radical, and the scientific.[2] It is probable that no individual is consistent throughout in his attitudes on particular political issues, since he might be designated conservative on one issue, radical upon

[1] Whenever a conflict involves fundamental intransigence between contestants, no balance is possible; the logic of force and supremacy is the only answer, except toleration where it is possible. The religious struggles of the sixteenth century are analogous to the present-day struggles between capitalism and communism. However, while religious bodies might tolerate one another, it hardly seems possible that capitalism could tolerate communism or communism tolerate capitalism. See J. W. Allen, *A History of Political Thought in the Sixteenth Century* (New York, 1928), pp. 294–295 Norman Wilde, *The Ethical Basis of the State* (Princeton, 1924), points out that, just as soon as the state seemed to be recovering from the religious struggles beginning with the Reformation, the economic question, upon which there does not seem to be a logical line of division or solution, arose as an even greater challenge to it.

[2] A. B. Wolfe, *Conservatism, Radicalism, and Scientific Method* (New York, 1923). In speaking of the Hebrew prophets, Renan declares that "the work of the prophets has thus remained one of the essential elements of the history of the world. The movement of the world is a parallelogram of two forces—liberalism, on the one hand, and socialism on the other, liberalism being of Greek and socialism of Hebrew origin. Liberalism drives toward the greatest human development, and socialism takes account first of all of justice strictly understood and of the happiness of the great number often sacrificed in reality to the needs of civilization and of the state." Ernest Renan, *Histoire du peuple d'Israël* (Paris, edition of 1923), Vol. II, p. 541.

another, and scientific on a third. Such a situation is not necessarily a diseased condition of opinion, since there are probably some issues that must remain subjective, others that may become more or less objective with the advance of knowledge, and others that are purely scientific in nature. Furthermore, in each single political issue there are aspects that should be judged on the basis of the assembled facts and not upon belief, just as there are aspects that can be judged in no other way than in the light of the subjective, in accordance with either traditional views or radical reformism. Some political functions, such as the maintenance of public order, are so inherently a part of the state that it is really inaccurate to say that public opinion has any objective freedom in connection with them. Certainly, without public order the state would cease to exist in an effective sense, and without the state it would hardly be possible to assert that there is such a thing as public opinion. It is ultimately improper, therefore, to speak of an effective freedom of evaluation in connection with sustaining public order, the legal order, or the state.

The conservative attitude is the dominant tendency of public opinion and it will probably always remain so; it is perhaps irrevocably associated with the Western conception of the state. It is the attitude of mind that relies on the course of history for guidance; it looks to the more or less blind evolution of the state before the impact of organized forces rather than the consciously directed action of the human will. The conservative accepts social purpose as defined by history; he believes in general in the *status quo*, and, while he believes in political advance, such progress is viewed as the product of human energy over long periods of time. The conservative feels with Burke that he is the product of history, just as those who come after him will also be produced in the mould of time. The state is a great historical and permanent partnership of those who have lived in the past, those who are living in the present, and those who are to live in the future. The unbreakable partnership is broad in its terms, for it includes the whole gamut of human interests and aspirations. As those in the past made it possible for those in the present to be what they are in terms of intelligence, moral perceptions, and civilization, so those in the present owe it to those in the future not to endanger their chances of the good life.[1] The conservative does not say that progress must be stayed, but he insists that reform is dangerous because of the *destructive* power of the human will in rearranging the social texture. It works upon faith and belief as to what should be and not upon the experience

[1] See Edmund Burke's *Reflections on the French Revolution*, for one of the finest examples of the conservative spirit in politics.

of the past as to what is valuable in human life. The past is experience and it offers guidance with regard to the weaknesses and strengths of political action. History shows where reform has failed, and a proper understanding of history indicates why it has failed. The conservative points out that most new things have been tried in some form in the past, and the fact that such reforms have not endured indicates their inability to make a valuable contribution to the present. The conservative senses the profoundest function of the state in history, for he views the state as the great agent of social conservation, as the agent by which the good of the past is handed on to the present and the future.[1]

Attitude seems to be a matter of temperament, whatever may be the cause of temperament in the individual. To the conservative, the radical is a visionary, a weaver of utopian threads which, like Plato's *Republic*, must be laid up in the heaven of the absolute for the contemplation of the philosopher and that rare citizen who can emancipate himself completely from the prejudices of his age. To the conservative the radical is a dangerous individual, for he cannot see the survival values dictated by history, and he is contemptuous of the stabilizing force of experience. Radicalism is merely political youth which will be dropped as the world is better understood; if persisted in, it becomes political senility. The confirmed conservative gradually reaches a hatred of all radicals and their works, and the deeper the conservatism the deeper is the hate and distrust.

The modern radical has a close intellectual affinity with radicals of the past; taking the long-run view of history, it would seem that the radical has through the centuries fought a consistently losing fight. The radical asserts that he does not object to the value of experience, but that so much experience is really valueless and represents an unintelligent conservation of unfortunate elements in the state. To the radical the survival values of history must be closely and critically examined; his subjective leaning is not scientific but inherently in favor of *certain* changes, for no man is a radical in all respects. The radical, like the conservative, selects those situations in society which

[1] In the conservative attitude it seems that history is finally the expression of human reason; the conservative is at home with a philosophy of universal history. See G. W. F. Hegel, *Lectures on the Philosophy of History*, tr. by J. Sibree (London, 1894). The conservative is opposed to the development of *l'étatisme*, *i.e.*, the tendency toward various aspects of collectivism. He is likely to regard the renaissance of the pagan state as the beginning of a long evolution which leads to statism or socialism. *Cf.* de Reynold, *La démocratie et la Suisse* (Berne, 1929), pp. 158–159. See also E. L. Woodward, *Three Studies in European Conservatism* (London, 1929).

should be changed or preserved. Perhaps it is a question of balance, the conservative desiring to change only a few things and those few in a cautious, evolutionary manner, and the radical desiring to change many things under the guidance of human will and intelligently conceived purpose. The radical attitude is more critical than constructive; it does not accept things as they are, but insists that changes should be made. To the radical mind there is nothing vicious about breaking with history, for it is merely a necessary step if progress is to be made a reality; to the conservative mind there is not only the impossibility of breaking with the past but the unwisdom of it. Both the radical and the conservative test state functions by their subjective leanings; it is a matter of principle with the conservative to maintain, and it is a matter of principle with the radical to change.

From the days of the Greeks the certainty of knowledge has been viewed as one of the supreme ends of human activity. Plato would agree with the modern world in discounting mere opinion, for Plato had a great contempt, as did Socrates before him, for the unexamined popular affirmations that controlled the Athens of his day. Knowledge for Plato was the product of dialectic, the rational systematization of concepts perceived in the mind; the true reality was the rarefied idea or absolute abstraction or form, not the second stage in reality, which was the actual object made by human art, nor the third stage from reality, the reproduction of appearance made by the artist.[1] Science to Plato was the science of numbers—not mere calculation, and certainly not the commonplace observation of facts. While Aristotle had no contempt for abstractions, and while he insisted that nature worked toward ends that were to be perceived in a rational manner, yet he made it possible to study nature with dignity in its minutest manifestations.

Knowledge today is not generally recognized as philosophical abstractions; it is rather the assemblage and organization of observable facts. In the world of science this attitude toward knowledge has produced modern physical and biological science, and in the world of social relations it has produced the pragmatic and positivistic attitude and the nascent scientific method in social relations. The scientific attitude must be the product of cultivation, for no one is a scientist at heart with regard to social relations. It must be the product of the best reason of man. In recent years the student of society, of the functions of the state, and of politics in general has acquired a name—he is not a radical, not a conservative, but a scientist. He tries not to regard social questions from the standpoint of

[1] *Republic*, Bk. X.

preconceived ideas, for he is interested first in the facts, in values that are empirical in essence.[1] It has been our effort to show that such an attitude cannot exclude effectually the values in human relations, for man is a creature of moral purpose, but that those who have dealt in the philosophy of human relations have had an unnecessarily broad field due to the lack of the development of social science.

The world can never be without its radicals and conservatives, and likewise it must not be without its scientists who approach the functions of the state with open minds. The scientist is cold in his evaluation of state functions, and yet he is broadly humanitarian in his sentiments, as were the later Stoics. The conservative is the Sophist of the modern age since he favors the conventional system of morality and social organization.[2] Perhaps the radical is the Platonist who would construct of the tough and unresponsive materials of his day the new republic which is not to be laid up in heaven until philosophers are kings or kings are philosophers. But let the radical become a scientist and he is no longer a Platonist, and let the conservative cease to preach the doctrine of success within the conventional order of things and he is no longer a Sophist. The gentle maturity of the Stoic ideal combined with the unwavering Aristotelian devotion to facts produces the scientist in human relations, who stands between the Sophist and the Platonist and who would point the way to the rational yet eclectic emancipation of men.

Both the radical and the conservative show great trust in the state, the radical in its capacity to provide the means of betterment and the conservative in its ability to do the same thing by an evolution that conserves experience.[3] The scientist cannot a priori have a confidence in the political order, for his chief concern, which rises from his humanitarian basis, is the result of political action. He is a pragmatist when it comes to means, if of necessity he must be a Stoic as to ends. The scientist is interested in the effective state, not the conserving state or the ideal state. The canon of effectiveness looms first in his mind, but he also believes that it is possible to make the state more effective through intelligence and experience. The scientist is not averse to experiments in state function if they are first submitted to a cold and

[1] See R. B. Perry, *General Theory of Value* (New York and London, 1926).

[2] F. J. Church, translator and editor, *The Trial and Death of Socrates* (London, 1926), p. xxxviii.

[3] In the days of declining mercantilism or of the city-state, it was radical to suppose that the state should be strictly limited; in the days of individualism, of industrial society, it is conservative to take the same position. The point is that the contents of conservatism, radicalism, and scientific method change in each generation.

rational examination. If a state function becomes a disorganizing element in the community, he would drop it or modify it. The scientist does not lean upon coercion to attain his ends, but upon education, and in this he is truly Greek and ultimately Platonic. The scientist, being a pragmatist, counts more on political support than on repression, for, if a new function has the value claimed for it, political opposition will be converted into support. The scientist comes nearer the idea of progress than either the radical or the conservative, for the radical is likely to step too far in his support of mutative political parties and the conservative is often unwilling to step at all. To the scientist the state is an important and necessary agent of progress, but the defects and expensiveness of state action stand out in his mind fully as much as its efficiency. It is the scientist with his pragmatism of means rather than the radical or the conservative to whom we must turn for knowledge of the proper functions of the state and for the criteria of state action.

The Individualist View. In modern times the individualist has been the conservative. In the ancient city-state he would have been a radical, since the city-state did not develop succinctly the idea of a sphere of individual action exempt from the interference of the state. Individualism itself is a product of the modern age; it came into being in part through the influence of Christianity, which drew the individual away from worldly loyalties. But individualism as a modern movement comes with the commercial revolution, with the expansion of trade and the development of science that taught the individual to rely upon his reason rather than upon traditional authority.[1] The undemocratic paternal state was a fact of the seventeenth and early eighteenth centuries. It is not unnatural, therefore, that the overthrow of mercantilism, which was economic paternalism, should coincide with the earlier democratic stirrings of the modern world, and that the traditional point of view of democracy, economically, morally, and intellectually, should be individualistic in character.

Historically, social organization has not been individualistic. In the most primitive forms of organizations the individual was submerged, and his concept of personality was the personality of the group.[2] The progress of social organization seems to be in part the development of a consciousness of self. Plato and Aristotle taught the inequality of man and the subservience of the inferior, while the Stoics contributed the idea of a common humanity under the law of nature. Before

[1] *Cf.* Hegel, *op. cit.*, pp. 456 *ff.*

[2] H. J. Ford, *The Natural History of the State* (Princeton, 1915); W. G. Sumner, *Folkways* (Boston, 1907); R. H. Lowie, *Primitive Society* (New York, 1920).

individualism could become effective, some basis of social decentralization was necessary, and this was provided in Western thought, apparently, by the combination of Stoic and Christian ideas. By natural law, the Roman jurists tell us, men are equal, though by the law of nations they are not, therefore human slavery is an institution of the law of nations, not of the law of nature. The medieval conception of the worth of the individual is a combination of the Hebrew idea of the covenant, the Roman legal idea of the contract, and the feudal theory of mutual obligation.[1]

But this worth of the individual, which must be the foundation of an individualism granting to the single personality freedom from interference in certain matters, was not made effective until modern times.[2] Hence, it must be said that individualism is a product of the post-Reformation period.[3] We must observe the types of freedom that were produced in this period, since we are the children of history. Religious freedom, *i.e.*, toleration, is one of the first types and it came about after a long and futile social struggle. State freedom in religion finally passed into individual freedom of worship in the more modern period.[4] Religious freedom leads to freedom of thought and to the contention that disagreement with the prevailing social and political theories is not sedition. It sprang from the appreciation of what man had accomplished in the field of science and the transplanting of this attitude to the general field of social relations. We have already discussed the Enlightenment, which was a foundation of liberty of thought and freedom to express ideas.[5] But individualism as we know it in the eighteenth, nineteenth, and twentieth centuries is economic individ-

[1] R. H. Murray, *The History of Political Science from Plato to the Present* (New York, 1926), p. 46.

[2] Perhaps the most able attempt to preserve the liberty of individuality is that of J. S. Mill in *On Liberty*. The conduct of an individual is divided into self-regarding and social acts, liberty from state interference being morally just in the first class. Mill admitted with the greatest frankness that the line was hard to draw, but when the social aspect of conduct is merely *contingent* he feels that, within a narrow field of regulation, society can better suffer some loss than attempt to destroy by coercion the individual's freedom. Mill's argument rests on the presupposition of Humboldt that progress comes from individuality and that the end of society is the development of individuality, which in turn requires liberty for its realization.

[3] C. E. Vaughan, *Studies in Political Philosophy* (Manchester, 1925), Vol. I, p. 10.

[4] See D. G. Ritchie, *Natural Rights* (London, 1895); Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), "The Protestant Theory of Persecution."

[5] See Mill, *op. cit.* (Everyman's Library), pp. 94–95.

ualism. It is attained by the withdrawal of the state from the close regulation of economic life under the system of early modern mercantilism.[1] The growth of trade and commerce to world-wide proportions and the effect of intellectual attacks on the restrictions of economic independence, combined with the ineffectiveness of the state in these fields, led to a gradual breakdown of the prevailing system of economic limitations. While the theories of the classical economists, led by the physiocrats and Adam Smith, who published *The Wealth of Nations* in 1776, provided the rational justification of the freer policy of the state, it was in the nineteenth century that individualism became a fundamental part of Anglo-American tradition. Individualism was firmly grounded when it became part of the system of legal traditions protecting the newly formed capitalist class.[2] The biological views of the nineteenth century, influenced by Darwin and formulated in social terms by Herbert Spencer, combined with the traditions of the law as formulated in Sir Henry Maine's famous dictum about progressive societies, united to give to Western thought the classic defense of the individualistic state.

These views are not, however, to be separated clearly from the historic ideas of natural law and rights, which go back to the ideas of the Stoics and which, before the development of the biological interpretation of society and the study of the history of legal institutions, enabled the fathers of the American and French revolutions to consider the function of the state as limited in character. In Locke's view the purpose of the state is the preservation of natural rights, the rights of life, liberty, and estate, which together form the total concept of property.[3] The theory of the American Declaration of Independence may be considered the creed of democracy of the eighteenth century type, but it is also the creed of individualism in terms of inalienable rights. Likewise, the French Declaration of the Rights of Man and the Citizen in 1789 is both a foundation of democracy and a foundation of individualism, for it gives to the individual a sphere of activity free from the interference of positive law. Individualism and democracy[4]

[1] See Charles Gide and Charles Rist, *A History of Economic Doctrines* (Boston, 1915); L. H. Haney, *History of Economic Thought*, rev. ed. (New York, 1927); R. G. Gettell, *History of Political Thought* (New York, 1924).

[2] J. A. Ryan and M. F. X. Millar, *The State and the Church* (New York, 1922), p. 211.

[3] *Two Treatises of Civil Government*, Sec. 123. Writers who have sought to include Locke in the list of thinkers accepting the economic interpretation of politics have frequently failed to state the three elements in the idea of property.

[4] Democracy as used here is, strictly, political democracy as a form of government, not as social and economic philosophy.

for the eighteenth century were drawn from the doctrines of natural law, just as individualism and democracy in the nineteenth century were drawn from biological,[1] jurisprudential, and utilitarian considerations. The permanence of the contribution of the eighteenth century must not be overlooked, for it must be remembered that the common lawyers of the seventeenth century, like the leaders of the American Revolution, associated the rights of Englishmen under the common law with the rights of man under natural law.[2]

The utilitarian tradition of the nineteenth century was individualistic. Jeremy Bentham proposed, as we have seen in an earlier chapter, to remove the archaic and historical survivals of society which hindered the advancement of individual happiness. The state should act only to efface itself. He rejected the historical-legal individualism, the theory of natural rights, and theological conceptions of restrictions on liberty, all of which were to be replaced by the intelligent calculation of the greatest happiness of the greatest number. John Stuart Mill held similar views as to the functions of the state and on similar grounds. The state might interfere when the acts of the individual were other-regarding or social, but not when they were self-regarding, for the self-regarding act should be completely free from the interference of the state. Mill admitted, however, that all human acts were not to be considered in the light of a selfish calculation between pleasure and pain, and that the role of sympathy in human actions was important.

However we may look at the nineteenth century, we must admit that for English-speaking peoples it was predominantly individualistic, at least in the earlier decades. Various lines of thought combined to produce the historic freedoms of religion, speech, and competition economically and intellectually. The historic doctrines of natural rights, the implications of biology, the findings of historical jurisprudence, and the doctrines of the utilitarians all supported the propositions of individualistic democracy.

Individualism a Doctrine of Means. The difference between individualism, which is an attitude of mind in the first place, and various forms of collectivism must be carefully observed. All social theories in the West since the time of the Stoics and the rise of Christianity agree on the proposition that the individual is an end in himself. They all agree that one of the chief objects of the state is the develop-

[1] See Ritchie, *Darwin and Hegel* (New York, 1893); *Darwinism and Politics* (London, 1895); Crane Brinton, *English Political Thought in the Nineteenth Century* (London, 1933).

[2] See Roscoe Pound, *The Spirit of the Common Law* (Boston, 1921), p. 90.

ment of the individual, but how this development shall be attained is a matter of dispute. Individualism is significant only as a theory of means; as a view of ends it blends with other social thought. Let us consider the means sanctioned by democratic individualism for the development of society.

Competition is perhaps the fundamental article in the creed of the individualist. Competition involves freedom of thought and action in all the aspects of social organization. The chief function of the state is the preservation of the conditions of free competition. The preservation of this competition among individuals and groups may take the form of a theory of rights, and indeed modern political life is hardly conceivable without some organization of rights. Rights in turn may be viewed as the removal of unreasonable restrictions upon the activity of the individual.[1] Clearly, this should be one of the functions of the state, and this in fact is one of the strongest claims of individualism. The action of the state in many cases must be negative rather than positive regarding those who are benefited. We have grown so accustomed to the ordinary protection of freedom of conduct that it is hard for us to imagine the intensity of feeling of the reformers who began modern individualism, capitalistic in nature, by insisting upon the removal of restrictions that were merely historic survivals.

But more profound even than the removal of restrictions on the individual personality is the individualistic belief in the capacity of man, or at least of most men. Here the free invigorating breezes of the eighteenth century Enlightenment blow without hindrance. The individualist assumes (1) that the individual knows what he wants and what is best for him, *i.e.*, once the individual has received proper training, his judgment is not a responsibility of the state; and (2) that the individual can get what he conceives as his need if the state removes a certain number of obstacles from his path. The state provides, under the individualistic scheme of society, opportunity which may be taken or rejected. Education financed from the taxpayer's pocket is therefore not a collectivist tendency in society, for it is merely a means whereby the capacities of personality are unleashed. Education in an individualistic democracy does not assume that all are equal, but that a minimal opportunity should be given to all. With education the individual knows more certainly what he can desire in a practical way. If the state provides for free competition in the economic world, the more capable inevitably rise to the top. A failure is the responsibility, not of the state, but of the individual. The poor, in other words, are,

[1] L. T. Hobhouse, *The Metaphysical Theory of the State* (London, 1918), pp. 74, 75, 60 note.

by and large, poor because of their failure to exert themselves and take advantage of their opportunities.

No individualist would contend, however, that the path to success is paved equally well for all. Some have much farther to travel in order to attain intellectual and economic recognition; there is no fixed starting point for the race of life in individualistic society. But it is contended that in a humanitarian and individualistic society the mire at the bottom of the ladder is not so difficult to overcome that the individual is exhausted by his struggle to the first stages of attainment. No individualist would contend that, even if all individuals had equal capacity, equal discernment as to opportunity, and equal energy, all would be brilliant leaders of men in the moral, intellectual, or economic world. One of the data assumed by the individualist is the difference in actual personal physical and intellectual capacity, though he would also assert that, morally speaking, each individual has a right to an equal chance in life. The successful businessman will admit that there are chances or factors in the road to economic success over which the individual, however wise, has little control. The farmer does not control the international wheat market, and the individual has great difficulty in knowing when the path will lead to prosperity or failure.[1]

The creed of the individualist casts doubt upon the ability of the state to alter materially the situation. The simplest argument in this condemnation is to point out the chance of corruption and ineptitude in the bureaucracy. Only in recent years has the individualist been faced with the fact that the government *is* efficient in certain large-scale economic operations, and in the future he must face also the fact that the technique of government operation will improve by the accumulation of experience. Experiments in collective society since the war have been launched on a larger scale than ever before in the history of the world. If, at the end of fifty years of Russian communism, collectivism is a relative success, the amount of accurate information available concerning the ability of a scientifically managed society to provide a better life than the efforts of the individual in a more loosely organized system will be such that the debate on this point will be over in a scientific sense.[2]

[1] One of the best statements of the individualistic position is that of Herbert Hoover, *American Individualism* (New York, 1923). See C. E. Merriam, *American Political Ideas*, 1865–1917 (New York, 1920). Excellent statements of constitutional individualism may be found in Lochner *v.* New York, 198 U. S. 45 (1905); Adams *v.* Tanner, 244 U. S. 590 (1917); Allgeyer *v.* Louisiana, 168 U. S. 578 (1897).

[2] Treitschke, *Politics*, Vol. I, Ch. XII, insists that the state is external and uncreative in most of its activities; while the state exercises more control over

Assuming the effectiveness of the state in making the moral and economic conditions of citizenship better, the individualist contends that the advantages lost are greater. Individual initiative, the feeling of personal responsibility for the verdict on a lifetime, and the knowledge that success in life must come in large measure from the efforts of each individual in his own behalf are, in the mind of the individualist, the elements of universal constant progress. The individual is forced to compete with his fellows as well as cooperate with them, and in each generation much of the best in human capacity will be developed. Progress has been accelerated, according to the individualist, simply because of individualism in all fields. It has come because there has been competition between ideas and because there has been a steady stream of rewards for the capable in all fields. The industrial development of the modern world is viewed as the product of the genius of capitalistic economics. The industrial revolution came in a period of individualism, and it must remain as a problem of the future, whether or not economic progress can be maintained and the progress of the arts fostered, under other than an individualistic society.

It can hardly be said that the individualism of the eighteenth and nineteenth centuries has been preserved in its purity. The notable increase in the function of the state, even in states historically committed to individualism, such as the United States, is a matter of common observation. The growth of governmental regulation of industrial life, the safeguards provided by the government for pure goods and numerous commodities, the protection extended to the laboring class as a whole, the growth of government ownership of natural resources, and plants established to give fundamental services to the citizens, such as transportation, light, water, gas, electricity, and others, all attest the fact that a new form of individualism or a partially developed collectivism has been created.[1] To list the regulations of life that have been sanctioned under the American doctrine of the

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the economic than the intellectual life, it is rarely creative in the former. *Cf.* W. G. Sumner, *What Social Classes Owe to Each Other* (New York, 1884).

[1] See C. A. Beard, *American Government and Politics*, 5th ed. (New York, 1928); C. P. Patterson, *American Government* (New York, 1929). Hoover's *American Individualism* makes important concessions, yet insists that individualism remains. This seems to indicate that he believes a new form of individualism is developing.

See *The Political Philosophy of Robert M. LaFollette*, edited by Ellen Torelle (Madison, Wis., 1920); Theodore Roosevelt, *The New Nationalism* (New York, 1910); *The Public Papers of Woodrow Wilson*, edited by Ray S. Baker (New York, 1925). The Progressive movement before the war, led by such men as LaFollette, Theodore Roosevelt, Woodrow Wilson, and others, combined the principle of increased government functions with more democracy. One of LaFollette's favorite phrases was "the cure for the evils of democracy is more democracy."

police power naturally raises the question of just how much individualism actually remains. It is a question fundamentally of balance, and the individualist contends that it is better to surrender individualism reluctantly than to throw it overboard for we know not what. Welfare, furthermore, is considered a legitimate article in the individualist's creed, and the actual regulations of individual conduct allowed in individualistic societies are insignificant when compared with the vast amount of freedom that yet remains under the aegis of personal responsibility.[1]

The Indictment of Individualism. The indictment of individualism is primarily an indictment of the social and economic order that has been fostered by this historic theory. Capitalism bears the brunt of the attack.[2] As Plato saw that individualism was inimical to his ethical conception of justice as the harmony of the parts of the state, so the modern proponents of economic harmony of the parts of the state sense that individualism is inimical to their conception of economic justice. Contrary to the philosophy of the city-state, however, the modern critic of social organization contends that the fundamental fact in the moral freedom of the individual is not primarily ethical development but economic freedom and equality which may lead to moral freedom and equality. Individualism has failed, it is said, since there is little correlation between individual merit or effort and the rewards secured.[3]

The modern attack on capitalism culminates in the speculations of Karl Marx. Before him the utopian socialists had sought to avoid

[1] Mill distinguished between state interference which restrains the liberty of the individual by prohibitions and that which insists that certain things shall be done in order to help him. The first interference is illegitimate; the second does not turn on the principle of liberty but on the principle of expediency of governmental interference. See A. D. Lindsay, introduction to J. S. Mill, *Utilitarianism, Liberty, and Representative Government* (Everyman's Library), pp. xix–xx. See John A. Ryan, *Declining Liberty and Other Papers* (New York, 1927). For an excellent classification and discussion of the functions of the state, see R. M. MacIver, *The Modern State* (Oxford, 1926), pp. 183 *ff.*; Paul Leroy-Beaulieu, *L'État moderne et ses fonctions*, 2d ed. (Paris, 1891).

[2] It is a shallow view, however, to hold, as many socialists seem to, that certain specific repudiations of capitalism and individualism mean by implication or logic the entire destruction of the historic system. Reformism, as stated by Catholics (Ryan and Millar, *op. cit., passim*), is a criticism of capitalism but it is not a repudiation of it. It has been suggested, for instance, that the philosophy of *laissez faire, i.e.*, the principle of social atomism or individualism, should be called more properly *laissez tomber*, or to let fall or crumble.

[3] It should be noted that the communism advocated by Plato in the *Republic* was ethical primarily and economic in a secondary sense only. Aristotle criticized it because he felt that the economic and humanitarian motives in life had been underestimated by Plato. *Politics*, Bk. II, Chs. III–IV.

the evils of society by the formation of ideal communities in which the moral and philosophical should predominate over the economic. But their analysis of capitalism and their theories of the correction of its evils are inferior to the ideas of Marx.[1] The immediate superiority of Marx over his predecessors springs from the fact that he proposed a materialistic interpretation of history which explained not only modern capitalism but other economic systems as well. It was the theory of inevitable and constant class conflict in all ages. The names of the exploiters and the exploited have changed; at one time it is the conflict between master and slave, at another it is between lord and vassal, and in modern times it is the bourgeoisie and the proletariat that represent class conflict under capitalism.[2] Exploitation is economic in character and it involves social injustice to those exploited.

Under the modern system, indeed under all systems, exploitation consists in the control of labor, which is the source of value. The laborer does not get the full value of his labor, and the surplus value goes to the accumulation of wealth held by capitalists. The accumulation of surplus value implies that the rich class will become richer in the course of time as the poor will become poorer; this brings about a continuous surplus of commodities above the purchasing power of the workers. Ultimately the top-heavy capitalist system will fall before the rage of the exploited masses; the proletariat of the world will unite against the system that produces war, wage slavery, and unemployment. What will be the results of the socialist revolution? The bourgeoisie will be overthrown and its economic control over society extirpated; since the proletariat will control in the interest of the workers, the exploitation of the masters will cease and the class struggle will end in the creation of the classless society. The rewards of society will be distributed with justice, either in accordance with the value of the work done or in accordance with the more humanitarian doctrine: "From each according to his ability, and to each according to his needs."[3]

[1] See H. W. Laidler, *History of Socialist Thought* (New York, 1927); *Socialism in Thought and Action* (New York, 1920); Paul H. Douglas, "Proletarian Political Theory," Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), Ch. VI; *The Communist Manifesto* of 1848 by Karl Marx and Friedrich Engels. See Werner Sombart, *Le Bourgeois*, tr. from the German (Paris, 1926), for a careful examination of the historical roots of capitalistic mentality.

[2] See St. Augustine, *The City of God*, Bk. III, Ch. XVII, for the suggestion that "proletariat" came to signify those who were too poor to equip themselves in arms but who had the leisure to bear children.

[3] W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930), Ch. IV; N. Lenin, *The State and Revolution* (London, 1919).

The indictment of capitalism insists that certain evils are inherent in the system. The great and summary evil of the system is the exploitation of the masses. But this evil takes three distinct forms. The first is war, for the socialist contends that world peace and the destruction of imperialism are impossible until capitalism has been overthrown. The capitalists by their accumulations are continually seeking broader markets and they bring to their assistance the power of the law and the force of the state. One country may have too many workers and little raw materials; since the world is organized into nationalistic-capitalistic states, it must expand by whatever means possible. Another country may have a surplus of capital for investment, which has been stolen from the workers; the profitable investment of this capital involves the exploitation of the workers in other countries. To the socialist the secret of peace is a just economic order.[1]

Wage slavery and unemployment go hand in hand. The worker is being robbed of the products of his labor; he cannot accumulate a surplus of wealth since the employers are continually depressing wages and also trying to sell their products at the highest possible prices. The worker is in fact a slave of the employer since he can never realize the dream of economic independence. But economic surpluses are accumulating all the time because of the wealth that the capitalists take to themselves. The wages of labor represent only a part of their productive power, and therefore the processes of exchange of commodities can never work smoothly and permanently without interruption. There will be constantly recurring periods of unemployment during which the surpluses taken from labor and held by the capitalists must be disposed of. Under capitalism, so the socialists contend, the purchasing power of labor is not equal to its productive power; this would not be the case in a socialized commonwealth.

Socialism at the present time has to take account of the developments of recent years. Some of these developments have been favorable to the socialist contentions. The state owns the postal system and operates it with efficiency, and there are many bright spots in the system of governmental operation of utilities which show that government service may be cheap and managed with honesty. Furthermore, the experience of the world with the operation of services is not by any means a practical refutation of the claims of the socialist as to what the state is capable of doing. The corporate developments within capitalism in recent years have outstripped

[1] Scott Nearing and Joseph Freeman, *Dollar Diplomacy* (New York, 1925); P. T. Moon, *Imperialism and World Politics* (New York, 1926).

early ideas of what was thought possible in the way of economic organization. To the socialist the growth of huge corporations, the rise of trusts, and the effectiveness of monopolies that do not by any means charge more than smaller organizations all point to the impending socialization of the economic organization and resources of the state. Such developments are preparing the way for the state, and it will be an easy matter for it to absorb the industrial units built upon the capitalistic foundations of society.[1]

While the socialists do not surrender their major premise of economic classes under capitalism, they are forced to recognize that great long-run improvements have been made in the average standard of living under our present system. The rich have been growing richer, to be sure, but the poor have not been growing poorer. Whether the rise in the standard of living is sufficient to justify capitalism is one of the major matters of dispute at the present time. To the socialist the effectiveness of the huge aggregations of capital we see at the present day is but a faint suggestion of the effectiveness of the socialized state in terms of standards of living. To grant that under industrial capitalism improvements in the general conditions of the masses have taken place is not to admit that the inherent evils of capitalism are overbalanced by its virtues. Moreover, capitalism, even with increased wages and better conditions of work that have been brought about by social legislation, has not prevented the recurrence of wars aroused by fundamental economic conflicts in the modern world, and the continual struggle for economic stability, *i.e.*, the elimination of unemployment, has, it seems, been a somewhat losing fight. The socialist, of course, contends that a world socialist government would eliminate imperialism in all its forms and therefore war; then within each country the regulation of the processes of production, so free under capitalism, would stamp out what is perhaps the greatest evil of modern times—unemployment.[2]

Aspects of the Conflict between Individualism and Collectivism. Before entering into a brief discussion of the types of socialism, a statement of some aspects of the conflict should be made. In the first place, as we have noted, the central issue in political science is

[1] *The New Republic*, LXVI (May 13, 1931), 341, remarks: "The huge unit must now be thought of as the typical or representative firm, and certainly as the dominant type. Competition, of course, still exists, but its nature is radically changed. . . . Our fate is more and more the result of conscious choices on the part of the relatively few—or of failure on the part of those few to exercise choice."

[2] See *The Socialism of Our Times, A Symposium*, edited by H. W. Laidler and Norman Thomas (New York, 1929).

always the relation of the individual and the state. The individualist looks, not to groups or to the state, but to the individual. He would have a society in which the principle of liberty is recognized more than the principle of authority, on the theory that individual development can best be secured by many types of freedom. The critic of individualism, on the other hand, points particularly to the economic sphere as the region of exploitation and would restrict economic freedom in order to develop and to secure moral freedom or the development of the individual personality.[1] The end is always the same —the creation of conditions that foster the enlightened individual— but the means are widely different. The function of the state in economic life, for the socialist, is limited by its effectiveness only, while the individualist objects on principle to state action because it is contended that the values of individualism are thereby lost. For the one group the moral and economic purposes of the state must be secured by a unity of means, *i.e.*, individualism; for the other, the moral and economic purposes of the state are secured by a differentiation of means—individualism in the moral and collectivism in the economic order. In the last analysis it would seem that both the individualist and collectivist are willing to admit that the most important single fact in the life of the individual is the economic order; the individualist and capitalist can admit the economic interpretation of history without surrendering their positions. This is a fact that the individualist has not always perceived clearly, and it has resulted in the somewhat inconsistent defense on the basis of moral idealism of an economic order as the greatest asset of a society.

In the second place, the conflict centering around individualism involves fundamental differences in the theory of distribution. Socialism, aside from the philosophical bases of the inevitability of the class struggle, the materialistic interpretation of history, and its economic theory of justice, is a theory of distribution. A majority of the students of economics have come to the assistance of capitalism. The intellectual descendants of the classical economists divide the economic order into shares. There is capital which receives interest, there is land which draws rent, and there is labor which draws wages.

[1] The individualist is reluctant to admit, on principle, that state interference may actually increase the liberty of the individual. It is supposed that, if the state did not restrict me (along with others), I would have had the choice of doing what is done for me by compulsion. In a practical sense there can be no liberty without society. See Lindsay, *op. cit.*, p. xxiii. *Cf.* B. F. Wright, *A Source Book of American Political Theory* (New York, 1929), p. 401, for Randolph's conception of state function in the Virginia convention of 1829–1830.

Management may be separated from labor, and, if so, it draws a special share of the products of the economic order. The share that each factor in production draws depends largely on objective factors. Capital, if scarce, may draw a very high rate of interest; if it is plentiful, its returns may diminish. The rent of land varies with its type, location, and scarcity; because of the competition between entrepreneurs the income from land is likely to represent its true value in terms of rent. Wages, moreover, are not the product of legislation, but of the competition between employers and employees. For a time the organization of labor may secure a higher margin of wages, but in the long run workers cannot be paid more than they are worth, or the economic order would go into bankruptcy. Whether wages are kept down near the margin of subsistence by the competition and increase of workers, and whether the "iron law of wages" is true, are matters of dispute among economists, but that there are limits to the economic value of labor is clear even to the socialists. Management may at times be overpaid, but under a regime of free competition the individualist insists that this situation cannot be long continued, for highly paid management that does not pay for itself will be discontinued. Thus the conservative economists insist that "in the long run" the shares of economic distribution are roughly what the economic order will stand.

The socialist, on the other hand, criticizes most severely this complacent "long-run" point of view. While the conservative economist insists that there can be no general overproduction of commodities because of the infinite expansibility of human wants, the socialist insists that overproduction is a fact. The recurrent disorganization of production and distribution is cited in support of this contention, and it is asserted that an economic system based on the profit motive can never result otherwise. In case of increase in land values, the socialist joins with Henry George in his *Progress and Poverty* in insisting that persons getting the benefit have done nothing to create it since it is a social value that should accrue to society. In the more extreme forms of socialism interest is viewed with disfavor. Capital is produced by labor, and the accumulations of capital represent amounts which should have gone to labor or which should now be owned by labor, but which were taken from it under the capitalistic system of production. While it is questionable whether socialists would urge an indefinite increase in wages, nevertheless they assert that wages do not by any means represent the productivity of labor.[1]

[1] Some conservative economists are coming to accept the socialist criticism of distribution. The conservative picture of the share taken by capitalists and going

Socialism has, however, many forms. In its more moderate types, such as represented by the League for Industrial Democracy, which is the intellectual and educative aspect of the Socialist party in the United States, the burden of emphasis falls on the protection of social interests. Socialism, in the nonrevolutionary and moderate sense of the American Socialist party, is interested primarily in the means that should be adopted to safeguard the general economic welfare. Socialism might in this sense be defined as the advocacy of government ownership or control of those industries and resources that are of primary social significance. It would favor the government ownership of natural resources, such as oil, minerals, and waterpower. It would favor the regulation or ownership of transportation facilities and the regulation of the distribution of manufactured commodities in the interest of the consumer, along with the general regulation of the conditions of labor in the interest of labor. The productive energies of the nation should be socialized to prevent their exploitation in the interest of a few private owners. That capitalism is inherently incapable of serving all and serving well is a fundamental part of the socialist creed.

To Norman Thomas, the presidential nominee of the Socialist party in the United States in 1928 and 1932, progress is the realization of industrial democracy. "We may say broadly that democracy means in Lincoln's phrase, government of the people, by the people and for the people; and that industrial democracy is the application of the same idea to economic life."[1] The modern socialist does not object to machinery as such, but to the private domination of machine production in the interests of personal profit rather than social good. The antagonism of capitalism to true democracy, which is held to be industrial democracy, is seen first in this respect, that production is for profit rather than for the people's benefit. While the ideal of service may be spoken of, it is profit that is necessarily the master of the economic situation. In the second place, capitalism is against the democratic principle since it lodges legal control in owners who are often absentees. "Holders of stock who may never have seen the inside of a steel mill, voting for each share they hold, are the rulers of the steel trust—not those who work in the mills or those who use its

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either into consumption goods or back into productive enterprise that would employ more labor, broke down in 1929 owing to the tremendous increase in profits in the United States.

[1] Norman Thomas, "What is Industrial Democracy?" *League for Industrial Democracy* (1925), p. 7. See also *America's Way Out* (New York, 1931), by the same author.

product. . . . Control rests with powerful groups of 'insiders' who are supported by the stockholders as long as they seem to be turning over profits in dividends."[1]

Approaches to Industrial Democracy. The uninitiated conservative is likely to believe that all radicals are the same. The popular conception of Bolshevism in America during the early postwar years included all persons who offered criticism of the present economic order, and there was no distinction between the various types of criticism of capitalism. The present issue is complicated by appeals to historic and traditional attitudes which arouse a great deal of heat but which cast very little light on the actual claims of the radical. The scientific criticism of radicalism is very strong, but the issue should be simply this: is the present economic order more advantageous to society in the long run? In this connection the experience of the state in public ownership and control should be of the greatest importance. An intelligent treatment of radicalism must be based on adequate understanding of its claims, *i.e.*, the claims radicals make for themselves, not the claims attributed to them by opponents who are partially informed and who respond more to emotions than to intelligent evaluation. At least radicalism seems to be a permanent issue in the modern state, and the conservative can maintain the present order only by showing that it is a better and more effective one than any of the proposals made for its alteration. The issue of industrial democracy has a multitude of forms, but there is scarcely an election in which some aspect of the problem does not appear.

A brief statement should be made of the movements that have as their goal the realization of some form of industrial democracy. There is first the *organization of producers.* Under this heading we should note that both workers and employers have made experiments. The workers have organized trade and labor unions to make collective bargaining effective and to assume a share in the management of industries through shop committees and joint committees that deal with the relations of employers and employees.[2] On the other hand, the methods of the employers have taken two broad forms: company unions have been organized to prevent affiliation of their workers

[1] *Ibid.*, p. 10.

[2] The American Federation of Labor is the outstanding example of this type of organization in America. Under the leadership of the late Samuel Gompers, it sought to influence the course of government policy and the conduct of industry, but it did not enter politics as a group. See Gompers, *Seventy Years of Life and Labor*, 2 vols. (New York, 1925). Also Gompers' "Annual Report to the American Federation of Labor," 1898. L. L. Lorwin, *Labor and Internationalism* (New York, 1929).

with other workers in the same occupation outside the specific plant, and employers have provided in certain instances for employee representation in the management of industries. The initiation in these cases comes from the employers rather than the workers. A third type of approach from producers may be listed as genuine producer cooperation. There have been instances of cooperative workshops and building guilds, and the farmers' cooperative is of considerable significance in the United States. The purpose in the latter case is to market goods, rather than produce them, by cooperative endeavor.

A second type of fundamental character is *consumers' cooperation*, as contrasted with that of the producers. The voluntary consumers' cooperative is the most notable form of this type. A number of consumers band together to buy certain commodities in order to get the advantages of large-scale buying. The cooperative may either reduce the prices of the goods or refund to the members of the cooperative a proportionate share of the savings that such combination gains. A second form of cooperative may be listed as the compulsory cooperative, in which the state provides certain services to the mass of citizens at a lower cost, generally speaking, than can be provided by private enterprise. The state as the organizer of public services, such as roads, education, and public-utility services (*e.g.*, gas, light, water, and transportation) has established what can be called a compulsory cooperative, since the advantage appears in the cheaper cost of the service in comparison with the cost as conducted under private enterprise. Whether or not the actual cost of certain of these cooperative public services is less than their cost under private administration is a matter of intense interest. In any case, the loss in taxes and the increased taxes in certain instances must be balanced against the immediate saving to the community in service charges.[1]

A third form of approach to industrial democracy, as distinguished from the approach of the producers and the consumers, must be observed in the organization of *workers* growing out of their desire as *producers and consumers for larger control over social forces.* The first type of organization is that of the workers for political action. It may be either through political parties or through legislative agents or lobbies, the latter being the consistent policy of the American Federation of Labor. Labor is interested in legislation to aid workers

[1] There is a loss in taxes because publicly owned utilities are not taxed. The increase in government ownership will increase, therefore, the amount of property which is exempt from taxation. It is conceivable that there could be such an increase in these services that either they would have to be taxed or other forms of taxation revenue would have to be tapped.

when by their own efforts they cannot obtain adequate protection, and it is always interested in preventing legislation that is contrary to the definitely formulated interests of organized workers. These efforts of workers to control the state through informal representation are balanced, of course, by similar efforts of trade associations composed of employers and owners.

The workers' party is not a significant element in American political life. American labor has been effective through informal political action and it is possible that, owing to the complicated party system in the United States, it would not have been successful if it had early entered whole-heartedly into the political arena with a political party bidding for popular support.[1] The multi-party system of European states and the Labor Party in British politics indicate the effective party diversity possible upon economic matters. A continental parliament has represented in it through party organizations practically all the possible shades of economic opinion from the most conservative to the extreme radicals on the left—the communists. It should be noted that in general American unskilled labor has not been radical and this, combined with the traditional background of American party life, has made the organization of wage earners into political parties less of a desideratum. On the other hand, the more radical of the labor groups and those groups frankly radical regardless of labor affiliations have been drawn farther into the political arena. Third parties in the United States which have developed rural support have often been effective in getting their demands incorporated into the platforms of the major parties.

Theories of Industrial Democracy. The approaches to industrial democracy discussed above are tentative and experimental. In them there is no fundamental criticism of the present order, and no reforms of far-reaching character are proposed. The American Federation of Labor, particularly, is conservative in contrast with the Socialist party, and, with the increasing strength of organized labor, it is probable that it will become increasingly conservative and nationalistic in its temper. It may be said, as a generalization, that only those groups that are fundamentally at war with capitalism find their way into the political arena; it is these groups, which propose as their gateway to industrial democracy substitutes for capitalism, that we must now consider. These theories may be listed as follows:

[1] See F. E. Haynes, *Social Politics in the United States* (Boston, 1924); *Third Party Movements in the United States* (Iowa City, 1916); A. N. Holcombe, *The Political Parties of Today* (New York, 1924); E. E. Robinson, *The Evolution of American Political Parties* (New York, 1924).

syndicalism, consumerism, communism, socialism, guild socialism, and anarchy.[1] All the great revolutionary theories agree in condemning the present system as undemocratic. All stand for production for use and not for profit. Yet there are certain fundamental differences between radical or revolutionary theories which may be briefly stated. They differ as to (1) the relative place they would give to man as a producer and a consumer, (2) the place and value of the state in attaining a new society, and (3) the tactics that should be used by groups in securing change.

The first difference finds a clear expression in the contrast of ideas in "all power to the producer" and "all power to the consumer." The syndicalist, *i.e.*, labor unionist, develops his fundamental views around the function of the organized producer. The producer should take over the organization and management of industries and all necessary economic functions, together with what political functions remain (which would not be many) after the overthrow of the exploiting class.[2] The state represents to syndicalism class interest and domination; without the class that demands the state for its preservation, little need for force would remain after the destruction of capitalism. Syndicalism has been strong in France and it was strong in Italy before the rise of Fascism. The fundamental unit in the reorganized economic system would be the group of producers or the trade or labor union. The syndicalist feels that action through the conventional democratic political machinery is futile in securing its ends, and therefore direct action, *i.e.*, sabotage and the general strike, is advocated.[3]

[1] See Laidler, "Roads to Freedom," *League for Industrial Democracy*, and *History of Socialist Thought*.

[2] It must be remembered that most radical criticisms of the industrial order, aside from state capitalism or state socialism (as contrasted with "scientific" or Marxian socialism), believe that the chief function of the state is the protection of capitalism and the capitalist. The state is inherently the product of a class society and will last only so long as there is class society. Such theories are, therefore, anarchistic in nature.

[3] See Douglas, *op. cit.*, in Merriam, Barnes, and others, *op. cit.*; W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928); G. Sorel, *Reflections on Violence*, tr. from the French (New York, 1914). For a moderate syndicalist view, see Charles Albert, *L'État moderne* (Paris, 1929). Perhaps this author is primarily a pluralist in his views, but he asserts that society is made up of a body of producers and a body of governors and that politics consists in the adjustment of these two forces.

French syndicalism was influenced by the revolutionary philosophy of industrial unionism advocated by the Industrial Workers of the World and the Socialist Labor Party in the United States. See Daniel de Leon, *Speeches and Editorials* (New York, 1935).

As extreme to the syndicalist position we find what may be called *consumerism.* It is contended that consumers' cooperation, organized and effective to the point of actually overturning the present system of production and distribution, would be far more democratic than syndicalism or the control of producers. All people are consumers, but not all are producers in an active way. The very idea of production for use implies the supremacy of the interest of the consumer. While much heat may be generated over the conflicting claims of producers and consumers, when the argument is over each side must admit the existence of the other. The syndicalist is compelled to recognize the interest of the consumer, and the consumerist is forced to recognize the rights of workers as producers to organize and present their claims. Moreover, both the syndicalist and the consumerist agree in one fundamental particular: they hate the state and would reduce its activity to the lowest possible point.[1]

When we consider communism we must first point out that Bolshevism is derived from a party label, "Bolsheviki," or the majority, and that sovietism is merely machinery, a means of organizing representative councils on the basis of the economic interests in the state. Communism stands for control by the producer, and it believes that the state is the creature of the capitalist class. Eventually the state must go, according to the Russian view, but in the transition between the rule of the bourgeoisie and the proletariat the state is useful in suppressing counterrevolution. The Russian attitude favors revolution as a means of overthrowing capitalist society and insists that this is in strict accordance with the teachings of Marx. In practice the Russians have suppressed the syndicalist influence in the state, and, while the government is in theory based on workers' control, it is in fact in the hands of the Communist party, which is the only effective expression of the dictatorship of the proletariat. The transition period is the time of the revolutionary dictatorship of the proletariat. While the Russian attitude immediately after the revolution in 1917 condemned cooperation with noncommunist groups, the rise of Fascism has produced the "United Front" movement which seeks the collaboration of all groups opposed to war and the Fascist conception of authority. The communists have been moving toward the right or more conservative view, while the Second or Socialist Labor International has been becoming more radical.[2]

[1] James P. Warbasse, *Cooperative Democracy* (New York, 1925); S. Webb and B. Webb, *The Consumers' Cooperative Movement* (New York, 1921).

[2] See Douglas, *loc. cit.;* N. Lenin, *op. cit.;* John Strachey and Ludwig Lore, "New Orientations on the Left," *The New Republic* (October 2, 1935), 207 *ff.*

Turning to state socialism, we find a sharp break between it and communism or scientific socialism. The state socialist in general is opposed to revolution as a means of attaining social democracy; he has broken away from a strict adherence to the dogmatic conceptions of Marx; and he has faith in social democracy as a means and as an ultimate goal. The socialist views with alarm the dictatorship of the proletariat based upon force, or any dictatorship for that matter, for he knows that the answer to force is force and that, if there must be dictators, there is no guarantee that the dictator will be a Lenin rather than a Mussolini. While the socialist has confidence in the state as a matter of principle, the communist uses it during the period of transition and proposes to drop it when the strength of capitalism has been sapped. Furthermore, the socialist considers the theory of world-wide revolution a counsel of despair. If war cannot be prevented, Western civilization cannot be saved; imperialism, if it is to be cured at all, must be cured in times of peace and not of war. According to Norman Thomas, "Both socialists and communists, however sharp the tactical differences between them, are committed to some use of the state. Neither party is exclusively 'statist' in outlook as its critics allege. The communists in Russia have sanctioned or even fostered both workers' unions and cooperatives, and modern socialists regard both forms of organization as necessary supplements to the state."[1]

Guild socialists have far less confidence in the state than socialists. The guild socialist movement has made a real contribution in insisting on the need of a plurality of organizations to express the plurality of interests of the individual. The state (or the commune, as the guild socialists refer to it) has the care of residual interests left over after the guilds have effectively organized the primary interests of the workers. As a worker, the individual is a member of a guild; as a neighbor, he is a member of the commune. Consumers' interests are recognized in the advocacy of consumers' cooperatives. The fundamental weakness of guild socialism as a movement is its vagueness on the relations between different guilds and between the guilds and the commune. There is disagreement among the guild socialists on these points, but in general it can be said that social interests, or interests common to an entire society, are not adequately secured. There is no assurance of equality of bargaining power between the different guilds, as in the case of syndicalism, and there is no guarantee that particular guilds will not become so conservative that the interests

[1] Thomas, *op. cit.*, p. 42.

of progress will not be protected. Clearly society as a whole has a fundamental interest in the control of basic necessities such as natural resources, utilities, and power, but to concede such a power to the commune would not materially alter the present economic organization of society.[1]

The idealism of anarchism, which seeks the elimination or destruction of the state, may be admitted. Kropotkin's *Communist Anarchism* is one of the most beautiful theories of social organization ever printed. It presupposes a desire and a capacity in man for the voluntary organization of all social ends, for which there is little evidence. The general tendency of the present is for anarchists to work with syndicalists along revolutionary lines, though the anarcho-syndicalist approach to economic problems is obscured by the apparent success of the Communist party in Russia.[2]

Conclusion. It is clear that the intoxication of ideas is nowhere more apparent than in the perpetual conflict over the functions of the state. The radical or the revolutionary is immersed in the great ideas that form his inspiration in life and he does not care to consider in a pragmatic way how these ideas must be limited in practice or harmonized with the conditions of living.[3] But as it is possible to see only the idea that will be realized in a particular vision of perfection, so it is possible to consider all things in the light of historical parallels. As observed above, the scientist planner of economic society rather than the conservative or the radical must be the final adviser as to the means that can be adopted by the state to secure the ends of social life so deeply embedded in the democratic thought of Western civilization.[4] Pending the triumph of science in testing the regulative capacity of the community, we must be certain with Lord Acton that, "as surely as the long reign of the rich class has been employed in promoting the accumulation of wealth, the advent of the poor to power will be followed by schemes for diffusing it."[5]

[1] Miles Carpenter, *Guild Socialism* (New York, 1922); Bertrand Russell, *Proposed Roads to Freedom* (New York, 1918); G. D. H. Cole, *Guild Socialism* (New York, 1920); S. G. Hobson, *National Guilds and the State* (New York, 1920).

[2] For an excellent discussion and bibliography on anarchism, see F. W. Coker, *Recent Political Thought* (New York, 1934), Ch. VII.

[3] Jowett, *Dialogues of Plato*, Vol. III, p. cxiii.

[4] G. E. G. Catlin, *Science and Method of Politics* (New York, 1927), pp. 146 *ff.*

[5] Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), p. 94. For a splendid discussion of the principles of economic planning in general, see the *Report of the Director* of the International Labor Office to the International Labor Conference for 1932 and 1933.

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Chapter XXII

THE CHALLENGE OF POLITICAL PLURALISM[1]

I have termed this view the pluralistic theory of the state because it is rooted in a denial that any association of men in the Community is inherently entitled to primacy over any other association.—H. J. Laski.[2]

The Discredited State. In the last chapter the problem of the state as a functioning unit was discussed from the arena of practical politics. It was seen that the function of the state is a central issue of modern political dispute, but it was also seen that this discussion of the function of the state is focused on its relation to economic forces. We must now turn to the function of the state in terms of political ethics; while the subject has been suggested in previous chapters, the modern attack on the sovereignty of the state demands particular attention. The twentieth century has been distinguished in political philosophy by a concerted and broad theoretical attack on the unity of the state as expressed in the doctrine of sovereignty. The monists are those who maintain at the present time the validity of the idea of sovereignty, while the pluralists are those who accept the state but deny its sovereignty.[3]

In the final analysis the issue centers upon the amount and kind of unity desirable or possible in the modern state. The history of political thinking has, in a sense, oscillated between the conceptions of the highly unified and the partially disintegrated state. It is a matter of degree, since all political thinkers, with the exception of those with anarchistic views, have approved unity by political means; the state itself denotes a certain amount of unity, but the nature of this unity is a matter of increasing debate.

Plato and Aristotle differed as to the unity needed in the state. Plato was seeking in *The Republic* a "oneness" suitable for his unitary conception of justice as harmony between the parts with each part performing functions proper to it. The "parts" in man were the

[1] Before studying this chapter the reader should review Ch. III.

[2] "Law and the State," *Economica*, No. 27 (November, 1929), 283.

[3] F. W. Coker, "Pluralistic Theories and the Attack upon State Sovereignty," Merriam, Barnes, and others, *Political Theories; Recent Times* (New York, 1924), p. 80. *Cf.* W. W. Willoughby, *The Ethical Basis of Political Authority* (New York, 1930), p. 427.

faculties of the soul, and the "parts" in the state were classes. As the soul was divided into the rational, the spirited, and the appetitive, so the state was divided into classes dominated by each of these three faculties of the soul. Justice was a proper subordination of the spirited and the appetitive to the rational, and the unity sought was the unity of the rational. Aristotle in his *Politics* condemned the Platonic theory of justice, both as to the end sought and as to the means adopted for attaining it. The end of life in the state is not the unification of all ends under the political, but the preservation of all good ends under the political, for the state is composed of many parts and each part has a suitable ethical purpose or design to achieve. As to the means adopted by Plato, Aristotle felt that the communism of wives and property among the rulers would be destructive to unity rather than an aid, and he held that under such a system the benefits of friendship and individual motivation would be lost. The state for Aristotle must be unified by education and friendship, and not by such disturbing devices as proposed by Plato in *The Republic.* For Plato society is organic, while for Aristotle it is symbiotic.

Yet it must be admitted that the ancient city-state was better able to attain unity than the large nation-state or country-state of the present day. In the community of the city-state it was possible to speak of ethical or purposive unity, while the modern state unity, being desirable in certain things, must be attained in some measure by legal conceptions of state unity, *i.e.*, sovereignty, and by allowing a degree of ethical decentralization.[1] Is this legal unity more than a fiction? Can it be defended as a vital picture of modern political life? These are the questions asked by the pluralist in his search for political justice. The conception of state unity, having become legal by surrendering in large measure the notion of moral unity, is now attacked by the pluralist.

Before the World War and immediately after it forces arose in political thought which, if carried to their logical conclusions, would have discredited the state.[2] To interpret the history of political society as an oscillation between unity and disunity is not far from the facts, and it indicates the significance of the ever-vital political issues raised by the mere existence of the political community itself. Republican Rome at times had something of the unity of the Greek city-state, but never so much, owing to the conflict between the plebs and the patricians; the empire attained for a time a higher degree of legal and

[1] Cicero, *On the Commonwealth*, tr. and ed. by G. H. Sabine and S. B. Smith (Columbus, Ohio, 1929), pp. 10–11; see Willoughby, *op. cit.*, pp. 184–185.

[2] P. W. Ward, *Sovereignty* (London, 1928).

administrative unity, and as a result the doctrine of positive law and the theory of sovereignty are found in a germinal state.[1] The unity of the Holy Roman Empire was a fiction in comparison with the moral unity attained by Christianity. A new period of state unity and a corresponding development of the theory of sovereignty appeared in the rise of the national state beginning in the fourteenth century. Absolutism, divine-right monarchy, and nationalism presented a solid frontal attack on disunity, and in this period we find the development of the doctrine of sovereignty clearly presented in the thought of Pierre DuBois, Jean Bodin, James I, Thomas Hobbes, and others. The revolutionary movements of the eighteenth and nineteenth centuries struck at this national unity, but unsuccessfully in Central Europe, where in the nineteenth century an ethical absolutism, a theory of the omnicompetent state, held sway. The twentieth century presents a paradox, for those who criticize the unity of the state and attack the concept of sovereignty are not unwilling to see the development of unity in terms of world government.[2]

In contrast to the movement of political speculation led by the pluralists, we find that unity is in fact advancing. Russian communism and Italian Fascism, the swing of dictatorship from one European government to another, and the resistance offered to international unity all indicate that the ideal of the legally and morally unified state is not dead. It may be said that the idea of the unified state is one of the most disturbing factors in the modern international world. While the state has been worshipped in the past, it may also be worshiped at the present time, and the ideals of Fascism and the actual politics of the Communist party, along with the American conservative reaction after the war, indicate that state worship is tightly interwoven in the modern fabric of citizenship. Nationalism in an effective sense demands unity of the state and idealism in political purpose; the objective symbol of nationalistic unity is the doctrine of sovereignty. The subjective manifestation of this nationalistic unity is the loyalty of the citizen and his appreciation of political traditions.

Whether the pluralistic attack on the doctrine of sovereignty is valid depends finally upon the nature of political society. If society is atomic rather than organic, their claims have a lasting foundation. Eighteenth century liberalism, which exalted the individual and his rights, viewed political society as many individuals united by common

[1] See Willoughby, *The Political Theories of the Ancient World* (New York, 1903).

[2] See H. J. Laski, *A Grammar of Politics* (New Haven, 1925), for a pluralistic interpretation of the League of Nations system.

purposes rather than as an organic whole. Yet the modern attack would disintegrate society, not so much in terms of the individuals composing it as in terms of the many group affiliations of each individual. If the individual is the real unit in the state, sovereignty becomes an artificial creation just as the unity of the state in any high degree is an artificial creation. The same result follows if the group instead of the individual is taken as the real unit, for then the claims of the state for unity *may* become artificial. The pluralists would not declare the state to be artificial as was done in the eighteenth century, for the state is an association or an agency of human purpose as other associations are agencies of human purpose. Nevertheless any unity claimed by the state over and above the residual functions left after other groups have functioned is artificial, and it is just this claim to inherent unity that the pluralists have associated with the doctrine of sovereignty.[1]

The Rights of Groups. The atomic view of political society adopted by French liberals of the eighteenth century did not permit the right of association to come between the individual and the state. It was Turgot's policy to abolish all forms of the corporate life, with the exception of the state, and thus associations of workers, employers, or other individuals were not looked upon with favor. In order to assure the individual his freedom, he was to be prevented from developing a vital associational life, which was in the modern view the very negation of liberty.[2] The pluralists do not lack historical perspective as did the French atomic theorists, but they are in danger of adopting the fallacious approach of hasty generalization. Just as the eighteenth century tended to look at the state as a federation of individuals, so the modern pluralist tends to view the state as nothing more than a federation of groups.[3]

At the turn of the present century the claims of groups were presented in terms of group personality or real personality. In terms, the doctrine of the *Gesammtperson* is not an attack on the sovereignty of the state, but an assertion of the inherent rights of corporate life independent of the concession of legal personality. Gierke is perhaps the greatest exponent of the doctrine of real personality. In his studies

[1] See William Orton, "The Atomic Theory of Society," *The American Political Science Review*, XXIV (1930), 628 *ff.*

[2] *Ibid.*, p. 634.

[3] As an example of the atomic theory of the state, we may recall Ephraim Emerton, *Humanism and Tyranny* (Cambridge, Mass., 1925), pp. 219, 246, in which it is shown that the church attitude in the Papal States in the fourteenth century toward associations was one of distrust involving complete power of regulation or destruction.

of Germanic and Roman law he came to the conclusions that one of the great defects of Roman and canon law was that they did not get beyond the idea of corporate personality as *personae fictae;* that the great merit of German fellowship or association law was that it permitted the recognition of the real personality of associations; and that the only vital interpretation of group life must be in terms of group personality as a reality. The group is not the collection of so many disparate atoms, for through participation in a community of purpose a collective consciousness and will distinct from the consciousness and will of the individual members is created. The particular point of attack was, of course, the concession theory of the corporation which held that corporate personality is a legal creation and concession of the state. The immediate result of the theory is the insistence upon the inherent rights of groups as well as of the state and a corresponding limitation upon the right of the state to interfere with the rights of personality of corporation groups.[1]

Maitland in England followed the ideas of Gierke and attempted to apply them to British group life. As most of the pluralists adopt in some form or other the group emphasis, their indebtedness to Gierke and Maitland is clear. But it must be observed that the mere defense of groups as real persons or as associations with inherent rights is not sufficient to constitute the destruction of sovereignty.[2] Certain writers, such as Figgis,[3] have applied the theory of group rights to their own particular concerns; in the case of Figgis, this is the church. It is contended that both historically and ethically the state cannot absorb the church, that it must continue as an independent association with whose rights the state has no power to interfere. Other writers, such as Laski, have been concerned chiefly with the right of producers to associate. But Laski has been in reality an exponent of the program of the British Labor Party (though recently he has become a

[1] Frederick Hallis, *Corporate Personality* (London, 1930); Otto von Gierke, *Das deutsche Genossenschaftsrecht* (Berlin, 1881), Vol. III; Max Radin, *The Legislation of the Greeks and Romans on Corporations* (New York, 1909); Gierke, *Political Theories of the Middle Age*, tr. and introduction by F. W. Maitland (London,1900). The introduction by Maitland is a classic statement of the importance of the theory of real personality. H. A. L. Fisher, editor, *The Collected Papers of Frederic William Maitland*, 3 vols. (Cambridge, 1911), Vol. III, pp. 304 *ff.*, "Moral Personality and Legal Personality."

[2] A position with some points of similarity and yet distinct is that taken by G. D. H. Cole in emphasizing the possibility of general wills in smaller groups than the state; this is not inconsistent with Rousseau's idea of the general will as an attribute of the state. See Cole, introduction to J. J. Rousseau's *Social Contract* (Everyman's Library), p. xxxii.

[3] J. N. Figgis, *Churches in the Modern State* (London, 1913).

Marxist): there is only one ultimate conflict and that is between capital and labor, and the prime right of association is that of labor to form trade unions. If we take the general trends of modern social legislation as a whole, there is nothing revolutionary on the insistence of group rights, for the freedom of labor combination has progressed steadily since early in the nineteenth century. The culminating expression of this right of workers to combine is found in Part XIII of the Treaty of Versailles, Article 427, which guarantees to workers the right of association for their mutual benefit.[1]

The early impetus to group rights given by Gierke and Maitland in terms of real personality has continued but in a different form, for, while Laski in his early writings approved the group approach to politics, in his constructive work, *A Grammar of Politics* (1925), the emphasis is on the individual and his desires concerning associates rather than on the association or the group itself. While there are yet defenders of the idea of the real group personality, the generality of thought at the present time puts little faith in the theory.[2] The value of the group approach to political life is, however, apparent. It is clear that the individual does not face the state directly; he faces it through intermediary bodies—a political party, a trade association, a labor union, a church, or other groups with a definite attitude toward public policy.[3] The individual does have a loyalty for these group affiliations, and it is probable that the course of politics must take account of group interest whether it desires to or not. Group interest is not limited to the territorial extent of the state, for associated interests are in many cases vitally international.[4] The vitality of group affiliations must be recognized, but, as Laski insists, we should consider the state a competitor with other associations for the loyalty of the individual citizen.[5] Certainly, when we consider the influence

[1] See C. W. Pipkin, *Social Politics and Modern Democracies*, 2 vols. (New York, 1931).

[2] Willoughby, *The Fundamental Concepts of Public Law*, pp. 40–48; W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), Part IV.

[3] Sun Yat Sen, *San Min Chu I* (Shanghai, 1927), p. 114, points out an interesting difference between the East and the West: in the West the individual expands into the state through machinery or a group interest; in China the individual comes to know the state through his loyalties to the family and the clan, which remain between the individual and the state.

[4] A. D. Lindsay, "The State in Recent Political Theory," *Political Quarterly*, I (1914), 128–145.

[5] While groups are vital in the state, it must not be forgotten that (1) many groups are vital only because they are self-centered and struggling fundamentally against ideas of public welfare that are generally accepted (Seba Eldridge, *The New Citizenship* (New York, 1929), Ch. II), and (2) that many interests which

on the operation of government which determined groups can have, we must almost concede that we are approaching a struggling feudalism of groups, each seeking to bend the action of political authority in its own direction. The constitutional state, *i.e.*, the sovereign democratic state, is either breaking down or its history in the future is to be written in a different context.

In such a situation the pluralist issues his challenge. The doctrine of the legally unified, the sovereign state, does not fit the facts. The state, he says, has never been sovereign, and its unity has been a colossal historical fiction. A vital political science must not be content with the fictions of the legalists, the supporters of particular states claiming omnicompetence, or the limited Austinian conception of law as the positive enactment of the determinate sovereign. As a force in history, says the pluralist, political authority has been a partially stable cooperation or federation of social units. Not only has the state been limited in its authority, but a proper interpretation of the state cannot admit the conception of sovereignty even theoretically. As Aristotle said, the ends within the state are many instead of one, and each end has its own inherent claims to existence, to be heard through organization, which should not be limited except insofar as the just claims of the total society must be heard. The idea of political authority must not be viewed as expressed solely through the machinery of the state in a formal sense. The state must be viewed as no different from other and privately organized interests from the standpoint of inherent qualities. The state rests upon the day-by-day consent of its members, upon the consistent judgment of its worthwhileness by the individual and his group or groups; therefore it is in a perpetual contest, even conflict, with other associations for the loyalty of the citizen; it is a polyarchy. The state is limited in its authority, not by inherent weakness in the state itself, but by the inherent strength of the competing influences in life which the state cannot effectually or legitimately comprehend. But the burden of proof falls squarely upon the shoulders of the pluralists.[1]

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should be organized as distinct group forces have in reality been surrendered to the *bourgeoisie* under the influence of traditional individualistic ideas (J. A. Ryan and M. F. X. Millar, *The State and the Church* (New York), 1922, p. 211).

[1] R. Emerson traces the pluralistic attitude of society back to the nineteenth century distinction between state and society, which led to the view of the state as an organization of organizations and to the acceptance of an independent sphere for society. See *State and Sovereignty in Modern Germany* (New Haven, 1928), pp. 39 *ff.* See also R. M. MacIver, *Community*, 3d ed. (New York, 1924), pp. 250 *ff.* On p. 262 he takes the customary pluralistic view of society as being federal in nature.

The Legal State and the Ethical State. It has been observed that the pluralistic attack upon sovereignty is fundamentally an attack upon the unity of the state. This attack upon unity and this denial of sovereignty have two distinct sides, *viz.*, the denial of sovereignty of the state municipally or constitutionally and the denial of sovereignty on the basis of the needs and the facts of international life. As we shall see, the last attack vests in international government and law an authority superior to that of the state, while the first attack imposes internal limitations on the authority of the state. One of the historic distinctions in Western countries has been between the legal and ethical sides of political life. Such a differentiation is seen in Bodin, one of the first great exponents of the sovereignty of the state, for Bodin, while he spoke of the supreme power of the state, yet retained limitations upon it under the head of natural, divine, and fundamental law, *i.e.*, a moral or ethical and historical constitutionalism.[1] A distinction between moral and positive law is found germinally in Roman legal discussions, since natural law and the law of nations were distinguished. Also it is fundamental in Anglo-American law. However, the fundamental use of the distinction in public law has been between the state as a legally organized unit and the state as an ethically organized or purposive community in human life. Not only this, but in modern times the distinction between state and government has been accepted as fundamental, government being regarded as the organized agent of the state viewed either as a *moral* or a *juristic* person.[2]

The pluralist has sensed the value of these distinctions to the defender of sovereignty and has been disposed to deny them. The pluralist denies, in the first place, the distinction between state and government, and also ultimately denies the distinction between law and morals, since he condemns the formal distinction between positive law as the enactment of the state and ethical principles[3] such as are found in the historic legal materials. In fact, the

[1] C. H. McIlwain, "Sovereignty Again," *Economica* (November, 1926).

[2] C. E. Merriam, *History of the Theory of Sovereignty since Rousseau* (Columbia Studies, 1900); Willoughby, *The Nature of the State* (New York, 1896), and *The Fundamental Concepts of Public Law* (New York, 1924); Ward, *op. cit.*

[3] The distinction between law and ethics is not the same as the distinction between politics and morality. For the pluralist, to unite law and morals does not mean that politics and morality are the same, since he denies the right of the political community to formulate the content of group or individual morality. The idealist unites politics and morality in order to exalt the state; the pluralist should separate them to cast it down. Vaughan, *Studies in Political Philosophy*, Vol. II, introduction, p. 406.

defenders of sovereignty make this their major point of attack on grounds of principle, for it is contended that, while the pluralists have valuable suggestions with regard to political ethics, their theories of public law are entirely too uncertain and vague.[1] For the pluralist the state is that body of persons who exercise effective political power. This, at least, is the theory of Duguit, and of Laski, his follower in certain respects. Moreover, the pluralist is unwilling to admit the formal or analytical conception of law as the command or the expression of will on the part of the state. In other words, the prevailing political morality, one might say the constitutional morality of a state,[2] is the source of, if not the content of, valid law. The forces that move the state cannot be enclosed within the narrow bounds of the command of the sovereign, and it is the forces at work in the state rather than positive law which count in the mind of the pluralist.

The critics of sovereignty will not admit the separation of the legal and the ethical in politics, and in a sense they are attempting to revive the Greek concept of a politics whose chief element is the ethical. However, there is a marked difference. The critic of sovereignty is, in general, a believer in pragmatic ethics. He contends that the old doctrine of natural law is not a sufficient ethic of the state, and that, on the other hand, one may not go to history for an answer to all questions of political moment. The historical interpretation of the state has been idealistic (ethically absolute) and organic, and this the pluralist rejects with his emphasis on authority as federal. The natural-law school was intellectual and rationalistic and did not shrink from the idea of the sovereignty of the people, *i.e.*, the doctrine of the consent of the governed, leading directly to the sovereign state, which the pluralist rejects.[3] Between these two aspects of historical error the pluralist seeks to wend his way, adopting in general an anti-intellectualistic approach and pragmatic ethics.

A few remarks must be made on the legal or sovereign state of the jurist and the lawyer. Monism has gone through various forms. In its early stages it was a defense of the doctrine of absolute state power vested in the national monarch.[4] In this form it was propounded by Bodin, and his ideas are a development in part of those of the

[1] See Willoughby, *The Ethical Basis of Political Authority*, Part II; Johannes Mattern, *Concepts of State Sovereignty and International Law* (Baltimore, 1928).

[2] Elliott, *op. cit.*, p. 155, note.

[3] See W. E. Hocking, *Present Status of the Philosophy of Law and of Rights* (New Haven, 1926).

[4] See J. N. Figgis, *The Divine Right of Kings* (Cambridge, 1914); Merriam, *op. cit.*

supreme political power that one finds in the political thought of antiquity.[1] From Bodin we pass to Hobbes,[2] who was primarily impressed with the state as a legal institution. Beginning with Bentham and culminating with Austin in the nineteenth century, we find the legal side of sovereignty emphasized, rather than the power theory advocated in earlier times. The English development of the theory of sovereignty did not stress the notion of the state as a juristic personality as did the German thinkers of the nineteenth century. Austinianism, as expressed in John Austin's *Province of Jurisprudence Determined*, is a doctrine primarily of British positive law, while the German theories of monism are first of all interpretations of the nature of the state. In Willoughby's interpretation of sovereignty we find a combination of the Austinian positive-law theory with the German interpretation of the nature of the state; this results in a clear distinction between the concept of the state as a corporate or juristic person and government as its agent, the thesis that the state is completely organized (*i.e.*, legally organized) in its government, and the belief that law, to be certain, must be viewed in a formal or analytical sense as the command or expression of the will of the state through its proper agent, the government.[3]

It is a curious commentary that the pluralists are reluctant to consider adequately the refinements of the theory of sovereignty contributed by Germany and America during the nineteenth and twentieth centuries. Laski interprets sovereignty as power, and therefore insists that the state is not all-powerful, which is perfectly true. He starts with an attack on the doctrines of John Austin in his *Grammar of Politics*, the refutation of which had already proceeded apace in the works of the monists themselves. The modern monist insists that the lawyer's state is expressed in terms of legal will rather than of power, and that the ethical validity or social feasibility of law is to be sharply separated from its legal or formal side. In fact, it is just this side of Austinianism that pluralism does not adequately treat. While Austin did not develop the doctrine of state personality as the modern monists do, the monist agrees with Austin that the tests of law for

[1] Willoughby, *The Political Theories of the Ancient World;* J. W. Allen, *A History of Political Thought in the Sixteenth Century* (New York, 1928).

[2] Hobbes made no distinction between state and government. As a matter of practical politics and not of legal reasoning, he saw the necessity of the absolute government or the unified state. See his *Leviathan* (1651).

[3] Willoughby, *The Nature of the State* and *The Fundamental Concepts of Public Law.* Willoughby's contribution to the theory of sovereignty consists primarily in showing that the idea of the state as a juristic person does not necessarily carry with it the idea of the moral or ethical absolutism of the state.

actual use in political life cannot be the content of positive morality. Austin did not believe the state was unlimited in power either in a physical sense or in the world of morals, for he was a believer in the divine law and the fundamental character of certain moral principles. Furthermore he would not admit that these considerations should be injected into the objective determination of the content of municipal law. He contended merely that the state is *legally* unlimited; surely, if the state has its most characteristic expression in a constitutional and legal order, it is difficult to assign to other bodies than the state the right or the power to make law. Whether law is obeyed is, to the monist, a matter of practical politics and social ethics; the nature of law is independent of right and wrong. After all, it would seem that, if law and ethics can be separated as to *means of formulation*, the monistic position is not so untenable.

Austin's theory is an explanation of the British state. His determinate sovereign, which is habitually obeyed and which is the state, is none other than the British Parliament. It may be said that it is difficult to apply his theory to other political systems, though Austin himself made this attempt. The monist would insist that Austin spoke in terms of fact, for Parliament does make the law and the law exists in a formal way at least because Parliament has said that it must be. Since the time of the Stuarts, neither the monarchy nor the common lawyers have offered any serious objections to the supremacy of Parliament. This supremacy is simply one of the chief facts of the British political system, and it is doubtful whether Austin's ideas would apply accurately to any government other than one with parliamentary institutions and a flexible constitution.[1] One real question of applicability of Austin's theory to British institutions arises in his fundamental analysis of the nature of law. For Austin law in the political state is positive in character, *i.e.*, it is made by human intelligence and organization; it consists of rules laid down for the guidance of intelligent beings by intelligent beings having the power to do so. While the laws of God may be admitted as such, Austin is chiefly interested in human laws which may be called positive or enacted law in the strict sense.[2] Does this concept agree with the position of custom in British law?

The common lawyer is likely to emphasize the unwritten and customary character of British law which would minimize the positive enactments of the determinate sovereign.[3] To Austin law is a com-

[1] Elliott, *op. cit.*, p. 160.

[2] W. J. Brown, *The Austinian Theory of Law* (London, 1906), Ch. I.

[3] See Roscoe Pound and T. F. T. Plucknett, *Readings on the History and System*

mand and it is a command by political superiors to political inferiors, defining legal rights and duties. A legal duty has three parts: there is a source of definition which is the sovereign in the state; there is the person to whom the right is given; and there is the person upon whom the correlative duty is imposed. Such a concept to Austin was broad enough to include the entire field of law. As far as custom is concerned, what the sovereign permits in custom he commands. The mere concession to the judiciary of the right of defining custom does not alter the fact that the acceptance of custom by authorized agents of the state is necessary to give it a place in the order of legal values.

The historical jurists, led in England by Sir Henry Maine,[1] saw a weakness in this Austinian position. Maine insisted that Austin's explanation was highly artificial, since legislation was new in the history of legal institutions. Positive law was, therefore, itself a new concept. One must admit, it would seem, that Austin comes nearer to an explanation of the British system of law than the system of law in an Indian state governed almost entirely by custom, despite the fact of potential absolute monarchy. Austin's notion of positive law is peculiarly annoying to those who want the legal system to remain without change or who fear radical legislative innovations made possible by Austin's conception of the function of the sovereign.[2]

One must not forget that Austin speaks of the legal and not the ethical state, as is implied by the pluralists in their attack on Austinianism. Austin did not conceive of the state either as morally unlimited or unlimited in terms of sheer power. Anyone admitting the validity of the law of God cannot say the state is morally unlimited, and no one will assert that the physical power of the state is absolute. While Laski attacks the idea of unlimited power in the state in his rejection of Austin, Austin himself denies the idea of unlimited power, but *retains the idea of the state as the final source of legal values*, which is, after all, the core and only essential point in the doctrine of sovereignty.[3] Law for Austin was not power, but an expression of legislative will, *i.e.*, sovereign will.[4] If there are legal limitations on the state,

of the Common Law, 3d ed. (Rochester, 1927), pp. 124 *ff.*, for material on the position and function of custom.

[1] *Early History of Institutions* (New York, 1875), pp. 392 *ff.*

[2] See J. C. Carter, *Law, Its Origin, Growth and Function* (New York, 1907).

[3] See John Dickinson, "A Working Theory of Sovereignty," *Political Science Quarterly* XLII (1927), 533.

[4] Austin was a utilitarian and therefore would be in conflict with the idealist interpretation of the will of the state. See Green, *Works*, Vol. II, pp. 403–404, 408, for his criticism of the Austinian view, which, says Green, regarded the determinate sovereign as much more important than it really is. The general will and not

argued Austin, they must come from the law, but, since the determinate sovereign itself is the source of law, it is a contradiction in terms to argue that the supreme source of positive law can itself be limited by positive law.[1]

It is just here that the more modern proponents of the legal state step in. It is really contrary to the Anglo-American traditions that government should be above the law; it is part of the theory of constitutional government that the law is supreme, for, as Cicero said, the law governs the magistrates as the magistrates govern the people.[2] The monist considers Austin's idea of the government's being above the law, but not above constitutional morality (or constitutional conventions and traditions), as a definite weakness. To remedy this German and American monists have proposed the distinction between state and government. The state, not the government, is the source of law, which, to be sure, is still positive, and the state is viewed as a juristic or legal person with a *legal* will. The government is merely an agent for carrying into effect the will of the state. The government, therefore, is limited by law, though the state is not, for the government is not the source of law, *i.e.*, positive enactment. Law is a formal expression of will, and the tests of the existence of law are not tests of its rightness. The idea of the state's personality is a nineteenth century German conception which has been accepted and developed by W. W. Willoughby, the leading exponent at present in the English-speaking world of the doctrine of sovereignty.[3] Of what value is the distinction between state and government?

The monist regards the distinction as fundamental, not only from a logical point of view, but also because of the modern doctrine of constitutional government. Constitutional government is the rule of law and not of men, and, to be secure, law must be above the government, which is an arrangement of functioning offices in the state. If the state and the expression of its will, the law, are above the government, the government becomes a limited agent with a responsibility to be tested before other branches of the government

the sovereign is the real determinant of the habitual obedience of the people, the general will being "that impalpable congeries of hopes and fears of a people, bound together by common interest and sympathy. . . . The essential thing in political society is a power which guarantees men's rights, *i.e.*, a certain freedom of action and acquisition conditionally upon their allowing a like freedom in others."

[1] Brown, *op. cit.*, Ch. V.

[2] *De Legibus*, ed. by Keyes, Bk. III, Ch. I.

[3] R. Emerson, *op. cit.;* L. Duguit, "The Law and the State," *Harvard Law Review*, XXXI (1917), 1–185.

given the right also to express the will of the state. Furthermore, the idea of state personality has more of the universal in it than the Austinian idea of the determinate sovereign. The determinate sovereign is difficult to find, for instance, in a federal government, but that the state exists is hardly to be questioned. There is no necessity of a unified expression of the will of the state, and there is no need for one determinate organ to overshadow all other organs. A division and delegation of governmental powers does not mean a division and delegation of sovereignty, for sovereignty remains vested in the state, and it is also the identifying feature that makes a state a state. Some confusion has risen in American thought over the position of the Constitution. To Burgess, the Constitution is above the government and any enactments of positive law are made by the government. The constitution represents the organization of the state,[1] with the more recent monistic position insisting that the organ which draws the constitution is a part of the government and that the constitution is merely positive law occupying a controlling position. Thus, it would be impossible to conceive of the state as being limited by the constitution; only the government can be so restrained.

Types of Pluralistic Attack. Both the monists and the pluralists admit and insist that in practice government is not omnicompetent in a practical sense. The monist admits this limitation in all fields, and he further admits that the mere enactment of legal values is no guarantee whatever that they will be effective in practice. The monist is, therefore, obliged to go beyond these admissions and insist that the state is legally unlimited. Now even a pluralist must admit that, if the premises are granted, there is much to be said in favor of the modern monistic position. It certainly represents to a certain extent the actual claims of the state, for there is no organization which attempts to enact rules that are upon an equal footing with the laws of the state. The nature of law and the nature of legal limitations are, therefore, the key problems in the pluralistic conception of the state. No pluralistic attack on the state can admit the Austinian theory of law.

As to the nature of law, the pluralist denies completely, at least in theory, the Austinian conception. The elements of the legal order must be found outside the enactments of the state; they must be found in the social forces that make enactment possible. The international-law attack on sovereignty places legal validity above the state in a world of interdependence, which means a world of law in

[1] J. W. Burgess, *Political Science and Comparative Constitutional Law* (Boston, 1898), Vol. I, Ch. III.

the face of which the conventional theory of the legal independence of each state is unreal and dangerous. Historically, the force of international custom and agreement has been superior to the demands of particular states for complete independence, and from a moral point of view the world demands the supremacy of international law over the state, at least in certain respects. The ethical attack of Krabbe, to be considered shortly, places the source of legal validity in the sense of right, in the content of community conscience, rather than in the formal enactments of the state. For such an interpretation as given by Krabbe, the Austinian theory of validity arising from formal enactment is arid and without value. The pragmatic attack of Duguit places the source of legal validity not in the enactments of the state but in the facts of interdependence, giving rise to an objective law of social solidarity anterior to the state. Duguit and his follower, Laski, definitely reject the notion of a distinction between state and government. The state is the government, and the government is that body of men which has the power of rulership in its hands. Laski believes state and government to be the same, and with Duguit denies the distinction as well as the personality of the state. The source of legal validity is found in the utility or value of the services of the state, and in the conscience of groups and, latterly, in his thinking, of individuals.

The Nature of Legal Limitations. What is the nature, then, of the legal limitations on the power of the state? Both the monists and the pluralists admit objective physical and moral limitations, but these are not primarily at issue. The pragmatic tendency in Duguit and Laski, of course, would insist that the physical and moral limitations show that there can be no legal omnipotence except in the realm of metaphysics. Historically, we may say that there have been two types of limitations on the legal power of the state. These two are (1) objective limitations such as natural law, objective law, or the moral claims of the individual, and (2) the theory of self-limitation or autolimitation, first advanced by German thinkers and adopted by recent monists. The first type, the objective limitation, involves the most ancient conception of law as the order and principle inherent in nature. Plato, Aristotle, Cicero, and the medieval thinkers down to the rise of the national states insisted that rulers were subject to the law, and it was generally held that human enactments contrary to natural justice were invalid. As we have just seen, the decline of dogmatic natural-law doctrines has not overthrown the concept of a law objective as to the government. Duguit's law of social solidarity is to be interpreted as a revival of natural law governing the state,

but in realistic terms.[1] The ethical and moral interpretation of the state found in Krabbe and Laski limits the law, but it would be admitted by them in general that the content of justice changes.

The theory of autolimitation of the state as the source of rights and limits on the state receives the most caustic attack by the pluralists. To them it is at most a sheer fiction since the state could not ignore these limitations if it wanted to.[2] The modern theory of self-limitation is contrary to the older historic doctrines of the state as being objectively limited by forces of right over which it had no control. Autolimitation as the basis of rights developed coincidentally with the nineteenth century theory of sovereignty, and the theory of sovereignty, it must be granted, developed in connection with nationalism. The theory of self-limitation is inherent in the constitutional state, and the organization and delimitation of the powers of government are the functions of the constitution, whether written or unwritten. Historically, constitutional government arose in connection with the objective limitations of natural law and rights, but with these views discredited another basis of limitation was found in the distinction between state and government and the self-imposition of limitations. It cannot be said that the history of the constitutional state shows the weakness of this theory, since as an agent of political democracy it has been careful, generally speaking, in the protection of rights. The monist does not admit that the force of public opinion, which makes it impossible to alter materially the limitations imposed on the state, vitiates his position. For public opinion to the monist is an extralegal force; it is recognized legally only insofar as definite means for its expression are established. The pluralist, on the other hand, regards the theory of self-limitation as a dangerous fiction—dangerous because there is the possibility of the development of the authoritarian state under the aegis of sovereignty, and a fiction because in general it is impossible for the state to ignore these limitations.

Whatever may be said of the theory of self-limitation, it must be conceded that it is firmly embedded in modern public law. As far as the rights of individuals and groups are involved, the measure applied by the state is the measure established by law. While there are some suggestions in American constitutional law, for instance,

[1] See Stammler's concept of natural law with a changing content, based on his distinction between form and matter. The inherent principles of justice involved in the form of justice must be applied to the concrete materials of justice. See Hocking, *Present Status of the Philosophy of Law and Rights* (New Haven, 1926); C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930); Vaughan, *op. cit.*, Vol. I, pp. 230, 241.

[2] Duguit, *op. cit.*, XXXI (1917), 128 *ff.*

of the natural-law yardstick, it is the formal agency of the government that determines finally what application shall be made of absolute conceptions of right and justice.[1] In favor of the theory of self-limitation it can at least be said that it provides a means of defining the limits of state action, which theories of law as objective to the state do not. As Laski says, there is a penumbra of anarchy surrounding the pluralist state which is not admitted in the public-law concepts of the monist. As the theory of self-limitation in the sphere of actual law is an expression of the nature of law, so it must be said that the attack on this theory is the echo of the attack on the theory of law as positive. There are two ways of looking at the question. On the one hand, it may be said that the idea of law as positive, with the corresponding view of self-limitation, is a realistic expression of the unity of the state, or an expression of the formal unity of the state as it ought to exist; on the other hand, it may be asserted with the pluralists that it is an attempt to inject into the state a unity which does not exist in fact and which should not exist. Therefore the idea is a pernicious fiction rather than a vital approach to the problems of public law.

The Pluralistic Society. But behind the pluralist notion of law and limitations on the state is a conception of the disintegrated society. We are back, therefore, to the original starting point—the nature of the denial by pluralists of the unity of the state. We shall have occasion to consider the question of the moral and ethical unity of the states again at the conclusion of this chapter when an attempt will be made to evaluate the contribution and the validity of the pluralistic conception of the state. In this conception, the state, in the words of Figgis, is a "society of societies."[2] This does not of logical necessity deny the sovereignty of the state, for it is more of a program of legislation than a theory of positive law. It would seem that Maitland, Lindsay, Barker, Figgis, the guild socialists, and others would be satisfied with a functional or group federalism as contrasted with the territorial federalism that is characteristic of modern federal governments. However, such theories of the rights of groups, whether the argument deals with the real personality and the ethical function of groups or with the economic interests of associations, result in a concept of political society which is contrary to certain underlying aspirations of the present legally unified state. It is the pluralists who insist that their theory of society is contrary to the sovereign state, since the defenders of sovereignty do not necessarily

[1] Haines, *op. cit.*

[2] *Churches in the Modern State*, p. 49.

adopt an absolutist conception of the moral function of the state. Pluralists have been wont to ascribe to the monists a belief in the Hegelian state as the embodiment of the rationality of history, but, while those who take this doctrine, such as the neo-Hegelians and certain of the Oxford idealists, believe in the sovereignty of the state, the monist per se does not necessarily have this affiliation.

Growing out of definite conceptions of society which deny the essential unity of the national and sovereign state, the pluralists have attacked sovereignty by way: (1) of international law, (2) of legal validity in terms of the sense of right of the members of the community, and (3) of pragmatic and realistic interpretations of the process of state life and the actual functions performed by the state.

The International-law Attack. With the growth of internationalism in recent years, the exponents of international law have become less impressed with the sovereignty of the state. Instead of viewing the family of nations as a group of independent sovereign states *accepting* certain principles of international intercourse as interest or principle dictates, the newer concept of the family or society of nations insists on the recognition of the *fact* of interdependence and the futility of asserting certain conventional doctrines of international law. The monist regards international law as having been accepted by the states and as having validity as law from the fact of acceptance. The sources of international law may be custom, treaty agreements, and general state practice, but the validity of international law as such comes from acceptance. The courts as the conservators of tradition have taken this view and refused to enforce international rules of conduct unless there is some ground for assuming the acceptance of the particular rule of international law.[1] If it is a question of realism in international legal life, the argument leans heavily toward a criticism of sovereignty. As a practical fact, it is doubtful whether a civilized state could successfully reject the prevailing values of the international legal order. If the individual state cannot reject international law, is it proper to speak of the sovereignty of the state? The argument may be carried a step farther. If the principles of international law may not be rejected, is there any real choice as to acceptance on the part of the state in the first place? Is not a state a member of the family of nations by virtue of the fact that there are rules of international conduct which are not subject to change, rejection, or acceptance by the single state?

[1] Willoughby, *The Fundamental Concepts of Public Law*, Ch. XVI; Mattern, *op. cit.*; E. M. Borchard, "Political Theory and International Law," Merriam, Barnes, and others, *op. cit.*, Ch. IV.

We have already noted how much the pluralist attack relies on what might be called a realistic interpretation of the state. The international-law attack is primarily just this. It is contended that the old doctrine of acceptance of international rules of conduct is contrary to the facts. States do not accept the rules of international law, for they exist as members of a world of states by virtue of the international legal order. The foundations of an ordered world are not in fact left to the casual acceptance or rejection of the individual sovereignty. But the argument goes farther than this in the Austrian school, as it is called. Kelsen and others present not only the factual superiority of international law, but the ethical and normative ideal of a world empire of law. Perhaps it may be said that the theory of the sovereignty of international law is a revival of the concept of a Roman or a Holy Roman Empire, and in the minds of some critics of sovereignty there is a willingness to accept world government as the solution of modern difficulties and conflicts.[1]

As Borchard says:[2]

> Just as it has become common for nations to submit to the awards of international tribunals which are not unanimous, so it may in time be possible to obtain submission to legislation passed only by majority vote. Before this can happen, however, the doctrine of sovereignty, as a characteristic of states placing them above international law, must disappear or be so qualified as to admit the actual fact that states are bound by international law, whether or not they so will. In many respects, a mere examination of current practice will demonstrate the accuracy of this statement. When theorists fully recognize it and relinquish some of their traditional and antiquated veneration for the all-powerful state, international law will be greatly strengthened and may be enabled more usefully to serve its purpose as a regulative agency for the delimitation of conflicting interests arising in the society of states.

The Ethical Attack on Sovereignty. The leading exponent of the ethical attack is Hugo Krabbe, whose views on the legal validity of law are contrary to the analytical or Austinian conception and also the conservative legal theory of international lawyers.[3] To Krabbe, the notion of legal validity as formality of enactment is singularly unreal and pernicious. The first fact of which students of politics must take account is the existence of communities. Communities exist by virtue of the common sense of right characteristic of rational human

[1] For Hans Kelsen's views see, *Das Problem der Souveränität und die Theorie des Völkerrechts* (Leipzig, 1920); *Allgemeine Staatslehre* (Berlin, 1925).

[2] Merriam, Barnes, and others, *op. cit.*, p. 139. By permission of The Macmillan Company, publishers.

[3] Hugo Krabbe, *The Modern Idea of the State*, tr. and introduction by Sabine and Shepard (New York, 1922).

beings. The idea of the community is not limited to states or parts of states, but overlaps state boundaries and produces thereby the sense of right of the international community. The extent of the community is the extent of the sense of right, which from another point of view is the expression of purpose. Purpose or the sense of right is not a single unity, but is composed of many parts, which may be conflicting. The integration of the sense of right is a relative matter, but its existence is the true sanction, the true test of the validity of the content of law. Law is, in fact, that which accords with the sense of right and not with the formal enactment of a political sovereign. Krabbe, it would seem, does not distrust the state, and he is not greatly interested in breaking it into a number of conflicting groups or interests; what he is interested in explaining is the source of legal value, and his ideas on this subject place him among the critics of sovereignty.

The historic ideas of rulership must be revised, as it is no longer possible to view the authority of the state, or rulership, as the mere expression of will. Behind the will must be the normative facts of human existence which are the only source of the existence and validity of law. Law as the written rule is the expression of will, but behind will is the sense of right which finds expression in the process of government, *i.e.*, the evaluation of interests in a decentralized state. The state is the community acting through the sense of right of individuals as members of an independent community for the formulation of legal values. Government itself deals with interests, the treatment of which should be decentralized; however, government is not an organ of the sense of right but is immediately the expression of organized will. While law is the totality of effective rules, the validity of law does not depend on will, but upon the sense of right.

Rousseau lives again in the ideas of Krabbe, for, while law may be rational as the expression of will, the sense of right, as the normative element in life, is emotional. Krabbe says:

> That which works in us as the instinct, the feeling, the sense of right, and which lives in our souls as an original force of nature, lies at the basis of that authority which compels us to live in a society. It is the foundation of the rulership which is inherent in the idea of the state. . . . What is now in actual practice adorned with the old name of sovereign is a man or an assemblage of men upon whom the law has laid a task. They are not therefore invested with a power to be expressed through will in independence of the law.[1]

[1] Krabbe, *op. cit.*, p. 9. By permission of D. Appleton-Century Company, Inc., publishers. See Willoughby, *The Ethical Basis of Political Authority*, Ch. XXII. See also H. Krabbe, *Kritische Darstellung der Staatslehre* (Haag, 1930).

The Pragmatic Attack on Sovereignty. a. The Ideas of Léon Duguit. Duguit stands out as an adherent to a realistic and pragmatic interpretation of public law. He declares that the idea of state or corporate personality is a fiction that must be expunged from political literature, though he does not thereby conclude that groups are to be ignored by an unhealthy unification of the state. Instead of states existing as sovereigns, the expression of whose will is law, they exist as public-service institutions. Law is not command, for it is the organizer of public services. A realistic and socialized legal system is proposed to replace the abstract dogmas of the sovereign state produced by the era of national absolutism. What is the state? The state as a fact, if the doctrine of personality is rejected, is merely those persons who exercise the powers of government; the state and the government are the same. And the government, though it is an instrument of fear and force, is not itself unlimited, for it exists to perform services demanded by the facts of social solidarity, and its continued existence is justified on the basis of meeting the needs of society.

What public services must the state perform? This is a matter of variation, but, whatever the variation, public services are an expression of the solidarity of society. Solidarity is a fact, and it would seem to be largely external to the human will. The development of modern society has produced a greater interdependence between groups. "Any activity that has to be governmentally regulated and controlled because it is indispensable to the realization and development of social solidarity is a public service so long as it is of such a nature that it cannot be assured save by governmental intervention."[1] The organization of public services, therefore, and not command is the basis of public law; and public law is, by this token, objective, *i.e.*, independent of the casual expression of governmental will. The fundamental law of the individual or group is that social solidarity shall be maintained and developed; to do anything that dislocates the public services or diminishes the actual solidarity of society is illegal whether so designated by law in a positive sense or not.

Such a concept of the state means state responsibility rather than state supremacy. As the doctrine of sovereignty, according to Duguit, places the state above responsibility, it is inimical to solidarity, and, as solidarity is a fact, the evils of the doctrine of sovereignty become apparent. Duguit believes, incidentally, that the French system of state responsibility before the administrative courts is a recognition by the state itself that the theory of sovereignty is no longer tenable.

[1] Duguit, *Law in the Modern State*, tr. by H. Laski and F. Laski (New York, 1919), p. 48.

Administrative responsibility is an expression of the objective and anterior law of social solidarity. The statute ceases to be an expression of the command of the sovereign; it compels, not because it commands, but because it is an expression of the social facts to which the state must give heed. The member of the government acting under a statute that has organized a public service is not carrying out the supreme will of the state but is merely expressing the prevailing conception of some aspect of social solidarity that gives rise to government.

Duguit is not interested in natural-law conceptions or in the fictions of the lawyer. He rejects any metaphysical or ethical ideas of law, for law is the expression by responsible rulers of the fundamental needs of society, and government itself is merely the expression of the *fact* of rulership. Government is government because it can govern, and in a sense Duguit is little interested in a priori justifications of rulership or the particular functions of the state. Government represents power used in the interests of solidarity. The cleavage between Duguit, who seeks facts, and Krabbe, who investigates the ethical qualities of human nature, is clear. Yet the critics of Duguit have insisted that he ushers natural law out by the front door, only to let it in again by the back, for social solidarity is very much the same thing as Stammler's "natural law with a changing content." In fact, Duguit has been placed among those thinkers who have been instrumental in reviving natural-law philosophy.[1]

b. Theory of Laski. Harold J. Laski may be recognized as the leader of the ethical-socialistic pluralistic attack on the state. While Duguit develops his ideas as a basis for interpreting French public law in terms of responsibility, Laski constructs his theory of the nature of the state along somewhat different lines to show the futility of the doctrine of sovereignty and the vital place of trade unionism in the state. He seeks to give an answer to the question: why should an individual obey the state? What is the relation between the individual and political authority? His work falls into two groups, the

[1] The works of Duguit most available to students are, "The Law and the State," *Harvard Law Review*, XXXI (1917); *Law in the Modern State*, tr. by H. Laski and F. Laski (New York, 1919); "Theory of Objective Law Anterior to the State," *Modern French Legal Philosophy* (New York 1921); *L'État, le droit objectif et la loi positive* (Paris, 1901). For a late and full exposition of Duguit's ideas, the *Traité de droit constitutionnel*, 3d ed. (Paris, 1927), Vols. I and II (Paris, 1928) should be consulted.

Critics of Duguit are ably represented by Elliott, *op. cit.;* Willoughby, *The Ethical Basis of Political Authority;* A. Esmein, *Droit constitutionnel*, 8th ed. (Paris, 1927), Vol. I.

first series of works being developed to undercut the doctrine of sovereignty, while his later work, *A Grammar of Politics*, is offered as the constructive theory of a political pluralist.

While in his earlier works the group aspect of political life engaged his primary attention, in the constructive side of pluralism the individual is given a place in the foreground. The group becomes merely a means of stating the interests and needs of the individual. In theory at least, Laski is an exponent of pragmatism in politics. He is interested in the politics of reality and his political science is ostensibly founded upon the observable and concrete facts of political life. Political life in fact is pluralistic, says Laski, and in the fact of such competition between loyalties the Austinian conception of sovereignty becomes a vicious unreality.

> These facts present themselves to Mr. Laski under two broad heads, closely related: first, every individual act of the state can be reduced simply to the act of those in power, and commands no especial moral sanction because it is the act of the state; second, as the acts of the state are to be tested in terms of the purpose they express or fulfill, they must of necessity compete for the loyalty of individuals with the purpose of other associations as real as the state. This, I take it, is tantamount to the assertion that the political framework under which law is made, interpreted, and administered, has no claim upon obedience *qua* political framework, for it must eventually face the existence of other corporate bodies with autonomous wills of their own, with ends often distinct from its ends, and a hold on the lives of their members more secure than its hold.[1]

The moral qualities we find in human relations, insists Laski, are in individuals themselves and not in any case in the acts of the state. Following Duguit, the government is the state, and an act of government is merely an act of those in power at a particular time. The act of the state is morally neutral; it is simply a bid for the favorable judgment of the individual conscience. As a fact and as a matter of obligation, the individual should question the acts of the state. He judges in terms of its contribution to the development of his personality. State authority at any time represents a balance between the effective claims of the state for support and the effective representation and embodiment of interest found in the groups to which the individual gives his allegiance. The individual's interest cannot be expressed solely in terms of the state; it requires expression in larger areas and lesser areas. The lesser areas of loyalty are found in subnational groupings to whose authority the individual submits, and

[1] Elliott, *op. cit.*, pp. 144–145. By permission of The Macmillan Company, publishers.

the larger loyalties in supernational groupings for international government. If the state is merely a body of persons exercising authority, Laski can say that international government as organized in the League of Nations system is a superstate, but the same concession is not made to smaller groups. Why?

The answer appears perhaps in the actual political institutions that Laski would preserve. Laski's social theories have been in fact those of the British Labor Party, and the actual authority of Parliament is not diminished by him when it comes to the point of rejection or acceptance in the *Grammar*. Laski is not willing to surrender the position of Parliament, and to some of his critics sovereignty has not been destroyed despite all the brave protestations that it will not fit the facts. If the state is to regulate the rights of property, to guarantee the rights of association, if it is to continue as a territorially represented state with effective consultation of citizen interests in the making of laws, surely it must be admitted that in a formal and practical sense the rules of the state are superior to the rules of groups. In the final analysis, what Laski presents may appear more as a social program for the state and a critique of the grounds of political obedience than as a destruction of the sovereign state, *i.e.*, state with the power to declare in an authoritative sense the content of law. Of course, if Laski means by sovereignty the physically omnicompetent state, the monists will agree with him. The monists themselves do not insist that sovereignty is power alone; they merely insist that in the last analysis the state has the rule-making power and that the final point of reference for a binding rule of conduct is the state and no other social group.[1]

Evaluation of the Pluralistic Attack. The evaluation of the pluralistic attack may be considered under three heads: (1) whether the idea of sovereignty is actually contrary to the facts of state life, (2) whether positive law in the monistic sense is really a fiction, and (3) whether the actual content of legislation proposed by the pluralist is inconsistent with the monistic view of the state.

Is the theory of sovereignty contrary to the facts? The answer to this question obviously depends upon the meaning of sovereignty. The monist says that it is not. While admitting that the idea of

[1] Among the chief works of H. J. Laski, we should note: *The Problem of Sovereignty* (New Haven, 1917); *Authority in the Modern State* (New Haven, 1919); *Foundations of Sovereignty and Other Essays* (New York, 1921); *A Grammar of Politics* (New Haven, 1925).

For critical appreciations see Elliott, *op. cit.;* Willoughby, *op. cit.;* and Coker, *Recent Political Thought* (New York, 1934).

sovereignty is a product of modern times, such an admission is not also an admission that the higher state forms of antiquity did not have in fact the power to determine formally the content of law. In recent years there have been many conflicts between the state and other groups, but, when we observe the virility and unity of the state shown in the soviet system or in the postwar European dictatorships, when we consider the assertion by the state of supremacy over the church, which in some cases has been an association with a membership almost as large as that of the state, the question may be legitimately asked whether there is not an inherent force in the citizenship association which places it above other groups.[1] While international government has grown tremendously in recent years, states have not conceded the destruction of sovereignty, nor do many of the facts of international life indicate that sovereignty is a dead fiction. Although the state has surrendered in part before such groups as organized labor, both in America and Europe, such temporary surrenders do not mean that the state is permanently discredited. The facts of life may demand in reality a greater assertion of the control of the state over associations rather than the contrary.[2] For the state to admit that as a matter of everyday politics there are limits to political obedience—limits to the support that is to be accorded the state—does not mean that the state is not the final focal point of constitutional rules.

Whether or not the analytical theory of law is valid depends finally upon the distinction between the formal and the ethical aspects of law. If the ethical aspect of law is viewed as an argument with regard to what the content of law should be and not as a practical test of what the law is, there is no fundamental attack on sovereignty in the assertion that public opinion, the national or traditional conscience, or other forces really determine the *content* of law. If the pluralist is willing to concede the objective existence of rules that purport to express

[1] See Green, *op. cit.*, Vol. II, Sec. 141: "The other forms of community (*i.e.*, group) which precede and are independent of the formation of the state, do not continue to exist outside it, nor yet are they superseded by it. They are carried on into it. They become its organic members, supporting its life and in turn maintained by it in a new harmony with each other." The facts of practical politics compel us to admit a measure of truth in the above observation. See Dickinson, *op. cit.*, *passim*. While Jellinek, *Allgemeine Staatslehre*, dritte Auflage (Berlin, 1929), p. 400, admits that the state acts in a private-law capacity in social matters, he refers to the notion (pp. 431–432) of the inherent rights of associations as a romantic theory. On the other hand, the supremacy of the state over its comprehended associations is a product of the modern times.

[2] See Elliott, *op. cit.*, pp. 154 *ff*. This is one of the fundamental levels of practical politics which we may find in the authoritarian doctrine of Fascism.

constitutional morality, he has conceded all that the modern monist demands. Austin, Willoughby, and other monists are quite willing to concede that there are practical limits to the power and moral claims of the state; but what they are interested in, and what they assert as a fact, is that the state does insist upon declaring what the rules of law shall be. The vast machinery of legislation and judicial settlement so characteristic of the modern state is, to the monist, an objective manifestation of the formal element in law. That the content of law is to be treated philosophically, that it should embody the best of the state conscience, is admitted by them. The monists would admit also that the laws of the state must compete with other values for the general support of the citizenship. No modern defender of sovereignty would contend that a purely formal approach to law is complete within itself. While the science of jurisprudence must deal with the history, evolution, and purpose of law, the monist insists that in the daily functioning of the state it must be guided by declared rules.

If the pluralists are presenting merely the claims of a philosophy of law, of the functions of the state, and the rationale of political obedience, it must be admitted that they have made an important contribution. They have led us away from theories of the omnicompetent state and they have provided a motivation for practical and realistic studies of politics. It is quite possible to accept the premises of the pluralists concerning legislation without accepting the conclusion they draw from such ideas—the denial of the lawmaking power or sovereignty of the state. The pluralists have asserted the limitations on the power and the effective obedience accorded the state; they have supposed the state to be a public-service institution; they have insisted upon the supreme importance of the ethical evaluation of the citizen body with regard to the acts of the state (with the exception of the fear and force pragmatism of the syndicalists, the solidarists, and Duguit); they have suggested the value of decentralization of moral functions in a democracy and, presumably, of the integration of economic interests where necessary for efficiency; and they have recalled to our serious attention the rights of associations in political life and the survival of moral federalism, as contrasted with economic centralization. But all these ideas are ideas as to how the sovereign or lawmaking state should function; they are in fact proposals as to what should be included in the modern legislative program of a state. As such the pluralistic attack is suggestive and it has great value; politics should always be realistic in its immediate purposes.

The state has a will to persist. It is the most universal of human institutions as to space, and it is one of the most enduring as to time.

The state, it may be said, has a unity and a permanence that other associations lack. Nonstate associations have their permanence in the durability of the state; they have their freedom of expanding over the whole world by virtue of the ubiquitous character of political society. As Hocking observes, the state "gives other groups their freedom in the time-room of history."[1] Yet we must admit that the small group has an advantage over the larger one, for the small association can excite more fundamentally the loyalty of the individual. The small group tends to absorb under peaceful conditions the loyalty of personality, but the state must be preserved as the essential condition of the normal existence of the smaller groups. To say that the state must consider the individual as a member of an interest group, and that the judgment related to the individual must, broadly speaking, be a judgment of the claims of a group, does not in turn deny the right of judgment and the right of declaring officially the rules of constitutional morality. Despite all the admissions that may be made in favor of pluralism, it is the pluralists themselves who vitiate their attack upon sovereignty, for "political pluralism strangely declines to recommend the one step that would seem necessary to give its counsels effect, namely, to shear the locks of the state's unique power. It proposes no return to the former distribution of armed forces among the various social powers. It does not advocate the abolition of force-using against recalcitrant citizens and groups."[2]

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[1] Hocking, *Man and the State*, p. 119. With great pertinence Norman Wilde has shown that the chief failure of the pluralists is in not recognizing that "society is not a plurality of coordinate groups, but an organized system of institutions of differing value," not only in efficiency but inherently also. The state, because of its social functions, has more of a presumptive claim to sovereignty than any other group. *The Ethical Basis of the State* (Princeton, 1924), pp. 165–166.

[2] Hocking, *Man and the State*, p. 88. By permission of the Yale University Press.

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PART VIII

THE AUTHORITARIAN STATE

CHAPTER XXIII

THE COMMUNIST SYSTEM

> And here it becomes evident, that the bourgeoisie is unfit any longer to be the ruling class in society, and to impose its conditions of existence upon society as an over-riding law. It is unfit to rule because it is incompetent to assure an existence to its slave within his slavery, because it cannot help letting him sink into such a state, that it has to feed him, instead of being fed by him.—Karl Marx and Friedrich Engels.[1]

The General Nature of the Authoritarian State.—We have already discussed the general outline of the authoritarian principle in the statement of the contemporary crisis in political and social liberalism. Our attention turns here to one of the most striking of modern political tendencies: the development of various kinds of regime, with differing political philosophies, all of which have the very definite purpose of elevating authority far beyond the liberal conception of power. In the broadest sense, any effective repudiation of the liberal tradition logically leads to an emphasis on force and power. Liberalism, whether national or international, has for centuries believed that outside of law there is chaos; there is a tacit blame for all that happens to anyone who steps beyond the subtle boundaries of the law. The authoritarian lives not in terms of the creation of chaos or political disorder, but in the fact that an order exists; he does not believe that preaching about the virtues of law will cure the wickedness of the lawless. Functioning social power is, therefore, the center of interest to the authoritarian. Power that is checked and divided is seldom equal to the tasks that are imposed upon it. The power that is effective from a pragmatic point of view is unitary by definition.

The world of fact is rich enough for all to make their cases. The modern authoritarian sets as his goal the resolute elimination of all wishful thinking. There are times in which force must be used; there are also times when the gentler norms of conduct that fall under the rubric of the liberal rule of law may be permitted to operate. Yet in

[1] *Manifesto of the Communist Party.*

the stern realities of social decay or change the premium falls on action rather than thought. Action implies its own set of norms, but they are living because they are inextricably intertwined with the facts of social and political reality. Intellectual standards are largely *ex post facto*, perhaps nothing more than the unimportant backwash of destiny. Life itself is primarily biological self-affirmation, and it is in no case the metaphysical substance of logic and concepts. Fundamentally, the authoritarian pretends to take history as it is in all the nakedness of reality. The history that counts in the successes and failures of leadership is not what ought to be but what is. Authority, it is seen, is a primary force in the making of history, and the state is the crystallization of power. The liberal is constantly looking at what ought to be, and the normative drive in thought finds its ultimate expression in those modern political philosophers who see the reality of the state itself in terms of the legal norm or standard.[1]

Under these circumstances authoritarianism is a characteristic of fluid periods in the history of institutions. Our experience with liberalism's antithetical form is yet young. It is too early to state whether we are entering a period in which change and disorganization are really going to sap the foundations of the great liberal tradition of the last one hundred and fifty years. Already, however, it is impossible to ignore the variegated experimentation that presents itself to the student of politics. The communists would like to have us believe that the ultimate contrast is between communism and Fascism, and in the last accounting liberalism will prove to be nothing more than a prelude to capitalistic reaction. The liberal must, on the other hand, assert the universality of his conceptions and maintain the position that the real conflict is between liberal democracy and authoritarianism, whatever may be the concrete form that the latter takes. In another sense, the conflict is between the individualistic social organization that is known as democracy and the tight-knit exercise of community power that goes under the name of dictatorship. Dictatorship in the social sense is the characteristic expression of authoritarianism.[2] But dictatorship may take many different forms, though

[1] This is particularly true of the Viennese school of legal thinkers who are led by Hans Kelsen. See his *Allgemeine Staatslehre* (Berlin, 1925), and other writings, and Johannes Mattern, *The Concepts of State, Sovereignty and International Law* (Baltimore, 1928). Verdross is another important thinker of this school. See Henry Janzen, "The Legal Monism of Alfred Verdross," *The American Political Science Review*, XXIX (1935), 387 *ff.*

[2] The student must keep clearly in mind the two fundamental senses in which the word "dictatorship" is used. The juristic use of the term by Carl Schmitt in *Die Diktatur* (München, 1928), in which the exercise of emergency and extra-

there is to be found running throughout them certain common devices. At all costs the apologist of communism as it is practiced in Russia must distinguish between his authoritarianism and other forms that do not accept as a fundamental principle the revolutionary dictatorship of the proletariat.

The Significance of the Russian Revolution. Beyond all question the greatest symbol in the contemporary world of change and disintegration is "communism." People who respond with emotional energy to few other ideas are likely to be roused from their lethargy by the suggestion that the exponents of communism are gaining either in direct or in indirect support. A great symbol of change is a necessary ingredient in a great period of reaction. The banner words of "liberty," "equality," and "fraternity" of the time of the French Revolution produced the greatest intellectual effort of modern times in defense of authority. What was then the sign of decay—liberalism and democracy—are now the retreat of those who are fighting the principle of economic and political authoritarianism. Such a statement does not imply that the revolutionary importance of Russian ideology is going to provide the foundation for a complete upheaval of all historic institutions as we know them in the West. Far from it. Like the French Revolution, the Russian catastrophe is likely to be unique. The conditions of successful revolution are difficult to reproduce, especially when the proletarian revolution is involved.[1] In Russia in 1917 there was not only war weariness, but also the weak and disorganized Russian middle class which could offer no resistance to any determined group. The middle-class interest in other countries is much stronger, and in addition it has been put on the alert just as the feudal aristocracy was on the watch in all countries after the outbreak of the revolution in France. Burke's *Reflections on the Revolution in France* did much, no doubt, to put the historically advantaged groups on their guard, but also the events in France taught them that concessions must be made. The survival of European aristocracies to the World War of 1914–1918 is an evidence of the failure of the generous and catholic hopes of the leaders of the French Revolution.

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ordinary powers is implied, is quite different from the sense in which the word is currently employed. Social dictatorship suggests the permanent concentration of political and social authority.

[1] H. J. Laski, *The State in Theory and Practice* (New York, 1935), stresses in his concluding chapter the improbability that a situation like the Russian in 1917 will be reproduced in other countries. Laski's opinion as a contemporary British Marxian sympathizer should hearten those who fear the marching proletariat.

Indisputably, the Russian Revolution of 1917 is one of the great revolutions of history. It takes its place in the revolutionary process of modern times, which includes the English Revolution of the seventeenth century, the American and French revolutions of the eighteenth century, and the Chinese outbreak of the twentieth. Students realize that the revolutionary process is long and complicated. The early promises are soon forgotten, and the young militancy of leadership merges into the hard conservatism of those who are unaccustomed to place and power. It is equally true that the old situation never is integrally restored. The changes of the revolution may be slight; the fundamental ethos of the people may remain; but the old regime does not come back in its historic form. Monarchy was restored in England after the fall of the Commonwealth in the seventeenth century, but the virility of British monarchy was somehow lost. The Roman Catholic Church has pushed forward to new frontiers and it has regained much that was lost because of the Protestant Reformation, but the old church unity of Europe has not returned.

It will be the task of future investigators to write of the real changes that have been brought about by the Russian Revolution. The current sensitiveness of the Russian leaders to counterrevolutionary movements indicates that the task of revolutionary consolidation has not been completed. The fermentation of the English Revolution lasted for at least fifty years; the French Revolution may be dated, perhaps, from 1789 to the establishment of the Third Republic after the Franco-Prussian War; the Chinese revolution may be as timeless as the old regime. The task that the Russian Revolution has before it may in realization be the substructure of a whole epoch. It should be observed, however, that this long period of revolutionary dynamics is one in which dictators are not uncommon; it is one in which violence is the strong medicine of social change. The Alexis de Tocqueville of the new Russia will indicate the similarity between the new and old; he may, like the French aristocrat, point out how the old authoritarianism of the czarist regime was carried over into the new. The defenders of the second or third generation of the new Russia will speak with the conservative zeal of the end of the revolutionary period.

When in the autumn of 1917 the leaders of the Bolsheviks carried all before them, as usual in the case of successful revolution with the aid of the troops and the police, a new group of heroic figures was offered to the world. The hate that has greeted the rise of Lenin and Trotsky is equalled perhaps by the bitterness that accompanied the achievements of Napoleon. But along with the great tyrants of the past whom the people have loved and to whom they have erected their

fairest monuments, such as Caesar, Napoleon, Frederick the Great, and others, must be added the epic names of the leaders of the Russian Revolution. In times of violence and authoritarianism, the "seeing eye" of the leader seems to sense the destiny of an age, and with Thomas Carlyle whole peoples who have wallowed in intellectual cynicism become worshippers at the shrine of the hero. Great leadership is based in all probability upon a large measure of social irreconcilability; the great leadership, even if only the tool of fate or forces, touches all, whether by way of praise or condemnation.[1]

The Philosophy of Communism. To the student of politics the two phases of the Russian movement that are of greatest interest are the philosophy of communism and the fundamental issue of revolutionary tactics. Our attention turns now to the problem of the philosophical basis of communism, and therefore to one of the great world views out of which has sprung a peculiarly challenging type of political and social authoritarianism. A philosophy is important if a sufficiently large number of the human race are moved by it. It may be that the philosophy is only a rationalization of the eternal struggle for power; it may be, in other words, that there is nothing unique about the philosophy of communism. It would seem, however, that ideas as well as men are feared, and the fact is that large numbers of individuals are conscious of the force of the principles of communism. Those who fear Marxism fear not so much the men behind the movement as the attraction of its ideas for those who now live quietly within the framework of the historic social systems of the West.[2]

There is little doubt that the philosophy of communism is a singularly dissolving force on the principles of liberalism. The liberal who will not fight for his principles in the face of crisis and criticism is not a vital standard-bearer of a great tradition. The fighting spirit of the middle classes may be waning, and because of this the day of other groups may be at hand, but the placid acceptance of the ideas of communism is merely an additional means whereby the remaining force of liberal democracy is drained away. The fundamental strength of the liberal is his belief that his views are universal in their application. When the liberal, as any other standard-bearer,

[1] See Leon Trotsky, *The History of the Russian Revolution*, tr. from the Russian, 3 vols. (New York, 1932); W. H. Chamberlin, *The Russian Revolution*, 1917–1921, 2 vols. (New York, 1935).

[2] In the next chapter on Fascism we shall examine the principles of those thinkers who believe in the "iron law of oligarchy" as the basis of the social process regardless of the philosophy that may be used. In their minds the red line of historical continuity is the struggle for power between those groups who have it and those who do not.

begins to doubt the universality of his ideas, when the combative strength that he is willing to devote to their defense is gone, the alternative social and intellectual form has only the facade to destroy in order to establish its own dominance. Most of the socialist thinkers and many others, such as the late Vilfredo Pareto, believed that the middle classes and their institutions—parliamentary democracy, particularly—were on the decline before the war. Among the critical thinkers, indeed, change in the social structure of the European regime had become an accepted commonplace. It may be that the rise of authoritarianism is the expected answer to this prophecy. In any case, the alternative form of authoritarianism has no doubt as to its own universality. Our modern world is not only the battlefield of groups or incipient oligarchies struggling for power, but it is also the campaign ground of widely different philosophies of community life. In many ways the most positive and determined of these new philosophies is that of dialectic materialism, the official and orthodox outlook on the world adopted by the communists.

Dialectic Materialism. Dialectic and historical materialism are part and parcel of each other. Dialectic materialism is the broader of the two terms, since historical materialism is merely the application of dialectics to the historical social situation as it exists at any given moment. Perhaps we can introduce this phase of the subject by making a comparison between the materialistic and the nonmaterialistic or spiritual interpretations of historical causation. Any adherent of a religious philosophy of life must hold that spiritual values are an autonomous force in the development of life situations. The values of belief, of the consciousness of a higher power or of a providential destiny, are regarded as forces acting independently. The mechanism of control, the concrete manner in which a spiritual force changes the face of history, may not be stated to the last detail, but even here the more mystical urge in religious philosophy can accept it as an intuitive appreciation of reality rather than as a purely quantitative fact. What is important is that spiritual energy is an original, underived, and determining force in the complex life situations of the human race. A pantheistic universalization of this force is not necessary to the proposition as it is here stated, though the religious philosopher may well consider soul and spirit as dominant in both organic and inorganic nature.

Materialism, on the other hand, regards matter as the original and the underived force in world causation. This idea has been of importance from the time of the Greeks to the present, though materialism as a force for economic and social change is a relatively recent develop-

ment. The materialism of the communist insists that religious and moral forces are derivative and not original; that which is primary is a particular type of material arrangement which bears upon the life of man with man. Without exploring the more metaphysical aspects of the materialistic interpretation of society, we may note that the type of material arrangement that determines the broad outlines of the historical development of human society is the production of the means of subsistence. The problem of production is erected by Karl Marx and Friedrich Engels in their various writings into a concept of the "relations of production."

The relations of production are not merely technological; they are social, though the technical aspect comes into the picture with adequate definiteness. Production is eminently a social problem, and it is not only the technological aspect of production that changes but also the social elements in a given situation. Marx in his *Das Kapital* rejects the classical explanation of production by which capital legitimately draws interest and other factors such as rent and profit are received by those who own essential instruments in the productive process. Labor is the source of value; it produces capital as well as the actual goods of consumption. The capitalist, on the other hand, accumulates a surplus value which is in reality stolen from the workers, the real producers of wealth. This is exploitation, and it is the foundation of the class structure of society. Classes in fact are as objective as the relations of production, for the former spring logically from the latter. The whole class structure, whether consciously so perceived or not, is based on the exploitation of the workers by the possessors. A change in the class organization of society accompanies a change in the relations of production. The mechanism and the control of social change are to be found in the study of the class basis of society.

Social evolution is not, however, an aimless and chance process. There is a dialectic or logic of historical development. This dialectical process was drawn by Karl Marx from the German philosopher Hegel. Hegel was, on the other hand, a firm believer in the identity of the real and the rational and in the essential function of spirit in the evolution of mankind. In *The Philosophy of History* Hegel traces the development of spirit from the earliest times down to its full unfolding in the Germanic civilization of his own day. Marx reversed the dialectical substance of history; Hegel's theory was upside down. What was wanted was a reversal of the dialectical substance, which would make matter the real substance of history and establish the final importance of the system of relations of production as they have been transformed through various social eras. Specifically, however, the logical process

in Marx remained the same as in Hegel. First there is the thesis, and out of the thesis as a logical thrust in history comes the antithesis, and from interaction of thesis and antithesis emerges the new synthesis, with the possibility up to a certain point of a repetition of the process.

The dialectics of material history may be interpreted in two ways. One may begin with the thesis of a primitive communism in which there is no class structure and no private property. Out of this there developed the various systems of exploitation, such as ancient slave society, feudalism, and finally modern capitalism. This is the antithesis. Beyond there is the new synthesis, when the class structure of society will be destroyed (because of the end of bourgeois property), and the rise of the new communism in a classless, stateless society. On the other hand, the dialectic process may be taken on a narrower scale, since not all communists insist on the importance of primitive communism in their interpretation of history.[1] The *Communist Manifesto*, published in 1848 on the eve of the French Revolution of that year, speaks of the process of history as one of class struggles, and the implication arises that various forms of exploitation have had a dialectic relation to each other. To the Marxian the thesis is primitive communism, the antithesis all class forms since primitive communism, and the synthesis that is being worked out is the coming classless society.

Class analysis is therefore of fundamental and inescapable interest to the communist. In this analysis the primary interest falls upon the characteristics of modern capitalism. It is a curious fact that utopian thinkers have generally held that the attainment of the perfect society is close at hand. It is undoubtedly true that Marx considered the proletarian revolution in Western Europe to be much nearer than it has proved to be, and many critics regard the Russian Revolution as contrary to the Marxian view, since capitalism in Russia was quite undeveloped in 1917 when the revolution came. The communist is chiefly concerned with the developmental tendencies of the bourgeoisie, the modern exploiting class.

What Marx had in mind in the *Manifesto* when he spoke of the *bourgeoisie* seems to be the high capitalists and financiers, not the petty bourgeoisie, which we generally refer to as the middle class or classes. It was his expectation that the petty bourgeoisie, the shopkeeper and trader, for instance, would sink to the level of the proletariat or

[1] The old-fashioned communist is often a follower of Lewis Morgan's *Ancient Society* (London, 1877). The modern Russian communist is greatly interested in the problems of anthropology, since the character of primitive society has a very definite bearing on the total historical outlook of communism.

industrial workers with the continued development of capitalism. On the other hand, the control of society would rest more and more in *la haute bourgeoisie*, resulting in the clarification of the class structure. It must not be assumed that Marx and Engels held that there were only two classes in society; what they believed was that there is a tendency for society under modern capitalism to differentiate itself into two primary classes, the bourgeoisie and the proletariat. Undoubtedly, the petty bourgeoisie has shown a surprising (to the Marxians) tendency to maintain itself, though it must be conceded that since the World War there has been a rapid disintegration or declassing of these elements in society.

The modern bourgeoisie holds in its power the instruments of production, but it is driven along a certain course by a logic all its own. It would seem that much of the course of the development of this class is determined in the usual meaning of the term "economic determinism." Happily for the proletariat, the bourgeoisie is constantly revolutionizing the instruments of production from a technological point of view; it is driven to world expansion and international competition; it tends to beat down the conditions of the workers and also the petty bourgeois elements in the population. The role of the bourgeoisie in a social sense is utterly irresponsible, wicked, and inequitable. It is unfit to rule because, owing to the recurring industrial crises, it is no longer able to feed its own industrial slaves. Its capacity to rule was, in the minds of Marx and Engels in 1848, fast drawing to a close and the period of the victory of the proletariat was at hand.

Proletarians, whether class conscious or not, emerge from this general development. Without the bourgeoisie there could be no proletariat in the modern sense. The proletariat is a natural result of the systematic and ruthless exploitation that the bourgeoisie cannot escape in the maintenance of its own position. The proletariat is, therefore, an historical fact that can be properly interpreted only in the light of dialectic materialism. The proletariat carries upon it the marks of its origin. Being the result of exploitation, it is the victim of poverty and of all of the abuses that bourgeois capitalism entails. The historical tendency is for the proletarians to sink lower and lower in the social scale as the course of exploitation goes toward its destiny. But this very situation provides the basis for a reaction that will bring about a new society based on the complete repudiation of all the class imperialism that has been characteristic of modern economic history. The political role of the proletariat and its leaders is the revolutionary overthrow of the unjust capitalistic system. Such a

revolution will come about through social and political upheaval, and in this belief we have a point of fundamental importance in the whole communistic scheme of economics and politics.

A point of great significance here is the question as to whether dialectic materialism is deterministic in its character. Certain writers have labeled the Marxian system as economic determinism.[1] There is undoubtedly an element of deterministic thought in communist philosophy. The conduct of the bourgeoisie is not merely a matter of choice; for instance, its imperialism is a logical and inevitable outgrowth of its striving to maintain itself. A proletariat is not the choice of the capitalists or of the workers; the proletariat is an inevitable fact of historical evolution. There was a tendency among the orthodox socialists of prewar Germany to believe in the inevitability of the workers' revolution. Capitalism, it was held, had to go through its various stages of development before the time of the triumph of the workers could come. In the meanwhile, the class struggle was to be waged prospectively with the future condition of economic organization in mind, but at the moment every effort should be made to bring about a better condition of the workers in terms of conditions of work and social legislation. The internal laws of capitalistic development would take care of the day upon which the revolution must come. The volition of the workers was not an important item in the establishment of those objective conditions required for a successful change in the social order.[2]

Present-day Russian thinkers are very clear in their rejection of the extreme determinism of the old orthodox socialists. One may find a reason for this in the fact that the Russian Revolution took place in a country with an undeveloped bourgeoisie where capitalism had made only its beginning. The *action* of the class-conscious workers was all important. Emphasis must fall upon the conditions of leader-

[1] See F. W. Coker, *Recent Political Thought* (New York, 1934), who in his discussion of Marx speaks of economic determinism rather than dialectic materialism.

[2] The contemporary communists hold that there was no real difference between the prewar orthodox socialists and the revisionists, since both movements had the effect of weakening the proletariat at the moment when it should strike in a revolutionary manner. The orthodox Marxians held to the ultimate necessity of revolution, while the revisionists were in general believers in gradual social reform and participation in bourgeois governments. The bitterness of the Russian orthodox leaders toward the social democrats and reformist socialists is without limit. Dutt declares that the natural result of reformist tactics is the rise of Fascism. R. P. Dutt, *Fascism and Social Revolution* (New York, 1934). Coker, *op. cit.*, pp. 66 *ff.*, discusses the revisionists and the orthodox thinkers of the prewar period.

ship and other immediate factors that made a revolution possible, and it is indeed to the credit of the insight of the early revolutionary leaders that they were guided by the situation and not by abstract doctrines concerning the development of the capitalist system. It has been the work of Lenin to interpret the doctrines of Marx and Engels in the light of the Russian situation and to stress the fact that capitalism in general had reached, toward the end of the war, a general development that justified the revolution in any capitalistic country. International capitalism rather than national development must be the guide to the modern revolutionist.[1] While the external and objective situation is important, the class war must at all times be waged. Revolutions are won; they are never the gift of objective circumstance. Max Eastman contends, however, that Marx was uncertain whether the relations of production cause or merely condition the situation in which the exploited workers find themselves. He notes that in the same passage Marx speaks of both causation and conditioning. Obviously, if the latter explanation is accepted, there can be little doubt that the workers are justified in seizing the state whenever it is in their power so to do.[2] Such indeed is the permanent attitude of the modern communist thinker.

The Problem of Tactics. It has been noted above that the Marxians believe that the only manner in which fundamental change can be brought about is by revolution. Here is an attitude which contrasts sharply with that of the reformers of the socialist school and with liberals who believe that it is possible to use the machinery of the rule of law and parliamentary democracy in order to bring about a society in which economic justice prevails. There is, perhaps, no more fundamental issue in the field of modern political criticism. Is the revolution necessary, or can the idea of liberal and intelligent discussion bring about change without the catastrophic necessity of revolution? The communists believe that the compromising attitude of the postwar reformist socialists has made it possible for the reaction to get under way; this has resulted in the destruction of the workers' organizations and parties and the establishment of decadent capitalistic dictatorships. Of course, it must be borne in mind that the communist considers bourgeois democracy as nothing more than a cloak

[1] See Joseph Stalin, *The Foundations of Leninism*, rev. tr. (New York, 1932), for an explanation of the part played by Lenin in the modern development of Marxian theory; also *Leninism*, tr. from the Russian (New York, 1928).

[2] See Karl Marx, *Capital, The Communist Manifesto and Other Writings*, edited by Max Eastman (The Modern Library) (New York, 1932), pp. xi, xiii; Sidney Hook, *Toward the Understanding of Karl Marx* (New York, 1933).

for the dictatorship of the bourgeoisie over the larger element of the population, the exploited workers.

Revolution is necessary because of the nature and character of the bourgeoisie. No compromise can ever be effected since there is a life-and-death struggle between the old rulers of society and the new elements that see the possibility of social justice as interpreted by the Marxians. The exploiters never surrender voluntarily. However, there is no necessity that the revolution be prolonged and bloody. Whether the revolution is short or long, destructive or not, depends upon the preparation and leadership of the workers as well as upon the state of decay in which the bourgeoisie and their allies find themselves. It is probable, as Laski has suggested, that in countries where the bourgeois mind has a very large number of followers the revolution is all but impossible, unless indeed the armed forces of the country should move over to the side of the workers under the leadership of the revolutionists. Likewise, the revolution in concept is universal. No partial destruction of capitalism is ever secure, since the reactionary tendencies of the remaining capitalistic countries will lead to armed intervention if it is necessary.

Communist tactics are therefore pointed always to the ultimate goal of the revolution. Bourgeois legality, *i.e.*, liberal democracy, imposes no moral obligation since it is but the weak rationalization of the most vicious type of social dictatorship. At whatever level of activity the communist finds himself, he must think in terms of the revolution. Cooperation may be permitted at times, but only in the interest of later noncooperative and revolutionary attitudes. This statement is true whether we consider the trade-union activity of the communist, his street-corner oration, his publication of the Marxian classics and appeals, his demonstrations of one kind and another, his secret development of illegal organizations, or finally his participation in civil strife which leads directly to the threshold of the revolution. The class struggle is fought on many fronts and in a multitude of ways, but it is always the class struggle that is being waged, since class cooperation, so desired by the bourgeoisie, is only an effective weapon of delaying the inevitable victory of the proletariat. The member of a bourgeois organization who cooperates with the communists, as in the contemporary struggle against what is called "Fascism," must recognize that the communistic attitude is highly tentative and does not mean in any sense a reconciliation with liberalism and the technique of democracy.

Much of the revolutionary energy of the communist leaders is taken up in the preparation of the workers for the final days when the

corruption of capitalism will be destroyed. Here is a stressing of the will of the proletariat as a fundamental aspect of change, for a proletariat that is untrained and unequipped to take over the reins of government could not possibly secure the fruits of the revolution. This preparation, of course, must be adjusted to the experience of the workers themselves. In a country that is near the revolution, greater attention must of necessity be paid to arming the workers and training them for actual street fighting. But when, as in the United States, class consciousness is undeveloped, more effort must be devoted to the creation of that consciousness of class interest which is the basis of some advanced stages of revolutionary action. It is important, of course, that the bourgeoisie should act against their own interests as much as possible; they must be forced by political tactics to act in a revolutionary capacity despite their immediate inclinations.

Marx stated in the *Manifesto* that the first great task of the workers was to win the battle of democracy. Democracy, however, is a working-class order, since the largest number of people in a community are those who are producers and workers of various kinds. The revisionists and orthodox socialists in fact took the position that this meant working within the fold of liberalism in a general effort to get enough votes to take over the government in a peaceful manner if possible. The present-day communist regards voting as futile, since the bourgeoisie will never surrender simply because they are outvoted. The battle for democracy is a real and inevitable revolutionary struggle, and it signifies the establishment of conditions in which democracy—genuine economic democracy—is possible.[1] Hence, the official Marxians of the Soviet Union are not content with mild political agitation and education. The whole set of workers' institutions of a capitalist country must be revolutionized in spirit. Thus, the communists are found working their way into all types of organizations that have a bearing on the social issue. They attempt to take over the nonrevolutionary trade unions; they assist in the organization of strikes; they provide funds for the defense of workers who have been caught in the toils of bourgeois law; they encourage all forms of action that may have a revolutionary implication, such as the denunciation of war on the basis of the criticism of capitalism; and they work without fatigue to convince the soldiers, sailors, and the police that their real allegiance is with those against whom they are directing their fire.

[1] Lenin, *The State and Revolution* (London, 1919), is the classic statement of this point of view.

In the days before the World War when the French syndicalists were revolutionary in their outlook, it was held by them that the real instrument of social reorganization was the revolutionary trade union. Sorel was one of the primary advocates of this view, as well as one of the greatest of the modern defenders of violence as fundamental in the political process.[1] German communists, however, have never believed that the trade or labor union had such revolutionary possibilities. The union is a necessary tool in agitation, but in the critical hour of the proletarian uprising it is the militant body of leaders, the party, and the armed forces on their side that will win the struggle for power. No myth of the general strike, the characteristic weapon of the organized workers when thoroughly revolutionized, is sufficient. Actual armed and fighting workers alone will be sufficient to sweep the capitalist exploiters from the pages of history. The workers should never, as Marx advised during the critical revolutionary years of the middle of the nineteenth century, surrender their arms. They will surely be betrayed by those who pretend to be their friends.[2]

Tactical developments in Marxian theory have occurred from the active life of Marx and Engels down to the present, but the most productive period was that between the appearance of the *Communist Manifesto* in 1848 and the years immediately following the fall of the Paris Commune in 1871 and the rise of the German Social Democratic party. The revolutionary principle of proletarianism is resolutely stated in the *Manifesto*, but there is clear evidence that the experience of the French workers during the century exercised a profound influence on Marx. While Marx, Engels, and others believed that only the German socialists could furnish the philosophical foundations of socialism,[3] they saw in the concrete revolutionary experience of France the key to much that was needed to complete their system. The French students of socialism are inclined to deny the originality of Marx and Engels from the standpoint of both historical theory and tactics. The proletarian movement of the French Revolution was crushed, but it recurred in 1848 when, it is said, the workers faced their oppressors in open conflict for the first time. But the Commune of 1871 was for a short time a genuine proletarian government, and, as Engels declared, it was the first example of the dictatorship of the proletariat. Marx's *Civil War in France* and other writings during the later period

[1] See Georges Sorel, *Reflections on Violence*, tr. from the French (London, 1914).
[2] Marx, *op. cit.*, pp. 355*ff.*, 363.
[3] Robert Michels, *Der Patriotismus* (München and Leipzig, 1929), pp. 46 *ff.*

of his life attest the deep consideration that he gave to the lessons of experience from French revolutionary workers' action.[1]

These later writings, combined with the *Manifesto*, indicated the precise measures and general political policies that should be followed by the workers in order to attain power. In these discussions a profoundly antipolitical attitude is given the clearest expression. The state is a class instrument; it is the weapon of the bourgeoisie for maintaining their class dictatorship. Only so long as classes exist will the state be necessary. With the attainment of communism, there will be the possibility, if not the inevitability, of a classless and stateless society, since when there are no classes, *i.e.*, no exploitation, there will be no need of a state, as a weapon of force, to maintain the classes who have control of the instruments of production. Therefore, in the study of the Paris Commune it was seen that one of the first efforts of the workers was to liquidate the old exploiting political system. In Marx's criticism of the Gotha program of the German socialists we find the whole conception of the transitional period between the first destruction of the bourgeois state and the attainment of communism. This is the period in which the workers must use the reconstructed state in the form of the revolutionary dictatorship of the proletariat. On the eve of the Russian Revolution Lenin defended with vigor in his *State and Revolution* the necessity of this transitional period, against not only the social chauvinists, *i.e.*, the revisionistic and patriotic socialists, but also against the anarchists, who believed that the state might be overthrown immediately and the anarchistic society (with which the communists agree ultimately) ushered in.

Non-Marxians are prone to believe that the transitional period will last indefinitely, and certainly there are few signs that the state is ceasing to exist in the Soviet Union. But what Marx had in mind was a direct and frontal attack on the greater pillars of the bourgeois political system. In the first place, the army must be destroyed, and it should be replaced by the more informal system of the armed and aroused proletariat. Secondly, the bureaucracy must be liquidated. There is a close similarity between Jacksonian democracy and the communist attitude toward the public service. In Marx the party as a governing agent does not appear clearly, for he was convinced fundamentally of the ability of the class-conscious proletariat to organize and direct the state. The bureaucrat is the chief support of reaction once the army is gone. The workers must train

[1] Marx, *op. cit.*, pp. 367 *ff.*; Lenin, *op. cit.*, *passim.*

all to be able to participate in governing, and at all costs the appearance of status or privilege must be destroyed in the civil service. One of the chief means of achieving this is to reduce the wages of the civil servants to the common level of all producers, though there should be rotation in public office.[1] Following this, the clerical influence in society must be broken. All church property must be taken and the clergy must be shorn of influence in social organization. The "parson power" is a constant danger of reaction against the essential objectives of the revolutionary proletariat.

It was apparent to Marx, and most clearly to Lenin, that the socialistic reconstruction of society would not take place overnight. The period of transition is the time in which the economic bases of the future communistic-anarchistic society are laid. Also there is a complete reconstruction of the political organs. The building of socialism is not a short effort, nor is it an easy task. Much of the emphasis on economic planning in Russia can be traced back to the crystal-clear perception on the part of Lenin that the socialist society had to be built and that it was no spontaneous emergence from revolutionary energy. The way will be prepared for the withering away of the state when the socialist society has been created.

The creation of the socialist society is not merely technical; it is profoundly mental. The class mind must be extirpated, since, as we have seen, there is ultimately no reconciliation between the exploiters and the exploited. It is here that we come to what is perhaps the most spectacular function of the period of transition—the destruction of the last remnant of the bourgeoisie. It is no process of compromise; it is one of stern revolutionary justice—and terror. From the liberal standpoint there is little justification for the terror in a revolution, but from the point of view of those who have become revolutionary leaders there is no escaping this period. When a revolution that heralds the end of property in the bourgeois sense is undertaken, there can be success only if the most extreme measures are taken. The future welfare of the proletariat justifies the most violent and lawless measures. The transitional period is for the bourgeoisie, *i.e.*, those who are counterrevolutionary, a time of summary justice at the hands of the justice-thirsty proletariat and their leaders. When the bourgeoisie is repressed, there will no longer be any need of the political arm, except as it may be useful in the gradual achievement of the higher forms of communistic society. The necessity of the terror is proved by the many revolutions that were successful in part because of the speedy condemnation of the leaders of the opposition. It has been

[1] Lenin, *op. cit.*, has possibly one of the best discussions of this problem.

stated that the leniency of the communist regime in Hungary just after the war provided the basis for the reorganization of the "white" or reactionary forces. The white terror, during which the communists were suppressed, was utterly ruthless in its methods. The terror is, indeed, the great symbol of the will of a revolutionary movement to survive.

Russia stands today in the full swing of the transitional period. Socialism is being built, but there is a high sensitivity even yet on the question of counterrevolutionary activity. Criticism must be within the limits of Marxian orthodoxy, and those who step beyond are branded without mercy as the tools or instruments of the not-yet-dead old order. No promise is made as to the date upon which the state will cease to exist; some might say that this will come only when the last capitalistic government has capitulated before the aroused proletariat. Others feel that, with the decline of the world revolutionary movement, the cooling ardor of the Russian leaders, and the entrance of Russia into the League of Nations and other capitalistic connections, the time of the liquidation of authority is more remote than ever, in spite of a certain amount of functional decentralization which may be attained through the strengthening of such institutions as the trade union.

The Russian Communist Party. According to H. G. Wells in his *Experiment in Autobiography*, the great achievement of Lenin was the reconstruction of the Communist party and the establishment through it of a governing order that could be the driving force in the experimental socialist society. The authoritarian state is commonly a one-party state, a state in which the party has been made part of the formal governmental apparatus. In this we have one of the more significant differences between the liberal and the authoritarian political structures. The party in Russia is not open to everyone, but only to those who have shown their fidelity and ability in the revolutionary cause. It constitutes a political elite upon whose shoulders fall the propaganda and educational tasks of the regime, as well as the maintenance of order and the repression, with the aid of the police, of counterrevolutionary activity. Some writers have compared the party to a religious order that has the complete and final obedience of all its members. In a formal sense, the party and the state are separate institutions, though in practice the leaders of the party are chosen for places of political leadership through the ordinary constitutional machinery of the state. The practical overlapping of the party and the state, combined with the prohibition of other political movements, is a point of striking interest. It may be questioned whether the word "party"

is properly used in this connection, since governing functions not traditionally associated with the party in the liberal state are assigned to it and since the principle of a recognized party opposition is lacking.

The Russian Communist party (of the Bolsheviks), however, is not simply a national organization. We have here a principle that springs logically from the theoretical internationalism of the communist movement itself. Communism has as its objective the complete and universal destruction of capitalism, and because of this all communist parties are regarded as united in a common cause. On the other hand, the Russian party occupies a place of peculiar prestige in the general international federation of such organizations known as the Third International. Russian leaders are supposed to provide guidance and example to the minority groups in other countries; the successes and failures of the Russian experiment are a matter of deep concern to all Marxian groups throughout the world. Many Marxians feel that too much attention is being concentrated on Russian achievement, since final success or failure in that country cannot be used to determine the ultimate validity of the communist interpretation of economic life. In addition, there has been a continual struggle within the communist groups on the problem of centralization and decentralization in party organization. The form of party organization at present is called "democratic centralism." This implies the democracy of the party, a society of workers who are equal one with another but who, for reasons of efficiency, are centrally controlled when decisions by the central organ of the party have been made.

The international position of the Communist party system can be made clearer if some attention is given to the history of the various Internationals. The First International, the International Workingmen's Association, was organized in 1864 under the direction of Marx. Opinions differ as to the purpose of this organization, some contending that it was really an organization of British workers to prevent the importation of continental strike breakers,[1] and others viewing it as a propaganda agency for the doctrines of the then developing system of Marxian or scientific socialism. It is true, certainly, that the German element in the congresses of the International fought against the anarchist forces led by Bakunin, leading finally to the expulsion of the latter. The internal conflict was so acute, however, that the force of the organization was broken.[2] Following this in the late

[1] See John R. Commons and J. B. Andrews, *A Documentary History of American Industrial Society* (Cleveland, 1910), Vol. IX, pp. 43–46.

[2] See L. L. Lorwin, *Labor and Internationalism* (New York, 1929), for one of the best accounts of the Internationals.

eighties of the last century the Second International was organized, as a union of the socialist parties in European countries. The unity of the International was never complete. There was continual struggle between national groups, and such questions as patriotism and the general strike as a means of preventing war were constantly but inconclusively debated. While war itself was roundly condemned as a necessary result of the capitalist system, no policy, such as the universal and general strike as a means of preventing it, could be agreed upon. It will be remembered that in 1914 upon the outbreak of the war the various national socialist groups each took a position for its own country, and the force of the International was broken for the duration of the conflict.

By the end of the war, however, the Russian Bolsheviks, or majority socialists, had secured control of the Russian government, and their intransigent attitude toward the other and more compromising socialist groups made the situation more complicated than ever. Here a brief account of the use of the names "communist" and "socialist" should be given. When Marx and Engels promulgated their *Manifesto* in 1848, they were preaching the doctrine of scientific socialism, but, in order to distinguish themselves from the petty bourgeois reformers and utopian socialists, they took the name "communist." However, with the passing of these efforts at social change, the field of radical economic criticism was left largely to the Marxians and their sects, and the name "socialist" gradually came back into use, particularly in the organization of the German and other social democratic parties. The situation was again uncertain at the close of the war, and, in order to make their position stand out in distinction to the German and French "perverters" of Marx, the Russian leaders went back to the original name of "communist," though they maintained at the same time that they were scientific socialists and that all nonrevolutionary socialist parties were nothing more than reformist.

From the time of the organization of the Third International in 1919 in Moscow down to the present there has been no complete agreement between the remnants and reorganized forces of the Second International (now the Labor and Socialist International) and the Russians. The campaign of vilification on the part of the communists against the reformist and parliamentary socialists is hard to duplicate in other fields of political struggle. The communists blamed the general postwar proletarian failure on the hesitancy of the reformists, and these in turn regarded the Russian leaders as a band of fanatics who did not understand in their high pronouncements on world policy the concrete situations that were faced in each country. Triumphant

authoritarianism in Italy and Germany and the threat of reaction in France and other countries have brought about some agreement, but it is obviously too late to do much good in Italy and Germany. France saw in 1934 the formation of a "United Front" movement between the communists and the socialists. The "United Front" is negative in that it is directed almost wholly against the possibility of the establishment of a right dictatorship in that country. There is little likelihood that this unity will be carried over into any positive program.

The whole theory of the Communist party is that it is an international force which is working not only for the building of socialism in Russia but also for the creation of the socialist mind throughout the world. The Third International is the union of the various communist parties that have been organized since the Russian Revolution. It is presumably controlled by a world congress of the International, and there is the right to expel any party that does not conform to the standards and program of the International as determined on a universal scale. There is much confusion as to the relationship between the Communist party in Russia and the Russian government. According to the Russians, the Communist party secures a majority of seats in the organs of the government because of the confidence of the people in its leadership; according to the enemies or critics of Russian "democracy," the party secures this dominance because it is completely unwilling to see any other group get control of the government. Technically, it is the Communist party as a member of the Third International which conducts propaganda outside Russia. The attitude of the Russian government seems to be cooling toward the active prosecution of world revolution, as Leon Trotsky and his followers insist is in the letter and spirit of Marx. World congresses of the International have become less frequent, and the government itself has come more and more into close international contact with capitalistic powers. Russia's entry into the League of Nations is a sign that the effort to regard the League solely as an instrument of capitalism is at an end. The Russian military policy, its building of one of the strongest of military forces in the world, and the signing of treaties of mutual protection in case of war all indicate that the foreign policy of the Russian government is not unlike that of the previous regime. One is reminded of the suggestion of Ortega y Gasset in *The Revolt of the Masses* that revolutionary fervor lasts only about fifteen years, after which comes the period of conservative consolidation. Russia seems to be becoming a respectable member of the family of nations.

The Russian System of Government and Social Policy. The interest of the world does not center on the actual structure of the soviet government. Rather attention is focused upon the essential principles of communist philosophy and the rapid technological advance which that country is making. To the communist the development of industry under the first Five-year Plan ending in 1933 was an example of what socialism can achieve. To many others it was an example of how fast the waste of revolution could be rebuilt and advances made with the aid of foreign loans and foreign technicians. The test of the development of Russian industry is not in the present, but in the long upward swing that Russia must undertake without outside assistance.[1]

The Union of Soviet Socialist Republics (USSR) is in political form the federal union of six autonomous republics. The member republics are in constitutional law equal, though there is in fact a dominance of the Russian Socialist Federated Soviet Republic (RSFSR), which has 70 per cent of the whole soviet population within its borders. The RSFSR is, roughly speaking, Russia in Europe, and in turn it is composed of eleven partially autonomous soviet republics. The constitution of the RSFSR was adopted in 1918 just after the revolution, and it has been a model for the constitutional structure of the larger federated unit that now makes up the USSR. The constitution of the USSR which is now in effect was adopted in 1923. The jurisdiction of the supreme authorities of the USSR is very wide, extending particularly to international matters and to general economic life within the union. It is provided that

> . . . the Congress of Soviets and, during the intervals between the Congresses of Soviets, the Central Executive Committee of USSR, consisting of the Union Council and the Council of Nationalities, shall be the supreme authorities of the USSR. The Congress of Soviets of the USSR shall consist of the representatives of Town Soviets and of the Soviets of the urban settlements, apportioned at the rate of one deputy for every twenty-five thousand electors, and of the representatives of the village Soviets at the rate of one deputy for every one hundred and twenty-five thousand inhabitants.

[1] Oswald Spengler, *Man and Technics*, tr. from the German (New York, 1932), remarks that what the present Russian government is doing is very largely the reconstruction of what was destroyed by the war and the revolution. Certainly, the establishment of industries is not a direct proof of the truth of historical materialism. The problem in Russia may not be so much the finding of a job as finding the goods and services that should come as the normal reward for labor. It might be added that certain of the capitalistic countries during the depression beginning in 1929 have had a measure of prosperity, and that therefore we cannot say that Russia alone in the world has been a genuine island of prosperity. That it has been a theater of achievement none will deny.

Russian federalism presents many problems of interest to the modern world. A great variety of peoples, races, languages, and cultures is represented within the federal bond. It is not so much the territorial unit that is important in the formal federal decentralization as the race or the cultural group. Under the communist principle respect may and must be paid to different languages and cultures, and indeed no principle of superiority of any race over another is recognized. The bond of union is the common adherence to the principles of social organization and justice which the leaders find in the writings of their "saints," such as Marx and Lenin particularly. Russian federalism is a federalism of peoples rather than of areas, and, while autonomy is stressed, it is freedom within the limits of the orthodox political and economic theory of the union. In fact, it may be said that no other solution is possible where so many divergent racial and cultural elements are brought together under a common government.

The Central Executive Committee of the USSR is composed of the Union Council and the Council of Nationalities. The Union Council is elected by the Union Congress of Soviets, and it consists

> . . . of representatives of the Union Republics in proportion to the population of each of them and in such number as shall be determined by the Congress of Soviets of the USSR. The Council of Nationalities shall consist of five representatives each from the Union and Autonomous Soviet Socialist Republics and of one representative each from the Autonomous Oblasts. The composition of the Council of Nationalities shall be confirmed as a whole by the Congress of Soviets of the USSR.

The Central Executive Committee has a legislative and supervisory authority over the Council of People's Commissars of the union and of the autonomous republics. Its legislative authority, consisting of the power to issue codes of law, decrees, and decisions, is exercised for the purpose of coordinating the work of the entire union. On the other hand, "during the intervals between the sessions of the Central Executive Committee of the USSR, the Presidium of the Central Executive Committee of the USSR shall be the highest legislative, executive and administration authority of the USSR." The Presidium, therefore, may annul any order or decree of the Council of People's Commissars of the union or of any of the republics in the Russian federation. Executive and administrative functions are entrusted, under the direction of the Central Executive Committee, to the Council of People's Commissars, which is formed by the Central Executive Committee

itself. The commissars, whose organization may be changed from time to time, may issue orders binding throughout the USSR.[1]

The ultimate challenge of the Soviet Union may not be so much in the doctrines of Marx and Lenin as in the fact that great efforts are being made to plan the national economy. It is too early, of course, to come to very definite conclusions as to the effect of this national planning, but it is certain that no other aspect of Russian affairs has so struck the favorable imagination of the Western world as this. Under a central planning board an extended net of planning authorities has been established throughout the soviet state.[2] Economic chaos followed the revolution in 1917 and heroic efforts were required to bring order and production out of the wreckage of the war and the revolution. Various strategic retreats of an economic character were put into operation, such as the New Economic Policy in 1921, but the real effort at reconstruction was the Five-year Plan covering the years 1928–1933. The results of the plan have been variously estimated, but it is fairly certain that, while it failed in many respects, it also achieved quite unexpected results in others. Along with the educational progress of the union, there is a rapid movement toward industrialization which will enable it in time to provide a standard of living comparable to that of the more advanced industrial countries. The fundamental difficulty has been to provide adequately for the daily needs of the consumers; work itself has been plentiful for the population. No doubt one of the great achievements of the regime has been the creation of a morale among the people which has enabled it to carry on through the more trying years of economic uncertainty.[3]

The liberal world has only praise for the effort to plan and develop the economic life of the union. What the liberal thinker objects to is the restriction of the basic rights of the individual. It is probable that the average Russian today is firmly convinced that he has more freedom than any individual living under the "horrible conditions" of modern capitalism. It is certain, however, that the Russian government is not interested in permitting criticism outside the

[1] At the head of the Communist party is an All-Union Congress which meets every two years and which is composed of delegates elected from district and provincial organizations. The Central Executive Committee exercises authority between congresses. The Central Executive Committee is divided into three sections, the Political Bureau being the most important. Joseph Stalin is the Secretary-General of the party and is a member of the Political Bureau.

[2] See W. H. Chamberlin, *The Soviet Planned Economic Order* (Boston, World Peace Foundation, 1931); *Russia's Iron Age* (Boston, 1934).

[3] For an evaluation of the Five-year Plan, see Chamberlin, "The Balance Sheet of the Five-Year Plan," *Foreign Affairs*, XI (1933), 458 *ff.*

limits of official orthodoxy. The individual may criticize all he wishes the technical organization of the state's economic life, but, if he should question the value of socialization itself, or the truth of dialectic materialism in this examination of social science, he would be branded as a *saboteur* or a counterrevolutionist. The union government has not been gentle, as may be surmised, in dealing with such people.[1] The soviet leaders are convinced that the bourgeois governments do not actually allow true freedom, and that, while exploiters are suppressed, there is real democracy and freedom within the ranks of the workers. Perhaps there is no reason, on the other hand, to suppose that the Russian regime will fall because of its oppression of those with the counterrevolutionary mind. There are numerous examples in history which might go to show that repression is sometimes as effective as freedom in the maintenance of a particular group in political power.

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CHAPTER XXIV

THE FASCIST EXPERIMENT

Es scheint nun aber, dass wir heute an einem gewissen Wendepunkt stehen, dass für unsere Epoche individualistischer Weltanschauung die Stunde geschlagen hat.—Werner Niederer.[1]

The Meaning of the Word "Fascism." There is much that is experimental and changing in the present-day government of Italy. But at the core of a pragmatic and dynamic situation there is a certain consistency and permanence of attitude which must be taken into account in studying Fascism. In the first place, there is acute debate as to the meaning of the word. In general there are two broad interpretations of the Italian movement. The first regards Fascism as the peculiar doctrine, policy, and institutional setup to be found in Italy since the rise of Benito Mussolini to power in 1922. In truth, there are many uncertainties in this view, and within certain limits what is accepted today may not be tomorrow. Secondly, Fascism is regarded as the more general form of reaction of the nonproletarian forces in society to the bid for power on the part of the Marxians and other socialists. The term "Fascism" is applied with a good deal of confusion and ambiguity to any evidences of a will to self-defense among liberals against revolutionary propaganda and to any acts of violence that do not originate with the proletariat. Fascism as nonproletarian violence and lawlessness comes fairly close to a generally popular conception of the movement.

All agree, however, that Fascism is authoritarianism, though many who accept this statement would not agree that the communist system is authoritarian. It has been suggested that the remarkable rage and bitterness shown by proletarians at the rise of Fascism indicate not only that the movement is the most effective one that the middle classes have discovered in their war on Marx and his followers, but that, since Fascism is so similar to communism in its technique of rulership, the communists must insist upon a sharp distinction, whatever may be the cost. In the second view presented above, we have

[1] "It appears, however, that we stand today at a certain turning point, namely, that for our era at least the hour has struck for individualistic *Weltanschauung*." *Der Ständestaat des Faschismus* (München und Leipzig, 1932), p. 2.

the communist explanation. Fascism is the reaction of "finance-capital" in its most critical and decadent stage to the handwriting on the wall. It is a last desperate effort on the part of the exploiters to hoodwink the masses and make them submit to a new version of the age-old chains. Fascism is thus similar in all the countries of reaction; it is a distinctly exportable commodity. The communist, who likes nothing better than to have the privilege of suppressing the bourgeoisie and their civil and political liberties, has nevertheless a most keen and critical sense for any deviation from the line of tolerance. It is after all merely a matter of tactics to keep liberals within the fold of democracy, since it is easier to prepare for the revolution under these circumstances. However, in general, the communist feels that in the long run there is little difference between bourgeois forms of government.[1] Agitation is freer when there are civil liberties and freedom for all points of view in the daily conflicts of politics. If communism would establish democracy within the ranks of the producers and exclude by dictatorial means the minority bourgeoisie, the Fascist insists that his "democracy" is merely exclusion from public life of the communist and revolutionary elements; for those who accept the prevailing point of view there is a higher and a truer freedom in the state than before the advent of authoritarianism.

The communistic conception of Fascism is based on the application of the analysis of historical materialism to the postwar situation. Whether one considers Italy, Germany, Austria, Hungary, or other countries, the same general situation has developed. Likewise, in countries prevailingly democratic there is an increase in those trends that lead to reactionary authoritarianism. One must examine the situation, however, from the point of view both of the capitalists and of the proletarians. In all cases there has been a greater readiness of the so-called liberal capitalists to scrap the machinery of democracy in order to preserve the system; everywhere the extent of civil liberties, it is said, has been curtailed. But on the other side, the socialists of the reformist type have a great burden to bear, for they have avoided the revolutionary course in a Europe that is overripe for direct action. Reformist leadership has been unable to take a strong line in the early stages of reaction; reformists have sought to compromise with their foes, with the result that they have been driven from the political scene. According to Dutt, Fascism is the logical child of reformism. Had the parliamentary socialists accepted the leadership of the Third International in the period since the war, Europe would be communist

[1] This idea is expressed by Lenin in *The State and Revolution* (London, 1919).

for the most part today, instead of being the field of triumph of a decadent and tyrannical capitalism.[1]

Naturally, one who is not a Marxian can hardly accept this interpretation of the rise of Fascism in Italy. The opposite point of view is complex, as it would be, considering the nature of the case, but generally it is held that parliamentary and liberal institutions decline when there is a strong revolutionary movement that regards the method of political discussion as an incidental element in a general theory of tactics. No democratic system can survive unless it is believed in, unless, as Lowell has pointed out, the disputants are willing to accept the decision of the majority. When any group goes outside the law and appeals to the higher law of violence, the only answer is a countervailing appeal to the same source with the same method. Thus, the chief responsibility for the rise of authoritarianism and the decline of liberalism is often laid at the door of the communists, and not at all upon those who have believed that social reform should come through peaceful means.

The decline of parliamentary democracy is, of course, the central issue involved. It is clear that the liberal ideal of freedom and individualism cannot survive unless there is a policy of give and take rather than one of irreconcilable conflict. And it is also clear that, if parliamentary government is to be replaced, the logical bids for power will come from those groups that are willing to resort to power politics and collective or mass action. There is considerable discussion as to whether Fascism in Italy is a middle-class movement. The communists assert that it is the last political gasp of the decadent bourgeoisie, and such men as Sorel have been socialists, it is said, because they had no confidence in a disintegrating bourgeoisie rather than because they had confidence in the leadership that might be produced by the proletariat. One finds in the literature of Fascism an appeal to the entire nation, and the supposition comes without difficulty that it is a mass movement rather than one with a class basis limited to the petty and high bourgeoisie. As a mass movement, of course, one must compare it with the workers', peasants', soldiers', and sailors' republic in Russia. It may be admitted that the decay of the bourgeoisie since the war is an important factor in the rise of authoritarianism, but this is not to admit that the communists are

[1] See R. P. Dutt, *Fascism and Social Revolution* (New York, 1934), for what is perhaps the ablest exposition of this view. But *cf.* H. J. Laski, *The State in Theory and Practice* (New York, 1935), in the concluding chapter, for another Marxian outlook, which does not place the blame wholly on the revisionists but also attributes it to the intransigence of the leaders in the Third International.

the logical persons to assume power. The original charm of the liberal attitude was the conviction of the rising burgher class that its political conceptions were universal in application and that the most revolutionary, if intelligent, should be able to accept its point of view. But let the middle classes come to the conclusion that there is a large group in the state completely unwilling to accept the democratic and liberal scheme, and they can hardly be blamed for going outside the presuppositions of their traditional economic and political individualism.

If one examines Italian Fascism, it will be discovered that one of its fundamental conceptions is antagonism to internationalistic and revolutionary thought. Perhaps, above all, Fascism is anticommunist. This in itself is not enough to hold a movement together, since the force of the communists may be broken or driven out of sight. Positively, this anticommunistic attitude is reflected in the sense of the organic character of the nation, the feeling for the historical reality of national consciousness, and a political sense that insists on the reality of power. However, all this must be understood in the double background of the Italian situation and of the general currents of thought that have been developing in Europe since the turn of the century.

The Italian Background. The Fascist feels that his case cannot be understood unless the history and tragedy of Italy are taken into account. It is not our purpose here to give a brief history of Italy; rather it is to suggest some of the ideas and general situations that produced postwar reaction in so dynamic a form. In the days of the Roman republic and of the empire, Rome was the center and apogee of Western civilization. The decline of Rome brought an end to all this, though the descendants of the Romans have never forgotten through the centuries of German, French, and Spanish domination that once they and not the barbarians ruled the world. The thought of greatness has never left the Italian historical imagination. Poets like Dante expressed the need for unification, and hard patriots like Machiavelli saw the need of magnificent leadership in order to restore the heirs of the Roman tradition to their political patrimony. The nineteenth century was the time in which Italian unity was finally realized, through a combination of fine leadership and the misfortunes of the customary oppressors. By the end of the third quarter of the century, Italy was free from Austrian and other interference; the Papal States had been taken, and Rome again was the capital of a united kingdom. The great aim, that of national integrity had been reached. But along with this came the prevailing philosophy of the day which stemmed from the French Revolution, *i.e.*, political liberalism and the

principle of democracy. It may be admitted quite readily that Italy had little to do with the development of the liberal attitude; her own political tradition ran in other and more authoritarian lines. The *Risorgimento* meant the attainment of national unification, and not of necessity the permanence of the foreign liberal tradition that had been attached to it.

Yet with unification Italy did not recover the place in Europe that she deemed was rightly hers because of the Roman tradition. She remained a second-rate power and a land of economic inconsequence. The standards of education and of life were low. Italy was regarded by the tourist as a beautiful museum of the past rather than a living and contemporary political reality. She had few colonies, and in the concert of European powers the heir of Roman imperialism was not often considered. In politics, liberal democracy did not result in progress so much as the establishment in power of coteries of politicians whose personal ambitions seemed of greater importance than the needs of the country. It is true that gradually the House of Savoy, under whose heroic leadership unification had taken place, became the symbol of union among all Italians, and with this consciousness the republican tradition imported from France and liberal Europe ceased to have the force it once possessed.[1]

Whatever theoretical international validity may be attached to liberalism and democracy, the fact remains that in Italy these forces were exotic plants that were not destined to flourish in the new environment. Various movements of criticism arose in contradiction with the prevailing system. There was, at first, the development of Italian socialism. Socialism in most countries has been weakened by internal divisions, in spite of a common reliance on the writings of Marx. The socialist party became strong and of significance in parliament. It was a fundamental challenge both to the monarchy and to the regime of economic liberalism which was a part of the general liberal and democratic system of the country. With the turn of the century there was a feeling that there was something peculiarly Italian about socialism in Italy; it was becoming more patriotic in certain wings and less patriotic in others. When the World War came, it was the socialists and the parliamentarians who were disinclined to enter the conflict and complete, perhaps, the dream of the political rebirth of Italy.

At the same time in various intellectual circles there was a definite rise of nationalistic pulse. Italy saw the other powers snatching

[1] See Guido de Ruggiero, *The History of European Liberalism*, tr. from the Italian (Oxford, 1927), on Italian liberalism. A valuable bibliography is appended to this volume.

colonies and unappropriated areas in different parts of the earth, but the Italian government did nothing to assure that Italy should have her share. When in 1896 an Italian force was defeated by Ethiopia (or Abyssinia), the government thought it was a good time to retire from the fray rather than prosecute the war with renewed vigor. Various writers took up the cry for the expansion of Italy, particularly in Africa. There was persistent criticism of government leadership in these matters; journals in favor of Italian imperialism were founded, and, though they had a relatively small circulation, they yet had considerable influence in the long run.

Perhaps one of the most critical periods in Italian leadership since the unification of the country came over the question of entry into the war. Parliamentary leaders in general and the socialists were, as the nationalists claimed, antipatriotic. The movement for a definite entry into the war and for a final accounting of the long historic issue between Italy and Austria was outside the normal groups of leaders. The final entry into the war was, in effect, a repudiation of parliamentary leadership; it was the first victory of more vigorous minds over those which occupied positions of authority in the government. Again, during the war the government was not decisive in its suppression of criticism of what the country was doing, and the defeat at Caporetto has remained as a stinging memory among those who wish to prove that Italy is capable of being rated with the first powers of Europe.

The postwar period of conflicting discussion and agitation is the critical time of survival or failure in liberal government. After the war the government started again on the same course it had been following before. Italy's claims at the Peace Conference were not given adequate consideration; and it was the direct action of the poet Gabriele d'Annunzio in the seizure of Fiume which electrified the imagination of the people with a patriotic turn of mind. The weakness of the government was accompanied by a rise of proletarian and antipatriotic violence. The height was reached in the seizure of some of the Northern Italian factories by the militant socialists; there was similar proletarian and communistic action in other parts of the country. Russian leadership urged with desperation the need of a revolution and the necessity of purging the socialist movement of those old and compromising commanders who were likely to fail to act in the critical days ahead. It is perhaps true that socialism of a revolutionary stamp lost its golden opportunity; and it is no doubt true that, as the leaders were unwilling to initiate the revolution, they were also incapable of managing the productive power of the factories and work-

shops that they had taken over. The revolutionary wave receded, while the government did little either for or against it, and in its turn the new patriotic surge received the same benevolent neutrality in its system of direct action.

If the socialists cared little for the fruit of victory, this was everything to the politically conscious ex-soldier. Benito Mussolini, the ex-socialist, became their leader and gradually the Italian *fasci di combattimento* rose to be a political force. Mussolini was in his youth a socialist with syndicalist leanings. He spent a number of years outside Italy where he was usually in trouble with the authorities. He was active in journalism, and when the war broke out in 1914 he felt that, despite the neutrality policy of the socialists, Italy should enter the war on the side of the Allies. His patriotism gradually overcame his socialism, and he was one of the active personal forces that led to Italian intervention. He enlisted in the army, and he was later wounded in action. However, he was then used by the government in a journalistic capacity rather than as a soldier at the front. When the war was over, he was one of the most intense and forceful of the ex-soldier patriots, though he was not completely antisocialistic even then. At first he had applauded the seizure of the factories, but he was soon convinced that the defense of Italy and the preservation and assurance of her place in the world of nations were not to be guaranteed in this way. He turned to the elements of the right, or more conservative thought, and began anew his work of agitation.

In March, 1919, he founded the first *fascio di combattimento* or fighting unit. The types of recruits in the movement were quite varied, since there were socialists, anarchists, syndicalists, artists, intellectuals, middle-class forces, and even persons of the extreme right. What united these diverse elements was the desire for action, direct action, in defense of Italian prestige and the fruit of the victory. The first program was incoherent, as Mussolini admits, but then the Fascists have never in the history of their pragmatic logic been so strong for intellectual consistency as for political action. It is a matter merely of historical curiosity to note that the first program called for the establishment of a republic, universal suffrage, disarmament, the abolition of compulsory military service, and the reorganization of national production under the association of technicians and workers. In 1921 Mussolini and a number of his followers were elected to the Chamber of Deputies, and in the autumn of 1922 came the famous March on Rome, the result of which was the appointment of Mussolini as prime minister although he had only a handful of votes in the Chamber. The fact that the king refused to have martial

law declared just before these changes took place enabled the shift from the old parliamentary leaders to the goverance of the Fascists to take place without undue violence.

The years from 1919 to the consolidation of the Fascist regime in the middle twenties were years of action and political controversy in the most elemental form. The country had to be captured for the new leaders whose patriotism soon led them away from their socialist or left sympathies. Squadrism is the name given to the method followed in these years of early conflict. The Fascist groups that sprang up quickly all over Italy took matters into their own hands. Municipalities were first subject to attack, and socialist officials were forced out of office by whatever threats or violence were necessary. The resignation of officials placed more and more of the local governments in the hands of the central authorities, but locally everywhere the power of the socialists was broken; the left had clearly lost its chance of victory. At first there was no desire to form a political party, but with the realization that a party organization would be useful there was marked alteration of policy. In November, 1921, the Fascist party was organized at a congress held in Rome. As a result Mussolini had an instrument that has proved to be effective in the development of all postwar authoritarian systems—the military party. Violence itself did not cease to be important after the march on Rome. With strong leaders surrounding him, Mussolini was able to resort to whatever violence has been necessary to maintain his regime. By 1926 the opposition parties were finally suppressed; the Fascist party became the sole legitimate political movement in the state; the press was brought under control (in his first years as prime minister Mussolini permitted a great amount of adverse and abusive criticism, especially in the Matteotti affair during 1924 and 1925); and the outlines of the mature social policy of the Italian totalitarian state began to appear.

The Philosophical Tradition of Fascism. To the student of current political movements, the anti-intellectualist foundations of Fascism are perhaps of greatest interest. It should be observed first of all that liberalism rests upon a relief in the reason and intelligence of human beings as the foundation of political action. Democracy is conceivable, because human beings may, under proper conditions, come to proper political judgments. The foundation of political freedom is in turn based upon the possibility of social rationalism. Liberalism does not stress life as dynamism or as force. Force in the liberal conception is necessary perhaps in the end, but it is a last resort. The liberal is supposed to think and then to act. Yet since

the turn of the century there has been a rising tide of political appreciation which insists on reality and action rather than speculation and which regards political life as movement and decision. To the liberal this is nothing more than a resurgence of the ancient and Machiavellian tradition of politics as violence, and it is regarded as a step backward from the advances in civilization that may have been possible under democracy.

The roots of political anti-intellectualism are difficult to catalogue. What is apparent is that in all authoritarian states there is more emphasis on organic vital forces than upon the refined intellect of the academician and the philosopher. Modern mass utopianism is certainly not good soil for the delicate flower of liberalism, and there is generally a tendency of the masses to believe in their dogmas as scientifically founded (as in Marxian Russia, for instance) and to believe in the necessity of coercion to force those members of society who are recalcitrant to hold their peace or to accept the doctrines of the new movement. Some may see in the mass vulgarization of science much of the root of present-day anti-intellectualism,[1] and others may see anti-intellectualism and the repudiation of standards as the inevitable result of the rise of the masses in revolt against the ancient aristocratic principles of civilized society.[2] What is to be sharply observed, however, is that anti-intellectualism has received at the hands of intellectuals a careful rationalization that stands in fundamental antithesis to the liberal world view. The inevitable mark of anti-intellectualism is the belief in and the approval of violence as a political technique. In other words, we say that the chief foundations of this movement are intuitionism, pragmatism, and an ultraradical positivism that will consider nothing but the naked facts of human history and life.

Mussolini has acknowledged his political masters[3] to be William James, the American pragmatist; Georges Sorel, the French defender of syndicalist violence; Friedrich Nietzsche, the German romanticist of the superman; and Niccolo Machiavelli, the great apostle of *Realpolitik*. Violence is not alone the whole story of political anti-intellectualism, for with it may come a profound belief in a *Mythus*, as the Germans say, which is emotional and intuitional in its appeal. There

[1] See in general Wyndham Lewis, *The Art of Being Ruled* (New York and London, 1926).

[2] José Ortega y Gasset, *The Revolt of the Masses*, tr. from the Spanish (New York, 1932).

[3] See P. Winner, "Mussolini—A Character Study," *Current History*, XXVIII (1928), 517 *ff*.

is a political anti-intellectualism, just as there are a religious mysticism and a religious rationalism. To the modern liberal, the rejection of the intellectual is not dangerous in politics so long as it is simply myth or emotional belief; it is a danger only when violence as a technique is accepted in community life. Both of these aspects are found in the life of Mussolini; there is the myth of the organic nation and there is also pure political activism. Politics is not deliberation, as the liberals may insist; it is preeminently action. Mussolini does not make any claim to originality in thought, though he asserts himself to be a focal or central point in action for the Italian people as organized in a state. He is a realizer of ideas that intellectuals may suggest for consideration. It might be added that in this pragmatic view the facts are never completely under consideration, since action itself is constantly creating new facts that must be taken into account.

There are many different points of view strung together in what may be called the mental foundations of Fascism. There are inconsistencies, but there is unity in the general pragmatic slant of logic or nonlogic in political life, as well as in the absolute affirmation that Italy must be in the future all that she has ever been in the past. For purposes of treatment, however, we may separate the background of the anti-intellectualistic syndicalist foundations of Fascism from those which are based on the romantic idea of the Italian nation.[1]

Syndicalistic Pragmatism. Syndicalist is the name given to those socialists, particularly before the World War, who believed that the great revolutionary force was to be the organized force of the workers in their labor unions. The anarchistic element in syndicalism was strong, and its tradition was generally antipolitical, believing that, when the producers had taken over production, the purely political arm of society would be unnecessary. The syndicalists held that they were true followers of Marx, and that if he were alive he would approve of their technique of social change. In turn, the syndicalists believed in violence and their strictures on the parliamentary socialists who cooperated and compromised with the bourgeois politicians were merciless. Georges Sorel was one of the leading exponents of the principles of violence in politics, and his somewhat disorganized work, *Reflections on Violence*, has been regarded as one of the most important works in contemporary political thought; at least it has been listed as the key work in the anti-intellectualist system of political action.[2]

[1] See in general E. L. R. Rosen, *Der Fascismus und seine Staatsidee* (Berlin, 1933).

[2] French syndicalism has grown quite nonrevolutionary since the war. The prewar period of revolutionary militancy is now a thing of the past. Of course,

In Sorel's view one must always regard living from the dynamic standpoint. He was in this profoundly influenced by the philosophy of Henri Bergson, who has constantly emphasized the vital and changing side of existence rather than the more systematic and rationalistic or intellectualist interpretation. In the Sorelian view, Bergson's *élan vital* leads directly to the conception of the general strike. For it was only in violence, in direct action—the strike, sabotage, the boycott, and the label—that the proletariat expressed its will to conquer. Sorel believed that the bourgeoisie was becoming increasingly incapable of holding the reins of the government, and that, as the proletariat trained its elite, it was being prepared to assume the control of society when the proper moment should come. Particularly, it was Sorel's belief that revolutionary energy is created by a conception of the supreme conflict. Instead of the simple idea of revolution, he substituted the conception of the revolutionary general strike. It was a myth to be sure, and there might never be such a strike, but the force of the workers would be measured by the animating power of such a legend or myth. The early Christians did not conquer the world as they hoped, but their belief in their inevitable triumph under Christ's leadership, even to the end of the world, was the basis of much of the power of the early Christian church. The reformers believed that Europe was going to be won completely to the purified faith, and, while this has not occurred, what the Reformation did gain was due largely to this energizing belief. The soldier of Napoleon sensed the grandeur of battle; his willingness to die for the cause sprang in no little degree from an implicit confidence in Napoleon's leadership. Likewise, the proletarian convinced of the coming of the great general strike can also be a strong force because of the emotional and the nonintellectual attitudes that are the basis of his economic conduct.

The general strike that Sorel had in mind was not a mere political strike to wring some concession from frightened parliamentary leaders. It was to be a proletarian general strike, led by the workers for the revolutionary end of the reconstruction of society. Those leaders in parliament particularly, who would use the workers in general strikes for their own political ends, are enemies of the proletariat, and they will always betray in the end the true proletarian and revolutionary purpose of labor action. From French politics Sorel drew a number

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the views of Sorel have suffered an eclipse in French labor unionism, which now turns to parliament as well as to its own direct action. See F. W. Coker, *Recent Political Thought* (New York, 1934), Ch. VIII. W. Y. Elliott, *The Pragmatic Revolt in Politics* (New York, 1928), gives a good general account of the development of pragmatic political violence.

of illustrations of the tendency of politicians to use the workers' organizations and the direct action instituted by them for their own party purposes. The decadent bourgeoisie was eager to make the trade union an engine of the parliamentary political party. It might become an auxiliary weapon by which to beat down the opposition, but in turn the parliamentarian would never be a useful servant of the ultimate purposes of the workers.

It should be noted that Sorel believed in the possibility of the rise of a proletarian elite that would undertake the true and uncompromising leadership of the revolutionary movement. The leadership offered by the parliamentary politician could, of course, never be used. Nor could the decadent bourgeoisie be relied upon to come over to the workers. Out of the struggles of the workers in their direct action would come the new leaders; direct action, *i.e.*, violence, was a training school for the new elite that would eventually take the place of the incompetents who reigned before the war in the various parliamentary bodies of Western Europe. This notion of the elite, as we shall see, was to become of general significance in the postwar repudiation of the democratic "myth."

Sorel was not merely accepting violence as inevitable; he was defending it as a creative political force. In this he has much in common with the Fascists, as he was influenced in a degree by the Italian social scientist of the eighteenth century, Giambattista Vico.[1] This assertion of force as a profound and vital aspect of politics is diametrically opposed to the basic conceptions of liberalism and democracy; it is also opposed to the historic conceptions of natural law and its derivative, the law of nations. There is little doubt that in a pragmatic accounting of history violence has played an immensely important role and that in many situations force has succeeded where persuasion or moralizing has failed. Historians, too, have not been unwilling to praise the successful in history as the first and greatest standard.[2]

The principles of violence as advanced by Sorel were in the syndicalist framework. It was the Italian sociologist, Vilfredo Pareto, who generalized some of the principles set forth by the Frenchman. Pareto, like Sorel, had been an engineer, and he came to the social sciences in the maturity of life. Pareto was a distinguished student of economics and politics, and he had a broad background in historical

[1] See Benedetto Croce, *The Philosophy of Giambattista Vico*, tr. from the Italian (London, 1913).

[2] Lord Acton, *The History of Freedom and Other Essays*, edited by J. N. Figgis and R. V. Laurence (London, 1909), pp. 212 *ff.*, brilliantly indicates this tendency.

and classical knowledge. He attempted to be purely scientific; he was interested in facts and not in theories, and his conclusions are based on the most detached interpretation possible regarding the facts of human conduct and behavior. It is a notable fact that the scientific method if pushed to its extreme degree, to a radical positivism, results in a kind of anti-intellectualism with regard to the basis of human action. Behavior itself is often nonlogical; indeed, it may be asserted that in every type of behavior there is a large element of the irrational. In Pareto's system[1] there is a primary interest in what he calls *residues*, or the basic, if not instinctive, drives in conduct. These residues are classified after a fashion—however, not even to the satisfaction of Pareto himself. There are various types of rationalizations, opinions, interpretations, and evaluations of conduct based on these residues, and such secondary manifestations are called *derivatives*. What Pareto sought was a science of society, a science from which all metaphysics had been banished, and in which there alone remained the observable and positive phenomena of conduct. While he admitted that some action was logical, as in certain aspects of economic behavior, most social action falls under the rubric of nonlogical or nonintellectual behavior. It is, naturally, this nonlogical conduct with which the political leader has to deal.

Politically, the chief interest in Pareto centers on his conception of the possession of social power. In his study of society he observed that the few actually control and that the great masses are excluded in all societies from the possession both of wealth and of power. But there is continually a "circulation" of those who hold the wealth and power of society. This is an observable fact, and in all societies it is subject to scientific study. To this task he set himself, and in the end he reached the conclusion that efforts to alter this general law of the distribution of the privileges of social existence were doomed to failure. Those who promise to rectify the so-called evils of society are in turn primarily interested in maintaining their own position. The masses must therefore, turn to the other champions who have never tasted the delights of the inner circle of the ruling elite or oligarchy. Democracy is in fact an impossibility. Rationalizations serve a secondary role in relation to the primary fact of force or the exercise of power.

It is of great importance, insisted Pareto, that no elite lasts indefinitely. This is true both of those who possess wealth and of those

[1] See the following works of Vilfredo Pareto, *Les systèmes socialistes*, 2d ed., 2 vols. (Paris, 1926); *Traité de sociologie générale*, 2 vols. (Paris, 1917–1919); *The Mind and Society*, tr. from the Italian, 4 vols. (New York, 1935).

who possess power. The "circulation of elites" is one of the fundamental facts of society. Oligarchies grow weak under various circumstances, and new groups rise to power under rather generalized conditions. The student of history can make comparisons that will enable him to see the end of the old and the beginning of the new. It is a striking fact that years before the rise of authoritarianism Pareto predicted the overthrow of the parliamentary oligarchies that controlled the states of the Western world. The elite that is growing weak becomes solicitous of the underlings of society, and, like the decadent aristocracy of the era just before the French Revolution, begins to consider many plans for the amelioration of the misery of society. Yet seldom are the repentant holders of power permitted to carry through their schemes. They have lost the ability to fight for themselves and they cannot exist in a realistic world on the charity of the long-disadvantaged members of the state.

On the other hand, those who covet the places of power are also inclined to favor the masses who have been ill-treated by the existing regime. Such ill-treatment is nothing unusual; in fact, it is the ordinary social situation. The prophet of the masses who will promise Utopia with his advent to power secures a following. Perhaps the old group is shorn of its authority in a peaceable manner; perhaps violence is resorted to. What is important, however, is the fundamental fact that the decadent elite is no longer possessed of the power that once put it in authority. Revolution is likely to occur if the circulation of capable people from the lower strata to the higher is stopped. If there are few artificial props of power, the new groups work into the old continually and there is a constant evolution in the structure of the elite. Revolutions do not occur when this is the case. The essential question is whether there will ever be an oligarchy that remembers its out-of-power promises with any distinctness. Pareto would urge that he is not a prophet, but one interested in what has happened through the long centuries of civilization in the West.

The details of the change in elites is of interest to the social scientist. In ancient Rome there was first an infiltration of the lower orders of the city into the ranks of the higher; then those outside the city came into authority, and finally provincials reached the pinnacles of power. At times when the old could not be dislodged without violence, force was resorted to in order to bring about change. The same is true in other and more modern societies. In general, it may be said that the new blood in the ranks of authority has been drawn from the agricultural classes, where selection or survival is much more rigid than in the powerful classes. It might be added here that Pareto

did not believe that it would be of any great social advantage if those in authority had more children, since the unfit would have more chances of survival and there would be an increasing number of them seeking to hold social authority. It would check the free circulation of the elites if the upper classes did breed more freely, and, insofar as the children of the powerful were given the better places, the road would be cleared for revolution rather than for the ordinary and inevitable course of social evolution.

The implications of the Paretian view as far as political democracy is concerned are quite obvious. Democracy is a rationalization that may be used at certain times for the purpose of maintaining power, but that there should ever be for more than brief intervals anything like a liberal system is out of the question. Democracy is simply impossible; it is not a question of ought or ought not to be; it is a question of fact. The realistic student of politics, therefore, may accept the open repudiation of democracy as a change of external incidents and symbols of power rather than a fundamental alteration of the social order. Liberalism is a mere derivative that serves a useful purpose when a new group of revolutionary leaders are struggling for authority. The lukewarm attitude of later liberals toward democracy is entirely understandable, for they have been going through the process of forgetting the promises that had formerly been made to the struggling masses who are always forced to turn to leaders of some sort. Pareto has been called, in the light of these general beliefs, the Karl Marx of the bourgeoisie. Certainly, the rule of the bourgeoisie would not have for Pareto any of the universal qualities that the liberal ideology has long claimed for it. On the other hand, there is considerable controversy as to whether Pareto is a forerunner of Fascism.

Certain writers hold that Pareto enunciated the fundamental political principles of the Fascist repudiation of liberalism. Indeed, there is much truth in this, for the Fascist leaders, notably Mussolini, have expressed their debt to the realistic social thinkers and to the pragmatists who insisted on the measure of truth in the success of policy. But Pareto also believed in the general failure of social reform. In economics he was fundamentally an individualist, and we shall see that the corporative Fascist state is not individualistic in its outlook. The leaders of Fascism promise much (and little) to the masses, and great energy has been displayed in developing by state action the productive powers of Italy. Pareto was no friend or believer in the magic touch of success in the bureaucracy; nor did he see advantage in vast public expenditures, *panem et circenses*, and

other concessions to the masses. The results of this type of policy were generally to cripple and destroy the economic forces of the country itself; the spoliation of capital by governmental interference, as shown in the vast and futile socialism of the days of declining Rome, tends to destroy the very basis of society itself. Some of Pareto is Fascist, but much is not.

Other Italian writers, such as Robert Michels and Gaetano Mosca, have followed the same irreverent interpretation of liberalism and democracy. Michels in his *Political Parties* developed the theory of the "iron law of oligarchy," and he used for his examples the socialist parties of Europe in the forty or fifty years before the outbreak of the World War. If the theoretically most democratic of all parties could be proved to be basically oligarchic in character, little remained of the democratic legend. Democracy is impossible, just as it is in the interpretation offered by Pareto. Mosca's doctrine of the political class is in the same general category.[1]

Benito Mussolini has acknowledged his indebtedness to Sorel, Pareto, and others. He became convinced, apparently, that socialism was impossible. His pragmatic logic is dynamic; action not rationalization is the stuff of politics. Only the few can rule; only the few can make decisions. When there is leadership, there is virility. Mussolini has often been criticized for his inconsistencies. It is doubtful whether a thoroughgoing pragmatist would admit this as a criticism. What he is interested in is action that will bring about the results he has in mind. Political organization is not a matter of principles; it is a matter of fluidity, of changing with differing circumstances. What is important is that there should be at the head of the state a leadership that is capable of sensing the inner meanings of events and of acting in accordance with the perception so reached. Parliamentary democracy is anchored in a fixed set of political mechanics. The new situation may be met with incompetence; if it is met with competence, there is a veil of hypocrisy cast over the fact of leadership. The democratic state fears the thing that is most necessary for survival, the fact of a leadership that is ready for all eventualities.

Italian Nationalism. The second broad stream of Fascist thought is nationalism. We have already suggested some of the elements on this side of the problem. Centuries of frustration have, no doubt, made the Italians peculiarly subject to the feeling of the desirability of

[1] See Gaetano Mosca, *Elementi di scienza politica*, 2d ed. (Turin, 1922); "The Crisis in Parliamentarism and How It May Be Overcome," in *The Development of the Representative System in Our Times*, Interparliamentary Union (Geneva, 1928), pp. 69 *ff.*

national strength. There are two schools of thought in this connection. One group of Fascist thinkers would trace their ideology almost entirely to their own tradition. Fascism is pure *Italianità*, and it is not a borrowing of general European ideas that glorify the national state. Dante, Machiavelli, Mazzini, and others form a calendar of national saints whose ideas are enough for the foundation of the present movement. Here, of course, Fascism is regarded as nothing more than a realization of what has already been expressed by Italian poets, orators, political leaders, and writers. Furthermore, some of the Italian writers insist that the Renaissance and the *Risorgimento* must be separated; the former was not truly Italian; the latter was. The latter represented the overthrow of the French revolutionary tradition in Italian life; it signified the achievement of what had been dreamed by unnumbered patriots through the generations that have composed in their succession the Italian nation.[1]

Critical students are prone, however, to place Italian nationalism under the general influence of this tendency of thought in Europe. Instead of seeing Italian nationalism as something unique, as a peculiar romanticism of that country, they insist that Europe by and large was nationalistic during the nineteenth century, when Italy began her struggle for unification. The great nationalists are not by this token Italians; more likely they are Germans, and in spite of denials the nationalism of the French may also have been an influence in the re-creation of the nationalist dream of the Italians. But with all this, there would be no denial that Fascism in its most general outlines is the final chapter in the long series of efforts of that country to attain its unity. At this point a difficulty must be faced, for Italian nationalism is almost wholly absorbed in the state; the state is the primary expression of the fact of nationality. Such a situation is in contrast with German National Socialism which places the state in a secondary category in relation to the folk. Italian nationalism is the Italian belief in the state, and therefore thinkers who have placed the state above all human associations have received a hearing before the Italian intellectuals.

Mussolini may have been influenced by the writings of Nietzsche, who believed in the superman and who no doubt convinced Mussolini

[1] See Rosen, *op. cit.*, on the differences among Italians as to the points discussed; Alfredo Rocco, "The Political Doctrine of Fascism," *International Conciliation*, No. 223 (1926); "The Political and Social Doctrine of Fascism" *International Conciliation*, No. 306, (1935); Alfredo Crespi, *Contemporary Thought of Italy* (London, 1926); Enrico Corradini, *Discorsi politici* (1902–1923) (Firenze); *L'Unità e la potenza delle nazioni* (Firenze, 1922).

that he has one of these rare beings. Hegel's philosophy of the state, which we have discussed in earlier chapters, was important in the rationalization of nationalism on the peninsula. But Hegel, while studied with enthusiasm by Italian youth, has not been accepted without modification, as indeed he could not be. Benedetto Croce, one of the leading philosophers of present-day Italy, has had much to do with the revision of the Hegelian thought to fit it for Italian acceptance.[1] With Nietzsche providing a basis for imperialism, and Hegel providing help in the appreciation of the political community, and the host of Italian nationalists, such as Mazzini, who have emphasized the duty of the citizen to his country, it has not been hard to build up an impressive case for the national state in the Italian mind. It must never be overlooked, however, that the Italian has a very definite history and a glorious political tradition to which he can turn. Other nations have a relatively recent development of historical greatness, but Italians feel that all that Rome achieved is theirs. It is not to the republican tradition that they turn, but to the symbols of imperial greatness of the empire as they have come down to the present both in the literature and in the monuments of stone by which the Italian has lived. Rome was the center of civilization at one time; indeed, many nationalists believe that such is the case today. It is difficult, if not impossible, for the American to realize the grip on the Italian imagination of the imperial tradition. This tradition was also authoritarian.

Instead of the myth of the general strike as in Sorel, Fascism implies the myth of the organic nation. This nation is not just a figment of the nationalist's imagination, however; it is an historical development, and it is as necessary to the complete life and the discipline of the individual as any other social relation. In Hegel and the idealists, the individual finds that his true meaning as a personality is to be a submissive and obedient tool of the social organism of which he is a part. As we have already said, the nation and the state are identified. If the nation is all, so is the state. If the Italian has a responsibility for preserving what has been given him by his forebears, he also has a grave responsibility for the Italian of tomorrow. He may be called upon to sacrifice himself that those who live in the future may also live. Sacrifice may not be merely for the additional happiness of those who will be born, but it may be for the preservation of Italian tradition itself. Italian thought and culture perform a service in the civilization of the world; it must be

[1] *Cf.* Croce, *What Is Living and What Is Dead of the Philosophy of Hegel*, tr. from the Italian (London, 1915).

preserved if the world is to make progress. Great ideas are yet to come from Rome, as they have come in the past. The state is a spiritual and moral fact in itself, since the organization of the state is concrete and is experienced by the citizen in the government to which he submits. The state is the custodian of the spirit of the people, and it transmits that spirit to the forthcoming generations and to the world in general.

The reality of the Fascist conception of the nation-state is the faith upon which it reposes. It is not on force alone that the state rests, though force is held to be creative in the historical process, but also on the spiritual consciousness of political union between the members who are the rank and file and those who are the elite or the stratum of rulers. Fascism is, as Mussolini has declared, the faith of our time; it represents a stage in the development of the human spirit.[1]

The Corporative State. The two great realities that the Fascists stress are the nation and national production. Fascism is adamant in its determination to consolidate the national principle in the lives of its citizens, but it is also determined that national production shall be developed to the utmost. Here the syndicalist emphasis on production is given a new setting, but along with the syndicalist inspiration we must also place the primary instrument for the attainment of the development and coordination of production, the corporative state. Fascism is pragmatic in its origins and its evolution of policy. The corporative state, therefore, is fundamentally experimental, and the Fascists are not impressed when their critics, especially the communists, taunt them for not reaching in the early years of the regime a complete systematization of the principles of corporativism. The corporative idea is not new, since it is common in the thought of opponents of the individualism of the French Revolution and in the theories of the defenders of the *ancien régime.* French royalists have consistently advocated corporativism, on the basis of the historic models they have before their eyes; and it may be noted that the program of the French Action, which combined nationalism, corporativism, and antiparliamentarism, has exercised great influence on certain circles of Fascist thought.[2]

[1] The most authoritative expression of the doctrine of fascism is undoubtedly Mussolini's article on the subject. See "The Political and Social Doctrine of Fascism," *International Conciliation,* No. 306 (1935); also *The Living Age,* No. 345 (1933), 235 *ff.*

[2] See C. T. Muret, *French Royalist Doctrines since the Revolution* (New York, 1933); also Rosen, *op. cit.*

We have here a striking combination of historic trends of thought. The guild socialist believed in the organization of guilds in order to bring about harmony in national production; the French syndicalists likewise wanted to place the focus of industrial activity in the association of producers; and the French Action (the royalists) saw in the restoration of the medieval corporations the possibility of human liberty. Mussolini's socialist-syndicalist background combines with the inspiration of the syndicalists and that of the nationalists under French influence to lead the Fascist regime to accept as a major effort the establishment of corporativism under the aegis of the authoritarian state. Even here we do not find dogmatism so much as experiment; pragmatism flourishes here more than an economic absolutism.

The corporative state springs logically out of the fact of organicity which is accepted in the Fascist creed. Liberalism as expressed in the *Rechtsstaat* saw in the state primarily the association of individuals under a legal bond; but the Fascist state considers the individual producer, not as an end in himself, but as a factor in a total and harmoniously working economic organism.[1] The national economy must work as a totality, and not as a series of conflicting group interests. Socialism attempts to place the allegiance of the worker with all other workers throughout the world, and capitalism in its abusive phases acts on the assumption that the financier has his ties of allegiance on a higher plane than the state. Fascism insists that the allegiance of both workers and employers must be to Italy first, and the class conception of solidarity is resolutely denied. No worker in the name of class loyalty can impair the general productive power of the state; no employer can injure the workers and consuming population in the interest of a profit that is pernicious from a national point of view; the government as the symbol of the organic unity of all must insist that the objective national allegiance is preserved.

On the contrary, it must not be assumed that the individual worker or employer is regarded individualistically. Both are part of greater groups. The principle of association is, therefore, accepted as fundamental in the repudiation of individualism and economic and political liberalism. Associations are not free to take whatever course they may desire. There must be discipline, order, and hierarchy in all walks of life. The antinational association may be suppressed, just as any other unpatriotic movement. The corporative principle is, thus, that all elements in production, workers and employers, must

[1] Werner Niederer, *Der Ständestaat des Faschismus* (München and Leipzig, 1932), *passim*.

be organized into associations that are approved by the state; through these associations their participation in national production is regulated and controlled. The association must have the approval of the state; collective contracts must be entered into under the supervision of the state; and strikes and lockouts are declared to be illegal and injurious to the national economy. The principle of association is extended to professional and artistic workers; indeed, every worker is presumably a member of an association, and his dues, made obligatory by the state, may if necessary (and such is now the case) be collected by the government as a part of the general levy of taxes. In turn, if an association of workers or employers acts contrary to national interest, it may be dissolved and in time replaced by another association that fits into the national picture. While Fascism believes in private property, it does not believe that the present day is a time for the old unregulated capitalism of liberalistic free trade.

Various laws have been passed by the Italian government for the organization of the corporative state. By 1934 the structure was complete in its general outlines, although the first law was passed in 1926. The famous Charter of Labor, which states the rights and duties of Italian labor, was promulgated in 1927. Still later there was established the National Council of Corporations, and in 1934 another law created the corporations toward which the previous legislation looked.[1] At the bottom of the scheme of organization each worker is supposed to belong to some association; at the same time the employers are grouped into like associations of the first grade. Such syndicates are organized on a basis of productive interest involved and on the basis of territory, and there is the possibility of expansion and restriction along both lines The professional workers constitute another type of organization, which cannot be based, of course, on the cleavage between employers and workers. Above the associations of the first grade there are provincial federations, and in each of the provinces of Italy there is a Provincial Economic Corporative Council. Many of the most important decisions in economic conflict are reached at the provincial level. Finally, there are national federations of the smaller units, which in turn are united into confederations (reduced in 1934 from thirteen to nine); at the summit stands the national Ministry

[1] See Alberto Pennachio, *The Corporative State* (New York, 1927); Niederer, *op. cit.;* Fausto Pitigliani, *The Italian Corporative State* (London, 1933); "The Corporative State," *Fortune* (July, 1934); Herman Finer, *Mussolini's Italy* (New York, 1935), Ch. XVII; *Industrial and Labour Information,* International Labor Office, XLIX (1934), 211–217; LI (1934), 102–103; LII (1934), 247–248; Benito Mussolini, *Fascism: Doctrine and Institutions* (Rome, 1935).

of Corporations which is the authoritative coordinating force in the entire system. A tentative National Council of Corporations was established in 1930, which was composed of seven sections and included representatives of employers and workers of certain great branches of production. Before 1934 these sections were referred to when it was contended that the corporations had already been established. The corporative institutions of Italy are complicated by the divergent trends of horizontal (occupational) and vertical (product) organization. Trade-union and employer organizations follow the horizontal principle, while the corporative idea emphasizes the vertical collaboration of many interests.

As a continuation of the act of 1926 and the Labor Charter, a law was passed in February, 1934, which was designed to provide the final organization of the corporative structure. It was provided that delegates of an association might by decree be grouped with others into a corporation, and that upon the completion of the structure there should be created a general assembly of the National Council of Corporations. Associations so grouped into specific corporations remain members of their respective federations, but because of their corporate significance they are granted a self-governing status. Each corporation has its own council, which is composed of an equal representation of workers and employers, along with representatives of public bodies, members of the Fascist party, technical experts, and government officials. It is provided that joint sessions between two or more corporations may be held. The Italian government believed that under the law of 1926 the federations of associations gained at the expense of the primary units; under the act of 1934 it will be possible to integrate more effectively the primary bodies or associations of the first grade. To Alfredo Rocco the corporate structure represented by virtue of the 1934 legislation a genuine "planned economy" in contradistinction to both liberal capitalism and communism.

The new corporative state was established finally in November, 1934, when a general assembly of delegates was called in Rome which included several hundred representatives. Twenty-two corporations of category had been established by decree, after careful examination of the possibilities by the government. Thus the danger of creating hundreds of overlapping corporations was avoided, while at the same time the broader aspects of production and interests (including those of the consumers as represented by the party and certain experts) were tentatively brought together in a cooperative enterprise. The first group of corporations includes a cycle of industries in the field of agriculture, industry, and commerce, which are as follows: (1)

cereals, (2) vegetables and fruits, (3) wine, (4) oil, including olive oil, (5) livestock and fishing, (6) beets and sugar, (7) timber, (8) textile products. The second cycle of corporations includes industrial and commercial production as follows: (9) metallurgical and mechanical products, (10) chemical products, (11) clothing, (12) paper and printing, (13) building, (14) water, gas, and electricity, (15) mining, (16) glass and ceramics. The third cycle of corporations deals with service industries as follows: (17) insurance and credit, (18) professions and the arts, (19) sea and air transport, (20) internal communications, (21) entertainments, and (22) hotels and restaurants.[1]

By the law of 1934 the new corporations have legislative power over matters that fall directly within their competence. Each corporation is headed by a cabinet member, and this provides the basis for coordination in national economic activities. It has been expected that the Chamber of Deputies will be eliminated and a national corporative assembly substituted in its place. This principle was suggested by Mussolini in his discussion of the new corporations before the Italian Senate, and in 1936 he announced the end of the Chamber of Deputies.[2]

The Fascist Party. Italian politics is carried on under the one-party system. The party having official recognition is the Fascist party, which is in fact an organ of the state and in some senses the supreme political instrument in Italy. It was not until the regime was well under way that opposition parties and the freedom of the press were suppressed, but as the situation stands at the present day there is no room for an opposition on questions of principle, though as in Russia there is room for discussion of technical matters concerning the projects of the regime. The party has, as is usual in the modern authoritarian state, functions of governing that are far more extensive than under the liberal conception of the party. The party and the state overlap in a practical and a constitutional manner. To some, the party is the government.[3]

[1] See "The Corporative State," *Fortune* (July 1934).

[2] It should be borne in mind that within each association, beginning with the bottom unit, the idea of the elite is applied. The distinction in the association of the first grade is between inscribed and noninscribed members. Both categories must pay dues, but only the inscribed members are regarded as participating and effective. From the elite of the associations are chosen, generally speaking, the officers, and the officers of the smaller units are representatives and officers in the larger ones.

[3] See V. M. Dean, "Fascist Rule in Italy," *Foreign Policy Reports*, Vol. VII, No. 3, pp. 56–58; Erwin von Beckerath, "Fascism," *Encyclopaedia of the Social Sciences*, Vol. VI, pp. 133 *ff.*

The Grand Council of the Fascist party is a symbol and a practical organization of the authoritarian technique. As an organ of the party, it was made in December, 1928, an agency of the state. It has advisory and consultative duties, and is somewhat analogous to the cabinet in certain countries. It has electoral duties which will be mentioned below, but its chief function is to nominate the successor to the present head of the government—Mussolini—since the law provides that "The Grand Council, on the proposal of the Chief of the Government, shall draw up and keep up to date a list of names to be submitted to the Crown for nomination in the event of a vacancy in the post of Chief of the Government." We may have here a solution of the problem of succession in the authoritarian state. It has been suggested that one of the greatest difficulties in such regimes is to provide for a peaceful succession to power. Experience in Russia might indicate that the one-party control of the government and the military discipline of the party have solved this problem for that country. While the Grand Council is not precisely a duplication of Russian machinery, it is simply another logical development of the one-party technique in the authoritarian state. The death of Mussolini, therefore, would be unlikely to precipitate a political crisis in the state.[1]

The Government of Italy. The rise of Fascism in Italy has not meant an open break with the historic constitution of 1848. When the March on Rome took place, Mussolini was appointed prime minister though he did not have by any means a majority to support him in the Chamber of Deputies. Since the constitution provides for the parliamentary system of responsible government, the ordinary procedure was suspended. But the Fascists have not taken any definite stand against the monarchy, and by various decress the legal structure of the country has been changed so that the constitution has in fact been amended. By the terms of the act of 1925 the prime minister came to be known as the "head of the government" as well as prime minister, and the line of responsibility was shifted from parliament to the king. The act signified, indeed, the formal end of parliamentary government. It may be said without undue exaggeration that the prime minister and head of the government concentrates in his hands

[1] As is the case with the Communist party in Russia, membership in the Fascist party is not easy to attain. The youth organizations in Italy are the training institutions for more mature Fascists, and the party itself is the training school for the governing elite. In the discipline and selection of the party it is supposed that the largest measure of ability will be brought to the service of the state. See H. W. Schneider and S. B. Clough, *Making Fascists* (Chicago, 1929).

the leadership of the state. The principle of leadership, especially as involved in the party, is added to that of the general principle of the head of the government. Mussolini is known as *Il Duce del Fascismo e il Capo del Governo.* Likewise, the whole governmental administration has been centralized in Rome, and the medieval *podesta* has been reestablished as the local agent of Rome and of the Fascist party.

In 1923 a law was passed which provided that the party that obtained the largest vote at an election (assuming the party got as much as 25 per cent of the total vote cast) should have two-thirds of the seats in the Chamber of Deputies. This law enabled the Fascists to exercise a complete control over the Chamber. However, in 1928 the electoral law provided that the right to propose candidates for election to the Chamber should be vested in the national confederations of syndicates legally recognized under the decree law of 1926. In turn it is the function of the Grand Council of the party to approve a list of 400 candidates. The voters then have the right to vote for or against the list so submitted. In fact, it is more of a plebiscite than an election in the liberal conception of the word. The law of 1928 provides that the right to vote "is granted to citizens over twenty-one years of age and to those under twenty-one but over eighteen years of age who are married and have children, provided they fulfil one of the following conditions. . . . " These conditions are, in general, that the person pay syndical or associational dues, or be an officer of a company that pays syndical dues; persons may vote who pay a certain amount in taxes to the state or who hold government bonds up to a given figure; also, persons may vote who have a pension or salary from the state or local governmental unit, or who are members of the regular or secular Catholic clergy or ministers of another cult allowed by the state.

The Future of Fascism. In origin at least Fascism was a patriotic reaction to the unpatriotic and revolutionary influence of the communists and socialists. A negative impulse, however, is not a permanent foundation for a regime. It is too early to judge of the fruits of Fascism, just as it is too early to evaluate the permanent results of the rise of communistic philosophy to power in the Soviet Union. Historically, it would seem that authoritarianism is more suited to the long Italian tradition of government than the liberal system that has taken such deep root in other countries. The hope of the critics of Fascism is that the regime will become normalized and that there will be a restoration of some of the phases of liberalism, such as opposition parties and an uncensored press. It is true that violence has

been successful in the maintenance of rulers over long periods of time, but the hope of liberals is that violence can be eliminated as the prominent aspect of any system of government. The future of Fascism is bound up with the general destiny of European politics, rather than with the nationalistic impulses of the contemporary leadership of the Italian people.

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Chapter XXV

GERMAN NATIONAL SOCIALISM

Dem steht gegenüber die wahrhaftige germanische Demokratie der freien Wahl des Führers, mit dessen Verpflichtung zur vollen Übernahme aller Verantwortung für sein Tun und Lassen. In ihr gibt es keine Abstimmung einer Majorität zu einzelnen Fragen, sondern nur die Bestimmung eines einzigen, der dann mit Vermögen und Leben für seine Entscheidung einzutreten hat.—Adolf Hitler.[1]

The Postwar Background. The storm in world sentiment that greeted the rise of Herr Adolf Hitler to the position of German chancellor in the early days of 1933 has somewhat subsided. The history of propaganda shows that rage against the remote does not last indefinitely. As the active disfavor in which National Socialism stood in 1933 subsides, there is coming in its place a passive indifference (in the United States at least) as to what is happening in Europe in general and in Germany in particular. Early predictions that Hitler would never come to power, or that once in power he would last only a short time, having proved untrue, National Socialism seems to be taking its place among the significant authoritarian regimes in the West. It stands out because of the striking character of its philosophy of political life, while other social dictatorships, such as those in Austria or in certain Balkan countries, receive little attention because of the lack of originality in the justification of the repudiation of liberalism and democracy. No one can read the apologies for National Socialism without being moved, either for or against it, or at least to an appreciation of the philosophically daring qualities involved in the argument for the regime. As in the case of the soviets and Fascism, the liberal hope is that the more violent aspects of the system will be trimmed to the level of approval in the world at large. But it seems that in a battle of different world views complete reconciliation is hardly possible. If liberalism once had all the leading powers of the world in its

[1] "Opposed to the former (parliamentary democracy) there stands the honest Germanic democracy of the free election of the leader, who then obligates himself to the full assumption of responsibility for all his acts. In this democracy there is no such thing as the vote of a majority with reference to individual questions; for it knows only the decisions of one single individual, who then must answer for his determinations with his property and life." *Mein Kampf* (München, 1933), p. 99.

folds, this is no longer true. Yet whatever the major differences between National Socialism and Fascism, there are fundamental similarities between Germany and the other forms of authoritarianism that challenge modern political thinking.

The strength of the anti-German movement since Hitler came to power has arisen from the fact that several different interests have been able to agree as to their end, while having at the same time different reasons. On the Continent it is fairly clear that National Socialism has been feared because it has meant the rearmament of Germany and the threat of disturbance to the European military equilibrium, *i.e.*, to the dominance of the Allied and Associated Powers of the World War. On the other hand, in those countries where the German military strength is no immediate menace, such as Great Britain and the United States, there is a strong protest against the racial discrimination upon which much of present-day German social policy rests. Poland has been able to come to terms with Germany because of their common antagonism toward the Soviet Union, while Japan likewise can sympathize with Germany for the same reason. Germany, Poland, and Japan may perhaps agree in a mutual desire for some of the territory of the Russian state. Italy can find in Germany sympathy for her policy of colonial expansion in Africa, but the solution of the Austrian question is troublesome. It is clear that Hitler is determined to reach an agreement with the British, as he has stated his policy in *Mein Kampf*, his book of the early years when he was struggling for political power in Germany. British opinion is peculiarly subject to reversal on the German issue.[1]

To understand the German mind of the last few years is a singularly difficult task for the American. There are not only the difference of circumstance and the European character of the German issue, but there is also a deep cleavage in philosophical attitude between American democratic conceptions and the fundamental postulates upon which the current German movement is based. Before the principles of National Socialism are investigated, we must examine the general background of the German citizen soon after the war. For without this situation it is abundantly clear that National Socialism would never have come to power. The Germans are a proud people, and in their history, legend, and cultural achievement they are wont to see much that is of the greatest value to the modern civilized world. They feel that they are among the real leaders of the West and that our

[1] There is in Germany a very close connection between internal political maneuvring, such as the holding of national plebiscites, and the attempt to reestablish the diplomatic prestige and influence of the Third Reich.

culture would be seriously incomplete without the Germanic addition. They refuse to regard themselves as among the inferior peoples of the world. They have been proud of the military achievements of past generations, and they have seen the mark of a Teutonic genius exhibited in the advance of modern technology. They are conscious of the fact that throughout history they have been forced to fight for what they have retained, and especially so in the mad scramble for territorial expansion in recent centuries. Likewise, they have known the bitterness of defeat and the ravages of invasion. To the Germans Napoleon is a brutal and ruthless invader; they like to recall the heroic days that finally resulted in Waterloo and the defeat of the military leader who desired to unite Europe under French control. Waterloo is to the German primarily a German victory over France. Through the generations has come the emotional thrill of the rise of Germany and her youth against invasion and the discovery, through common combat, of the bond between all Germans, in spite of the ridiculous state system that then existed.[1]

Rightly or wrongly, the Germans did not believe, in 1914, that they had started out in a great attempt to conquer the world. Such indeed would be contrary to the general spirit of German culture, regardless of the fact that the Germans also believed that in many ways German civilization and achievement have been above that of the rest of Europe. Even though they suffered defeat in the World War, they can look back with intense pride to the fact that they stood out heroically against most of the world for four years, and to the fact that in the critical junctures of the war it was the German army that saved her allies. The German troops moved from front to front up and down Central Europe, and when the war was ended the army was still fighting bravely against gigantic odds. No, the Germans declare, it was not the army that was defeated in its now legendary fight for the Fatherland; it was the unpatriotic elements at home that brought about defeat. The munitions strikers of 1918, the war profiteers, the preachers of revolution and discontent finally triumphed while the army labored at the front filled with the spirit of the ancient Teutonic warrior. The Fatherland was at stake, and Germany was fighting as of old to break the iron ring of her enemies, even as Frederick the Great had fought in his own day when German statehood was being constructed. The army, defeated from behind, came home in good order and laid down its arms in obedience to the commands of civil

[1] A good work on the development of modern German spirit is Lucien Lévy-Bruhl, *L'Allemagne depuis Leibniz* (Paris, 1890). Guido de Ruggiero, *The History of European Liberalism* (Oxford, 1927), may also be consulted to good effect.

rulers who had marched into power on the foundation of sedition. Those who brought about the peace signed the treaty, the *Diktat* of Versailles, which was negotiated under as humiliating circumstances as could be conceived by the leaders of the Allied and Associated Powers. The new civil authorities were, too, the ones who were responsible for the Weimar Constitution and the Republic of Germany after the war. These men, the socialists and the Marxians, the revolutionaries and antipatriotic rabble, were the leaders who had to shoulder the burden of a Germany held up to scorn and shame before the rest of the civilized world. The "shame of Weimar" was hardly built upon the lasting moral foundations of the German people, though it may have been clothed with the verbiage and the ideology of liberalism and democracy.

It should be remembered that the German government surrendered on the basis of President Wilson's Fourteen Points. A peace negotiated on the basis of these noble sentiments no doubt would have been lasting; it would have been a peace that even a proud but defeated Germany might have accepted with honor. But the Germans insist that the Fourteen Points were in no sense observed, and that once Germany had surrendered and disbanded her army the hungry and greedy victors proceeded to divide what they deemed to be the spoils of their conquest. The investigations of the causes of the war by the German historians have been sustained in part and in part disclaimed by historians in other parts of the world. What is certain is that few serious students of the years preceding the war now assert that the Germans and the Austrians were as guilty as they were pictured in the idealistic declamation of the political and military leaders of the Allied and Associated Powers. The postwar investigations of the causes of the catastrophe of 1914–1918 show again that war is war and that the innocent are hard to find when the sword is substituted for the instruments of peaceful civil life.

The Weimar Constitution of 1919 broke with the past governmental tradition of the German state. It was motivated, no doubt, by the general democratic idealism that accompanied the war, but also it may be seen as an attempt to bring to fruition the dreams of the German liberals of the period after the French Revolution and of the middle of the nineteenth century. The monarchy was rejected and a president put in his place. A new parliamentary body was established which attempted to bring about responsible government along the lines of the British and French constitutions. In addition, many ideas of humanitarian and socialist origin were written into the constitution, and the social functions of the state were greatly expanded.

While the form of a federal government was retained in deference to the German tradition, many felt that the great degree of national centralization made the question as to whether Germany was unitary or federal an academic subject, since it was unitary to all intents and purposes.[1]

Party life in postwar Germany followed the French and continental example rather than the British. The multi-party system, based on proportional representation and the broadest franchise, weakened the parliamentary system from the outset. It was exceedingly difficult to find a basis of agreement between the parties which would enable a stable ministry to be established. The burden placed on German democracy was unusually heavy. There was an impossible weight of reparations which acted cumulatively on the general economic disorganization of German society. Morally, the new government faced the rest of the world as a kind of pariah among the nations. The treaty of peace imposed such limitations on German armament as to make her obviously an object of distrust in the family of nations. The ex-soldiers, though weary of the war, had little love for the new regime, except as it promised economic security. Those who were patriotic within the framework of historic German nationalism could see little good in the republic. In addition, there were sporadic communist uprisings, and on the right wing of politics there were some attempts to restore the monarchy. German political struggle was passionate and emotional, and it did not have in it those elements of calm discussion and reasonable agreement on fundamentals which are so necessary to the success of democracy.[2]

It must be admitted, however, that there were enough Germans who were willing to give the republic a chance. The fanatical forces

[1] By a law of April 7, 1933, the remants of German federalism were virtually destroyed. The states or the Länder were united with the Reich, and the work of German unification, in the minds of German leaders, was at last completed. The local governmental structure was destroyed for the most part and new institutions were established which brought about an almost complete centralization of administration and control of policy.

[2] See H. L. McBain and Lindsay Rogers, *The New Constitutions of Europe* (New York, 1922), for the text of the Weimar Constitution. M. W. Graham, *The New Governments of Central Europe* (New York, 1924), has an excellent discussion of the foundation of the Weimar republic. See L. Rogers, "German Political Institutions," *Political Science Quarterly*, XLVII (1932), 322 *ff.* The strength of the German presidency under Paul von Hindenburg was a matter of postwar political development. This increase in power was facilitated by Article 48 of the Weimar Constitution dealing with emergency powers. In 1934 upon the death of von Hindenburg the presidential office was merged with that of chancellor. Hitler's title became that of "Leader and Chancellor" of the German people.

of irreconcilable attitude could not at first secure a wide hearing. It was only the constant growth of Marxian sentiment and the general decadence of economic and social life, combined with the continued international humiliations that the Germans suffered, which made the milder citizens turn to extreme political solutions. Economic distress was never absent after the war, and the middle classes had lost their old position, especially during the inflation that accompanied the French invasion of the Ruhr. The invasion of the Ruhr was one of the most important single facts which convinced many Germans that they could never regain their position among the nations without an open espousal of force and rearmament. Most persons concede that the German is a peace-loving individual, but on the other hand it cannot be forgotten that most Germans also realize that they owe not a little to the success, partial and otherwise, of their armies.

Among the returning ex-soldiers who had fought bravely throughout the war and who were bitterly disappointed with the revolution, the peace, the Treaty of Versailles, and the republic was a young border Austrian named Adolf Hitler. Much has been written about the present leader of the German people. Some have called him a political lunatic and others look upon him as a messiah. But it is certain that he has benefited greatly by being constantly underestimated by his opponents both within and without the National Socialist German Workers' Party. In every sense, Hitler is a self-made man. From an obscure ex-soldier of the German army in the fall of 1918, he built himself up politically during the next fifteen years, always against great odds, until in January, 1933, the old Prussian *Junker* and aristocrat, Paul von Hindenburg, who had been one of his most caustic critics, was forced to invite him to assume the German chancellorship. Hitler has fought every foot of the way from the destitution he experienced at the time of his demobilization to the wealth and power of the first leader of one of the most significant peoples in modern Europe. The hard school of experience through which he has come makes him perhaps less sensitive to criticism than the ordinary leader, since his opponents have been unsparing in their abuse of him and his movement from the beginning. The rage and contempt of his opponents have only spurred him on. Nor must one forget that he is one of the greatest, if not the greatest, of living orators. The spoken word has been his path to power, and his burning fervor has moved the most unsympathetic of observers, even if it has not always convinced them.[1]

[1] See P. Sheffer, "Hitler: Phenomenon and Portent," *Foreign Affairs*, X (1932), 383 *ff*. Most of what is known about Hitler comes from his own autobiographical

Hitler was born of lesser civil-servant parents on the border between Austria and Germany. His parents wished him to become a civil servant, but his ambitions were artistic rather than political. His education was not thorough, though he acquired a certain knowledge of German history and a feeling that all Germans speaking the mother speech and having a common blood should be united into one *Reich*. He was from his early years critical of the Danubian monarchy and the Austro-Hungarian state. Especially did he resent the increasing dominance of the non-Germanic peoples in the complex society of which he was a citizen. His sympathies finally led him to become attached to those leaders in Vienna who were pan-German in their thought. As a young man he found himself penniless in Vienna and excluded from the schools he wished to attend. He worked as an ordinary laborer; he refused to join in the trade-union movement; he formed a strong dislike of what he deemed to be the nonnationalistic attitude of the Jews; and he studied here and there in the literature on social and political subjects. While in Vienna he likewise formed a distinctly unfavorable opinion of the parliamentary system as he observed it in operation.

Later he came to Germany and in Munich tried to make his living, again as an ordinary worker. When the war broke out he enlisted immediately in the German army. While he did not rise to any distinguished military rank, he exhibited bravery on many occasions and was decorated by the German government. After the war, when he had recovered from his wounds received during the last days of the war, he was at loose ends. Quite by accident he discovered that he had ability as a public speaker, and he was invited to join a small group of nationalists and workers who were organizing a political party. He became Number 7 of what was later to be the National Socialist party. Almost immediately he surged ahead in his political leadership. He was in charge of public meetings, and gradually he became known in Munich as a speaker and agitator of power. Finally,

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work, *Mein Kampf*, which has gone through many editions and which has been one of the "best sellers" of recent years in Germany. It has been translated in part under the English title of *My Battle* (Boston and New York, 1933). There is considerable controversy whether this translation gives a true picture of what Hitler says in the original work. Two opinions have been expressed. One is that particularly dangerous passages have been taken out of the translation, thus softening the work; the other opinion holds that all the essential opinions of the original are expressed in the translation, but, because it is only about one-third the length of the original, it really presents Hitler's views out of context and in a much stronger light than in the original work. The author, having read both the original and translation, is inclined toward the latter view.

the fire of the communists and the press was drawn, and the National Socialist movement was launched as a force in German politics.

From the outset the National Socialist party was torn internally between those who wanted increased electoral and parliamentary activity and those who did not; between those who were more socialist than nationalistic and those who were more nationalistic than socialist; and between those who leaned more toward the military leaders of the old regime and those who wished to have little to do with them. In any case, in the early years of the party there was a close connection with the military, especially in the organization of the Storm Troops. These men were particularly trained at first to protect meetings against the incursions of the socialists and the Marxians, and to assist in whatever public demonstrations the party sponsored. In 1923 an ill-advised *Putsch*, or revolt against the Bavarian government, was attempted, and as a result Hitler was sent to prison and his party outlawed. Upon his release, a long series of internal conflicts grew out of the efforts of the party to expand northward in Germany, but through these Hitler maintained his position of leadership and gradually brought other groups within his own organization. At last, with the settling down of the economic depression after 1929, the great increase in the number of adherents of the party began. Some maintain that, had Hitler not been asked to become chancellor, his movement, already on the retreat, would not have continued to be significant in politics. But this is one of the great "if's" in modern history. The fact is that Hitler was given the leadership of the government and succeeded in the following months in so consolidating his position that he was able to eliminate from the government those men who had been cooperating with him but who represented opposing views.[1]

Teutonic Nationalism. Before a statement of some of the major policies of the German government is attempted, some space must be given to the examination of the prevailing conceptions that are

[1] The work of Konrad Heiden, *A History of National Socialism*, tr. from the German (London, 1934) is very important in connection with the rise of Hitler's party to power. For a text of the famous twenty-five points of the National Socialist party, see N. L. Hill and H. W. Stoke, *The Background of European Governments* (New York, 1935), pp. 398 *ff.* When Herr Hitler was appointed chancellor in January, 1933, the Reichstag was dissolved and an election held on March 5. When the new Reichstag met later in the month, it passed the Enabling Act, which is the legal foundation of the power of the present government. The act left untouched the powers of the president but provided for government by decree by the chancellor. It is stated that the law shall remain in effect until April 1, 1937, or until the present government is replaced by another.

accepted by the National Socialists. National Socialism is not something unique in German history; it is a phase of a long development, an aspect of a nationalistic movement that will continue, though perhaps in a different form, should the regime pass tomorrow. One reason for the success of the movement is the fact that it has stayed so close to certain phases of Germanic tradition. The feeling of a German toward his nation and state is more complicated than the attitudes of citizens of most other nationalities. The reason for this is that the political tradition and the state per se are only one element in nationalism, while cultural, linguistic, and racial feelings are also strong, and they have all been rationalized into a complex whole by the exponents of Germanism. Germany, like Italy, has felt for generations that political boundaries have not represented the realities of the people or the community upon which the state is based. For Italians, the national resurgence was a fight against historic forces that for centuries had been too much for the power of the state. German feelings have known many disappointments, and the people have seldom had the satisfaction in modern times of knowing that Germany was a dominant power in Europe. The sense of historic defeat has weighed heavily upon both Germans and Italians, and the present emphasis on nationalism must be regarded as one result of this unfortunate but inescapable historic memory.

Yet German thinkers have stressed the importance of the state. They did this during the flood tide of French and American liberalism, which was antistate in tradition but distinctly pro-state in practice. While the rest of the world was preaching the inconsequence of the state, the German thinkers of different schools were forced to place it high in the scale of those institutions that offered to the individual social and political security. With the reaction to the French Revolution, particularly after the invasions of Napoleon, German nationalism turned to the state as a superior military institution for deliverance from foreign conquest. Thus there is both a pro-state and a nonstate element in the traditions of German nationalism. A great nationalist like Fichte was in his early years an extreme individualist, though toward the end of his life he advocated what was in effect a self-sufficient autarchic state. While Kant did not stress an extended array of state functions, he proclaimed the rational moral duty of the individual to obey his rulers without question. It may be added that Kant was of immense importance in the moral resurgence that followed the Napoleonic invasions. But it was Hegel, perhaps more than the others, who brought the people as the possessor of a peculiar spirit into identification with the realities of ordinary political life. Nation-

alism spoke in terms of statehood and culture. The citizen not only had a simple legal relation of subjection to the state, but he also owed a moral duty of obedience because of the position the state occupied in the development of the peculiar culture of which he was a part.[1]

German nationalism must be studied in the light of political romanticism.[2] Romanticism is an extremely complicated movement in modern Europe, and our interest here must center specifically upon the political implications of the German phase of the movement. The romantics sought the mystical and the spiritual rather than the rational and the positivistic side of life. They favored the creative and the individual rather than the traditional forms of taste as represented in classicism. In Germany they began to search into their past, as with Herder, to gather out of the twilight of time those beliefs and practices and poems and legends which had been truly of the German people. In literature the individual and the creative signifies a rejection of the international and cosmopolitan mould of form. There was a revival of the ancient German lore and saga; the history of the language was investigated with minute care; and the spirit and soul of things Germanic were revealed to the light of criticism, at least to the satisfaction of some of the writers. But along with this there was, as in Goethe, a profound appreciation of the contributions of the creative period in Greek art and literature. The German spirit was in a sense the heir of what the Greeks had given at their best. German culture, indeed, was on its great upswing during the latter years of the eighteenth century.

In France and Italy the romantic movement was expressed primarily in literature and criticism, but in Germany there was a political aspect. Perhaps it arose from the cultural foundations of nationalism, but it was expressed in the German study of the historic, with its concentration on the history of German law and institutions, and in

[1] See Lévy-Bruhl, *op. cit.*, *passim*, for a general account of German thought to the middle of the nineteenth century. *Cf.* S. M. Melamed, "The Destinies of a Great Philosopher," *The Reflex*, VII (1935), 3 *ff.*

[2] "Unter 'Romantik'—es ist bezeichnend für unsere Zeit, das dies Wort in Verruf kam—versteht man jene Geistesströmung vor 100 Jahren, die wesentlich dazu beitrug, unser Volk zum Bewusstsein seiner Eigenart zu bringen, seine grossen kulturellen Leistungen aufzuzeigen und sein Wesen zu deuten. Fichte auf dem Gebiete der Philosophie, Schleiermacher in der Theologie, Niebuhr in der Geschichtsschreibung, Bopp in der Sprachwissenschaft, Grimm in der Deutschkunde, List in den Wirtschaftswissenschaften sind die leuchtenden Namen, die uns vorschweben, und die wir heute wieder anknüpfen." Helmut Nicolai, *Die rassengesetzliche Rechtslehre* (München, 1932), pp. 21–22. See G. A. Borgese, "Romanticism," *Encyclopaedia of the Social Sciences*, Vol. XIII, pp. 426 *ff.*

the evaluation of the political principles that should lie at the base of public policy. Romanticism has been associated from its inception with the idea of national resurgence, but this renaissance of the nation has been regarded from a broad point of view that has included the many facets of the particular Germanic culture. The spirit of romanticism may be shown by indicating the contrast between it and the ideology that is part of eighteenth century liberalism.[1]

It has already been shown that liberalism has been universalist in its intellectual attitude. The ancient conceptions of natural law and the law of nations were re-worked in terms of rights. Reason was the instrument by which the content of rights was discovered, but reason was a quality of the human being and it was not the specific attribute of the members of any national community. From the time of "the judicious" Hooker in *The Laws of Ecclesiastical Polity* at the end of the sixteenth century down through the great thinkers of the American and French revolutions, it was the God-given reason of man which was the primary test of what ought to be in the political world. These standards in their nature transcended the political boundaries of a given state or the cultural frontier of any specific community. Uniqueness was not stressed, for the universal standard could not be held and admit at the same time anything fundamental or essential in the peculiarity of national groups. The most radical of the liberal leaders believed that their ideas could be used wherever men as such were concerned in their living with one another. Culture and civilization were universal rather than national attributes.

The natural-law tradition, however, is older than the particular form of modern liberalism. Nor is the emphasis on reason something that is peculiar to the recent era, even if we admit, on the other hand, that the stressing of rights against rulers and the political community is. Universalism runs through Western thought from the days of the Stoics to the present, and in each age there have been specific modifications of doctrine though no thorough questioning of the basic postulate of a world moral order. In the Christian tradition of the West, especially in Latin Christianity, we find the means whereby the doctrine of natural law was preserved. Not only was there a natural constitutional law of states in the Middle Ages and in the modern age, but there was also a natural law between nations. Such ideas raise the complex question of the changing relation between the

[1] See Ernst Troeltsch, "The Ideas of Natural Law and Humanity in World Politics," in Otto von Gierke, *Natural Law and the Theory of Society*, 1500–1800, tr. and introduction by Ernest Barker, 2 vols. (Cambridge, 1934), Vol. I, pp. 201 *ff.*

law of nature and the law of nations from the time of the Roman jurists down to the modern international lawyers. We may accept the principle, however, that by the end of the eighteenth century most of the vigor of natural law had been sapped as far as constitutional law was concerned, though there were still people who, aside from the Latin theologians, stressed natural law in the construction of an international system of law and ethics.[1]

Certain implications flow directly from the above-mentioned principles. The humanitarianism of liberalism is regarded by liberals as one of the jewels of the modern political crown. Equality for all men, justice to human beings because they are such, charity and generosity toward the inferior, and a general condemnation of anything that speaks of force or violence in human relations rather than the governance of principle—these are the standards by which all else is measured. Meliorism and various types of social legislation are significant expressions of what the humanitarian and equalitarian ideas result in when applied to the concrete problems of society. It might be added that the principle of human perfectibility, while not held strongly at the present day, finds a modified institutionalization in the modern system of universal, free secular education. These are principles and applications that are, for the most part, universal in their meaning.

No contrast is more distinct, however, than that found in the liberal and the romantic attitudes toward internationalism. The romantic is essentially nonuniversal, while the liberal, if he follows his logic to the end, is internationalist or cosmopolitan in spirit. We have already indicated in a previous chapter that the League of Nations system may be regarded as an outgrowth of nineteenth century liberalism, or we may say it is an outgrowth of certain internationalistic trends that have been characteristic of Western thought for centuries. To the liberal, the nation or the national organism is nothing more than a passing phase in the development of man. The liberal tradition in its antipolitical and antistate phases can accommodate itself without difficulty to the fundamental criticism of the importance or the permanence of the state. To affirm that the state, as the embodiment of the nation, has a permanent and unique function in the world of

[1] See Gierke, *op. cit., passim;* C. H. McIlwain, *The Development of Political Thought in the West* (New York, 1932); Gierke, *Political Theories of the Middle Age,* tr. and introduction by F. W. Maitland (London, 1900); *Johannes Althusius und die Entwickelung der naturrechtlichen Staatstheorien* (Breslau, 1913); R. W. Carlyle and A. J. Carlyle, *A History of Medieval Political Theory in the West,* 5 vols. (London, 1903–1928).

states is to deny the unversalist principle of natural law and natural rights and the principle of humanitarianism.

Furthermore, the importance of the idea of progress in liberal thought must be associated with international and universal conceptions. Progress is not related to one group or community alone; it is in nature essentially similar in all countries. The development and the freeing of human intellect, the elevation of the social function of reason, the advance of science, and the accumulation of material advantages are not ideas than can be limited in their scope. World progress is the essence of progress if there is to be any at all. The Westerner looks with pity on those peoples who have not the same standards of earthly achievement, and the evaluation of his own progress is likewise an evaluation of the world. To deny progress is one of the most fundamental of all criticisms of the liberal attitude, for it rejects the possibility or the inevitability of the universal and creative function of reason.

The romantic takes his stand against the universal and the general. He is a believer in the individual and the unique as the creative qualities in life. In literature he may rebel as formerly against the canons of classicism, but in social life it might be a rebellion against the sovereignty of the international or the cosmopolitan. Thus natural law which stands above all peoples can have little place in his world of values, except as it is modified to support a conception of life as having infinite variation and gradation. Things are unequal in nature and society; the romanticist stands for that which is superior and creative against that which would hide its inferiority under the banner of the universal. The world-state is, in effect, a dream that denies the eternal differences among cultures, policies, and peoples. The particular nation is unique because of its own qualities which other national groups do not have. The universal must be denied as it is expressed in a world theory of human rights, in the conception of humanitarianism, in social and political internationalism, and in the common judgment of progress in every people.

The German romantic tradition has involved just such denials, but of course there have been many shades of opinion. Some of these have come close to the liberal and universalist conception of the world; others have been completely removed from this interpretation. The more extreme forms of romantic spirit have sanctioned the resort to methods that have been indefensible to the rest of the world, but the difficulty has been the almost complete divergence of views with regard to fundamentals. It is a striking fact that during the World War German propaganda which took its point of departure in German

conceptions was unimpressive to Western nonromantic communities. On the other hand, the Scandinavian countries, which had a better understanding of the Germanic point of view, remained neutral and were not swept away by the propaganda of the Allied and Associated Powers. Many Germans think that there should be more of an effort to reconcile the peculiarities of German thought with the intellectual principles of the historically liberal countries. Such thinkers can see in Spengler and Nietzsche and in National Socialism exaggerations and corruptions of the finer qualities of the German romantic spirit. They would bring about a clear acceptance of the standards of international conduct which have grown out of the ancient bases of Western rationalism. The historic assertion of the unique is a constant danger to the very national existence that is so declaring its freedom from the law of the rank and the file.

Contemporary National Socialism must be viewed in the above light. As before in other German movements, its leaders are seeking for the mystical and elusive qualities of the German soul. The spirit of the people, as it has come to be in its organic association with the soil, is the basis on which one must judge right and wrong. Perhaps it is only a German who can sense the reality of the German folk, but it is surely true that the Germans do not expect the non-German to see this reality as clearly as they. National Socialism involves the denial of universalism along several fronts. The religious values stressed in the Third Reich are not the universal values of Jewish-Latin Christianity; the racial theory of the nation is fundamentally an assertion of a unique and individual basis of community life; the belief in the creative life of German culture involves a disregard or a denial of equal and similar qualities in other cultures; and the belief in the state as the institutionalizing of the unique and the peculiar in the German group postulates a denial of integral international cooperation. The liberal ideal of progress as the evolution of humanity is replaced by the romantic conception of the development of a people. Likewise, the assertion that the army and its spirit are among the most important embodiments of the political and social soul is contrary to the liberal belief in discussion and democracy as the proper means of settling disputes between peoples. The army for the present German romantic is one of the great training schools for those civic virtues upon which the rise and fall of national communities depend. Naturally, the nation is one of the permanent means of organizing the people who are bound together by a common race.

The Germans speak of their *Weltanschauung* or world view, and it may be admitted quite readily that when two such essentially con-

tradictory philosophies as liberalism and National Socialism stand face to face there is little prospect of mutual understanding. When there is agreement over most of the way, it is easy to discuss peacefully the remaining areas of disagreement. But when the conflict is fundamental from the first premise, there is little chance of those kindly feelings in which liberalism believes occupying a dominant place in thought. In the war of propaganda between such opposing views, it is easy to permit hate to prevail over reason. In fact, it may be said that the only way in which the representative of one world view can reach the other is to use the fundamental assumptions of the other. The criticism of the world against a movement such as National Socialism may do much to confirm the German in his belief in the essential correctness of his own position.[1]

Das deutsche Volk. The beginning and the end of National Socialism is to be found in the affirmation of the existence of a German folk. Here is, however, one of the most difficult conceptions to carry over into our language. It is not sufficient to translate *Volk* as people, since the meaning of "people" is very different from that of the German word. Perhaps we shall have to search for the significance of this conception in some of the actual policies and beliefs that grow directly out of it; perhaps it is only by repetition that the Germans themselves have been convinced, along romantic lines, of the existence of this folk. In any case, the racial and political theories of present-day Germany must be interpreted in the background of the folk conception. It must be remembered that the romantic attitude does not rely on positivism to discover the people, for there is the strong flavoring of intuitionism and anti-intellectualism in the present German attempt to reconstruct society on the basis of historic materials. Feeling is quite as important as reason in the examination of fundamental ideas, and the romantic often is proud of the fact that he is not a victim of the sterile intellectualism donated to the world as a result of the French Revolution.

The German folk is not alone those who speak the mother tongue, or those who live within the confines of the German state. Neither the boundaries of 1914 nor those of the German states during the life of Frederick the Great are the territorial limits of the German political community. The German nation, as a symbol of the folk, extends

[1] Nazis in their propaganda point to the international boycott as evidence of their allegation of an international Jewish conspiracy. The fact is that the boycott was organized and supported by labor, and liberal anti-fascist groups, as a protest against Germany's treatment of the Jews and other minorities. From the Jewish standpoint a democratic society must be based on political unity and cultural freedom.

wherever there are those of German blood. This community of blood is not *pure*, for there are different but kindred races involved and there are elements that are not deemed ultimately to be part of Germanic foundations of life. In this community of race there are some elements that are superior to others, and it is the duty of the state to conserve and to develop those racial strains which are considered to be the best for the development of the nation. It is not biology alone which will establish this community of blood, for the German theory holds that certain tendencies in conduct and attitude are to be associated with races, and the intuitive values that people hold may prove or disprove their adherence to and membership in the German folk. There is, therefore, a biological naturalism at the heart of the National Socialist interpretation of the social process. This "scientific" explanation balances against the equally "scientific" Marxian interpretation of history. It would appear that those who take the masses with them must do so in the name of science.[1]

The folk lives upon the soil, and the love of the land that has nurtured the Germanic community throughout the centuries is something far stronger than any love of the countryside found in the United States. The quiet peasant attitude which can accept gracefully the fact of organicity with nature is necessary before the soil (*Boden*) can loom as large as it does in German thought. It is from the soil that man springs and it is from the soil that he lives. The race that uses the soil for the development of its own destiny is at the same time making itself one with the land. It is not surprising, therefore, that in National Socialism there is a bitter hatred of the large city. The man of the city is decadent; he has little or no folk sentiment, and he does not feel the vigorous and elemental desire of the peasant to have descendants who will carry on his name and his work. It is in the country that the historic virtues endure, and it is only in the peasant mind that the long upward swell of the folk spirit is revealed at its best. The peasant soldier is the heroic warrior, whose honor is above price. No modern writer has more eloquently expressed the decadence of the great world city than Oswald Spengler.[2] While Spengler has never been one of the more enthusiastic supporters of National Socialism, his philosophy stands in part in agreement with

[1] See T. Heuss, *Hitler's Weg* (Stuttgart, Berlin, Leipzig, 1932), p. 32.

[2] See *The Decline of the West* (New York, 1926–1928) Vol. II, Ch. IV, "The Soul of the City." The student of German thought should also consult Spengler, *Preussentum und Sozialismus* (München, 1921); *Man and Technics*, tr. from the German (New York, 1932); *The Hour of Decision*, tr. from the German (New York, 1934).

the objectives of the regime. He believes in the culture cycle of growth and decay in civilizations, and therefore he rejects the purely racial theory of the rise and fall of nations. But in his contempt of the city he is one with the agricultural philosophy of the leaders of Germany. In the intellectual decay of the city, which is out of touch with the forces that have produced the people on the soil, there is nothing but depopulation and race suicide. As it has been said, there is in the city no fourth generation.[1]

We must examine here more carefully the racial theory of the rise of Germanic civilization. It is generally admitted that an extreme form of this type of thought is officially orthodox at the moment, but there are many who hold that the radicals of the National Socialist movement may be displaced and that a more sober racial philosophy may come into favor. Most critics would admit also that, should National Socialism be driven from political life in the near future, the racial principle would still be important though not supported in an extreme form. The dominant theory in Germany holds that the Aryan race has been the source of all the great civilizations from India to Western Europe. The Nordic type is a form of the Aryan race, and it is clearly the elite of the diversified Aryan stock. Against the Aryan race are placed the mongrel types of Asia Minor particularly, since it was they in this theory who overcame the purity and strength of the Aryan blood that had built up the early Greek and Roman civilizations. As long as the original stocks held out against intermarriage with inferior peoples, their civilizations endured and increased in strength. With racial mixture and the bastardization of the race, the fighting and creative power that had been crucial in the beginning was lost. Story and legend indicate that the light-haired peoples came from the North. To the German mind there is the sharpest contrast between the Semitic and the Aryan types.[2]

[1] Spengler must be read to be appreciated. It is almost impossible to reproduce the Spenglerian train of thought. This is not to suggest in any degree the truth or falsity of the views he presents, but it is generally conceded that his writings are provocative, no matter what point of view the reader may hold.

[2] One of the most important works on the racial theory of National Socialism at the moment is Alfred Rosenberg, *Der Mythus des 20. Jahrhunderts* (München, 1934). Lawrence Preuss, "La théorie racial et la doctrine politique du national-socialism," *Revue générale de droit international public* (November-December, 1934), gives an excellent discussion of racial theory in Germany.

Among other important works, the reader should consult J. A. de Gobineau, *The Inequality of Human Races*, tr. from the French (London and New York, 1915); H. S. Chamberlain, *The Foundations of the Nineteenth Century*, tr. from the German, 2 vols. (London and New York, 1911). Jacob R. Marcus, *The Rise and Destiny of the German Jew* (Cincinnati, 1934), offers a splendid account of the anti-Semitic

The evidence for these contentions is gathered from many different sources, but the case for the Aryan view of culture has been unimpressive to many non-German students of race history, especially in the United States. In Europe there is undoubtedly a more definite sense of race and its importance in history than in this country, but the theory has been carried on to a greater development in Germany and Austria than in any other communities. Politically, movements are important because of their influence on conduct and not always because of the truth or falsity of doctrine. That racialism is important in the minds of a considerable section of Europe today is not to be denied.

On the basis of comparative philology, there was developed about a century ago the idea that there must have been a great original and civilizing race. There were evidences of a common language, and it was presumed that there was a race that spoke it. The traces of this common tongue were found in India, Persia, Greece, Rome, and Europe in general. In literary sources drawn from these countries and Egypt as well, there were evidences of a conquering race from the North which had overthrown the more primitive institutions standing in its way. In ancient India the Aryans were the high-caste Brahmans, and one of the fundamental social principles was the prohibition of intermarriage between the superior and the inferior stocks. Later, the vital force of the ancient conquerors of India was weakened because the blood community and the moral expression of this unity were destroyed by the infiltration of poor racial strains. In Persia much the same thing took place, according to the Aryan conception of cultural history, and even in early Egypt there are references to the light-haired superior men who came from the North. But the essential features in this case involve the interpretation of the rise and fall of Greek and Roman culture. In both cases, so the theory goes, the early warriors from the North were of the Aryan stock; it was they who laid the foundations of greatness in a cultural as well as in a military way; this strength lasted only as long as the races were kept separate. However, in both Greece and Rome the tide of Near Eastern population swept over the pure Aryan folk. Gradually, these invaders, the Semitic people particularly, brought about a debasement of religion and art. Instead of the purer and nobler religion of the ancient Aryan invaders, the exotic and the extreme in religious thought and custom appeared; instead of the brighter conceptions of early statuary and poetry, the debased forms were given constant

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problem from the Jewish standpoint. See also Paul Radin, *The Racial Myth* (New York, 1934).

attention. Marriage and citizenship were no longer associated with racial purity; the corrupted rabble was admitted on the same basis as the ancient aristocracy or the patricians. In turn, the power of military resistance disappeared in both Greece and Rome.

This theory argues that what is great and permanent in Greek and Roman culture came from the Aryans who first founded these civilizations. The Aryan element might be corrupted almost to the point of disappearance, but even during the medieval and early modern period the greater minds of Latin culture, such as Dante, can be shown to have a marked element of Northern blood. In France, for instance, the elements in the population of Nordic descent, especially in the Northern part of the country, were the foundations of French achievement and greatness. Germany herself was slow in developing in modern times in large part because of the southward drain of the superior peoples. But with the disintegration of the Aryan element in the South of Europe and the bastardization of once strong peoples, the creative life of the West was transferred finally to the North, from whence culture had come in the beginning. Here, we should mention that the Aryan stock is not limited, in this view, to Germany and the German minorities. The Scandinavian peoples, the Danes, the Swedes, and the Norwegians are counted in the Aryan family, as well as the larger part of the inhabitants of the United Kingdom and North America above the Rio Grande. Hitler asks in his *Mein Kampf*, after contemplating the exploration and settlement of continental United States, "Could the Jew have done this?" His answer is, of course, in the negative. The building of civilization is the work of the Aryans.[1]

It must not be forgotten that the National Socialists do not contend that the people of modern Germany are pure Aryans. There has been an unfortunate mixing of peoples, but what is contended is that the Aryan element is still sufficiently strong to be perceptible. The task of the state in its racial policy is to give every possible advantage to the sound racial strains in the community. In the course of generations, therefore, there will be a gradual recuperation of the racial basis of Germanic civilization. The National Socialists point with approval to the immigration policies of the United States and Great Britain. Our new immigration statutes are steps in the right direction, since they indicate the will to preserve the Northern European elements of our community. These laws will act toward the ends of race hygiene because they cut out the influx of inferior Eastern peoples which brought about the decay of ancient civilizations and

[1] On the historical phases of Aryanism, see particularly Rosenberg, *op. cit, passim.*

which have impaired the force of some of the Northern European cultures.

In German writings the word "Aryan" is broader than "Nordic." In part this arises from the fact that not all the present German people can be called Nordic, while it is much easier to believe that they are Aryan. However, in German theory there is a tendency to regard the Nordics as the elite of the Aryan peoples, and consequently much of the current racial policy is directed particularly toward the preservation of the Nordic type.[1] It is here that the principle of biological racial purity comes to its highest expression. It transcends the admission of the actual mixture of races, and it gives a basis of discrimination between the better and the worse in the administration of racial selection.

It must be recognized that the principles we have been discussing have the widest possible repercussion in public policy. The liberal view of man as rational, or the economic conception of the "economic man," gives place to a new body of thought. Instead of the exploiters and the exploited of Marxism, we have in terms of race the superior and the inferior individual. In other words, racial inequality leads immediately to political and social inequality. The principles of public and private law must take into account these differences, and in contrast to the liberal universalism in rights we have the theory that rights are to be attached to the racial significance of an individual. Citizenship and the right to govern also are linked with the racial standing of the individual. The single personality finds his reality only as a member of the *Blutgemeinschaft*, or community of blood, which is the foundation stone of the folk and in turn the basis of theories of law and rights.[2] Values and principles, such as loyalty and honor, the firm belief in the need for descendants, and the unity between the dead, the living, and the unborn, spring from the sense of the racial community, whether in the family or in the larger theater of the folk. The law itself is a more or less instinctive expression of race values which survive because of the continued and uncorrupted community of blood. The Jew asserts his own racial community by the historic resistance to intermarriage, and because of this, in the German theory, he cannot be a part of any other community that is organized on the ground of its appreciation of blood, soil, and culture. It must also be recognized here that the German theory does not involve the idea of world empire; to the German mind this is a product of Roman-oriental monarchy, which carried into practice the deifica-

[1] Preuss, *op. cit.*, p. 664.

[2] See Helmut Nicolai, *Die rassengesetzliche Rechtslehre* (München, 1932), *passim*.

tion of the emperor. The German peoples have lived in a community, and not in a society, such as the Roman, which looked always on the lordship of law as the will of the prince.[1]

The National Rechtsstaat: The Leader State. We must turn now to the political conceptions that have been developed in harmony with the biological conception of the folk. German political science is turning from the legal positivism of the individualistic *Rechtsstaat*, or constitutional state of the nineteenth century. There is a definite effort to reconstruct along folk lines the whole body of political and legal interpretations accepted as valid by the state. It is, of course, too early to state the ideas that are likely to be lasting in the evaluations of German thought, but some indications of developments that may in all probability survive the present political leadership may be made.[2]

German political conceptions begin and end with the folk, and the specifically legal and state conceptions are built upon the social basis of the blood community that we have been considering. The community is the primary fact, and the community is an organization of racially and culturally united people within a given territory. The territory, as we have seen, is not merely a question of jurisdiction and political boundaries, for the organic union of soil, people, and culture provides the framework for the spiritual conceptions of human existence. The reality of the individual is only within the community; his life, his rights, and his duties are to be interpreted in terms of his membership in a social organism, which in the German theory extends as far back as there are any records of the common living of Aryan peoples. The community, which is based on these qualities of common race, language, and culture, is in its political expression the nation. Authority in turn is found, not in the consent of the individual as a rational creature, as is the case in classical liberalism, but in the needs of the community. Here is the supreme law of life, political or moral. Right and law are not separate elements, for both come from the distinctive moral sense of the *Gemeinschaft*. What is necessary for the perpetuation of the community is right and is proper; it is moral.

[1] Nicolai, *op. cit.*, p. 18. It might be added that there is very little evidence for the wartime assertion that the Germans were striving to conquer the world. To believe in the uniqueness of the folk and the nation is to accept, finally, its separation from other peoples. The cultural mission of the Germans is essentially a program of internal or intranational realization.

[2] One of the most serious works in this field is Otto Koellreutter, *Grundriss der Allgemeinen Staatslehre* (Tübingen, 1933). See also Carl Schmitt, *Verfassungslehre* (München and Leipzig, 1928); *Der Begriff des Politischen* (Hamburg, 1933); *Staat, Bewegung, Volk* (Hamburg, 1935).

Law is not the will of the sovereign, drawing its validity from the stamp of positive enactment. Law is valid if it is an expression of the *Recht* or sense of right of the community. By definition the authority of the unitary, individual, and unique community is in its turn unity. This is the significance of the authoritarian state in the German interpretation of the word. The community is authoritarian, not because of any rational postulates as to the nature of authority, but because it is a necessary aspect of any living social organism. It should be clearly borne in mind that the state, the government, or those who exercise authority are not primary ends in themselves. Public order is only a symbol of the deep need of the community or the society to live. The Germans do not worship the state; they do believe in the nation. The state and its positive law and administration occupy only a secondary position in the minds of the theorists of National Socialism.

The authority of the state must be organized so that it is powerful enough to serve the needs of the community. In times of crisis, and the Germans feel that they live in such a time today, the authority of the state, springing from the nation community, may be expanded. In other periods it may be relaxed, because the attitude toward the state in German thought, as in Italy, is experimental and pragmatic to a large degree. But to a lesser extent than in Italy there is a combination of the pragmatism of political policy and structure with the absolute belief in the nation. From the twilight of German history is derived the basic principle of modern German thought on the question of political organization. There is first the national *Rechtsstaat*, and secondly there is the leader state (*Führerstaat*). The national legal state must be interpreted in the light of our previous discussion. The nation is the politically energetic racial and cultural community, and law is the deeper sense of justice that is historically characteristic of this nation. *Rechtsstaat* does not mean the rule of law as a positive set of rules enforced by the state and accepted as the standard of its own conduct. The law is more profound than enactment; it is part of the soul of the people. A certain number of corollaries flow from this idea; these are directly contrary to the liberal and democratic conception of the nature of the *Rechtsstaat* during the nineteenth century, particularly the denial of the binding character of the constitution.

Beyond this, the fundamental feature of political organization is leadership. This goes back to the Teutonic conception of political synthesis. The leader in the true and ancient Germanic democracy, as Hitler speaks of it,[1] is completely and personally responsible for

[1] *Mein Kampf* (München, 1933), p. 99.

the conduct of public policy, but at the same time he is completely responsible to the community. He does not have to test his leadership on the decision of minor questions, and the function of the people is to say "yea" or "nay" to the total import of its leadership. The use of the plebiscite in relation to the acts of *der Führer* in recent years in Germany is regarded as an application of this principle of traditional democracy. There is, in the German mind, little in common between this type of rulership and the theory and practice of liberal parliamentary government. The leader is not merely a legal official; above all he is a spiritual chief. He embodies in himself the sentient pulse of race, culture, and language. He is an historical symbol of the struggle of the folk to attain its inner racial destiny. He embodies the virtues of the German people, their loyalty to the leader, and the leader's loyalty to the people; he is a personality in which honor is real and not a word, and in time of crisis the true German looks upon his oath of fealty to the leader as the most solemn of pronouncements that it is humanly possible to make. His God and his country are institutionalized in the leader and the spirit of leadership.

Personality is therefore the soul of politics. Institutions and positive laws, ineffective in their sterile grandeur, fade away before the historic personality who by his leadership brings to fruition the individual personality and freedom within the immutable bounds of community and nation. Liberalism and Marxism move in the cadre of forms and institutions, while the spirit of National Socialism is found in the everlasting Teutonic affirmation of the principle of personality and leadership. The Weimar Constitution of 1919 was in effect a negation of what the permanent institutional spirit of the German demands. In the nature of the case it could not last. As soon as the foreign influences that denied true Germanism, such as internationalism, liberalism, and its outgrowth, Marxism, were destroyed, the old principle had of necessity to come to the foreground. Only for a limited time could the Germans accept a system of institutions which had nothing in common with the principles that had governed their history in varying forms through the centuries. The need of the hour would produce the leader, the hero, the inspiring personality, who would be able to reconstruct the new day on the basis of the profoundly rooted community. The National Socialists believe that the leader came just in time, before the evening of decline had darkened into the night of racial and national oblivion. But if the new leader, Hitler, has saved Germany, he has also saved the rest of Europe from a fate which would have destroyed every trace of

national individuality that has developed in other countries. The great historic service of National Socialism has been to turn back Bolshevism, which is the new tide of Eastern inferiority.[1]

The Party and the Army. The great institutions for the development of personality and leadership are, in the theory of National Socialism, the party and the army. Both represent the principle of the elite; both are selective training schools for the virtues of citizenship and the unleashing of the personal power of the ruling class. If the army has in it the elements of class distinctions that are grafted into the spirit of the people, the party is a body of men from all classes who have the utmost will to sacrifice themselves in the name of the leader for the good of the people. In the past it has been the army that has made Germany, and it is hardly conceivable that in the new regime the party should displace the great historical embodiment of the will toward life which has been in the German soldier. The spirit of the front, as in Italy, has been in no small degree the foundation of the new order of things. The army comes from the past into the present, and in its stern will to see that German people and culture live it projects itself, in its spirit of the heroism of the Teutons of old, into the future. The leadership of the army and the party takes the place of the shallow-rooted institutions of parliamentary democracy and the disgrace of the postwar Republic. The army is not an institution for conquering the world; it is the means of the national defense of German honor. The authoritarian nature of the community expresses itself in the unquestionable right of the people to defend themselves and preserve their standing among the other states of the earth.

Authoritarianism implies that there must be an acceptance of the fundamentals of community existence. Those who question the basis of the nation in history can claim no right to tolerance, for tolerance would mean here the invitation to the enemies of the people to do their worst. The Nationalist Socialist German Workers' Party is not a party in the old liberal sense of the world. It represents a world view and it is a total movement. If the principle of the party is accepted, there can be no room for those smaller groups that deny the essential values of the national movement.[2] The party, like the

[1] A. Ehrt, *Communism in Germany* (Berlin, 1933), puts forward this conclusion at the end of his study of the communist movement in Germany.

[2] On July 15, 1933, a law was announced which declared that "The National Socialist German Workers' Party is the only political party in Germany." Punishment was provided for anyone who should attempt to organize another political movement.

army, is an instrument of force as well as of consent. It was organized from the early days as the Storm Troops (*Sturmabteilungen*) and the special guard of the leader (*Schutzstaffel*). Its early task was to protect the political work of the party against outsiders; in latter days it has had its primary function in the organization of national discipline in a purely political sense. Its social importance is less than that of the army, but in nature it is not different. Both the army and the party are selected groups of those whose ability, militancy, and loyalty are proved, but also they are both part of the state. In the army the citizen (as distinguished from the passive state subject or alien resident) participates in the duty of national defense, and in the support of the party and its leaders he participates in politics generally. Outside the party, as in Russia and Italy, there is no real participation in government. It is not merely the state subject who is active in politics as in the liberal view, but it is the active personality who has assumed the additional burdens of being a citizen in the National Socialist sense. As a member of the race, he enjoys the rights which appertain to that condition, but as a member of the party he becomes an integral part of the state.[1]

Some Policies of National Socialism. The policy of National Socialism is in constant evolution, though certain major features may be mentioned in a concluding section of this chapter. While the Weimar Constitution has not been formally destroyed, the old system of parliamentary responsibility is gone, except in the most limited sense. The leader has been given full powers for a period of four years, and there is small likelihood that this policy will be discontinued. Education has been reorganized and adjusted to what are considered to be the national needs, such as the limitation of the number and racial character of the university students and the elimination from public life of all but the racially suitable proportion of non-Aryan peoples. The peasants' holdings have been guaranteed against foreclosure and seizure by creditors, in the hope that the standing of agricultural life can be maintained against the predominantly urban tendency of recent years. Non-Aryan persons have been, within certain limits, driven from the professions, such as journalism, teaching, and the law. The press has been disciplined and made to serve what are deemed to be the national exigencies.

[1] By a law of December 1, 1933, the National Socialist party was made a public corporation to which was assigned governmental functions, especially in the administration of justice. The party and the Storm Troops assumed a relation to the state like that of the army and the police. The party leader and the chief-of-staff of the *Sturmabteilungen* were made members of the government.

Various schemes have been adopted to encourage the development of German industry and national economic independence (*Autarky*).[1]

But what is most significant in making the Germans a proud people again is the resolute will to throw aside the restrictions and discriminations of the Treaty of Versailles. This fact explains as much as any single factor the rise of the National Socialist party to power. The restrictions on the right of Germany to maintain an army have been thrown aside, and compulsory military training restored, as is the usual case in European countries. The navy is to be rebuilt, subject to international agreement, with the British in particular. The Saar has been rewon by Germany in accordance with the Treaty of Versailles, but to the German it was the return of the lost child to its mother. While the Third Reich has not been successful on all fronts in its diplomacy, some advances have been registered. Germany's withdrawal from the League of Nations in the fall of 1933 was, in their own minds, an heroic protest against the lack of equality between Germany and the other powers.

It must be reemphasized in concluding that the National Socialist movement is expressive of a significant trend in German tradition. The fall of the government tomorrow would not mean the end of the spirit which gave rise to the determined belief of contemporary Germany that it did not cease with the defeat of 1918 to be a people. Regardless of the military preparations of the Third Reich, there are few serious students who doubt the inherently peaceful disposition of the average German. That he is a good soldier, the World War showed. Some truth may, perhaps, be attached to the assertions of the German leadership that what Germany wants is peace, security, freedom, equality, and respect among the states of the world.

[1] The meaning of "socialism" in the program of the National Socialists has been extremely vague. It means in general that national productive forces must be integrated and coordinated for national purposes. The more radical members of the party have desired a far more thoroughgoing reorganization of economic life than has taken place under the present government. In 1934 a "Law for the Organization of National Labor" was put into effect. The principle of cooperation between all factors in production was put forward in place of the Marxian conception of the class war. Private ownership remains in Germany, subject, however, to state supervision and control. The functions of the industrial leader were stressed in accordance with the prevailing ideas about the importance of leadership in social organization. The act creates advisory councils in business, labor trustees (13), and courts of social honor for the purpose of bringing about harmony between employers and workers. See *Industrial and Labour Information*, International Labor Office, XLIX (January–March, 1934), 245 *ff*. This publication is a very good source to consult on the social movement in all countries.

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Chapter XXVI

PRAGMATIC COLLECTIVISM

The intelligence of the white races has been softened by success, they have been used for so long to easy and unchallenged power where other races were concerned; they succumb at once to a little intelligence. That is the weapon they have scorned and neglected."—Wyndham Lewis.[1]

The Planned Economy. All classes today seem a little uncertain as to their future. The period beginning with the World War has seen the shattered foundations of many institutions and groups that thought they would never cease to have power and position, and even those who have survived war, economic depression, and monetary inflation are now raising the question in their own minds as to what will happen. Perhaps they turn toward Russia and feel a chill of horror at the thought of the proletarian revolution; they may turn to the economic policies of Fascism or nationalism; or they may consider the gradual strangulation (for good or evil, as the case may be) of the historic economic liberty of democratic and liberal states. Wherever the glance is turned, a tremendously increased sense of social responsibility for the unfortunate members of society may be observed, as well as the demand that the more advantaged members pay the cost of social security for the unfortunate and the incompetent. These are, in any case, powerful elements, since all have a vote when elections are held. The spirit of uncertainty breeds the atmosphere of concession, and, as ruling classes have ever done when they have not been sure of their social tenure, high circles have begun to talk of what they can do for the benefit of those who objectively could use more than they have of the world's goods.

The form of this attitude of concession is, in general, the admission that economic planning is essential to social survival. No one is precisely sure just what planning is, and there are many now engaged in "planning planning." The ripe fruits of this spirit have not yet made their appearance, but all agree that a sharp increase in governmental intervention must be accepted if the economic forces of society are to be held within the boundaries of a plan. There are many ideological questions that center on this problem. Some of these

[1] *The Art of Being Ruled* (New York and London, 1926), pp. 383–384. By permission of Harper & Brothers, publishers.

we have already considered, such as the general socialist approach to the functions of the state, the question of how competent the state may be to undertake these functions, and the issue of the value of economic individualism as against collectivism. Those who demand economic planning in the face of the war and postwar economic disequilibrium seem to have few dogmas that are openly expressed; ideology is carefully avoided. The principle that science—social science especially—will find the way is the one essential that may be particularly open to question. It is assumed that, if men will simply be rational, there is a ready-made avenue of escape from the evils from which we suffer. It is not admitted that there may be objective factors in a given epoch which reason may not conquer by simply taking thought. There is a driving conviction that the way of discussion and parliamentary government can also be made the way of science, and that the increase in the economic authoritarianism of the government will not result in a diminution of the civil and political liberties of the individual in other than economic fields. It is assumed, withal, that the liberal scheme of political society, founded in the beginning on individualism, is completely adequate to the problems of the new age.[1]

It is of great importance to remember that the talk of economic planning is not based on any particular set of economic doctrines. In Russia the planned society is being carried forward as the direct expression of the Marxian philosophy of social dynamics; in Italy the myth of the nation and pragmatic authoritarianism combine to provide a basis for social coordination whether or not the elements of national production are willing; and in Germany the principle of Germanic honor and social duty are being offered as the moral alternative to the class war. All three of these schemes reject the principles of liberalism. Planning is an outgrowth of a social philosophy which frankly places some sort of social organization above the will of the individual.[2] Liberalism has been built on the principle of liberty,

[1] See H. G. Wells, *Experiment in Autobiography* (New York, 1934), for an expression of the scientific principle in association with liberalism as the hope of the future sanity of the world.

[2] For a discussion of the principles of planning in these countries and the United States, see the *Report of the Director*, International Labor Office (Geneva, 1934). See also my *Labor in the League System* (Stanford University, 1934), Ch. VII, for additional comment on the work of the labor organization. The reports of the Director for other years may be consulted with profit on this subject. *Industrial and Labour Information*, published by the International Labor Office in Geneva, gives a fairly complete account of social and economic developments in the various countries of the world.

both political and economic. The fundamental issue is whether economic and political freedom must go together in all situations, or whether it is possible to replace economic anarchy with the disciplined economic organism without sacrificing the civil and political liberty of the individual. In point of fact, the interventions of the liberal state in economic liberty have been unsystematic, and it may be argued that liberalism interferes just about as much with political liberty as it does with economic liberty. A fundamental issue of the present, therefore, is whether political and social liberty can be maintained under a regime of economic planning. Whether this is the case remains to be seen, if and when the liberal order seriously undertakes the control of the direction of economic evolution.

From another point of view, the liberal attitude assumes that revolution is unnecessary to gain even the most significant of social ends. The rationality of parliamentary government is assumed, and the belief is held that men are capable of being rational and scientific in the discussion of technical and fundamental social questions. There is much to indicate that propaganda and emotion are more important than reason; but of this the liberal is not convinced. The Marxians assert the necessity of revolution in order to bring about any real social change, and the technique of violence in other authoritarian regimes means that revolution is in effect accepted as necessary in attaining their specific purposes. In a country such as the United States, the Scandinavian countries, or Great Britain, the belief is that the orderly procedure of democracy will attain in time a complete reorganization of economic life.

The question may be asked, therefore, whether regimentational economic planning is a form of the authoritarian state. From the point of view of the traditional liberal, with his belief in economic freedom, this is most certainly the case,[1] while from the side of those who believe in civil liberty but in economic discipline the reply is quite the reverse. Our liberalism is historic and traditional; when we speak of liberalism we must remember that it implies both political and economic liberty, and economic regimentation, even though it comes by way of the ballot, is nevertheless a mild form of the authoritarian state. The so-called liberal community that denies economic

[1] See Herbert C. Hoover, *The Challenge to Liberty* (New York and London, 1934), as a statement of this view. Regimentation in the mouth of ex-President Hoover signifies much the same as authoritarianism. *Cf.* the review of this volume by Professor Charles E. Merriam, in *The American Political Science Review*, XXIX (1935), 131–133.

liberty has much in common with all other authoritarian regimes. There is a prevailing belief in the value of state intervention in *economic* life, and there must likewise be a belief in the competence of the state to do the things demanded of it. There may be no revolution of violence, but it is clear that the old liberalism is not likely to survive the amputation of both legs. The state that is planned economically must take measures to defend its program, and there must be, especially if popular passion is aroused over these changes, a strong determination to curb the captious and unintelligent criticism of the economic reform of society. Authoritarianism has within it an imperialistic logic.

The parliamentary socialists and the contemporary economic planners have not given adequate attention to the technical and bureaucratic problems involved in economic authoritarianism. H. G. Wells has criticized the Fabian and evolutionary socialists for their lack of attention to the question of a "competent receiver" for the socialized society.[1] Is it to be assumed that the present bureaucracy is capable, either in ability or in social attitude, of undertaking the management of socialized or nationalized industry? Can we assume that the civil servant is inherently more capable of managing an industry than the men who have created it? On what grounds can we say that the state administrator is less subject to the weaknesses and the abuses of management that we find in private industry? Is it not true that it is simply a question of what group of men is going to have charge of the productive machinery of the nation? Have the socialists or the economic planners given any serious attention to the reorganization of administrative and territorial units and the scientific organization of an administrative personnel? Many are of the opinion that the socialists who had a dominating position in Central European governments at the end of the World War were quite unprepared to assume the tasks of administration. Too much time had been consumed in internecine and sectarian quarrels, and too much attention had been given to the criticism of capitalism rather than to the technique of the new commonwealth. In any case, the record of socialism during the last seventy-five or eighty years might suggest that there is at least a question as to whether socialized society will be any more able than capitalism to provide the abundance of consumers' goods that is promised on the morrow following the destruction of capitalism.[2]

[1] Wells, *op. cit.*, pp. 196 *ff.*

[2] See F. W. Coker, *Recent Political Thought* (New York, 1934), Chs. II and following, for an able discussion of the various sects of the socialist school.

Individualists are not prophets. What the economic authoritarian promises in the next world of social relations is not legal tender in the economic administration of the present. It may be questioned whether prophecy based on the presuppositions of science is science at all; the individualist is likely to call it mass evangelism with a generous dose of utopianism. Economic planning, to the individualist, is nothing new in the world. The gigantic development of Roman socialism, which, it is held, sapped the economic foundations of society, should be studied by those today who are unqualified advocates of economic discipline. If the state is not creative in the field of morals, *i.e.*, if the state should not curtail the civil liberty of the individual, why should it be so creative in the field of technology and economic organization? The story of reform is one of formulated ends and unexpected or partial results. It is not necessarily an evidence of progress if everyone is an employee of the state.[1]

Whatever one may think of social and economic change, we are in a period in which the masses are expectant and on the move. They are looking for new loyalties and new leaders. They seem to be convinced that Utopia is possible, and the spirit of much critical writing would indicate that want in the midst of plenty is unnecessary in the world in which we live.[2] Some are convinced that the multitudes are more intelligent today than in times past, owing to the vast development of secular education, while others are advocates of the proposition that the Great Society is still as much a dream as it ever was, at least so long as the masses refuse to accept standards and guidance from the aristocratic hand of the scientist and the superior elements in society. *The Revolt of the Masses* may mean the destruction of European civilization, in the opinion of José Ortega y Gasset. Great numbers of men are seeking the philosopher's stone of social security, and there is an increasing percentage which asserts that it has the secret of eternal abundance. If in former times "reason" went with mass utopianism, today it is "science." The more popular the scheme, the more dogmatic is the assertion of its scientific finality. Action comports none too well with science at times, but the demand of the

[1] See Vilfredo Pareto, *Les systèmes socialistes*, 2 vols., new ed. (Paris, 1926), *passim*, for one of the most dispassionate criticisms of the schemes for the economic reorganization of the world. Though written a number of years ago, Pareto's defense of individualism on the basis of a stern observation of social phenomena is still one of the most impressive that is available.

[2] See, for example, the works of George H. Soule, *A Planned Society* (New York, 1932); *The Coming American Revolution* (New York, 1934); and Stuart Chase, *The Tragedy of Waste* (New York, 1925); *Men and Machines* (New York, 1929); *A New Deal* (New York, 1932); *The Economy of Abundance* (New York, 1934).

present seems to be that action and science should be perfectly blended in the realization of a planned society, a society in which economic authority will be vested in the representatives of the masses. The liberals hope that the best will be the rulers of new authoritarian society, but one can only admit this as a hope of the liberals.

Pareto has shown how the declining aristocrats and the rulers who no longer have the ability or will to fight for themselves begin to plan for the betterment of the masses in the hope that their own tenure on power can be maintained. He has also suggested that the new leaders who want to get possession of power always promise much to the masses. He comes to the conclusion, however, that the result is much the same, the only substantial difference being that the people have a new set of rulers. The rise of communism in the Soviet Union, of Fascism in Italy, and of National Socialism in Germany might indicate that the old cliques of rulers are falling rapidly in every part of the world. One might say that the economic liberals are on the run wherever one casts the eye as a political and social observer. Economic planning carried through as its proponents wish would likewise redistribute social power. The question is whether the new rulers will remain filled with the social feeling and idealism that gave them power with the masses. The difficulty is, finally, which group of competitors for power will succeed in getting the people to follow? Not a few believe the demagogue rather than the scientist will succeed. One reason for this is simply that the genuine scientist cannot make definite promises as to what will be done under his authority; a promise to be scientific is not so effective as a promise of an earthly economic paradise.

Specifically, then, the signs of the times point toward the development of economic authoritarianism. But there is no assurance of the character of the new society. If the scientists can come to definite agreement as to fundamental reforms, if they can convince a sufficiently large number of people that they ought to be given a chance, and if the institutions of democracy can endure the economic uncertainties of our age while these things are taking place, we may and should reach a higher level of civilization. If time indicates the inability of the intellectuals and the scientists to agree on what ought to be done, if there is a decline in the level of scientific knowledge and technology, and if liberal discussion is replaced by the aroused multitudes, there may be authoritarianism, but it will be of little value except to demonstrate the downward path of modern civilization.[1]

[1] See Oswald Spengler, *Man and Technics*, tr. from the German (New York, 1932); José Ortega y Gasset, *The Revolt of the Masses*, tr. from the Spanish (New York, 1932).

What we have in the liberal state at the present time can hardly be called integral economic planning. There are many types of governmental intervention which may provide a basis for future policy. These specific policies of regulation arise from concrete needs rather than from a view of the total or long-run needs of the community. In some instances the machinery of the state is adequate for the proper administration of reform, and in others an attempted intervention may be a failure. Advisory councils have been established, composed most generally of functional representatives of various factors in production along with industrial experts, and these organizations have rendered some valuable service, though in many cases the advice of such bodies has been side-tracked in the heat of political discussion. Politics is ubiquitous and even the expert cannot escape. In the early days after the World War, advisory economic councils or institutions in Great Britain, France, and Germany, for instance, were expected to do far more than they were able. International conferences, such as the world economic conferences of 1927 and 1933, considered the best possible economic advice, but the governments could not follow, for instance, the intelligent suggestion of 1927 that the reduction of tariff barriers would help in the restoration of international trade. Various proposals emanating from the League of Nations or its bodies of experts and recommending that Europe draw more closely together economically have been thrust aside with little consideration. In fact, it may be said that the total body of proposals of the League of Nations and of the International Labor Conference constitutes one of the best programs for saving the present order that has been offered.[1]

Nationally, various learned bodies and social experts have been working on the problem of local, regional, and national planning. These studies, such as those of a state or city planning commission, have been able to offer valuable proposals, but the political leaders of cities and states have not been too willing to accept the results of these findings, except where little additional expense or no political consequences were to be feared. We are, in fact, in the stage of laying plans for future planning. It is a transitional era that is no doubt necessary if any of the ultimate objectives are to be attained.[2] Behind

[1] See L. L. Lorwin, *Advisory Economic Councils* (Washington, D. C., 1931); *The World Economic Conference and World Organization* (New York, 1933); Lindsay Rogers and W. R. Dittmar, "The Reichswirtschaftsrat: De Mortuis," *Political Science Quarterly*, L (1936), 481 *ff.*

[2] See C. E. Merriam, "Planning Agencies in America," *The American Political Science Review*, XXIX (1935), 197 *ff*; Jesse F. Steiner, "Recent Trends in Community Organization," *The American Journal of Sociology*, XL (1935), 788 *ff*; A. N. Holcombe, *Government in a Planned Democracy* (New York, 1934).

all these proposals, whether national or international, lies the assumption in strong or weak form that the competitive order of the nineteenth century is not suitable for the new age. There is the conviction that capitalistic economy must suffer serious modifications if it is to survive. Many students are of the opinion that reform is necessary to avoid the possibility of social revolution. It is a commonplace in contemporary thought that individualism must be displaced by collectivism if anything like social justice is to be achieved. The humanitarianism of the liberal, the fundamental faith in the possibility of a better world, pulses through the attempts to plan communities or nations, as well as through the fragmentary policies of governments which are designed to correct specific abuses. All in all there has been a tremendous growth of the economic authority of the political community.

The State and the Economic Life. a. The Restoration of Competition. We have already examined briefly the results of the overthrow of the capitalistic order in the Soviet Union. Our interest here centers on the milder forms of economic authority which have been vested in the state. Several types of policies may be adopted by governments, depending upon the remedial theory that is accepted as the basis of action.[1] In the first place, the truly liberal theory asserts that it is the function of government to restore competition. Whatever governmental interventions are necessary to recreate the free competition of economic units are justified. Thus laws that forbid monopoly are characteristic of this school of thought. American antitrust legislation, such as the Sherman Antitrust Act and others, is a good illustration of this view. Monopoly results in price-fixing agreements, often having the result of maintaining the price of goods above what they would be at the competitive level.[2] If laws can be passed which will break up these combinations, the natural laws of competition will tend to restore a just equilibrium between those who produce and those who buy manufactured products. It may be noted that many attempts have been made in the past few centuries in England under common law and statutory principles to prevent the organization of combinations that will be able to raise prices unjustly.

b. The Prevention of Industrial Abuses. A second policy which has been adopted in recent years is based on the proposition that government regulation is justified in order to prevent certain abuses.

[1] See J. Mark Jacobson, *The Development of American Political Thought* (New York, 1932), Ch. VII.

[2] Monopoly technique is also important in driving competitors out of business. In such cases monopoly may result in a temporary lowering of price.

Industrial evils are, of course, a part of the general picture of competition. The regulation of abuses and the enforcement of a high legal standard of responsibility are in fact forms of the regulation of competition. But this type of policy is particularly important where the economic form best suited to the situation is a natural monopoly. It is hardly reasonable that there should be two telephone systems in one city; one transportation system in a city is ample; this is likewise the case with the ordinary services that are absolutely essential in urban life, such as gas, electricity, water, and garbage collection. The best examples of this type of regulation, however, may be selected from the public-utility field. Common carriers, such as the railroads, and electrical-power companies have been constantly in the public eye ever since these services have been developed on a large scale. The government steps in to regulate public-utility financing, the conditions under which services are rendered, and the prices that are charged, especially where there is no real competition between the companies or corporations rendering such services. In the United States we have the Interstate Commerce Commission, the Federal Trade Commission, the Federal Communications Commission, and a number of other governmental units whose duty it is to regulate public utilities of various kinds. The state governments have likewise established commissions for the regulation of public utilities on the general theory of their importance to the public and the ease with which the consumers may be exploited through unfair and deceptive managerial policies.

c. The Government as an Interested Party in Industrial Conflict. In the third place, it has been felt that the state must take sides in certain types of economic controversy. No one can deny effectively the reality of modern strife between capital and labor. It may not be the class struggle in the sense in which the communist uses the term, for the average worker is usually more interested in better wages and conditions of work than in the strike or economic disturbance as a prelude to the revolution. The growth of trade unionism in the United States has been bitterly contested since its inception early in the last century. In spite of this there has been a constant growth of trade and labor organizations, and during certain intervals there have been situations in which the labor movement has successfully dictated the conditions of work, at least for skilled labor. The American Federation of Labor is a conservative organization of skilled workers, and most of the unskilled laborers have been excluded by the more aristocratic craft tendencies expressed in the federation. The federation, under the leadership of Samuel Gompers, took the position that trade-union action was sufficient to give the workers what they deserve under

modern industrial conditions. Until recent years the federation has frowned on social legislation, and it has consistently refused to enter the political arena as a political party, as the labor movements have done in other countries.[1]

The position of the government in labor conflicts is always delicate. It may be that the idea of protecting property will lead to an intervention which is in fact contrary to the interests of the workers; or it may be that the refusal to protect property and public order will give the strikers the conditions necessary to force the employers to accept their demands. As long as the workers' organizations are sufficiently strong, they are inclined to reject the assistance of the government, since government aid means government control and regulation to a degree, however mild it may be. The employers feel, naturally, that governments should give them police protection when they wish to resume operations in the face of the demands of striking workers. It is generally conceded that it is quite impossible for the public authority to remain neutral, since any course of action will favor one side or the other. The charge of the organized workers is that the government gives all of its protection, as a general policy, to the employers in the form of protecting order and property. Governments are inclined, therefore, to concentrate their attention on preventing conflict between capital and labor.

A number of devices have been developed in the attempt to prevent open conflict and to avoid the ultimate necessity of preserving order, which inevitably works against the coercive methods of strikers. The militia or the federal troops are a poor substitute for a peaceful solution of industrial conflicts. We have already seen how a large part of the economic efforts of authoritarian governments, as in Italy and Germany, is concentrated on maintaining industrial peace. But this is not peculiar to such governments, though industrial conflict usually has reached a much more acute stage in such countries than in those where at least the forms of liberalism have been maintained. In accordance with the spirit of liberalism, we find that action has been taken to persuade the opposing forces in industrial warfare to lay down their arms and to accept the more economical and sensible settlement of labor disputes by discussion and conciliation. Persuasive methods are, indeed, fully in the context of liberalism, while any coercive measures to preserve peace lead quickly into the principles of economic authoritarianism.

[1] Lorwin, *Labor and Internationalism* (New York, 1929); *The American Federation of Labor* (New York, 1933); Samuel Gompers, *Seventy Years of Life and Labor*, 2 vols. (London, 1925).

One such device for the attainment of peaceful settlements has been the board of conciliation and arbitration, established either by the state or by the national government. The government maintains formal neutrality; such a board is a recognition of the rights of the workers and is in fact a mild form of taking sides with the workers even where the decision in a particular case may be for the employers. Such schemes facilitate the balancing of forces; they provide a testing ground for the employers and workers to measure their determination not to make any concessions, but they also open a dignified way of retreat in case some compromise is suggested. There is no indignity in accepting the award of an impartial board. It is often assumed that the three parties to be represented on such a board are the workers, the employers, and the public. The socialist critics believe, generally, that the representative of the public is the representative of the employers or of the forces of capitalism. However, the success of such boards has proved that in no small number of cases the workers can be convinced that they are getting a fair deal.[1]

A more positive stand that governments have been led to take in most of the liberal countries is the recognition of the right of the workers to form associations or unions. Section 7A of the National Industrial Recovery Act of 1933 provided for the recognition of this right, but it did not specify the kinds of union that were to be formed. The inherent suspicion of the workers of anything fostered by the employers has led them to reject the company union or the plant union, a form of organization that has been widely accepted by the employers as a substitute for the nationally organized trade union under leadership from outside the industrial unit. Under the act of 1933 the workers, especially the American Federation of Labor, assumed that the kind of union to be approved was that which formed a part of the federation; when the government approved company unions or associations of employees formed by elections to determine majority sentiment, it was accused of betraying the cause of unionism. What the workers demanded, and have always demanded, is that the government guarantee the formation of workers' associations that have no connection with the employers. Workers have thought of their cause as involving the conditions of work, not in one factory, but in all factories engaged in a similar type of manufacturing. It is probable that only a government which leans definitely toward the left or toward

[1] Part of the program of the Democratic administration of President Franklin D. Roosevelt has been developed along this line. The government has established machinery for the settlement or conciliation of labor disputes and it begins the consideration of conflicts before strikes have actually been called.

socialism could take a strong stand against the company union and for the free formation of national workers' associations under the complete leadership of the workers.[1] Some states have passed laws prohibiting discrimination against workers because of their membership in unions or prohibiting employers from forcing their employees to agree not to join a union during the period of employment. Public policy has been coming more and more to the conclusion that it is justifiable to prevent such discrimination.[2]

A form of direct intervention in labor controversies is the device of compulsory arbitration of labor disputes. The Australian system has long been considered a model of this type of legislation; however, attempts to establish such courts in the United States with power to fix wages have met with the disapproval of the Supreme Court.[3] In this type of legislation there is as a matter of policy a willingness to use force to maintain peace, since, if either side refuses to accept the award of the court, the public power can be used with much greater justification than in a situation where, in the name of the protection of public order and property, just claims of the workers may be given little or no attention.

However, a much broader and more significant type of intervention by the state on the side of the workers against industrial abuses is the passage of social legislation. Such legislation attempts to protect the workers and various types of victims of industrial hazards. It is not based on the proposition that private capitalism is unsound, but that it needs regulation by the government's definitely taking the side of the weaker members of the productive forces of the nation. It

[1] Part XIII of the Treaty of Versailles which established the International Labor Conference provides for freedom of association, but it has been all but impossible to lay down any international standards as to what the "freedom of association" signifies in practice. See International Labor Conference, *Freedom of Association* (Geneva, 1927); International Labor Office, *Studies and Reports*, Series A, Nos. 28–32 (1927–1930).

[2] The Supreme Court declared Section 10 of the Erdman Act of 1898 invalid and contrary to the Fifth Amendment to the Constitution of the United States. The act, among other things, attempted to prevent discrimination against certain types of employees because of membership in a union. Adair *v.* United States, 208 U.S. 161 (1908). See E. S. Oakes, *The Law of Organized Labor and Industrial Conflicts* (Rochester, N. Y., 1927), pp. 156 *ff.*

[3] For information on the Australian and other statutes on compulsory arbitration, see Oakes, *op. cit.*, pp. 1012 *ff.* The wage-fixing provisions of the Kansas Court of Industrial Relations were declared unconstitutional by the Supreme Court of the United States. See Wolff Packing Company *v.* Court of Industrial Relations, 262 U. S. 522 (1923). See also A. R. Ellingwood and Whitney Coombs, *The Government and Labor* (Chicago and New York, 1926).

assumes that the workers are not, in fact, the equal of the employers in the determination of the conditions of employment. In turn, there is an assumption that the employer who wishes to give his workers better conditions should be protected from the "unfair" competition of other employers who are trying to make an additional profit on the basis of human misery and exploitation. The Supreme Court of the United States has for a number of years permitted the passage of social laws that protect workers in peculiarly dangerous or injurious industries.[1] However, it has been reluctant to admit such legislation when the work has not been unhealthy or dangerous in the eyes of the court, or when the workers have not needed particular protection.[2]

Social legislation has had a particularly complex legal background in the United States. If the court has been willing to admit that states may pass certain types of laws without violating the "due process clause" of the Fourteenth Amendment to the United States Constitution, it has not always been willing to expand the powers of the national government so as to permit Congress to pass such legislation as a part of its incidental regulation of interstate and foreign commerce. When a state passes a protective law, it is a question whether the private employer is being deprived of his liberty or property without due process of law, while in the case of the national government there must be some sort of delegation of authority, direct or putative, before it can be allowed by the court in its process of judicial review.[3] The problem of child labor in the United States is an excellent example of this type of difficulty. There is no question but that the states have the right within broad limits to regulate or prohibit the employment of children in paid occupations. On the other hand, there is no clear delegation of such a power to the national government.

On many occasions the Supreme Court has sanctioned the expansion by implication of national powers to meet new situations, but eventually there is a limit beyond which the court is unwilling to go. Under President Wilson Congress began to take action against child labor. It was provided in one statute (1916) that no goods manufactured with the aid of child labor (under certain specified conditions) could be transported in interstate commerce, but the court declared

[1] See Holden *v.* Hardy, 169 U.S. 366 (1898); Muller *v.* Oregon, 208 U. S. 412 (1908).

[2] See Lochner *v.* New York, 198 U. S. 45 (1905).

[3] See C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, Mass., 1930).

that this was not in fact a regulation of commerce within the meaning of the Constitution.[1] In 1919 Congress placed an excise tax on goods manufactured with the assistance of children, and the court ruled that this was not in reality taxation but the regulation of conditions of labor that fall within the jurisdiction of the states.[2] It may be added that the child-labor amendment, which would give Congress the right to regulate the labor of children, has been pending before the states for a number of years. An insufficient number of ratifications have been obtained to bring it into operation.

It will no doubt be necessary to adopt constitutional amendments before the national government will be able to regulate on a national basis both labor and capital. Business in the United States is certainly conducted on a national scale; it is a genuine national organism which is sensitive to disturbance in any part of the country. Nevertheless, there is no adequate power in the national government to regulate nationally the field of business and all that this implies. In other words, under the present constitutional arrangements economic planning in a real sense is impossible.[3] This has been particularly demonstrated by the fate of the so-called "New Deal" legislation which was passed by Congress under the leadership of President Franklin D. Roosevelt in 1933 and after. Before the test case on the "New Deal," Schechter Poultry Corporation *v.* United States, was decided in 1935, there were certain state cases that led persons to assume that the Supreme Court would approve of the new projects for the coordination and regulation of national business under various codes. These codes were formulated by the industries with the advice of organized labor, and they were promulgated by the President. The famous Minnesota Mortgage Moratorium Case[4] upheld a state statute which in effect allowed the state to provide for the postponement of the enforcement of mortgage contracts; the New York Milk Case[5] permitted the state of New York to regulate the retail price of milk; and the gold-clause decisions in 1935 sustained the monetary policies of the new administration.[6] However, when there arose a

[1] Hammer *v.* Dagenhart, 247 U.S. 251 (1918).

[2] Bailey *v.* Drexel Furniture Company, 259 U.S. 20 (1922). See E. S. Corwin, *The Twilight of the Supreme Court* (New Haven, 1934), for the discussion of certain aspects of the constitutional problem presented by child-labor legislation.

[3] But see E. S. Corwin, "Social Planning under the Constitution—A Study in Perspectives," *The American Political Science Review*, XXVI (1932), 1 *ff.*

[4] Home Building and Loan Association *v.* Blaisdell, 290 U.S. 398 (1934).

[5] Nebbia *v.* New York, 291 U. S. 502 (1934).

[6] Norman *v.* Baltimore and Ohio Railroad, 294 U.S. 240; Norts *v.* United States, 294 U.S. 317; Perry *v.* United States, 294 U.S. 330.

direct case on the right of Congress and the President to expand the conception of interstate commerce sufficiently to enable the government to enforce the codes of fair competition, it was held unanimously that intrastate commerce could not be touched and that the right to delegate quasi-legislative powers to the President had definite limitations.[1]

A generous policy as to social legislation is, however, one of the characteristics of the present age. We have here in effect a compromise field in which the assertion of political authority can be accepted by all interested parties. The movement toward social legislation began when the abuses of modern industrialism became apparent. There was also a demand for the protection of workers internationally, though it is natural that the international program should not have made the same progress as the national movement within each state. Trade unions and labor parties have joined in demanding an increasing program of social protection. Likewise, certain employers have shown sympathy for the movement on the general ground that it is more economical to have a working population with a high standard of living than one that is both poverty stricken, *i.e.*, unable to buy the products of modern industry, and incompetent in factory production. The economic limits of such legislation have, of course, been a constant source of conflict. Employers have frequently been of the opinion that a given measure of protection would so increase the costs of production that national competitive power would be diminished, or that even nationally the industry would be unable to stand the economic strain. The workers have felt that, as modern industry has become more effective, it is possible to give to labor a larger share of the income of capitalistic production. On the whole, many careful students of economic life feel that social protection and added purchasing power given the workers have been essential in preventing a radical decline of production and in enabling governments and industrial systems to weather the storms of economic maladjustment.[2]

[1] Schechter Poultry Corporation *v.* United States, 79 L. ed. 888 (1935). See also Panama Refining Company *v.* Ryan, 293 U.S. 388 (1935), which invalidated an unreasonable delegation of discretionary powers to the President with regard to the shipment of oil in interstate and foreign commerce. In Railroad Retirement Board *v.* Alton Railroad Company, 79 L. ed. 803 (1935), the Court invalidated the railroad pensions act as being beyond the authority of the federal government. Likewise, in United States *v.* Butler, 80 L. ed. 287 (1936), the Supreme Court invalidated the Agricultural Adjustment Act.

[2] An interesting view is given in Edward A. Filene, *Successful Living in This Machine Age* (New York, 1932). Filene concentrates his attention on proving

Social legislation has taken many forms, and only the larger outlines of the system as it has been developed in modern times may be indicated. In the first place, dangerous industries have been subject to regulation. Where the conditions of labor are particularly hazardous, as in certain types of mining, it has been found expedient to provide for shorter hours of work and for various types of safety devices in order to prevent the loss of life. In the case of industries where disease is not an unusual result of employment, it has been provided that dangerous materials may not be used or may be used only under certain conditions, as in the case of lead and white phosphorous. In other instances the laws have established systems of compensation for industrial diseases. Compensation for industrial accidents is a general part of the regulation of modern working conditions, but at the same time every effort has been made in certain countries to prevent accidents by the installation of safety devices of various kinds.

Secondly, certain types of workers have been protected. Against the wish of feminist groups, most modern governments have passed laws giving particular protection to women, such as the prohibition of night work, either generally or under specific conditions. It is a general principle of modern legislation that women should receive equal pay with men for equal work. In addition, many states have laws that assure the working mother maternity benefits before and after childbirth. The work of children and young persons has also been the focus of attention. Laws have been passed restricting or prohibiting the night work of young persons and children, and in other instances they have been excluded from certain occupations, or admitted only when medical examination has certified them capable of engaging in this work without physical injury. Some laws have borne upon this problem indirectly, such as those requiring young persons to attend school up to a certain age.

Thirdly, it may be observed that the working population has been given the benefit of certain general restrictions. Social legislation has shortened the working day and provided for periods of rest in both industry and commerce. At the end of the war, it was felt that the eight-hour day would meet the needs of modern industry, but at the present time there is a continual agitation for a work day shorter than this. As a remedy for economic depression, the workers have maintained that the thirty- to forty-hour working week should be adopted,

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the necessity of increased and wide-spread mass purchasing power. See also Filene, *The Way Out* (New York, 1925).

as this would enable industry to absorb a considerable number of unemployed persons. Workers of certain types, such as seamen and those engaged in various forms of transportation, have also been placed under specific regulations as to the conditions of work.

In the fourth place, there has been growing up a more and more insistent demand for economic security. It is asserted that the chief hazards of modern economic life, such as unemployment, accident, old-age inability, and other forms of disability, are in large measure outside the control of the individual worker himself. It is idle, in this view, to urge the worker to save for his old age or for the education of his children. If the worker is going to have the benefits of modern civilization, he must be given the assistance of the community in the form of social legislation. Social insurance is the general name given to this type of enactment. Insurance is provided in many countries against industrial accident and disease; it is organized in many states against unemployment, and it is increasingly demanded for those who have reached an age beyond which it is possible for them to be employed in gainful occupations. The financial difficulties of social legislation are perhaps greatest in this form of protection, and different schemes have been adopted, providing for contributions in various combinations from the workers, the employers, and the governments. The workers have felt for the most part that the largest share of the contributions should come from taxation and from the employers, while the more conservative students of such legislation have favored a substantial contribution from the workers.[1]

d. Public Ownership. The fourth general form of state intervention in the economic life of the modern state is public ownership. In part this is an aspect of socialism, but it is hardly to be assumed that because a city owns its light or gas plant, or because the national government engages in certain forms of business, the people have become convinced of the necessity of socialism. Socialism is first and foremost a philosophy of industrial life; it is an interpretation of history; and it is a fundamental repudiation of capitalism. Public ownership does not mean that the individualistic spirit of the people is gone or that the state has any intention of owning finally all the

[1] The basis upon which the American national government proposed in 1935 to adopt unemployment and old-age assistance was that of matching funds raised by the states. The national government has, apparently, an unlimited right to spend money, and the willingness to match state funds up to a certain point will be a great incentive toward state legislation along these lines. The Social Security Act of 1935, if constitutional in its essential aspects, may prove to be one of the most significant pieces of American social legislation.

productive forces of the community. There are many reasons for embarking on a limited program of public ownership. Certain industries are considered to be clothed with a public interest so great that the wastes or abuses of competition cannot be tolerated. It may be that the regulation of certain types of industries or utilities has failed, and that the political and social leaders are of the opinion that the only way these evils can be corrected is by public ownership, even though the cost of the service in the end may not be much less as far as the consumer is concerned. Some groups are particularly insistent that natural resources which are likely to be exhausted should come under the control or ownership of the state; the wasteful use of resources, such as timber, oil, or coal, may be irreparable in the future, if society should still have a fundamental need of these commodities. The regulation of fishing, both nationally and internationally, is a striking example of the protection of resources of a limited supply.

Political situations often lead to the municipal purchase of companies that have been supplying essential services, such as city transportation, electricity, gas, and water. There is no set rule that provides a line of demarcation between mere regulation and the public ownership of resources and utilities. There is no doubt that this question is one of the great public issues of the day. The advocates of ownership of utilities point to the possibilities of lower rates and the exploitation of the people by the companies; the defenders of private ownership demonstrate the ineptitude of public management in numerous cases and show that large sums in taxes which are paid to the support of the government would be lost in case of public ownership.

The policy of most modern governments is not that of confiscation. When the government wishes to own a natural resource or a utility, it adopts the policy of open buying, or perhaps that of eminent domain in case the property is needed for certain kinds of public use. It is generally regarded as revolutionary to insist upon the confiscation of privately owned monopolies or services. Naturally, the communists would not believe in giving any compensation to the exploiters, but the progressive reformer and the moderate socialist are willing to have the public assume the burden of debt involved in the purchase at a strictly fair price of such businesses. The determination of the purchase price of a business affected by a public interest is a matter of the deepest controversy. The owners wish to include in the estimated value the good will they are deemed to have, or perhaps the cost of constructing anew their material property, or the value of the

securities they have issued. The advocates of public ownership are unwilling to pay a price determined along these lines. A fair valuation of the physical property held by the concern is, in general, the standard desired in the public purchase of businesses. The franchise value, the total value of stocks and bonds and other considerations, it is argued, should not be included in determining the price the public should pay. It is felt that the nationalization or socialization of industries that are essential to the public well-being should be attained gradually, without too great a shock to the economic organization as it exists, and in any case upon a basis of adequate compensation to the owners of such enterprises.

Attack is being concentrated in recent years on the private control of national wealth. Not only is there a waning confidence in the ability of business leaders among certain reformers, but there is also a belief that even where there is ability there is a fundamental need of the protection of the public interest against the oligarchical control of modern finance. The "plutocrats" have long been under fire, and the demand that the state step in to regulate or own is not new in the history of the relation of the state to business and economic organization. The state bends before the stronger pressure. As long as the leaders of business are able to convince the majority of the people that they should not be disturbed, there is little change. Politics is becoming increasingly a problem in the balancing and directing of economic forces. But that the platforms of political parties and strongly reformist groups are models of economic acumen is not always a matter of agreement among the students and politicians of economics.

Taxation as a Political Issue. As has been suggested, there is an increasing demand that the state control the distribution of the total wealth of the country. Economic critics point to the gradual concentration of the control of wealth, especially through the organization of giant corporations which are actually managed by a small number of men who occupy the key positions in the finance structure of society. Economic security, many believe, can come only through the constant effort of the government toward a more equitable distribution of the economic resources of the nation. One of the fundamental devices by which a state may strike in this direction is by manipulation of the system of taxation. It is not contended that the ordinary tax system falls with equal rigor upon all classes in the community; perhaps this would not be desired by any group that has a policy with regard to taxation. The difference arises as to the class or classes upon which the tax burden should fall most heavily. Insistence that the state intervene more actively, either in controlling or

planning the national economy, implies in the long run that the more wealthy elements of society should pay most of the taxes and that in turn those with the least wealth should get the greatest possible benefit from the "power to destroy" which is the power to tax. The tendency of modern tax reform has been toward relieving the traditional tax bearers as the focus of economic power has shifted or as the social theory of the purpose of taxation as a political weapon has changed.

Much of the success of social legislation depends upon raising enormous sums from taxation. Not only this, but, as the revenue from the traditional taxes, such as those on land, real estate, and personal property, has become inadequate to support the machinery of government and the functions undertaken by it, the choice has been presented between getting more revenue or decreasing government functions. Instead of developing programs of taxation that fall almost completely on the wealthy, taxes that raise large amounts of revenue without provoking too much protest, such as the sales and nuisance taxes, have been adopted. This procedure presents in a clear form the difference between the theory of taxation merely as a means of raising revenue and taxation as an engine of social reform. The sales tax, for instance, is criticized as unjust because it falls most heavily on the man with the least income; it is easy to collect but it is unjust in its incidence. It is a tax, on the other hand, which raises large sums for the public coffer without causing a very active propaganda against it, except from those who are convinced on theoretical as well as practical grounds of its injustice. Those who would use taxation to reform the distribution of wealth turn to the sharply progressive income tax and to such taxes as estate or inheritance levies. The progressive tax increases as the ability to pay increases, and relatively it imposes the same burden on all who are subject to it. If the rates are increased on a heavily progressive scale, the result comes close to a confiscation of private wealth, but it is justified among other grounds on the theory that the wealth which is being seized is not essential to the happiness of the individual concerned.

The political phases of taxation are becoming increasingly important, both because of the need for revenue and because of the developing criticism of modern social organization. The simplest idea is that the wealth of the economic oligarchs should be seized and distributed to the less fortunate members of society. It is held that the power of the state is adequate to do this and that, if the social conscience demands it, the majority has the right to pass such reform legislation as it may wish. Defenders of more moderate income and inheritance-taxation rates point out the danger of checking industrial

initiative and advance through preventing large rewards from accruing to those who succeed. They are not content to believe that the state officials can use the money so taken in a more effective manner than the private owners; in fact their feeling is that, the more money the political leader has to distribute to the poor, the more dangerous he is to public liberty. Recent developments in these types of reformative taxation make it difficult to indicate whether the hopes of the progressives or the fears of the conservatives are the more justified.

In Great Britain where taxation has been extraordinarily heavy since the war, there does not seem to be any material diminution of economic ability on the part of those who are in positions of financial and industrial power. The future is usually impossible to foresee, but it may not be far-fetched to assume that, if the economic disturbances that followed the World War are not overcome, many popular experiments will be made in an effort to bring back the prosperity that the new generation will be told once existed. It may be discovered that most of the devices for the achievement of abundant living will prove illusory in the hands of leaders who have promised much but who find themselves unable to keep their promises. The past may indicate that it is difficult for governments to arrest the downward swing of an economic order once decline has set in in earnest. Of one thing we can be sure: taxes are not likely to be diminished because of the reduction of the cost and functions of government. The burden of taxes may be shifted as majorities become conscious of how this may be done. If taxes are reduced, it will be, generally speaking, because the source of revenue has dried up or is rapidly disappearing.[1]

Land Reform. One of the fundamentals of economic planning and the exercise of political intervention in economic life is the maintenance of agriculture. Economic authoritarianism inevitably turns to a consideration of the scientific relation between the productive forces

[1] The reduction of farm taxation is an example of this. The depression that began in the United States in 1929 has brought about a distinct shifting of the burden of taxation from the land and real estate owner to those who have incomes or who spend money. One of the chief reasons for this is not that the new system is necessarily more just than the old, but that there was no more revenue to be gained by the continued levy against agricultural and other capital forms of resources. Legal limitations on the right to levy these forms of real property taxes are efforts to consolidate the gains that have been made in shifting the burden of taxation to the urban populations. A primary justification of the sales tax is that it makes possible a sharp reduction of the taxation of agricultural and city real estate.

of agriculture and the productive power of industry. In part, this is a question of the relation and distribution of population groups, but in an even larger measure it is a problem in the equilibration of technology. It does not seem to be true that in modern industrial communities the rural areas have as high a standard of living as generally prevails in the cities, or that the agricultural populations can hold their own against the trends in social change which are everywhere apparent in the contemporary world. There can be no question that the production of food, raw materials, and various other commodities, such as cotton, wool, rubber, etc., is essential to the very life of the urban community. It seems equally true that, by and large, the urban and industrial community must have a large agricultural market for its finished products, whether this market is national or international. Economic life is an organism nationally, and many insist with reason that this is also true internationally. It may be argued, of course, that economic interdependence is a function of the general technological level, and that, with the development of latent energies in all countries, a broad economic independence might be established on the basis of scientific planning. This is one of the objectives of economic authoritarianism in Russia, Italy, and Germany, and it is likewise becoming a characteristic of the increasing authoritarianism on economic matters in the liberal and democratic states.

Liberalism does not hold, as it once did, that the agricultural population is the foundation of national morality and character. A greater appreciation of the city dweller is emerging in democratic thought, while in German and Italian authoritarianism there is an increasing skepticism as to the civic value of the city-bred individual. It is not merely a question of health, but rather of the ideas and principles that motivate conduct. The great city is regarded as having lost the moral standards upon which the state is built. Victories were won in the past by peasant armies, and if they are to be won in the future the peasant must again be the national soldier. A less debatable factor is the demonstrable decline of the birth rate among the inhabitants of urban areas. There is little doubt that the conditions for bringing children into the world and for their upbringing are somewhat less favorable among the poor in the cities than among the poor in the rural areas. Most students of social trends who feel that there should be a continuous increase in population are for that reason interested in the maintenance of rural life.

Some have contended that rural inhabitants should be made to compete with the urban by an elevation of the standard of life or by the assurance of economic security to the farmers, the ranchers, and

those who work with natural resources in other forms. Others view the drift toward the city as inevitable; such movements have occurred in the past at the height of civilizations, and what is happening today is nothing but a repetition of history. But that the old standards of family life and morality can be sustained without change in the city atmosphere is hardly to be expected.[1] Perhaps it is true that most policies for the preservation of the agricultural population, whether in ancient Rome or in modern England or in the United States, are doomed to failure. But this possibility does not prevent great efforts from being made to maintain in some degree the moral and economic integrity of those who are the primary producers of food.

The impact of technological developments has had its effect on the characteristics of modern agriculture. Machine production has been extended to the farm so that farming resembles the ordinary business enterprise more than it has in the past. The need for manual labor in the country has been lessened and this has in many cases driven the children of farmers into the city, even when they might otherwise have remained on the land. More and more agricultural land has been thrown open to cultivation, and in certain instances the agricultural market has been determined by international rather than by domestic conditions. It is virtually impossible to protect through the tariff the growers of an agricultural product, such as cotton, when they are selling on the world market. The tariff may preserve in some degree the higher standard of living of the worker, but the free-trade economists insist that more is lost than gained by interfering with international trade. Furthermore, in American agriculture as in other countries the farmer has been swept into the monetary system. His food may not come from the farm, and a multitude of necessary articles may have to be purchased by money received from the sale of a heavily emphasized crop. When the price of this crop goes down, the farmer is unable to buy what is necessary to a comfortable standard of living and he is likewise unable to pay the mounting burden of taxes which has been his lot in recent years.

Efforts made by governments to take people back to the land have met with stubborn resistance. The unemployed worker does

[1] One of the reasons modern American Catholic leaders are so insistent in their denunciation of birth control is probably the fact that American Catholicism is predominantly urban, whereas in Europe the backbone of the Catholic faith has been the peasantry. Birth control seems to be a prevalent factor in urban living, but the practice of family limitation by contraceptives in the modern city is not peculiarly modern. See John F. Moore, *Will America Become Catholic?* (New York, 1931). On the other hand, there is evidence of a declining birth rate among the rural stock in the United States.

not want to be a farmer; he wants his old job back. Even if he were willing to settle on a farm, it may be that his training is so defective that he will be a failure. The collectivized farm, as in the Soviet Union, may be the only easy answer, but this requires a close direction and discipline on the part of the state. And the world over, the farmer does not like to be disciplined by the government, though if it is a question of mere survival he may be willing to submit to whatever the government tells him to do.

Intervention in land and agricultural matters is, therefore, an important aspect of modern economic policy. The farmers and the ranchers must be maintained. The government may have to spend enormous sums, but the rural population must have a reasonable standard of living before they can absorb the products of industry. Private initiative in the form of cooperation for the distribution of agricultural products has been of assistance in some branches, but in a period of general economic disturbance this is of little avail. Direct relief to the farmer has been attempted in the United States, particularly in an effort to reduce the acreage of certain crops; bonuses have been paid to the farmer for cultivating a limited amount of his available land or for allowing the destruction of a certain portion of his animals. The amounts needed to reimburse the agriculturalists have been raised by a processing tax that fell largely on the urban consumer. It may be that the agricultural population will become the most heavily subsidized group in the modern state. The farmer will be subsidized in any event at the expense of the urban consumer and taxpayer.

Technological Advance. The conviction is widespread among students of economics that we have not been using to the full the productive capacity of contemporary technology. The communist notes this fact and urges that only a socialist state will be sufficiently free from the hindrances of vested interests to avoid all technological retrogression. Fascism or even liberal progressivism, as attempts to preserve capitalism, are merely paving the way to the stagnation of the inventive and technical abilities that might be used in the modern state.[1] The engineer and the technologist are certainly not free to exert their energy without considering the contemporary financial and credit mechanism. Another phase of this problem is the existence of technological unemployment. Here is a subject of heated debate, but a large number of students insist that rapid technological advances have thrown people out of work to such a degree that any normal

[1] R. P. Dutt, *Fascism and Social Revolution* (New York, 1934), begins his work by a criticism of capitalism which attempts to prove this point of view.

recovery of productive levels will still leave large numbers living on the generosity of political charity.

It is here that we have one of the most difficult of the issues of modern planning. The technology of a nation must be adjusted within itself, and it must also face the fact that more and more peoples are using this type of advance to increase their industrial power in the field of international competition. Observation of the results of disorganization of economic life, when left to its own predilections, has convinced a multitude of investigators that some discipline and control are necessary if the world is going to continue to enjoy the logical fruits of its technology. The conservative economist may insist that there has always been technological maladjustment, but that in time industry has always been reorganized in terms of the new advance, making it possible in fact to employ far more people than before the technological change made its appearance. But confidence in *laissez faire* has waned perceptibly, and, whether this is wisdom or foolishness, it yet remains a fact. The liberal reformer believes that it is possible to plan the economic society and to avoid the evils of disorganization from which all factors in production have suffered in the past.[1]

Government and the New Society. The liberal believes that we are on the verge of great advance in terms of the happiness of the ordinary individual; the critic may feel, on the other hand, that we are witnessing all the signs of the inception of decadence in Western civilization. Whoever is right, there are certainly enormous changes ahead; none predicts that society will remain nearly as static as it has in the past. In either case, great adjustments in the form and function of government will be necessary. The government of the new liberal society will be economically and culturally creative; the government of a decadent modern socialism modeled on the lines of declining Rome must also be different from that of today, when we seem to be coming to the end of *laissez faire.* Careful students of political society are not overly enthusiastic concerning the political ability and organization that are available for whatever is to come in the future. The planned society, or in other words, planned capitalism, will need all the ability for its bureaucracy that it is possible to recruit. The civil service must have authority if it is going to do all that the reformers promise the state will do. We may perhaps discover in the future that the hope

[1] Anyone who wishes to study social change in the United States during recent years should consult the reports drawn up by research committees appointed during the administration of President Herbert C. Hoover. See *Recent Social Trends* (New York, 1933).

of liberty was in the preservation of as much of the *status quo* as was possible in view of the necessities of society. If the state is capable of being reformed administratively and legally in accordance with modern needs, it may be possible to manage the type of world organization that our critics and dreamers have in mind.

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