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READINGS IN RECENT POLITICAL PHILOSOPHY



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READINGS IN RECENT POLITICAL PHILOSOPHY

Selected, abridged, and edited by

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TO

EDGAR DAWSON

PREFACE

It is axiomatic that to read—or at least to sample—is essential to the appreciation of a philosophical work as either philosophy or literature. However, it has been no easy task to act upon this principle in teaching college classes in political philosophy. An open-minded professor hardly wishes to drop the subject at the year 1800, but it is almost impossible to find source material for use in teaching the theories of the nineteenth and twentieth centuries. Professor Coker's excellent *Readings in Political Philosophy* (Macmillan, New York, 1914) closes with selections from Paine and Bentham, and there seems to be no book of readings for any later period. Moreover, it is exceedingly difficult to send students to original sources save for special assignments. Comparatively few works, even of the nineteenth century, have as yet become available in inexpensive editions of world classics, and many important books still covered by copyright are out of print and unobtainable at any price.

The present volume is an attempt to cope with this situation. Beginning where Professor Coker's selections end, it opens with the philosophy of the American and French Revolutions and closes with contemporary theories of nationalism and internationalism. Legal philosophy is generously included throughout, as intimately bound up with political philosophy in the narrower sense of that term. The readings have been drawn predominantly from works in the English language, but illustrations of the most significant schools of continental thought have, it is believed, been included. In most cases of works written in foreign languages, the standard English translations have been scrupulously followed, but a large number of minor corrections have been made in the anonymous translation of Kropotkin's *Conquest of Bread*, and the selections from Duguit have been translated, in collaboration with Miss Ruth E. Schechter, expressly for the present volume.

The readings included in this collection have been freely abridged, although cuts are indicated in the text only in the two instances where this has been required by the copyright holders. The editor believes that what her method lacks in scholarliness is

more than compensated by the gain to the volume in readableness and scope. There has been no paraphrasing. The language throughout is that of the respective authors, except in the sub-titles that have been introduced into the various selections. No paragraphs have been broken or combined, and sentences, although often beheaded or curtailed or otherwise abbreviated, have been telescoped in only three or four instances in the entire volume. In such matters as capitalization, italicization, spelling, and punctuation, there are very few cases of intentional variance from the original. Even where a typographical error has been suspected, the editor has hesitated to correct save in a most obvious case or where it has been possible to consult another edition of the work. On the other hand, in a number of the selections, the editor has departed from the author's order of development, but these divergences can be easily checked by glancing at the references that indicate the sources of the various passages. Although these references are only to chapters and sections or to paragraphs—not to pages—it is believed that in most cases they will enable the reader to locate a passage without undue loss of time.

The introductions that precede the various readings are necessarily brief and superficial, but it is the editor's hope that they will prove of some assistance to the college undergraduate as well as to the possible general reader. The accompanying references relate chiefly to biography and specialized criticism, with only occasional mention of general works. It is, therefore, well at this point to call the attention of the reader to the assistance to be derived from the volumes of the *Encyclopaedia of the Social Sciences* (Macmillan, New York, 1930–35) and from the standard texts on political philosophy. To be especially mentioned are William A. Dunning, *A History of Political Theories from Rousseau to Spencer* (Macmillan, New York, 1920); Charles E. Merriam and Harry E. Barnes, *A History of Political Theories: Recent Times* (Macmillan, New York, 1924); Francis W. Coker, *Recent Political Thought* (Appleton-Century, New York, 1934); and Raymond G. Gettell, *History of Political Thought* (Century, New York, 1924).

The editor is indebted to a large number of copyright holders for generous permission to use copyrighted material, but her acknowledgments on this score are made in the various introductions and need not be repeated here. Her other obligations, aside from those to her own publishers and their advisers, are primarily to

three persons. To Professor Dawson of Hunter College she is indebted for the original suggestion that she undertake this volume, and for advice and encouragement throughout the entire course of its preparation. And to two of her former students, Mrs. Gertrude Lapidus Shefkowitz and Miss Soia Mentschikoff, she is obligated for collaboration that has included not only indispensable clerical assistance but also innumerable constructive suggestions for the improvement of her book. To Mrs. Shefkowitz she is further indebted for almost the entire labor of preparing the bibliographical references in the introductions; the editor has found little occasion either to add or to subtract. However, for all errors in these references, as for those elsewhere in this volume, the editor must herself assume entire responsibility.

MARGARET SPAHR.

August, 1935.

CONTENTS

CHAPTER I. THE POLITICAL PHILOSOPHY OF THE AMERICAN AND FRENCH REVOLUTIONS

PAGE

I. THE PHILOSOPHY OF THE DECLARATIONS OF RIGHTS 1
The Declaration of Independence (July 4, 1776) 3
The Virginia Declaration of Rights (June 12, 1776) . . . 6
The Declaration of the Rights of Man and Citizen (August 26, 1789) 9

II. THE PHILOSOPHY OF THE AMERICAN CONSTITUTION 11
Alexander Hamilton and James Madison: *The Federalist* (1787–1788) 13

III. THE PHILOSOPHY OF THE FRENCH CONSTITUTION OF 1791 . . 29
Thomas Paine: *The Rights of Man* (1791) 30
Appendix: Excerpts from the French Constitution of 1791 (September 3, 1791) 40

CHAPTER II. THE CONSERVATIVE REACTION

I. THE REACTION IN ENGLAND 46
Edmund Burke: *An Appeal from the New to the Old Whigs* (1791) 47

II. THE CATHOLIC AUTHORITARIAN REACTION 63
Joseph de Maistre: *Essay on the Generative Principle of Political Constitutions* (1814) 64

CHAPTER III. THE UTILITARIAN ANALYSIS OF T[illegible] STATE

I. FUNDAMENTALS OF UTILITARIANISM . . . . . .
Jeremy Bentham: *A Fragment on Government* (177[illegible]

II. THE AUSTINIAN THEORY OF SOVEREIGNTY . . .
John Austin: *Lectures on Jurisprudence* (1832)

CHAPTER IV. THE HISTORICAL [illegible]

I. THE GERMAN HISTORICAL SCHOO[illegible]
Friedrich Karl von Savigny, [illegible] (1[illegible]
Legislation and Jurisp[illegible](19[illegible]

PAGE
II. THE ENGLISH HISTORICAL SCHOOL 146
Sir Henry Sumner Maine: *Ancient Law* (1861) 147

CHAPTER V. GERMAN IDEALISM

I. THE KANTIAN IDEA OF POLITICAL RIGHT 163
Immanuel Kant:
The Principles of Political Right (1793) 164
The Philosophy of Law (1796) 179
II. THE HEGELIAN IDEA OF THE STATE 185
Georg W. F. Hegel: *The Philosophy of Right* (1821) . . 187

CHAPTER VI. INDIVIDUALISM

I. UTILITARIAN LIBERALISM 207
John Stuart Mill:
On Liberty (1859) 208
Considerations on Representative Government (1861) . . 229
II. THE APOTHEOSIS OF LAISSEZ-FAIRE 241
Herbert Spencer: *Social Statics* (1850), with annotations from *Justice* (1891) 242

CHAPTER VII. END-CENTURY IDEALISM AND NATIONALISM

I. THE RISE OF ENGLISH IDEALISM 263
Thomas Hill Green: *Lectures on the Principles of Political Obl gation* (1879–1880) 264
ENGLISH HEGELIANISM 279
Bernard Bosanquet: *The Philosophical Theory of the State* (1899) 280
ONALISM 297
rich von Treitschke: *Politics* (*c.* 1880) 298

R VIII. FOUNDATIONS OF SOCIALISM
. 313
for the Relief of the Manufacturing
. 314
13) 324

PAGE

II. SCIENTIFIC SOCIALISM 333
Karl Marx and Friedrich Engels: *The Communist Manifesto* (1848) 335

CHAPTER IX. ANARCHISM

I. THE ANARCHIST ANALYSIS OF SOCIETY 353
Pierre Joseph Proudhon: *What is Property?* (1840) . . . 354

II. THE ANARCHIST PROGRAM FOR SOCIETY 368
Piotr A. Kropotkin: *The Conquest of Bread* (1888) 369

CHAPTER X. THE PHILOSOPHY OF THE CLASS STRUGGLE

I. SYNDICALISM 388
Georges Sorel: *Reflections on Violence* (1908) 389

II. COMMUNISM 409
Vladimir I. Lenin: *State and Revolution* (1917) 410

CHAPTER XI. EVOLUTIONARY SOCIALISM

I. FABIAN SOCIALISM 430
George Bernard Shaw: *Transition* in *Fabian Essays in Socialism* (1889) 431

II. GUILD SOCIALISM . . . . . 447 . 44
George D. H. Cole: *Social Theory* (1920) . . . 448 . 44

CHAPTER XII. THE LIBERAL ATTACK UPON THE SOVEREIGNTY OF THE STATE

I. THE THEORY OF OBJECTIVE LAW . . . . . .
Léon Duguit: *The Transformation of the Theory of State* (1913) . . . . . .

II. THE BASIS OF THE SOVEREIGNTY OF LAW . . . . .
Hugo Krabbe: *The Modern Idea of the State* (1915) .

CHAPTER XIII. RIGHTS IN AN OBJECTIVE

I. THE FUNCTIONAL BASIS OF RIGHTS . . .
Ramiro de Maeztu: *Authority, Liberty and Fu Light of the War* (1916) . . . . . .

II. THE PLURALIST CONCEPT OF RIGHTS . . .
Harold J. Laski:
The Sovereignty of the State (1
A Grammar of Politics (19

CHAPTER XIV. THE DEFENSE OF THE DOCTRINE OF SOVEREIGNTY

PAGE

I. THE DISTINCTION BETWEEN LEGAL AND POLITICAL SOVEREIGNTY 551
Albert V. Dicey: *Introduction to the Study of the Law of the Constitution* (1885) 552

II. THE REPLY TO TWENTIETH CENTURY CRITICS 568
John Dickinson: *A Working Theory of Sovereignty* (1927) . 569

CHAPTER XV. THE NEW JURISPRUDENCE

I. NEO-KANTIANISM 581
Rudolf Stammler: *The Theory of Justice* (1902) 582

II. THE SOCIOLOGICAL APPROACH TO LAW 598
Roscoe Pound: *An Introduction to the Philosophy of Law* (1922) 599

III. THE ANALYSIS OF THE JUDICIAL PROCESS 615
Benjamin N. Cardozo:
The Nature of the Judicial Process (1921) 616
The Growth of the Law (1924) 626

CHAPTER XVI. THE NEW PSYCHOLOGICAL APPROACH

I. THE PROBLEM OF SCIENTIFIC METHOD IN POLITICAL SCIENCE 634
Graham Wallas: *Human Nature in Politics* (1908) 635

II. THE ANALYSIS OF GROUP PRESSURE IN GOVERNMENT 647
Arthur F. Bentley: *The Process of Government* (1908) . . . 648

III. THE STUDY OF POLITICAL EXPERIENCE ON THE MOTOR LEVEL 658
Mary P. Follett: *Creative Experience* (1924) 659

IV. PRAGMATIC THEORY OF THE STATE 669
John Dewey: *The Public and Its Problems* (1927) 670

XVII. THE REVOLT AGAINST DEMOCRATIC LIBERALISM

. 680
Rocco: *The Political Doctrine of Fascism* (1925) . . . 681
Gentile: *The Philosophic Basis of Fascism* (1928) 689
. 701
The Method of Freedom (1934) 702

CHAPTER XVIII. PHILOSOPHIES OF INTERNATIONALISM

PAGE

I. LIBERAL INTERNATIONALISM 722
Nicholas Murray Butler: *The International Mind* (1931) . 723
II. ECONOMIC INTERNATIONALISM 731
Lewis L. Lorwin: *Economic Nationalism and World Co-operation* (1933) 732
III. COLLECTIVIST INTERNATIONALISM 744
Henry N. Brailsford: *Property or Peace* (1934) 745

INDEX 757

READINGS IN RECENT POLITICAL PHILOSOPHY

CHAPTER I. THE POLITICAL PHILOSOPHY OF THE AMERICAN AND FRENCH REVOLUTIONS

I. THE PHILOSOPHY OF THE DECLARATIONS OF RIGHTS

The close of the eighteenth century is undoubtedly one of the great turning points of history. The Industrial Revolution, the American Revolution, and the French Revolution combined to transform many of the supposed constants of human life and thought. It is therefore appropriate that a book of readings in recent political philosophy should open with material drawn from this period of change. As is natural for a revolutionary epoch, there is no lack of material. The Industrial Revolution influenced political philosophy only slowly and indirectly, but the American and French Revolutions were closely linked with political theory as both cause and effect. Many official documents of the period embody in impressive form the dominant philosophy of democratic individualism. To be particularly instanced are the American Declaration of Independence, the bills of rights included in the state constitutions and added to the Federal Constitution shortly after its adoption, and the declarations of rights that prefaced the various French constitutions of the revolutionary period.

In this collection the Declaration of Independence and the Virginia Declaration of Rights are chosen to illustrate the political theory set forth in American official documents. Of the Declaration of Independence it is hardly necessary to say that it was drafted by Thomas Jefferson and adopted by the Second Continental Congress at Philadelphia on July 4, 1776, following the passage on July 2 of a resolution declaring the colonies free and independent states. The story of the Virginia Declaration of Rights is less well known. The declaration was drafted by George Mason, and was adopted on June 12, 1776 by the convention, composed of forty-five members of the colonial House of Burgesses, which assembled at Williamsburg on May 6, declared Virginia independent of Great Britain on May 15, and adopted the Virginia constitution of 1776 on June 29. Neither the declaration of rights nor the constitution was submitted to the people for ratification. The Virginia Declaration of Rights was the earliest of the state bills of rights (although the constitutions of New

Hampshire, South Carolina, and New Jersey antedated that of Virginia) and served as a model in the drafting of later state and federal constitutional guarantees.

The French document chosen is the original Declaration of the Rights of Man and Citizen. This was one of the outstanding achievements of the opening months of the French Revolution, after the Estates-General that assembled in May 1789 had transformed itself on June 17 into the National Assembly. The Declaration of Rights was adopted on August 26 and was later incorporated into the first written constitution of France—the Constitution of 1791. Recent investigations have pointed out that the French declaration was largely inspired by the bills of rights of the American state constitutions, translations of which Franklin had caused to be published and circulated in France as early as 1783, and that the provisions of the French declaration, like those of the American bills of rights, were in general aimed at specific existing abuses.

The Declaration of Independence is here arranged in accordance with the official text as printed in the *United States Code* (Government Printing Office, Washington, 1926). The text of the Virginia Declaration of Rights is that found in Benjamin P. Poore: *Federal and State Constitutions* (Government Printing Office, Washington, 1878). The Declaration of the Rights of Man and Citizen follows the English translation by Frank M. Anderson in *The Constitutions and Other Select Documents Illustrative of the History of France, 1789–1907* (H. W. Wilson Co., Minneapolis, second ed., 1908), and is reprinted by permission of the translator. Except that the signatures to the Declaration of Independence are omitted, all three documents are given in their entirety.

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THE DECLARATION OF INDEPENDENCE

(*July 4, 1776*)

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any

Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish breth-

ren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the Representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

THE VIRGINIA DECLARATION OF RIGHTS

(*June 12, 1776*)

A declaration of rights made by the representatives of the good people of Virginia, assembled in full and free convention; which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 2. That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them.

Section 3. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Section 4. That no man, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which, not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Section 5. That the legislative and executive powers of the State should be separate and distinct from the judiciary; and that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the laws shall direct.

Section 6. That elections of members to serve as representatives of the people, in assembly, ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed or deprived of their property for public uses, without their own consent, or that of their representatives so elected, nor bound by any law to which they have not, in like manner, assented, for the public good.

Section 7. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 8. That in all capital or criminal prosecutions a man

hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

Section 9. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 10. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Section 11. That in controversies respecting property, and in suits between man and man, the ancient trial by jury is preferable to any other, and ought to be held sacred.

Section 12. That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments.

Section 13. That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Section 14. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of the government of Virginia, ought to be erected or established within the limits thereof.

Section 15. That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.

Section 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according

to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.

THE DECLARATION OF THE RIGHTS OF MAN AND CITIZEN

(*August 26, 1789*)

The representatives of the French people, organized in National Assembly, considering that ignorance, forgetfulness or contempt of the rights of man, are the sole causes of the public miseries and of the corruption of governments, have resolved to set forth in a solemn declaration the natural, inalienable, and sacred rights of man, in order that this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and their duties; in order that the acts of the legislative power and those of the executive power may be each moment compared with the aim of every political institution and thereby may be more respected; and in order that the demands of citizens, grounded henceforth upon simple and incontestable principles, may always take the direction of maintaining the constitution and welfare of all.

In consequence, the National Assembly recognizes and declares, in the presence and under the auspices of the Supreme Being, the following rights of man and citizen.

1. Men are born and remain free and equal in rights. Social distinctions can be based only upon public utility.

2. The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression.

3. The source of all sovereignty is essentially in the nation; no body, no individual can exercise authority that does not proceed from it in plain terms.

4. Liberty consists in the power to do anything that does not injure others; accordingly, the exercise of the natural rights of each man has no limits except those that secure to the other members of society the enjoyment of these same rights. These limits can be determined only by law.

5. The law has the right to forbid only such actions as are injurious to society. Nothing can be forbidden that is not inter-

dicted by the law, and no one can be constrained to do that which it does not order.

6. Law is the expression of the general will. All citizens have the right to take part personally, or by their representatives, in its formation. It must be the same for all, whether it protects or punishes. All citizens being equal in its eyes, are equally eligible to all public dignities, places, and employments, according to their capacities, and without other distinction than that of their virtues and their talents.

7. No man can be accused, arrested, or detained, except in the cases determined by the law and according to the forms that it has prescribed. Those who procure, expedite, execute, or cause to be executed arbitrary orders ought to be punished: but every citizen summoned or seized in virtue of the law ought to render instant obedience; he makes himself guilty by resistance.

8. The law ought to establish only penalties that are strictly and obviously necessary, and no one can be punished except in virtue of a law established and promulgated prior to the offence and legally applied.

9. Every man being presumed innocent until he has been pronounced guilty, if it is thought indispensable to arrest him, all severity that may not be necessary to secure his person ought to be strictly suppressed by law.

10. No one should be disturbed on account of his opinions, even religious, provided their manifestation does not derange the public order established by law.

11. The free communication of ideas and opinions is one of the most precious of the rights of man; every citizen then can freely speak, write, and print, subject to responsibility for the abuse of this freedom in the cases determined by law.

12. The guarantee of the rights of man and citizen requires a public force; this force then is instituted for the advantage of all and not for the personal benefit of those to whom it is entrusted.

13. For the maintenance of the public force and for the expenses of administration a general tax is indispensable; it ought to be equally apportioned among all the citizens according to their means.

14. All the citizens have the right to ascertain, by themselves or by their representatives, the necessity of the public tax, to consent to it freely, to follow the employment of it, and to de-

termine the quota, the assessment, the collection, and the duration of it.

15. Society has the right to call for an account of his administration from every public agent.

16. Any society in which the guarantee of the rights is not secured, or the separation of powers not determined, has no constitution at all.

17. Property being a sacred and inviolable right, no one can be deprived of it, unless a legally established public necessity evidently demands it, under the condition of a just and prior indemnity.

II. THE PHILOSOPHY OF THE AMERICAN CONSTITUTION

The Federalist (1787–1788)

Alexander Hamilton (1757–1804) and James Madison (1751–1836)

In the years immediately following the Revolution, the American experiment with a democratic republic was far from enjoying universal approbation. Although individual liberty was assured by the state constitutions, and state sovereignty by the Articles of Confederation, there was something lacking. The small farmers were in general content with what had been won by the Revolution, but commerce and business languished. It was the dissatisfaction of the business interests of the country that was mainly responsible for the events that culminated in the assembling of the Federal Constitutional Convention at Philadelphia in May 1787. The radicals of the Revolution—men like Samuel Adams and Patrick Henry—had no part in the convention's labors. Whereas the Declaration of Independence reflects democracy triumphant, the Constitution reflects a conservative reaction. Zeal for equality had given way to concern for stability and business.

The philosophy of the Constitution can be best appreciated by a study of *The Federalist*, the series of essays written by Alexander Hamilton and James Madison—with a few contributions from John Jay—in the winter of 1787–88. The purpose of the series, of which the idea and general plan were Hamilton's, was to secure the ratification of the Constitution by the state of New York, the geographical position of which made its action critical. This immediate object was attained, but the success of the essays was much more far-reaching. Although written for propaganda purposes, *The Federalist* may be said to have established the canons of orthodoxy for American political theory. By brilliant analysis and lucid exposition, Hamilton and Madison laid the foundations for that veneration of the Constitution that almost standardized American political thought for the next hundred years. Not the philosophy of the Revolution but that of the Constitution became the great heritage of the American people.

Both Hamilton and Madison had taken a prominent part in American public life throughout the entire period of the Revolution. Madison had served in the epoch-making Virginia convention of 1776 and later in the Virginia Assembly, where he had actively supported the removal of religious disabilities, and had held important committee chairmanships as a delegate to the Congress under the Articles of Confederation. Hamilton had written on political subjects before the opening of hostilities, had served as Washington's aide-de-camp in the Revolution, and had been a member of Congress under the Articles. Both men were members of the Philadelphia Convention, where Madison was exceptionally influential in the framing of the Constitution but Hamilton was handicapped by the opposition of his fellow-delegates from New York. Madison actively supported the Constitution in the ratifying convention of Virginia and Hamilton played the leading part in that of New York. It is hardly necessary to add that both men later held high office under the Constitution they had so actively endorsed,—Hamilton as Secretary of the Treasury under Washington, and Madison as Secretary of State under Jefferson and later as President of the United States.

The readings here given follow the text and the numbering of the essays found in the Everyman edition of *The Federalist* (E. P. Dutton and Company, New York, 1911), and are reprinted by permission of E. P. Dutton and Company as the American publishers of Everyman's Library.

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THE FEDERALIST

I. The Danger of Faction

[*No. X: Madison.*] *To the People of the State of New York:*

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection

of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment of different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. But 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 civilised 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.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay, with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties

are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number is a shilling saved to their own pockets.

The inference to which we are brought is, that the *causes* of faction cannot be removed, and that relief is only to be sought in the means of controlling its *effects*.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed.

By what means is this object obtainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such co-existent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the justice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure

democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronised this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalised and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established character.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic—is enjoyed by the Union over the States composing it.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division

of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

PUBLIUS

II. The Separation of Powers

[*No. XLVII: Madison.*] *To the People of the State of New York:*

One of the principal objections inculcated by the more respectable adversaries of the Constitution is its supposed violation of the political maxim, that the legislative, executive, and judiciary departments ought to be separate and distinct. In the structure of the federal government, no regard, it is said, seems to have been paid to this essential precaution in favor of liberty.

[*No. XLVIII: Madison.*] It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defence is indispensably necessary for the more feeble, against the more powerful, members of the government. The

legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

[*No. LI: Hamilton or Madison.*] To what expedient, then, shall we resort, for maintaining in practice the necessary partition of power among the several departments, as laid down in the Constitution? The only answer that can be given is, that the defect must be supplied, by so contriving the interior structure of the government as that its several constituent parts may, by their mutual relations, be the means of keeping each other in their proper places.

In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own; and consequently should be so constituted that the members of each should have as little agency as possible in the appointment of the members of the others. Were this principle rigorously adhered to, it would require that all the appointments for the supreme executive, legislative, and judiciary magistracies should be drawn from the same fountain of authority, the people, through channels having no communication whatever with one another. Perhaps such a plan of constructing the several departments would be less difficult in practice than it may in contemplation appear. Some difficulties, however, and some additional expense would attend the execution of it. Some deviations, therefore, from the principle must be admitted. In the constitution of the judiciary department in particular, it might be inexpedient to insist rigorously on the principle: first, because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications; secondly, because the permanent tenure by which the appointments are held in that department must soon destroy all sense of dependence on the authority conferring them.

It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices. Were the executive magistrate, or the judges, not independent of the legislature in this particular, their independence in every other would be merely nominal.

But the great security against a gradual concentration of the several powers in the same department, consists in giving to

those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defence must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature that such devices should be necessary to control the abuses of government. But what is government itself but the greatest of all reflections on human nature?

But it is not possible to give to each department an equal power of self-defence. In republican government, the legislative authority necessarily predominates. The remedy for this inconveniency is to divide the legislature into different branches; and to render them, by different modes of election and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit. It may even be necessary to guard against dangerous encroachments by still further precautions. As the weight of the legislative authority requires that it should be thus divided, the weakness of the executive may require, on the other hand, that it should be fortified.

[*No. LXXIII: Hamilton.*] From these clear and indubitable principles results the propriety of a negative, either absolute or qualified, in the Executive, upon the acts of the legislative branches. Without the one or the other, the former would be absolutely unable to defend himself against the depredations of the latter. He might gradually be stripped of his authorities by successive resolutions, or annihilated by a single vote. And in the one mode or the other, the legislative and executive powers might speedily come to be blended in the same hands.

But the power in question has a further use. It not only serves as a shield to the Executive, but it furnishes an additional security against the enaction of improper laws. It establishes a salutary check upon the legislative body, calculated to guard the community against the effects of faction, precipitancy, or of any impulse unfriendly to the public good, which may happen to influence a majority of that body.

The propriety of a negative has, upon some occasions, been combated by an observation, that it was not to be presumed a single

man would possess more virtue and wisdom than a number of men; and that unless this presumption should be entertained, it would be improper to give the executive magistrate any species of control over the legislative body.

But this observation, when examined, will appear rather specious than solid. The propriety of the thing does not turn upon the supposition of superior wisdom or virtue in the Executive, but upon the supposition that the legislature will not be infallible; that the love of power may sometimes betray it into a disposition to encroach upon the rights of other members of the government; that a spirit of faction may sometimes pervert its deliberations; that impressions of the moment may sometimes hurry it into measures which itself, on maturer reflection, would condemn. The oftener the measure is brought under examination, the greater the diversity in the situations of those who are to examine it, the less must be the danger of those errors which flow from want of due deliberation, or of those missteps which proceed from the contagion of some common passion or interest. It is far less probable that culpable views of any kind should infect all the parts of the government at the same moment and in relation to the same object, than that they should by turns govern and mislead every one of them.

It may perhaps be said that the power of preventing bad laws includes that of preventing good ones; and may be used to the one purpose as well as to the other. But this objection will have little weight with those who can properly estimate the mischiefs of that inconstancy and mutability in the laws which form the greatest blemish in the character and genius of our governments. They will consider every institution calculated to restrain the excess of law-making, and to keep things in the same state in which they happen to be at any given period, as much more likely to do good than harm; because it is favourable to greater stability in the system of legislation. The injury which may possibly be done by defeating a few good laws will be amply compensated by the advantage of preventing a number of bad ones.

Nor is this all. The superior weight and influence of the legislative body in a free government, and the hazard to the Executive in a trial of strength with that body, afford a satisfactory security that the negative would generally be employed with great caution; and there would oftener be room for a charge of timidity than of

rashness in the exercise of it. A king of Great Britain, with all his train of sovereign attributes, and with all the influence he draws from a thousand sources, would, at this day, hesitate to put a negative upon the joint resolutions of the two houses of Parliament. A very considerable period has elapsed since the negative of the crown has been exercised.

If a magistrate so powerful and so well fortified as a British monarch would have scruples about the exercise of the power under consideration, how much greater caution may be reasonably expected in a President of the United States, clothed for the short period of four years with the executive authority of a government wholly and purely republican?

But the convention have pursued a mean in this business which will both facilitate the exercise of the power vested in this respect in the executive magistrate, and make its efficacy to depend on the sense of a considerable part of the legislative body. A man who might be afraid to defeat a law by his single VETO, might not scruple to return it for reconsideration; subject to being finally rejected only in the event of more than one third of each house concurring in the sufficiency of his objections. A direct and categorical negative has something in the appearance of it more harsh, and more apt to irritate, than the mere suggestion of argumentative objections to be approved or disapproved by those to whom they are addressed. In proportion as it would be less apt to offend, it would be more apt to be exercised; and for this very reason it may in practice be found more effectual. It is to be hoped that it will not often happen that improper views will govern so large a proportion as two thirds of both branches of the legislature at the same time; and this, too, in spite of the counterposing weight of the Executive. It is at any rate far less probable that this should be the case than that such views should taint the resolutions and conduct of a bare majority. A power of this nature in the Executive will often have a silent and unperceived, though forcible, operation. When men, engaged in unjustifiable pursuits, are aware that obstructions may come from a quarter which they cannot control, they will often be restrained by the bare apprehension of opposition from doing what they would with eagerness rush into, if no such external impediments were to be feared.

This qualified negative is in this State vested in a council, consisting of the governor, with the chancellor and judges of the

Supreme Court, or any two of them. It has been freely employed upon a variety of occasions, and frequently with success. And its utility has become so apparent that persons who, in compiling the Constitution, were violent opposers of it, have from experience become its declared admirers.

The convention, in the formation of this part of their plan, departed from the model of the constitution of this State in favour of that of Massachusetts. Two strong reasons may be imagined for this preference. One is that the judges, who are to be the interpreters of the law, might receive an improper bias, from having given a previous opinion in their revisionary capacities; the other is, that by being often associated with the Executive, they might be induced to embark too far in the political views of that magistrate, and thus a dangerous combination might by degrees be cemented between the executive and judiciary departments. It is impossible to keep the judges too distinct from every other avocation than that of expounding the laws.

PUBLIUS

III. The Judiciary Department

[*No. LXXVIII: Hamilton.*] *To the People of the State of New York:*

According to the plan of the convention, all judges who may be appointed by the United States are to hold their offices *during good behaviour;* which is conformable to the most approved of the State constitutions, and among the rest, to that of this State. Its propriety having been drawn into question by the adversaries of that plan is no light symptom of the rage for objection which disorders their imaginations and judgments. The standard of good behaviour for the continuance in office of the judicial magistracy is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy it is an excellent barrier to the despotism of the prince; in a republic it is a no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright, and impartial administration of the laws.

Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights

of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honours, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

This simple view of the matter suggests several important consequences. It proves incontestably that the judiciary is beyond comparison the weakest of the three departments of power; [1] that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter; I mean so long as the judiciary remains truly distinct from both the legislature and the Executive. And it proves, in the last place, that as liberty can have nothing to fear from the judiciary alone, but would have everything to fear from its union with either of the other departments; that as all the effects of such a union must ensue from a dependence of the former on the latter, notwithstanding a nominal and apparent separation; that as, from the natural feebleness of the judiciary, it is in continual jeopardy of being overpowered, awed, or influenced by its co-ordinate branches; and that as nothing can contribute so much to its firmness and independence as permanency in office, this quality may therefore be justly regarded as an indispensable ingredient in its constitution, and, in a great measure, as the citadel of the public justice and the public security.

The complete independence of the courts of justice is particularly essential in a limited Constitution. By a limited Constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills

[1] The celebrated Montesquieu, speaking of them, says: "Of the three powers above mentioned, the judiciary is next to nothing."—*Spirit of Laws*, vol. i., page 186.—PUBLIUS.

of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice in no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorise, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is conclusive upon the other departments, it may be answered that this cannot be the natural presumption where it is not to be collected from any particular provisions in the Constitution. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority

of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time, clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case it is the province of the courts to liquidate and fix their meaning and operation. So far as they can, by any fair construction, be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is, that the last in order of time shall be preferred to the first. They thought it reasonable that between the interfering acts of an *equal* authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretence of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise WILL instead of JUDGMENT, the consequence would equally be the substitution of their pleasure to that of the legisla-

tive body. The observation, if it prove anything, would prove that there ought to be no judges distinct from that body.

Though I trust the friends of the proposed Constitution will never concur with its enemies, in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established Constitution, whenever they find it inconsistent with their happiness, yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents, incompatible with the provisions in the existing constitution, would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge, of their sentiments, can warrant their representatives in a departure from it, prior to such an act. But it is easy to see that it would require an uncommon portion of fortitude in the judges to do their duty as faithful guardians of the Constitution where legislative invasions of it had been instigated by the major voice of the community.

But it is not with a view to infractions of the Constitution only that the independence of the judges may be an essential safeguard against the effects of occasional ill humours in the society. These sometimes extend no farther than to the injury of the private rights of particular classes of citizens by unjust and partial laws. Here also the firmness of the judicial magistracy is of vast importance in mitigating the severity and confining the operation of such laws.

That inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can certainly not be expected from judges who hold their offices by a temporary commission. Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to their necessary independence. If the power of making them was committed either to the Executive or legislature, there would be danger of an improper complaisance to the branch which possessed it; if to both, there would

be an unwillingness to hazard the displeasure of either; if to the people, or to persons chosen by them for the special purpose, there would be too great a disposition to consult popularity, to justify a reliance that nothing would be consulted but the Constitution and the laws.

There is yet a further and a weightier reason for the permanency of the judicial offices which is deducible from the nature of the qualifications they require. To avoid an arbitrary discretion in the courts, it is indispensable that they should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them; and it will readily be conceived that the records of those precedents must unavoidably swell to a very considerable bulk, and must demand long and laborious study to acquire a competent knowledge of them. Hence it is, that there can be but few men in the society who will have sufficient skill in the laws to qualify them for the stations of judges. And making the proper deductions for the ordinary depravity of human nature, the number must be still smaller of those who unite the requisite integrity with the requisite knowledge. These considerations apprise us that the government can have no great option between fit character; and that a temporary duration in office, which would naturally discourage such characters from quitting a lucrative line of practice to accept a seat on the bench, would have a tendency to throw the administration of justice into hands less able, and less well qualified, to conduct it with utility and dignity.

Upon the whole, there can be no room to doubt that the convention acted wisely in copying from the models of those constitutions which have established *good behaviour* as the tenure of their judicial offices, in point of duration; and that so far from being blameable on this account, their plan would have been inexcusably defective, if it had wanted this important feature of good government. The experience of Great Britain affords an illustrious comment on the excellence of the institution.

PUBLIUS

III. THE PHILOSOPHY OF THE FRENCH CONSTITUTION OF 1791

The Rights of Man (*1791*)

Thomas Paine (1737–1809)

Whereas the American Constitution was framed after a successful revolution but under conservative influences, the French Constitution of 1791—the first of the revolutionary constitutions—was adopted by the National Assembly before the autocracy of the old régime had yet been overwhelmed by the rising tide of revolution. In consequence the French document—excerpts from which will be found in the appendix to this chapter—is somewhat more conservative than the American in its actual provisions, but incomparably more radical in spirit and outlook. It is symptomatic that the American Constitution as drafted in 1787 lacked a bill of rights—although one was later supplied through the addition of the first ten amendments in 1791—whereas the French Constitution of 1791 opened with the resounding phrases of the previously adopted Declaration of the Rights of Man and Citizen of 1789.

The French constitution at once attracted unprecedented attention abroad. In England, especially, it aroused consternation on the one hand and ecstasy on the other. Among its champions the foremost place probably belongs to Thomas Paine, who published *The Rights of Man* in 1791 as a direct rejoinder to Edmund Burke's vehement denunciation of the French Revolution in his *Reflections on the Revolution in France* (1790). In the days preceding the American Revolution Burke had championed the colonists on the issue of taxation and had been on the friendliest terms with Paine, but the French cataclysm flung them into diametrically opposed positions. Both for their own times and for posterity Burke became the oracle of the conservative tradition and Paine the leader of the rationalist attack upon established institutions.

Paine was born in England, the son of a Quaker stay-maker, but first made his mark after his emigration to America in 1774. He took a most active part in the revolutionary agitation of the period, and his *Common Sense* (1776) may be said to have crystallized American sentiment for independence. Paine returned to England in 1787, but fled after the publication in 1792 of *The Rights of Man, Part Second*, for which he was convicted of treason in his absence. Meantime he had reached France to find himself a delegate to the constitutional convention of 1793, but his comparative moderateness soon resulted in his imprisonment by the Jacobins. He spent his last years in America but found his earlier popularity effaced by hostility to his *Age of Reason* (1794–95), an exposition of deism written while he was imprisoned in France.

The following readings from *The Rights of Man* are based on the text in the second volume of M. D. Conway's edition of *The Writings of Thomas Paine* (Putnam, New York, 1894), and are reprinted by permission of G. P. Putnam's Sons. The excerpts from the Constitution of 1791 in the appendix

follow the translation by Frank M. Anderson in *The Constitutions and Other Select Documents Illustrative of the History of France, 1789–1907* (H. W. Wilson Co., Minneapolis, second ed., 1908), and are reprinted by permission of the translator.

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THE RIGHTS OF MAN

I. The Origin of the Rights of Man

Before anything can be reasoned upon to a conclusion, certain facts, principles, or data, to reason from, must be established, admitted, or denied. Mr. Burke with his usual outrage, abused the *Declaration of the Rights of Man*, published by the National Assembly of France, as the basis on which the constitution of France is built. This he calls "paltry and blurred sheets of paper about the rights of man." Does Mr. Burke mean to deny that *man* has any rights? If he does, then he must mean that there are no such things as rights anywhere, and that he has none himself; for who is there in the world but man? But if Mr. Burke means to admit that man has rights, the question then will be: What are those rights, and how man came by them originally?

The error of those who reason by precedents drawn from antiquity, respecting the rights of man, is that they do not go far enough into antiquity. They do not go the whole way. They stop in some of the intermediate stages of an hundred or a thousand years, and produce what was then done, as a rule for the present day. This is no authority at all. If we travel still farther into antiquity, we shall find a direct contrary opinion and practice prevailing; and if antiquity is to be an authority, a thousand such

authorities may be produced, successively contradicting each other; but if we proceed on, we shall at last come out right; we shall come to the time when man came from the hand of his Maker. What was he then? Man. Man was his high and only title, and a higher cannot be given him.

Every history of the creation, and every traditionary account, whether from the lettered or unlettered world, however they may vary in their opinion or belief of certain particulars, all agree in establishing one point, the *unity of man;* by which I mean that men are all of *one degree*, and consequently that all men are born equal, and with equal natural right, in the same manner as if posterity had been continued by *creation* instead of *generation*, the latter being the only mode by which the former is carried forward; and consequently every child born into the world must be considered as deriving its existence from God. The world is as new to him as it was to the first man that existed, and his natural right in it is of the same kind.

Hitherto we have spoken only (and that but in part) of the natural rights of man. We have now to consider the civil rights of man, and to show how the one originates from the other. Man did not enter into society to become *worse* than he was before, nor to have fewer rights than he had before, but to have those rights better secured. His natural rights are the foundation of all his civil rights. But in order to pursue this distinction with more precision, it will be necessary to mark the different qualities of natural and civil rights.

A few words will explain this. Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of his being a member of society. Every civil right has for its foundation some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.

From this short review it will be easy to distinguish between that class of natural rights which man retains after entering into society and those which he throws into the common stock as a member of society.

The natural rights which he retains are all those in which the *power* to execute is as perfect in the individual as the right itself. Among this class, as is before mentioned, are all the intellectual rights, or rights of the mind; consequently religion is one of those rights. The natural rights which are not retained, are all those in which, though the right is perfect in the individual, the power to execute them is defective. They answer not his purpose. A man, by natural right, has a right to judge in his own cause; and so far as the right of the mind is concerned, he never surrenders it. But what availeth it him to judge, if he has not power to redress? He therefore deposits this right in the common stock of society, and takes the arm of society, of which he is a part, in preference and in addition to his own. Society *grants* him nothing. Every man is a proprietor in society, and draws on the capital as a matter of right.

From these premises two or three certain conclusions will follow:

First, That every civil right grows out of a natural right; or, in other words, is a natural right exchanged.

Secondly, That civil power properly considered as such is made up of the aggregate of that class of the natural rights of man, which becomes defective in the individual in point of power, and answers not his purpose, but when collected to a focus becomes competent to the purpose of every one.

Thirdly, That the power produced from the aggregate of natural rights, imperfect in power in the individual, cannot be applied to invade the natural rights which are retained in the individual, and in which the power to execute is as perfect as the right itself.

II. The Origin of Governments and the Nature of Constitutions

In casting our eyes over the world, it is extremely easy to distinguish the governments which have arisen out of society, or out of the social compact, from those which have not; but to place this in a clearer light than what a single glance may afford, it will be proper to take a review of the several sources from which governments have arisen and on which they have been founded.

They may be all comprehended under three heads. First, Superstition. Secondly, Power. Thirdly, the common interest of society and the common rights of man.

The first was a government of priestcraft, the second of conquerors, and the third of reason.

When a set of artful men pretended, through the medium of oracles, to hold intercourse with the Deity, as familiarly as they now march up the back-stairs in European courts, the world was completely under the government of superstition. The oracles were consulted, and whatever they were made to say became the law; and this sort of government lasted as long as this sort of superstition lasted.

After these a race of conquerors arose, whose government, like that of William the Conqueror, was founded in power, and the sword assumed the name of a sceptre. Governments thus established last as long as the power to support them lasts; but that they might avail themselves of every engine in their favor, they united fraud to force, and set up an idol which they called *Divine Right*, and which, in imitation of the Pope, who affects to be spiritual and temporal, and in contradiction to the Founder of the Christian religion, twisted itself afterwards into an idol of another shape, called *Church and State*. The key of St. Peter and the key of the Treasury became quartered on one another, and the wondering cheated multitude worshipped the invention.

We have now to review the governments which arise out of society, in contradistinction to those which arose out of superstition and conquest.

It has been thought a considerable advance towards establishing the principles of Freedom to say that Government is a compact between those who govern and those who are governed; but this cannot be true, because it is putting the effect before the cause; for as man must have existed before governments existed, there necessarily was a time when governments did not exist, and consequently there could originally exist no governors to form such a compact with.

The fact therefore must be that the *individuals themselves*, each in his own personal and sovereign right, *entered into a compact with each other* to produce a government; and this is the only mode in which governments have a right to arise, and the only principle on which they have a right to exist.

To possess ourselves of a clear idea of what government is, or ought to be, we must trace it to its origin. In doing this we shall easily discover that governments must have arisen either *out* of

the people or *over* the people. Mr. Burke has made no distinction. He investigates nothing to its source, and therefore he confounds everything; but he has signified his intention of undertaking, at some future opportunity, a comparison between the constitution of England and France. As he thus renders it a subject of controversy by throwing the gauntlet, I take him upon his own ground.

But it will be first necessary to define what is meant by a *Constitution.*

A constitution is not a thing in name only, but in fact. It has not an ideal, but a real existence; and wherever it cannot be produced in a visible form, there is none. A constitution is a thing *antecedent* to a government, and a government is only the creature of a constitution. The constitution of a country is not the act of its government, but of the people constituting its government. It is the body of elements, to which you can refer, and quote article by article; and which contains the principles on which the government shall be established, the manner in which it shall be organised, the powers it shall have, the mode of elections, the duration of Parliaments, or by what other name such bodies may be called; the powers which the executive part of the government shall have; and, in fine, everything that relates to the complete organization of a civil government, and the principles on which it shall act, and by which it shall be bound. A constitution, therefore, is to a government what the laws made afterwards by that government are to a court of judicature. The court of judicature does not make the laws, neither can it alter them; it only acts in conformity to the laws made: and the government is in like manner governed by the constitution.

Can, then, Mr. Burke produce the English Constitution? If he cannot, we may fairly conclude that though it has been so much talked about, no such thing as a constitution exists, or ever did exist, and consequently that the people have yet a constitution to form.

Mr. Burke will not, I presume, deny the position I have already advanced—namely, that governments arise either *out* of the people or *over* the people. The English Government is one of those which arose out of a conquest, and not out of society, and consequently it arose over the people; and though it has been much modified from the opportunity of circumstances since the time of William

the Conqueror, the country has never yet regenerated itself, and is therefore without a constitution.

Mr. Burke said, in a speech last winter in Parliament, "that when the National Assembly first met in three Orders (the Tiers Etats, the Clergy, and the Noblesse), France had then a good constitution." This shews, among numerous other instances, that Mr. Burke does not understand what a constitution is. The persons so met were not a *constitution*, but a *convention*, to make a constitution.

The present National Assembly of France is, strictly speaking, the personal social compact. The members of it are the delegates of the nation in its *original* character; future assemblies will be the delegates of the nation in its *organised* character. The authority of the present Assembly is different from what the authority of future Assemblies will be. The authority of the present one is to form a constitution; the authority of future assemblies will be to legislate according to the principles and forms prescribed in that constitution; and if experience should hereafter shew that alterations, amendments, or additions are necessary, the constitution will point out the mode by which such things shall be done, and not leave it to the discretionary power of the future government.

A government on the principles on which constitutional governments arising out of society are established, cannot have the right of altering itself. If it had, it would be arbitrary. It might make itself what it pleased; and wherever such a right is set up, it shows there is no constitution. The act by which the English Parliament empowered itself to sit seven years, shows there is no constitution in England. It might, by the same self-authority, have sat any great number of years, or for life. The bill which the present Mr. Pitt brought into Parliament some years ago, to reform Parliament, was on the same erroneous principle. The right of reform is in the nation in its original character, and the constitutional method would be by a general convention elected for the purpose. There is, moreover, a paradox in the idea of vitiated bodies reforming themselves.

III. The French Constitution in Comparison with the English

The French Constitution says that the National Assembly shall be elected every two years. What article will Mr. Burke

place against this? Why, that the nation has no right at all in the case; that the government is perfectly arbitrary with respect to this point; and he can quote for his authority the precedent of a former Parliament.

The French Constitution says that to preserve the national representation from being corrupt no member of the National Assembly shall be an officer of the government, a placeman or a pensioner. What will Mr. Burke place against this? I will whisper his answer; *Loaves and Fishes.* Ah! this government of loaves and fishes has more mischief in it than people have yet reflected on. The National Assembly has made the discovery, and it holds out the example to the world.

Everything in the English government appears to me the reverse of what it ought to be, and of what it is said to be. The Parliament, imperfectly and capriciously elected as it is, is nevertheless *supposed* to hold the national purse in *trust* for the nation; but in the manner in which an English Parliament is constructed it is like a man being both mortgagor and mortgagee, and in the case of misapplication of trust it is the criminal sitting in judgment upon himself. If those who vote the supplies are the same persons who receive the supplies when voted, and are to account for the expenditure of those supplies to those who voted them, it is *themselves accountable to themselves,* and the Comedy of Errors concludes with the pantomime of *Hush.*

The French Constitution hath abolished or renounced *Toleration* and *Intolerance* also, and hath established UNIVERSAL RIGHT OF CONSCIENCE.

Toleration is not the *opposite* of Intolerance, but is the *counterfeit* of it. Both are despotisms. The one assumes to itself the right of withholding Liberty of Conscience, and the other of granting it. The one is the Pope armed with fire and faggot, and the other is the Pope selling or granting indulgences. The former is church and state, and the latter is church and traffic.

The executive power in each country is in the hands of a person stiled the King; but the French constitution distinguishes between the King and the Sovereign: It considers the station of King as official, and places Sovereignty in the nation.

The representatives of the nation, who compose the National Assembly, and who are the legislative power, originate in and from the people by election, as an inherent right in the people.—

In England it is otherwise; and this arises from the original establishment of what is called its monarchy; for, as by the conquest all the rights of the people or the nation were absorbed into the hands of the Conqueror, and who added the title of King to that of Conqueror, those same matters which in France are now held as rights in the people, or in the nation, are held in England as grants from what is called the crown. The Parliament in England, in both its branches, was erected by patents from the descendants of the conqueror. The House of Commons did not originate as a matter of right in the people to delegate or elect, but as a grant or boon.

By the French Constitution the nation is always named before the king. The third article of the declaration of rights says: "The nation is essentially the source (or fountain) of all sovereignty." Mr. Burke argues that in England a king is the fountain—that he is the fountain of all honor.

The French Constitution puts the legislative before the executive, the law before the king; *la loi, le roi.* This also is in the natural order of things, because laws must have existence before they can have execution.

The President of the National Assembly does not ask the King *to grant to the Assembly liberty of speech,* as is the case with the English House of Commons. The constitutional dignity of the National Assembly cannot debase itself. Speech is, in the first place, one of the natural rights of man always retained; and with respect to the National Assembly the use of it is their *duty,* and the nation is their *authority.* They were elected by the greatest body of men exercising the right of election the European world ever saw. They sprung not from the filth of rotten boroughs, nor are they the vassal representatives of aristocratical ones. Feeling the proper dignity of their character they support it. If any matter or subject respecting the executive department or the person who presides in it (the king) comes before them it is debated on with the spirit of men, and in the language of gentlemen.

In contemplating the French Constitution, we see in it a rational order of things. The principles harmonise with the forms, and both with their origin. It may perhaps be said as an excuse for bad forms, that they are nothing more than forms; but this is a mistake. Forms grow out of principles, and operate to continue the principles they grow from. It is impossible to practise a bad

form on anything but a bad principle. It cannot be ingrafted on a good one; and wherever the forms in any government are bad, it is a certain indication that the principles are bad also.

IV. The Bases of Representative, Hereditary, and Mixed Governments

[*Concl.*] Reason and Ignorance, the opposites of each other, influence the great bulk of mankind. If either of these can be rendered sufficiently extensive in a country, the machinery of Government goes easily on. Reason obeys itself; and Ignorance submits to whatever is dictated to it.

The two modes of the Government which prevail in the world, are, *first*, Government by election and representation; *Secondly*, Government by hereditary succession. The former is generally known by the name of republic; the latter by that of monarchy and aristocracy.

Those two distinct and opposite forms, erect themselves on the two distinct and opposite bases of Reason and Ignorance.—As the exercise of Government requires talents and abilities, and as talents and abilities cannot have hereditary descent, it is evident that hereditary succession requires a belief from man to which his reason cannot subscribe, and which can only be established upon his ignorance; and the more ignorant any country is, the better it is fitted for this species of Government.

On the contrary, Government, in a well-constituted republic, requires no belief from man beyond what his reason can give. He sees the *rationale* of the whole system, its origin and its operation; and as it is best supported when best understood, the human faculties act with boldness, and acquire, under this form of government, a gigantic manliness.

As, therefore, each of those forms acts on a different base, the one moving freely by the aid of reason, the other by ignorance; we have next to consider, what it is that gives motion to that species of Government which is called mixed Government, or, as it is sometimes ludicrously stiled, a Government of *this*, *that* and *t'other*.

The moving power in this species of Government, is of necessity, Corruption. However imperfect election and representation may be in mixed Governments, they still give exercise to a greater portion of reason than is convenient to the hereditary Part; and therefore it becomes necessary to buy the reason up. A mixed

Government is an imperfect everything, cementing and soldering the discordant parts together by corruption, to act as a whole.

In mixed Governments there is no responsibility: the parts cover each other till responsibility is lost; and the corruption which moves the machine, contrives at the same time its own escape. When it is laid down as a maxim, that *a King can do no wrong*, it places him in a state of similar security with that of ideots and persons insane, and responsibility is out of the question with respect to himself. It then descends upon the Minister, who shelters himself under a majority in Parliament, which, by places, pensions, and corruption, he can always command; and that majority justifies itself by the same authority with which it protects the Minister. In this rotary motion, responsibility is thrown off from the parts, and from the whole.

But in a well-constituted republic, nothing of this soldering, praising, and pitying, can take place; the representation being equal throughout the country, and compleat in itself, however it may be arranged into legislative and executive, they have all one and the same natural source. The parts are not foreigners to each other, like democracy, aristocracy, and monarchy. As there are no discordant distinctions, there is nothing to corrupt by compromise, nor confound by contrivance. Public measures appeal of themselves to the understanding of the Nation, and, resting on their own merits, disown any flattering applications to vanity. The continual whine of lamenting the burden of taxes, however successfully it may be practised in mixed Governments, is inconsistent with the sense and spirit of a republic. If taxes are necessary, they are of course advantageous; but if they require an apology, the apology itself implies an impeachment.

What we now see in the world, from the Revolutions of America and France, are a renovation of the natural order of things, a system of principles as universal as truth and the existence of man, and combining moral with political happiness and national prosperity.

I. *Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.*

II. *The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.*

III. *The nation is essentially the source of all sovereignty; nor can any* INDIVIDUAL, *or* ANY BODY OF MEN, *be entitled to any authority which is not expressly derived from it.*

In these principles, there is nothing to throw a Nation into confusion by inflaming ambition. They are calculated to call forth wisdom and abilities, and to exercise them for the public good, and not for the emolument or aggrandisement of particular descriptions of men or families. Monarchical sovereignty, the enemy of mankind, and the source of misery, is abolished; and the sovereignty itself is restored to its natural and original place, the Nation. Were this the case throughout Europe, the cause of wars would be taken away.

Whether the forms and maxims of Governments which are still in practice, were adapted to the condition of the world at the period they were established, is not in this case the question. The older they are, the less correspondence can they have with the present state of things. Time, and change of circumstances and opinions, have the same progressive effect in rendering modes of Government obsolete as they have upon customs and manners.

As it is not difficult to perceive, from the enlightened state of mankind, that hereditary Governments are verging to their decline, and that Revolutions on the broad basis of national sovereignty and Government by representation, are making their way in Europe, it would be an act of wisdom to anticipate their approach, and produce Revolutions by reason and accommodation, rather than commit them to the issue of convulsions.

From what we now see, nothing of reform in the political world ought to be held improbable. It is an age of Revolutions, in which everything may be looked for. The intrigue of Courts, by which the system of war is kept up, may provoke a confederation of Nations to abolish it; and an European Congress to patronise the progress of free Government, and promote the civilisation of Nations with each other, is an event nearer in probability, than once were the revolutions and alliance of France and America.

APPENDIX TO CHAPTER I

Excerpts from the French Constitution of 1791 [1]

(September 3, 1791)

The National Assembly, wishing to establish the French constitution upon the principles which it has just recognized and declared, abolishes irrevocably the institutions that have injured liberty and the equality of rights.

[1] For the Declaration of the Rights of Man and Citizen, which prefaces the Constitution of 1791, see above, page 9.

There is no longer nobility, nor peerage, nor hereditary distinctions, nor distinctions of orders, nor feudal régime, nor patrimonial jurisdictions, nor any titles, denominations, or prerogatives derived therefrom, nor any order of chivalry, nor any corporations or decorations which demanded proofs of nobility or that were grounded upon distinctions of birth, nor any superiority other than that of public officials in the exercise of their functions.

There is no longer either sale or inheritance of any public office.

There is no longer for any part of the nation nor for any individual any privilege or exception to the law that is common to all Frenchmen.

There are no longer *jurandes*, nor corporations of professions, arts, and crafts.

The law no longer recognizes religious vows, nor any other obligation which may be contrary to natural rights or to the constitution.

Title I: FUNDAMENTAL PROVISIONS RECOGNIZED BY THE CONSTITUTION

The constitution guarantees as natural and civil rights:

1. That all the citizens are eligible to offices and employments, without any other distinction than that of virtue and talent;

2. That all the taxes shall be equally apportioned among all the citizens in proportion to their means;

3. That like offences shall be punished by like penalties, without any distinction of persons.

The constitution likewise guarantees as natural and civil rights:

Liberty to every man to move about, to remain, and to depart without liability to arrest or detention, except according to the forms determined by the constitution;

Liberty to every man to speak, to write, to print and publish his ideas without having his writings subjected to any censorship or inspection before their publication, and to follow the religious worship to which he is attached;

Liberty to the citizens to meet peaceably and without arms, in obedience to the police laws;

Liberty to address individually signed petitions to the constituted authorities.

The legislative authority cannot make any law that attacks and impedes the exercise of the natural and civil rights contained in the present title and guaranteed by the constitution; but as liberty consists only in the power to do anything that is not injurious to the rights of others or to the public security, the law can establish penalties against acts which, in attacking the public security or the rights of others, may be injurious to society.

The constitution guarantees the inviolability of property or a just and prior indemnity for that of which a legally established public necessity may demand the sacrifice.

Property intended for the expenses of worship and for all services of public utility belongs to the nation and is at all times at its disposal.

The constitution guarantees the alienations that have been or that shall be made under the forms established by law.

The citizens have the right to elect or choose the ministers of their religious sects.

There shall be created and organized a general establishment of *public relief*

in order to bring up abandoned children, relieve infirm paupers, and provide work for the able-bodied poor who may not have been able to obtain it for themselves.

There shall be created and organized a *system of public instruction*, common to all citizens, gratuitous as regards the parts of education indispensable for all men, and whose establishments shall be gradually distributed in accordance with the division of the kingdom.

There shall be established national fêtes to preserve the memory of the French revolution, to maintain fraternity among the citizens, and to attach them to the constitution, the fatherland, and the laws.

A code of civil laws common to all the kingdom shall be made.

Title III: OF THE PUBLIC POWERS

[*1.*] Sovereignty is one, indivisible, inalienable, and imprescriptible: it belongs to the nation: no section of the people nor any individual can attribute to himself the exercise thereof.

[*2.*] The nation, from which alone emanate all the powers, can exercise them only by delegation.

The French constitution is representative; the representatives are the legislative body and the king.

[*3.*] The legislative power is delegated to one National Assembly, composed of temporary representatives freely elected by the people, in order to be exercised by it with the sanction of the king in the manner which shall be determined hereinafter.

[*4.*] The government is monarchical: the executive power is delegated to the king, in order to be exercised under his authority by ministers and other responsible agents, in the manner which shall be determined hereinafter.

[*5.*] The judicial power is delegated to judges elected at stated times by the people.

[*Ch. I.*] *Of the National Legislative Assembly.*

[*1.*] The National Assembly, forming the legislative body, is permanent and is composed of only one chamber.

[*5.*] The legislative body shall not be dissolved by the king.

[*Sec. I, 1.*] The number of representatives in the legislative body is seven hundred and forty-five.

[*2.*] The representatives shall be distributed among the eighty-three departments, according to the three proportions of territory, population, and direct tax.

[*Sec. II, 1.*] In order to form the National Legislative Assembly the active citizens shall meet every two years in primary assemblies in the cities and cantons.

[*2.*] In order to be an active citizen it is necessary to be born or to become a Frenchman; to be fully twenty-five years of age; to be domiciled in the city or in the canton for the time fixed by the law;

To pay in some place within the kingdom a direct tax at the least equal to the value of three days of labor, and to present the receipt therefor;

Not to be in a state of domestic service, that is to say, not to be a servant for wages;

To be registered upon the roll of the national guards in the municipality of his domicile;

To have taken the civic oath.

[*6.*] The primary assemblies shall select electors in proportion to the number of active citizens domiciled in the city or canton.

[*7.*] No one can be chosen an elector if he does not unite with the conditions necessary to be an active citizen [certain specified property qualifications].[2]

[*Sec. III, 1.*] The electors chosen in each department shall assemble in order to elect the number of representatives whose selection shall be assigned to their department.

[*3.*] All active citizens, whatever their condition, profession, or tax, can be elected representatives of the nation.

[*4.*] Nevertheless, the ministers and other agents of the executive power removable at pleasure, the commissioners of the national treasury, the collectors and receivers of the direct taxes, the overseers of the collection and administration of the indirect taxes and national domains, and those who, under any denomination whatsoever, are attached to the military and civil household of the king, shall be obliged to choose [between their offices and that of representative].[3]

[*7.*] The representatives selected in the department shall not be the representatives of one particular department, but of the entire nation, and no instructions can be given them.

[*Ch. II.*] *Of the Royalty, the Regency, and the Ministers.*

[*Sec. I, 3.*] There is no authority in France superior to that of the law; the king reigns only by it and it is only in the name of the law that he can demand obedience.

[*Sec. IV, 4.*] No order of the king can be executed unless it is signed by him and countersigned by the minister or administrator of the department.

[*5.*] The ministers are responsible for all the offences committed by themselves against the national security and the constitution;

For every attack upon property and personal liberty;

For all waste of monies appropriated for the expenses of their departments.

[*6.*] In no case can the order of the king, verbal or in writing, shield a minister from his responsibility.

[*Ch. III.*] *Of the Exercise of the Legislative Power.*

[*Sec. I, 2.*] War can be declared only by a decree of the legislative body, rendered upon the formal and indispensable proposal of the king, and sanctioned by him.

[*3.*] The ratification of treaties of peace, alliance, and commerce belongs to the legislative body; and no treaty shall have effect except by this ratification.

[*Sec. III, 1.*] The decrees of the legislative body are presented to the king, who can refuse his consent to them.

[*2.*] In the case where the king refuses his consent, this refusal is only suspensive.

When the two legislatures following that which shall have presented the

[2] Present editor's ellipsis.

[3] Translator's explanatory comment.

decree shall have again presented the same decree in the same terms, the king shall be considered to have given the sanction.

[*8.*] The decrees of the legislative body concerning the establishment, the promulgation, and the collection of the public taxes shall bear the name and the title of *laws*. They shall be promulgated and executed without being subject to the sanction, except for the provisions which establish penalties other than fines and pecuniary constraints.

The legislative body shall not insert in them any provision foreign to their purpose.

[*Sec. IV, 10.*] The ministers of the king shall have entrance into the National Legislative Assembly; they shall have a designated place there.

They shall be heard, whenever they shall demand it, upon matters relative to their administrations or when they shall be required to give information.

They shall likewise be heard upon matters foreign to their administrations when the National Assembly shall grant them the word.

[*Ch. V.*] *Of the Judicial Power.*

[*1.*] The judicial power cannot in any case be exercised by the legislative body nor by the king.

[*3.*] The tribunals cannot interfere in the exercise of the legislative power, nor suspend the execution of the laws, nor encroach upon the administrative functions, nor cite before them the administrators on account of their functions.

[*9.*] In criminal matters no citizen can be tried except upon an accusation received by the jurors or decreed by the legislative body, in the cases where the preferring of the accusation belongs to it.

After the accusation has been accepted, the facts shall be recognized and declared by the jurors.

No man acquitted by a legal jury can be taken again or accused on account of the same act.

[*10.*] No man can be seized except in order to be brought before the police officer; and no man can be put under arrest or detained, except in virtue of a warrant from police officers, an order of arrest from a tribunal, a decree of accusation of the legislative body, in case the decision belongs to it, or of a sentence of condemnation to prison or correctional detention.

[*12.*] No arrested man can be kept in confinement in any case in which the law permits remaining free under bail, if he gives sufficient bail.

[*17.*] No man can be questioned or prosecuted on account of writings which he shall have caused to be printed or published upon any matter whatsoever, unless he has intentionally instigated disobedience to the law, contempt for the constituted authorities, resistance to their acts, or any of the acts declared crimes or offences by the law.

Criticism upon the acts of the constituted authorities is permitted; but wilful calumnies against the probity of the public functionaries and the rectitude of their intentions in the exercise of their functions can be prosecuted by those who are the object of them.

Calumnies and injuries against any persons whatsoever relative to acts of their private life shall be punished upon their prosecutions.

[*18.*] No one can be tried either by civil or criminal process for written, printed, or published facts, unless it has been recognized and declared by a

jury: 1st, whether there is an offence in the writing denounced; 2d, whether the prosecuted person is guilty.

Title IV: OF THE PUBLIC FORCE

[*9.*] No agent of the public force can enter into the house of a citizen, except for the execution of the warrants of police and justice, or in the cases expressly provided for by law.

[*12.*] The public force is essentially obedient; no armed body can deliberate.

[*13.*] The army and navy and the troops designed for the internal security are subject to special laws, in the matter of military offences, both for the maintenance of discipline and for the form of the trials and the nature of the penalties.

Title VI. OF THE RELATION OF THE FRENCH NATION WITH FOREIGN NATIONS

The French nation renounces the undertaking of any war with a view to making conquests, and will never employ its forces against the liberty of any people.

Foreigners who chance to be in France are subject to the same criminal and police laws as the French citizens, saving the conventions arranged with the foreign powers; their persons, their estates, their business, their religion, are likewise protected by the law.

Title VII. OF THE REVISION OF THE CONSTITUTIONAL DECREES

[*1.*] The National Constituent Assembly declares that the nation has the imprescriptible right to change its constitution: nevertheless, considering that it is more conformable to the national interests to make use of the right only to reform, by the means provided in the constitution itself, the articles of which experience shall have made the inconveniences felt, decrees that it shall proceed by an assembly of revision in the following form.

[*2.*] When three consecutive legislatures shall have expressed a uniform wish for the amendment of some constitutional article, the revision demanded shall take place.

[*5.*] The fourth legislature, augmented by two hundred and forty-nine members elected in each department by doubling the usual number which it furnishes for its population, shall form the assembly of revision.

[*7.*] The members of the assembly of revision, after having pronounced in unison the oath to *live free or to die,* shall take individually that "to confine themselves to pass upon the matters which shall have been submitted to them by the uniform wish of the three preceding legislatures; to maintain, besides, with all their power the constitution of the kingdom, decreed by the National Constituent Assembly in the years 1789, 1790, and 1791, and in everything to be faithful to the nation, the law, and the king."

CHAPTER II. THE CONSERVATIVE REACTION

I. THE REACTION IN ENGLAND

An Appeal from the New to the Old Whigs (1791)

Edmund Burke (1729–1797)

A successful revolution is bound to awake reaction, especially when the revolutionists have gone to the extreme of violence and bloodshed, and the conservative opposition abroad is likely to be both more immediate and more pronounced than that at home. In France the full force of reaction was not felt until the post-Napoleonic era, and even then it did not succeed in restoring absolutism or feudal privilege; but in England the cause of political and social reform was blocked at the very threshold of the French Revolution and delayed for more than a generation.

A number of leading Whigs, including Fox and Sheridan, welcomed the early achievements of the National Assembly, but Edmund Burke, the brains of the "Old" or "Rockingham" Whigs, wrote his denunciatory *Reflections on the Revolution in France* as early as 1790. For this he was criticized in Parliament by his own former associates, who declared his present stand inconsistent with his past record. Burke's *Appeal from the New to the Old Whigs*, composed in the third person and published anonymously in 1791, was written as much to justify his own consistency as to answer Paine's rebuttal of the *Reflections* in *The Rights of Man*. Despite an approach that suggests the later historical school, Burke wrote not as a scientific historian but as the inspired and indignant prophet of conservatism and aristocracy. He was a prophet without honor in his own party until the execution of Louis XVI caused a complete revulsion of liberal opinion in England.

Born and educated in Ireland, Burke went to London in early manhood and soon made a name for himself in both politics and literature. He had a long parliamentary career in close association with Rockingham and other Whig leaders, and barely missed attaining cabinet rank. He advocated urgent reforms in Ireland, and was the salaried colonial agent of New York during the controversy over colonial taxation by Parliament. Burke made a masterly defense of cabinet government in *Thoughts on the Causes of the Present Discontents* (1770) and offered brilliant opposition to Lord North's colonial policy in his *Speech on American Taxation* (1774) and *Speech on Conciliation with America* (1775). The end of his parliamentary career centered upon the unsuccessful impeachment of Warren Hastings and the controversy over the French Revolution.

The following readings from *An Appeal from the New to the Old Whigs* are based on the text in the fourth volume of the American edition of

The Works of Edmund Burke (Little, Brown, Boston, fourth ed., 1871). Significant passages from *Reflections on the Revolution in France* (based on the text in the third volume of the same edition of Burke's works) have been added as footnotes by the present editor.

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AN APPEAL FROM THE NEW TO THE OLD WHIGS

I. The Issue between Mr. Burke and the New Whigs

At Mr. Burke's time of life, and in his dispositions, *petere honestam missionem* was all he had to do with his political associates. This boon they have not chosen to grant him. With many expressions of good-will, in effect they tell him he has loaded the stage too long. They conceive it, though an harsh, yet a necessary office, in full Parliament to declare to the present age, and to as late a posterity as shall take any concern in the proceedings of our day, that by one book he has disgraced the whole tenor of his life.— Thus they dismiss their old partner of the war. He is advised to retire, whilst they continue to serve the public upon wiser principles and under better auspices.

The gentlemen of the party in which Mr. Burke has always acted, in passing upon him the sentence of retirement, have done nothing more than to confirm the sentence he had long before passed upon himself. When that retreat was choice, which the

tribunal of his peers inflict as punishment, it is plain he does not think their sentence intolerably severe.

The quality of the sentence does not, however, decide on the justice of it. Angry friendship is sometimes as bad as calm enmity. When the trial is by friends, if the decision should happen to be favorable, the honor of the acquittal is lessened; if adverse, the condemnation is exceedingly embittered. Taking in the whole view of life, it is more safe to live under the jurisdiction of severe, but steady reason, than under the empire of indulgent, but capricious passion. It is certainly well for Mr. Burke that there are impartial men in the world. To them I address myself, pending the appeal which on his part is made from the living to the dead, from the modern Whigs to the ancient.

That a man should rejoice and triumph in the destruction of an absolute monarchy,—that in such an event he should overlook the captivity, disgrace, and degradation of an unfortunate prince, and the continual danger to a life which exists only to be endangered,—that he should overlook the utter ruin of whole orders and classes of men, extending itself directly, or in its nearest consequences, to at least a million of our kind, and to at least the temporary wretchedness of a whole community,—I do not deny to be in some sort natural; because, when people see a political object which they ardently desire but in one point of view, they are apt extremely to palliate or underrate the evils which may arise in obtaining it. This is no reflection on the humanity of those persons. It only shows that they are not sufficiently informed or sufficiently considerate. When they come to reflect seriously on the transaction, they will think themselves bound to examine what the object is that has been acquired by all this havoc. They will hardly assert that the destruction of an absolute monarchy is a thing good in itself, without any sort of reference to the antecedent state of things, or to consequences which result from the change,—without any consideration whether under its ancient rule a country was to a considerable degree flourishing and populous, highly cultivated and highly commercial, and whether, under that domination, though personal liberty had been precarious and insecure, property at least was ever violated. They cannot take the moral sympathies of the human mind along with them, in abstractions separated from the good or evil condition of the state, from the quality of actions, and the character of the actors.

None of us love absolute and uncontrolled monarchy; but we could not rejoice at the sufferings of a Marcus Aurelius or a Trajan, who were absolute monarchs, as we do when Nero is condemned by the Senate to be punished *more majorum*.

The subversion of a government, to deserve any praise, must be considered but as a step preparatory to the formation of something better, either in the scheme of the government itself, or in the persons who administer it, or in both. These events cannot in reason be separated. For instance, when we praise our Revolution of 1688, though the nation in that act was on the defensive, and was justified in incurring all the evils of a defensive war, we do not rest there. We always combine with the subversion of the old government the happy settlement which followed. When we estimate that Revolution, we mean to comprehend in our calculation both the value of the thing parted with and the value of the thing received in exchange.

The burden of proof lies heavily on those who tear to pieces the whole frame and contexture of their country, that they could find no other way of settling a government fit to obtain its rational ends, except that which they have pursued by means unfavorable to all the present happiness of millions of people, and to the utter ruin of several hundreds of thousands. In their political arrangements, men have no right to put the well-being of the present generation wholly out of the question. Perhaps the only moral trust with any certainty in our hands is the care of our own time. With regard to futurity, we are to treat it like a ward. We are not so to attempt an improvement of his fortune as to put the capital of his estate to any hazard.

It is not worth our while to discuss, like sophisters, whether in no case some evil for the sake of some benefit is to be tolerated. This, I think, may be safely affirmed,—that a sore and pressing evil is to be removed, and that a good, great in its amount and unequivocal in its nature, must be probable almost to certainty, before the inestimable price of our own morals and the well-being of a number of our fellow-citizens is paid for a revolution. If ever we ought to be economists even to parsimony, it is in the voluntary production of evil. Every revolution contains in it something of evil.

It must always be, to those who are the greatest amateurs, or even professors, of revolutions, a matter very hard to prove, that

the late French government was so bad that nothing worse in the infinite devices of men could come in its place. They who have brought France to its present condition ought to prove also, by something better than prattling about the Bastile, that their subverted government was as incapable as the present certainly is of all improvement and correction.

Mr. Burke was represented by Mr. Fox as arguing in a manner which implied that the British Constitution could not be defended, but by abusing all republics ancient and modern. He said nothing to give the least ground for such a censure. He never abused all republics. He has never professed himself a friend or an enemy to republics or to monarchies in the abstract. He thought that the circumstances and habits of every country, which it is always perilous and productive of the greatest calamities to force, are to decide upon the form of its government. There is nothing in his nature, his temper, or his faculties which should make him an enemy to any republic, modern or ancient. Far from it. He has studied the form and spirit of republics very early in life; he has studied them with great attention, and with a mind undisturbed by affection or prejudice. But the result in his mind from that investigation has been and is, that neither England nor France, without infinite detriment to them, as well in the event as in the experiment, could be brought into a republican form; but that everything republican which can be introduced with safety into either of them must be built upon a monarchy,—built upon a real, not a nominal monarchy, *as its essential basis;* that all such institutions, whether aristocratic or democratic, must originate from their crown, and in all their proceedings must refer to it; that by the energy of that mainspring alone those republican parts must be set in action, and from thence must derive their whole legal effect, (as amongst us they actually do,) or the whole will fall into confusion.

These new Whigs hold that the sovereignty, whether exercised by one or many, did not only originate *from* the people, (a position not denied nor worth denying or assenting to,) but that in the people the same sovereignty constantly and unalienably resides; that the people may lawfully depose kings, not only for misconduct, but without any misconduct at all; that they may set up any new fashion of government for themselves, or continue without any government, at their pleasure; that the people are essen-

tially their own rule, and their will the measure of their conduct; that the tenure of magistracy is not a proper subject of contract, because magistrates have duties, but no rights; and that, if a contract *de facto* is made with them in one age, allowing that it binds at all, it only binds those who are immediately concerned in it, but does not pass to posterity. These doctrines concerning *the people* (a term which they are far from accurately defining, but by which, from many circumstances, it is plain enough they mean their own faction, if they should grow, by early arming, by treachery, or violence, into the prevailing force) tend, in my opinion, to the utter subversion, not only of all government, in all modes, and all stable securities to rational freedom, but all the rules and principles of morality itself.

I assert that the ancient Whigs held doctrines totally different from those I have last mentioned. I assert, that the foundations laid down by the Commons, on the trial of Dr. Sacheverell, for justifying the Revolution of 1688, are the very same laid down in Mr. Burke's Reflections,—that is to say, a breach of the *original contract*, implied and expressed in the Constitution of this country, as a scheme of government fundamentally and inviolably fixed in King, Lords, and Commons;—that the fundamental subversion of this ancient Constitution, by one of its parts, having been attempted, and in effect accomplished, justified the Revolution;—that it was justified *only* upon the *necessity* of the case, as the *only* means left for the recovery of that *ancient* Constitution formed by the *original contract* of the British state, as well as for the future preservation of the *same* government.

II. The Pretended Power to Alter Duties under the Constitution

The factions now so busy amongst us, in order to divest men of all love for their country, and to remove from their minds all duty with regard to the state, endeavor to propagate an opinion, that the *people*, in forming their commonwealth, have by no means parted with their power over it. Discuss any of their schemes, their answer is, It is the act of the *people*, and that is sufficient. Are we to deny to a *majority* of the people the right of altering even the whole frame of their society, if such should be their pleasure? They may change it, say they, from a monarchy to a republic to-day, and to-morrow back again from a republic to a

monarchy; and so backward and forward as often as they like. They are masters of the commonwealth, because in substance they are themselves the commonwealth. The French Revolution, say they, was the act of the majority of the people; and if the majority of any other people, the people of England, for instance, wish to make the same change, they have the same right.

Just the same, undoubtedly. That is, none at all. Neither the few nor the many have a right to act merely by their will, in any matter connected with duty, trust, engagement, or obligation. The Constitution of a country being once settled upon some compact, tacit or expressed, there is no power existing of force to alter it, without the breach of the covenant, or the consent of all the parties. Such is the nature of a contract. And the votes of a majority of the people, whatever their infamous flatterers may teach in order to corrupt their minds, cannot alter the moral any more than they can alter the physical essence of things. The people are not to be taught to think lightly of their engagements to their governors; else they teach governors to think lightly of their engagements towards them. In that kind of game, in the end, the people are sure to be the losers. To flatter them into a contempt of faith, truth, and justice is to ruin them; for in these virtues consists their whole safety. To flatter any man, or any part of mankind, in any description, by asserting that in engagements he or they are free, whilst any other human creature is bound, is ultimately to vest the rule of morality in the pleasure of those who ought to be rigidly submitted to it,—to subject the sovereign reason of the world to the caprices of weak and giddy men.

But, as no one of us men can dispense with public or private faith, or with any other tie of moral obligation, so neither can any number of us. The number engaged in crimes, instead of turning them into laudable acts, only augments the quantity and intensity of the guilt. I am well aware that men love to hear of their power, but have an extreme disrelish to be told of their duty. This is of course; because every duty is a limitation of some power. Indeed, arbitrary power is so much to the depraved taste of the vulgar, of the vulgar of every description, that almost all the dissensions which lacerate the commonwealth are not concerning the manner in which it is to be exercised, but concerning the hands

in which it is to be placed. Somewhere they are resolved to have it. Whether they desire it to be vested in the many or the few depends with most men upon the chance which they imagine they themselves may have of partaking in the exercise of that arbitrary sway, in the one mode or in the other.

It is not necessary to teach men to thirst after power. But it is very expedient that by moral instruction they should be taught, and by their civil constitutions they should be compelled, to put many restrictions upon the immoderate exercise of it, and the inordinate desire. The best method of obtaining these two great points forms the important, but at the same time the difficult problem to the true statesman. He thinks of the place in which political power is to be lodged with no other attention than as it may render the more or the less practicable its salutary restraint and its prudent direction. For this reason, no legislator, at any period of the world, has willingly placed the seat of active power in the hands of the multitude; because there it admits of no control, no regulation, no steady direction whatsoever. The people are the natural control on authority; but to exercise and to control together is contradictory and impossible.

As the exorbitant exercise of power cannot, under popular sway, be effectually restrained, the other great object of political arrangement, the means of abating an excessive desire of it, is in such a state still worse provided for. The democratic commonwealth is the foodful nurse of ambition. Under the other forms it meets with many restraints. Whenever, in states which have had a democratical basis, the legislators have endeavored to put restraints upon ambition, their methods were as violent as in the end they were ineffectual,—as violent, indeed, as any the most jealous despotism could invent. The ostracism could not very long save itself, and much less the state which it was meant to guard, from the attempts of ambition,—one of the natural, inbred, incurable distempers of a powerful democracy.

I cannot too often recommend it to the serious consideration of all men who think civil society to be within the province of moral jurisdiction, that, if we owe to it any duty, it is not subject to our will. Duties are not voluntary. Duty and will are even contradictory terms. Now, though civil society might be at first a voluntary act, (which in many cases it undoubtedly was,) its con-

tinuance is under a permanent standing covenant,[1] coexisting with the society; and it attaches upon every individual of that society, without any formal act of his own. This is warranted by the general practice, arising out of the general sense of mankind. Men without their choice derive benefits from that association; without their choice they are subjected to duties in consequence of these benefits; and without their choice they enter into a virtual obligation as binding as any that is actual. Look through the whole of life and the whole system of duties. Much the strongest moral obligations are such as were never the results of our option. Taking it for granted that I do not write to the disciples of the Parisian philosophy, I may assume that the awful Author of our being is the Author of our place in the order of existence,—and that, having disposed and marshalled us by a divine tactic, not according to our will, but according to His, He has in and by that disposition virtually subjected us to act the part which belongs to the place assigned us. We have obligations to mankind at large, which are not in consequence of any special voluntary pact. Children are not consenting to their relation; but their relation, without their actual consent, binds them to its duties,—or rather it implies their consent, because the presumed consent of every rational creature is in unison with the predisposed order of things. Men come into a community with the social state of their parents, endowed with all the benefits, loaded with all the duties of their situation. If the social ties and ligaments, spun out of those physical relations which are the elements of the commonwealth, in most cases begin, and always continue, independently of our will, so, without any stipulation on our own part, are we bound by that relation called our country, which comprehends (as it has been well said) "all the charities of all." Nor are we left without powerful instincts to make this duty as dear and grateful to us as it is awful and coercive.

[1] "Society is, indeed, a contract. It is a partnership in all science, a partnership n 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. Each contract of each particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible and invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures each in their appointed place. This law is not subject to the will of those who, by an obligation above them, and infinitely superior, are bound to submit their will to that law."—Burke, *Reflections on the Revolution in France*, in *Works*, II, 359. (Present editor's note.)

Our country is not a thing of mere physical locality. It consists, in a great measure, in the ancient order into which we are born.

These are the opinions of the author whose cause I defend. On them he acts; and from them he is convinced that neither he, nor any man, or number of men, have a right (except what necessity, which is out and above all rule, rather imposes than bestows) to free themselves from that primary engagement into which every man born into a community as much contracts by his being born into it as he contracts an obligation to certain parents by his having been derived from their bodies. The place of every man determines his duty.

I admit, indeed, that in morals, as in all things else, difficulties will sometimes occur. Duties will sometimes cross one another. Then questions will arise, which of them is to be placed in subordination? which of them may be entirely superseded? These doubts give rise to that part of moral science called *casuistry*.

Amongst these nice, and therefore dangerous points of casuistry, may be reckoned the question so much agitated in the present hour,—Whether, after the people have discharged themselves of their original power by an habitual delegation, no occasion can possibly occur which may justify the resumption of it? This question, in this latitude, is very hard to affirm or deny: but I am satisfied that no occasion can justify such a resumption, which would not equally authorize a dispensation with any other moral duty, perhaps with all of them together. However, it is far from difficult to foresee the perilous consequences of the resuscitation of such a power in the people. The practical consequences of any political tenet go a great way in deciding upon its value. Political problems do not primarily concern truth or falsehood. They relate to good or evil. What in the result is likely to produce evil is politically false; that which is productive of good, politically true.

III. The Idea of the People

When the supreme authority of the people is in question, before we attempt to extend or to confine it, we ought to fix in our minds, with some degree of distinctness, an idea of what it is we mean, when we say, the PEOPLE.

In a state of *rude* Nature, there is no such thing as a people. A number of men in themselves have no collective capacity. The idea of a people is the idea of a corporation. It is wholly artificial,

and made, like all other legal fictions, by common agreement. When men, therefore, break up the original compact or agreement which gives its corporate form and capacity to a state, they are no longer a people,—they have no longer a corporate existence,—they have no longer a legal coactive force to bind within, nor a claim to be recognized abroad. They are a number of vague, loose individuals, and nothing more.

We hear much, from men who have not acquired their hardiness of assertion from the profundity of their thinking, about the omnipotence of a *majority*, in such a dissolution of an ancient society as hath taken place in France. But amongst men so disbanded there can be no such thing as majority or minority, or power in any person to bind another. The power of acting by a majority must be grounded on two assumptions: first, that of an incorporation produced by unanimity; and secondly, an unanimous agreement that the act of a mere majority (say of one) shall pass with them and with others as the act of the whole.

We are so little affected by things which are habitual, that we consider this idea of the decision of a *majority* as if it were a law of our original nature. But such constructive whole, residing in a part only, is one of the most violent fictions of positive law that ever has been or can be made on the principles of artificial incorporation. Out of civil society Nature knows nothing of it; nor are men, even when arranged according to civil order, otherwise than by very long training, brought at all to submit to it. The mind is brought far more easily to acquiesce in the proceedings of one man, or a few, who act under a general procuration for the state, than in the vote of a victorious majority in councils in which every man has his share in the deliberation. For there the beaten party are exasperated and soured by the previous contention, and mortified by the conclusive defeat. This mode of decision, where wills may be so nearly equal, where, according to circumstances, the smaller number may be the stronger force, and where apparent reason may be all upon one side, and on the other little else than impetuous appetite,—all this must be the result of a very particular and special convention, confirmed afterwards by long habits of obedience, by a sort of discipline in society, and by a strong hand, vested with stationary, permanent power to enforce this sort of constructive general will. What organ it is that shall declare the corporate mind is so much a matter of positive arrange-

ment, that several states, for the validity of several of their acts, have required a proportion of voices much greater than that of a mere majority.

If men dissolve their ancient incorporation in order to regenerate their community, in that state of things each man has a right, if he pleases, to remain an individual. Any number of individuals, who can agree upon it, have an undoubted right to form themselves into a state apart and wholly independent. If any of these is forced into the fellowship of another, this is conquest and not compact. On every principle which supposes society to be in virtue of a free covenant, this compulsive incorporation must be null and void.

As in the abstract it is perfectly clear, that, out of a state of civil society, majority and minority are relations which can have no existence, and that, in civil society, its own specific conventions in each corporation determine what it is that constitutes the people, so as to make their act the signification of the general will,—to come to particulars, it is equally clear that neither in France nor in England has the original or any subsequent compact of the state, expressed or implied, constituted *a majority of men, told by the head,* to be the acting people of their several communities. And I see as little of policy or utility as there is of right, in laying down a principle that a majority of men told by the head are to be considered the people, and that as such their will is to be law. To enable men to act with the weight and character of a people, and to answer the ends for which they are incorporated into that capacity, we must suppose them (by means immediate or consequential) to be in that state of habitual social discipline in which the wiser, the more expert, and the more opulent conduct, and by conducting enlighten and protect, the weaker, the less knowing, and the less provided with the goods of fortune. When the multitude are not under this discipline, they can scarcely be said to be in civil society. Give once a certain constitution of things which produces a variety of conditions and circumstances in a state, and there is in Nature and reason a principle which, for their own benefit, postpones, not the interest, but the judgment, of those who are *numero plures,* to those who are *virtute et honore majores.* Numbers in a state (supposing, which is not the case in France, that a state does exist) are always of consideration,—but they are not the whole consideration.

A true natural aristocracy is not a separate interest in the state, or separable from it. It is an essential integrant part of any large body rightly constituted. It is formed out of a class of legitimate presumptions, which, taken as generalities, must be admitted for actual truths. To be bred in a place of estimation; to see nothing low and sordid from one's infancy; to be taught to respect one's self; to be habituated to the censorial inspection of the public eye; to look early to public opinion; to stand upon such elevated ground as to be enabled to take a large view of the wide-spread and infinitely diversified combinations of men and affairs in a large society; to have leisure to read, to reflect, to converse; to be enabled to draw the court and attention of the wise and learned, wherever they are to be found; to be habituated in armies to command and to obey; to be taught to despise danger in the pursuit of honor and duty; to be formed to the greatest degree of vigilance, foresight, and circumspection, in a state of things in which no fault is committed with impunity and the slightest mistakes draw on the most ruinous consequences; these are the circumstances of men that form what I should call a *natural* aristocracy, without which there is no nation.

The state of civil society which necessarily generates this aristocracy is a state of Nature,—and much more truly so than a savage and incoherent mode of life. For man is by nature reasonable; and he is never perfectly in his natural state, but when he is placed where reason may be best cultivated and most predominates. Art is man's nature. We are as much, at least, in a state of Nature in formed manhood as in immature and helpless infancy. Men, qualified in the manner I have just described, form in Nature, as she operates in the common modification of society, the leading, guiding, and governing part. It is the soul to the body, without which the man does not exist. To give, therefore, no more importance, in the social order, to such descriptions of men than that of so many units is a horrible usurpation.

When great multitudes act together, under that discipline of Nature, I recognize the PEOPLE. In all things the voice of this grand chorus of national harmony ought to have a mighty and decisive influence. But when you disturb this harmony,—when you break up this beautiful order, this array of truth and Nature, as well as of habit and prejudice,—when you separate the common sort of men from their proper chieftains, so as to form them

into an adverse army,—I no longer know that venerable object called the people in such a disbanded race of deserters and vagabonds. For a while they may be terrible, indeed,—but in such a manner as wild beasts are terrible. The mind owes to them no sort of submission.

IV. The Lesson to Be Learned from the French Revolution

I have said that in all political questions the consequences of any assumed rights are of great moment in deciding upon their validity. In this point of view let us a little scrutinize the effects of a right in the mere majority of the inhabitants of any country of superseding and altering their government *at pleasure.*

The sum total of every people is composed of its units. Every individual must have a right to originate what afterwards is to become the act of the majority. Whatever he may lawfully originate he may lawfully endeavor to accomplish. He has a right, therefore, in his own particular, to break the ties and engagements which bind him to the country in which he lives; and he has a right to make as many converts to his opinions, and to obtain as many associates in his designs, as he can procure; for how can you know the dispositions of the majority to destroy their government, but by tampering with some part of the body? You must begin by a secret conspiracy, that you may end with a national confederation. The mere pleasure of the beginner must be the sole guide; since the mere pleasure of others must be the sole ultimate sanction, as well as the sole actuating principle in every part of the progress. Thus, arbitrary will (the last corruption of ruling power) step by step poisons the heart of every citizen. No sense of duty can prevent any man from being a leader or a follower in such enterprises. Nothing restrains the tempter; nothing guards the tempted. Nor is the new state, fabricated by such arts, safer than the old.

When you combine this principle of the right to change a fixed and tolerable constitution of things at pleasure with the theory and practice of the French Assembly, the political, civil, and moral irregularity are, if possible, aggravated. The Assembly have found another road, and a far more commodious, to the destruction of an old government, and the legitimate foundation of a new one, than through the previous will of the majority of

what they call the people. Get, say they, the possession of power by any means you can into your hands; and then a subsequent consent (what they call an *address of adhesion*) makes your authority as much the act of the people as if they had conferred upon you originally that kind and degree of power which without their permission you had seized upon. This is to give a direct sanction to fraud, hypocrisy, perjury, and the breach of the most sacred trusts that can exist between man and man. What can sound with such horrid discordance in the moral ear as this position,—that a delegate with limited powers may break his sworn engagements to his constituent, assume an authority, never committed to him, to alter all things at his pleasure, and then, if he can persuade a large number of men to flatter him in the power he has usurped, that he is absolved in his own conscience, and ought to stand acquitted in the eyes of mankind? This is to make the success of villainy the standard of innocence.

The pretended *rights of man*,[2] which have made this havoc, cannot be the rights of the people. For to be a people, and to have these rights, are things incompatible. The one supposes the presence, the other the absence, of a state of civil society. The very foundation of the French commonwealth is false and self-destructive; nor can its principles be adopted in any country, without

[2] "Far am I from denying the *real* rights of men. In denying their false claims of right, I do not mean to injure those which are real, and are such as their pretended rights would totally destroy. If civil society be made for the advantage of man, all the advantages for which it is made become his right. It is an institution of beneficence, and law itself is only beneficence acting by a rule. Men have a right to live by that rule; they have a right to justice, as between their fellows, whether their fellows are in politic function or in ordinary occupation. They have a right to the fruits of their industry, and to the means of making their industry fruitful. They have a right to the acquisitions of their parents, to the nourishment and improvement of their offspring, to instruction in life and to consolation in death. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself; and he has a right to a fair portion of all which society, with all its combinations of skill and force, can do in his favor. In this partnership all men have equal rights; but not to equal things. He that has but five shillings in the partnership has as good a right to it as he that has five hundred pounds has to his larger proportion; but he has not a right to an equal dividend in the product of the joint stock. And as to the share of power, authority, and direction which each individual ought to have in the management of the state, that I must deny to be amongst the direct original rights of man in civil society. It is a thing to be settled by convention.

"The rights of men in governments are their advantages; and these are often in balances between differences of good,—in compromises sometimes between good and evil, sometimes between evil and evil. Political reason is a computing principle: adding, subtracting, multiplying, and dividing, morally, and not metaphysically or mathematically, true moral denominations."—*Ibid.*, 308–309, 313. (Present editor's note.)

the certainty of bringing it to the very same condition in which France is found.

It must always have been discoverable by persons of reflection, but it is now obvious to the world, that a theory concerning government may become as much a cause of fanaticism as a dogma in religion. There is a boundary to men's passions, when they act from feeling; none when they are under the influence of imagination. Remove a grievance, and, when men act from feeling, you go a great way towards quieting a commotion. But the good or bad conduct of a government, the protection men have enjoyed or the oppression they have suffered under it, are of no sort of moment, when a faction, proceeding upon speculative grounds, is thoroughly heated against its form. When a man is from system furious against monarchy or episcopacy, the good conduct of the monarch or the bishop has no other effect than further to irritate the adversary. He is provoked at it as furnishing a plea for preserving the thing which he wishes to destroy. His mind will be heated as much by the sight of a sceptre, a mace, or a verge, as if he had been daily bruised and wounded by these symbols of authority. Mere spectacles, mere names, will become sufficient causes to stimulate the people to war and tumult.

Some gentlemen are not terrified by the facility with which government has been overthrown in France. "The people of France," they say, "had nothing to lose in the destruction of a bad Constitution; but, though not the best possible, we have still a good stake in ours, which will hinder us from desperate risks." Is this any security at all against those who seem to persuade themselves, and who labor to persuade others, that our Constitution is an usurpation in its origin, unwise in its contrivance, mischievous in its effects, contrary to the rights of man, and in all its parts a perfect nuisance? What motive has any rational man, who thinks in that manner, to spill his blood, or even to risk a shilling of his fortune, or to waste a moment of his leisure, to preserve it? If he has any duty relative to it, his duty is to destroy it. A Constitution on sufferance is a Constitution condemned.

They who go with the principles of the ancient Whigs, which are those contained in Mr. Burke's book, never can go too far. They may, indeed, stop short of some hazardous and ambiguous excellence, which they will be taught to postpone to any reasonable degree of good they may actually possess. The opinions main-

tained in that book never can lead to an extreme, because their foundation is laid in an opposition to extremes. The foundation of government is there laid, not in imaginary rights of men, (which at best is a confusion of judicial with civil principles,) but in political convenience, and in human nature,—either as that nature is universal, or as it is modified by local habits and social aptitudes. The foundation of government is laid in a provision for our wants and in a conformity to our duties: it is to purvey for the one, it is to enforce the other.[3] These doctrines do of themselves gravitate to a middle point, or to some point near a middle. They suppose, indeed, a certain portion of liberty to be essential to all good government; but they infer that this liberty is to be blended into the government, to harmonize with its forms and its rules, and to be made subordinate to its end. Those who are not with that book are with its opposite; for there is no medium besides the medium itself. That medium is not such because it is found there, but it is found there because it is conformable to truth and Nature.

The whole scheme of our mixed Constitution is to prevent any one of its principles from being carried as far as, taken by itself, and theoretically, it would go. Allow that to be the true policy of the British system, then most of the faults with which that system stands charged will appear to be, not imperfections into which it has inadvertently fallen, but excellencies which it has studiously sought. To avoid the perfections of extreme, all its several parts are so constituted as not alone to answer their own several ends, but also each to limit and control the others.

They who have acted, as in France they have done, upon a scheme wholly different, and who aim at the abstract and un-

[3] "Government is not made in virtue of natural rights, which may and do exist in total independence of it,—and exist in much greater clearness, and in a much greater degree of abstract perfection: but their abstract perfection is their practical defect. By having a right to everything they want everything. Government is a contrivance of human wisdom to provide for human *wants*. Men have a right that these wants should be provided for by this wisdom. Among these wants is to be reckoned the want, out of civil society, of a sufficient restraint upon their passions. Society requires not only that the passions of individuals should be subjected, but that even in the mass and body, as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection. This can only be done *by a power out of themselves*, and not, in the exercise of its function, subject to that will and to those passions which it is its office to bridle and subdue. In this sense the restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, they cannot be settled upon any abstract rule, and nothing is so foolish as to discuss them upon that principle."—*Ibid.*, 310–311. (Present editor's note.)

limited perfection of power in the popular part, can be of no service to us in any of our political arrangements. They who in their headlong career have overpassed the goal can furnish no example to those who aim to go no further. The temerity of such speculators is no more an example than the timidity of others. The one sort scorns the right; the other fears it; both miss it. But those who by violence go beyond the barrier are without question the most mischievous; because, to go beyond it, they overturn and destroy it. To say they have spirit is to say nothing in their praise. The untempered spirit of madness, blindness, immorality, and impiety deserves no commendation. We want no foreign examples to rekindle in us the flame of liberty. The example of our own ancestors is abundantly sufficient to maintain the spirit of freedom in its full vigor, and to qualify it in all its exertions. Our fabric is so constituted, one part of it bears so much on the other, the parts are so made for one another, and for nothing else, that to introduce any foreign matter into it is to destroy it.

II. THE CATHOLIC AUTHORITARIAN REACTION

Essay on the Generative Principle of Political Constitutions (1814)

Joseph de Maistre (1753–1821)

Conservatism is not all of one degree. *The Federalist* championed not only stability and property but also the dignity of the individual citizen, and moreover gave enthusiastic backing to an experiment with a projected form of republican government. Edmund Burke opposed all political innovation and interpreted even the British Revolution of 1688–89 as a restoration of the *status quo*, but he found the hand of destiny in the liberal as well as the autocratic elements of the British Constitution. It remained for the continental Catholic authoritarian reaction against the French Revolution to raise the standard of absolutism pure and simple.

As shown in the works of its leading exponent, Joseph de Maistre, there was something of the medieval in the Catholic reaction. De Maistre cultivated a historical approach not unlike Burke's, but there was always an overtone of authority and theology. Faith in God was revealed as the *sine qua non* of human progress; and faith in God meant unquestioning acceptance of the infallibility and sovereignty of the Roman Catholic Church.

De Maistre was the son of an important government official in Savoy, and had himself entered upon a career in public administration when Savoy was invaded by the troops of the French Republic. Then and on subsequent occasions in the next few years he took refuge in flight like an émigré from France proper. When the allied armies reconquered northern

Italy, de Maistre received a position in the cabinet of Sardinia, and he later endured many years of discomfort and exile as Sardinian ambassador to Russia. Emotionally and intellectually he was a Frenchman, and all his works were written in French. The most important were *Considerations on France* (1796), *Essay on the Generative Principle of Political Constitutions* (written in Russia in 1809 but not published till 1814), *The Pope* (1819), and the posthumous *Evenings in St. Petersburg.*

The readings here given are based on an anonymous English translation of the *Essay on the Generative Principle of Political Constitutions* (Little, Brown, Boston, 1847). Except as otherwise specified, the footnotes are the author's.

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ESSAY ON THE GENERATIVE PRINCIPLE OF POLITICAL CONSTITUTIONS

I. The Fallacy of the Written Constitution

[*I.*] One of the grand errors of an age, which professed them all, was, to believe that a political constitution could be written and created *à priori;* whilst reason and experience unite in establishing, that a constitution is a Divine work, and that that which is most fundamental, and most essentially constitutional, in the laws of a nation, is precisely what cannot be written.

[*II.*] It has often been supposed to be an excellent piece of pleasantry upon Frenchmen, to ask them *in what book the Salic law was written?* But Jérôme Bignon answered, very apropos, and probably without knowing the full truth of what he said, *that it was written* IN *the hearts of Frenchmen.* Let us suppose, in effect, that a law of so much importance existed only because it was written; it is certain that any authority whatsoever which may have written it, will have the right of annulling it; the law will not then have that character of sacredness and immutability which

distinguishes laws truly constitutional. The essence of a fundamental law, is, that no one has the right to abolish it: now, how can it be above *all*, if *any one* has made it? The agreement of the people is impossible; and even if it should be otherwise, a compact is not a law, and binds nobody, unless there is a superior authority by which it is guarantied.

Hence it is that the good sense of antiquity, happily anterior to sophisms, has sought, on every side, the sanction of laws, in a power above man, either in recognizing that sovereignty comes from God, or in revering certain unwritten laws as proceeding from him.

[*IV.*] Ask Roman history what was precisely the power of the Senate: she is silent, at least as to the exact limits of that power. We see, indeed, in general, that the power of the people and that of the Senate mutually balanced each other, and that the opposition was unceasing; we observe also that patriotism or weariness, weakness or violence, terminated these dangerous struggles: but we know no more about it.

[*V.*] The English Constitution is an example nearer to us, and, therefore, more striking. Whoever examines it with attention, will see *that it goes only in not going* (if this play upon words is permissible). It is maintained only by the exceptions. The *habeas corpus*, for example, has been so often and for so long time suspended, that it is doubted whether the exception has not become the rule. Suppose for a moment that the authors of this famous act had undertaken to fix the cases in which it should be suspended; they would *ipso facto* have annihilated it.

[*VI.*] At the sitting of the House of Commons, June 26, 1807, a lord cited the authority of a great statesman to show that the King had no right to dissolve Parliament during the session; but this opinion was contradicted: Where is the law? Attempt to make a law, and to fix exclusively *by writing* the case where the King has this right, and you will produce a revolution. *The King*, said one of the members, *has this right when the occasion is important;* but what is an *important* occasion? Try to decide this too by writing.

[*VIII.*] Towards the end of the last century, a great outcry was made against a Minister, who had conceived the project of introducing this same English Constitution (or what was called by that name) into a kingdom which was convulsed, and which

demanded a constitution of some kind, with a sort of frenzy. He was wrong, if you please, so far at least as one can be wrong when he acts in good faith. But who at that time had the right of condemning him? If the principle is granted, *that man can create a constitution*, this Minister had the same right to make his own as well as another. Were the doctrines on this point doubted? Was it not believed, on all sides, that a constitution was the work of intelligence, like an ode or tragedy? Had not *Thomas Paine* declared, with a profoundness that charmed the Universities, *that a constitution does not exist, so long as one cannot put it into his pocket?* The eighteenth century, which distrusted itself in nothing, hesitated at nothing.

[*IX.*] The more we examine the influence of human agency in the formation of political constitutions, the greater will be our conviction that it enters there only in a manner infinitely subordinate, or as a simple instrument; and I do not believe there remains the least doubt of the incontestable truth of the following propositions:—

1. That the fundamental principles of political constitutions exist before all written law.

2. That a constitutional law is, and can only be, the developement or sanction of an unwritten pre-existing right.

3. That which is most essential, most intrinsically constitutional, and truly fundamental, is never written, and could not be, without endangering the state.

4. That the weakness and fragility of a constitution are actually in direct proportion to the multiplicity of written constitutional articles.

[*X.*] We are deceived on this point by a sophism so natural, that it entirely escapes our attention. Because man acts, he thinks he acts alone; and because he has the consciousness of his liberty, he forgets his dependence. In the physical order, he listens to reason; for although he can, for example, plant an acorn, water it, etc., he is convinced that he does not make the oaks, because he witnesses their growth and perfection without the aid of human power; and moreover, that he does not make the acorn; but in the social order, where he is present, and acts, he fully believes that he is really the sole author of all that is done by himself. This is, in a sense, as if the trowel should believe itself the architect. Man is a free, intelligent, and noble being: without doubt; but

he is not less an *instrument of God*, according to a happy expression of Plutarch, in a beautiful passage which here introduces itself of its own accord:

We must not wonder, he says, *if the most beautiful and greatest things in the world are done by the will and providence of God; seeing that in all the greatest and principal parts of the world there is a soul: for the organ and tool of the soul is the body, and the soul is the* INSTRUMENT OF GOD. *And as the body has of itself many movements, and as the greater and more noble are derived from the soul, even so it is with the soul; some of its operations being self-moved, while in others it is directed, disciplined, and guided, by God, as it pleases Him; being itself the most beautiful organ and ingenious instrument possible: for it would be a strange thing indeed that the wind, the water, the clouds, and the rains, should be instruments of God, with which He nourishes and supports many creatures, and also destroys many others, and that He should never make use of living beings to perform any of His works. For it is far more reasonable that they, depending entirely on the power of God, should obey His direction, and accomplish all His will, than that the bow should obey the Scythians, the lyre and flute the Greeks.*[1]

No one could write better: and I do not believe that these beautiful reflections could be more justly applied, than to the formation of political constitutions, where it may be said, with equal truth, that man does every thing, and does nothing.

[*XII.*] Let us now consider some one political constitution, that of England, for example. It certainly was not made *à priori*. Her Statesmen never assembled themselves together and said, *Let us create three powers, balancing them in such a manner, etc.* No one of them ever thought of such a thing. The Constitution is the work of circumstances, and the number of these is infinite. Roman laws, ecclesiastical laws, feudal laws; Saxon, Norman, and Danish customs; the privileges, prejudices, and claims of all orders; wars, revolts, revolutions, the Conquest, Crusades; virtues of every kind, and all vices; knowledge of every sort, and all errors and passions;—all these elements, in short, acting together, and forming, by their admixture and reciprocal action, combinations multiplied by myriads of millions, have produced at length, after many centuries, the most complex unity, and happy equilibrium of political powers that the world has ever seen.

[1] Plutarch's Banquet of the Seven Sages.

[*XIII.*] Now since these elements, thus projected into space, have arranged themselves in such beautiful order, without a single man, among the innumerable multitude who have acted in this vast field, having ever known what he had done relatively to the whole, nor foreseen what would happen, it follows, inevitably, that these elements were guided in their fall by an infallible hand, superior to man. The greatest folly, perhaps, in an age of follies, was in believing that fundamental laws could be written *à priori*, whilst they are evidently the work of a power above man; and whilst the very committing them to writing, long after, is the most certain sign of their nullity.

[*XVII.*] The English doubtless, would never have asked for the *Great Charter*, had not the privileges of the nation been violated; nor would they have asked for it, if these privileges had not existed before the Charter. What is true of the State, in this respect, is also true of the Church: if Christianity had never been attacked, there never would have been any writings to settle the dogmas; nor would the dogmas have been settled by writing, had they not pre-existed in their natural state, which is the *oral*.

[*XIX.*] These ideas (taken in their general sense) were not unknown to the ancient philosophers: they keenly felt the impotency, I had almost said the nothingness, of writing, in great institutions; but no one of them has seen this truth more clearly, or expressed it more happily, than Plato, whom we always find the first upon the track of all great truths. According to him, "the man who is wholly indebted to writing for his instruction, *will only possess the appearance of wisdom.*[2] The word is to writing, what the man is to his portrait. The productions of the pencil present themselves to our eyes as living things; but *if we interrogate them, they maintain a dignified silence.* It is the same with writing, *which knows not what to say to one man, nor what to conceal from another.* If you attack it or insult it without a cause, it cannot defend itself; *for its author is never present to sustain it.* So that he who imagines himself capable of establishing, clearly and permanently, one single doctrine, by writing alone, IS A GREAT BLOCKHEAD. If he really possessed the true germs of truth, he would not indulge the thought, that *with a little black liquid and a pen* he could cause them to germinate in the world, defend them from the inclemency of the season, and communicate to them the neces-

[2] Plat. in Phaedr., Edit. Bipont, X, p. 381.

sary efficacy. As for the man who undertakes to write *laws or civil constitutions*, and who fancies that, because he has written them, he is able to give them adequate evidence and stability, whoever he may be, a private man or legislator, he disgraces himself, whether we say it or not; for he has proved thereby that he is equally ignorant of the nature of inspiration and delirium, right and wrong, good and evil. Now, this ignorance is a reproach, though the entire mass of the vulgar should unite in its praise."

[*XX.*] After having heard the *wisdom of the Gentiles*, it will not be useless to listen further to Christian Philosophy.

"It were indeed desirable for us," says one of the most eloquent of the Greek fathers, "never to have required the aid of the written word, but to have had the Divine precepts written only in our hearts, by grace, as they are written with ink in our books; but since we have lost this grace by our own fault, let us then, as it is necessary, seize *a plank instead of the vessel*, without however forgetting the pre-eminence of the first state. God never revealed any thing in writing to the elect of the old Testament: He always spoke to them directly, because He saw the purity of their hearts; but the Hebrew people having fallen into the very abyss of wickedness, books and laws became necessary. The same proceeding is repeated under the empire of the New Revelation; for Christ did not leave a single writing to his Apostles. Instead of books, he promised to them the Holy Spirit: *It is He*, saith our Lord to them, *who shall teach you what you shall speak*. But because, in process of time, sinful men rebelled against the faith and against morality, it was necessary to have recourse to books." [3]

II. The Necessity for Reliance upon God

[*XXIV.*] If the desires of a mere mortal were worthy of obtaining of Divine Providence one of those memorable decrees which constitute the grand epochs of history, I would ask Him to inspire some powerful nation, which had grievously offended Him, with the proud thought of constituting itself politically, beginning at the foundations. I would say, "Grant to this people every thing! Give to her genius, knowledge, riches, consideration, especially an unbounded confidence in herself, and that temper, at once pliant and enterprising, which nothing can embarrass, nothing intimidate. Extinguish her old government; take away from her memory;

[3] St. Chrysost. Hom. in Matth. I, i.

destroy her affections; spread terror around her; blind or paralyze her enemies; give victory charge to watch at once over all her frontiers, so that none of her neighbors could meddle in her affairs, or disturb her in her operations. Let this nation be illustrious in science, rich in philosophy, intoxicated with human power, free from all prejudice, from every tie, and from all superior influence; bestow upon her every thing she shall desire, lest at some time she might say, *this was wanting* or *that restrained me;* let her, in short, act freely with this immensity of means, that at length she may become, under Thy inexorable protection, an eternal lesson to the human race."

[*XXV.*] We cannot, it is true, expect a combination of circumstances which would constitute literally a miracle; but events of the same order, though less remarkable, have manifested themselves here and there in history, even in the history of our days; and, though they may not possess, for the purpose of example, that ideal force which I desired just now, they contain not less of memorable instruction.

We have been witnesses, within the last twenty-five years, of a solemn attempt made for the regeneration of a great nation mortally sick. It was the first experiment in the great work, and the *preface,* if I may be allowed to express myself thus, of the frightful book which we have been since called upon to read.

[*XXVI.*] *But,* it will be said, *we know the causes which prevented the success of that enterprise.* How then? Do you wish that God should send angels under human guises commissioned to destroy a constitution? It will always be necessary to employ second causes; this or that, what does it signify? Every instrument is good in the hands of the great Artificer: but such is the blindness of men, that if, to-morrow, some constitution-monger should come to organize a people, and to give them a constitution made *with a little black liquid,* the multitude would again hasten to believe in the miracle announced. It would be said, again, *nothing is wanting; all is foreseen; all is written;* whilst, precisely because all could be foreseen, discussed, and written, it would be demonstrated, that the constitution is a nullity, and presents to the eye merely an ephemeral appearance.

[*XXVII.*] I believe I have read, somewhere, *that there are few sovereignties in a condition to vindicate the legitimacy of their origin.* Admitting the reasonableness of the assertion, there will

not result from it the least stain to the successors of a chief, whose acts might be liable to some objections. If it were otherwise, it would follow, that the sovereign could not reign legitimately, except by virtue of a deliberation of all the people, that is to say, *by the grace of the people;* which will never happen: for there is nothing so true, as that which was said by the author of the *Considerations on France,*[4]—*that the people will always accept their masters, and will never choose them.* It is necessary that the origin of sovereignty should manifest itself from beyond the sphere of human power; so that men, who may appear to have a direct hand in it, may be, nevertheless, only the circumstances. As to legitimacy, if it should seem in its origin to be obscure, God explains Himself, by His prime-minister in the department of this world,—TIME.

[*XXX.*] But, since every constitution is divine in its principle, it follows, that man can do nothing in this way, unless he reposes himself upon God, whose instrument he then becomes. Now, this is a truth, to which the whole human race in a body have ever rendered the most signal testimony. Examine history, which is experimental politics, and we shall there invariably find the cradle of nations surrounded by priests, and the Divinity constantly invoked to the aid of human weakness. Fable, much more true than ancient history, for eyes prepared, comes in to strengthen the demonstration. It is always an oracle, which founds cities; it is always an oracle, which announces the Divine protection, and successes of the heroic founder.

[*XXXII.*] The most famous nations of antiquity, especially the most serious and wise, such as the Egyptians, Etruscans, Lacedaemonians, and Romans, had precisely the most religious constitutions; and the duration of empires has always been proportioned to the degree of influence which the religious principle had acquired in the political constitution: *the cities and nations most addicted to Divine worship, have always been the most durable, and the most wise; as the most religious ages have also ever been most distinguished for genius.*

[*XL.*] Not only does it not belong to man to create institutions, but it does not appear that his power, *unassisted,* extends even to change for the better institutions already established. The word *reform,* in itself, and previous to all examination, will be always suspected by wisdom, and the experience of every age justifies

[4] The author was de Maistre himself. (Present editor's note.)

this sort of instinct. We know too well what has been the fruit of the most beautiful speculations of this kind.

[*XLI.*] To apply these general maxims to a particular case, it is from the single consideration of the extreme danger of innovations founded upon simple human theories, that, upon the great question of parliamentary reform, which has agitated minds in England so powerfully, and for so long a time, I find myself constrained to believe, that this idea is pernicious, and that if the English yield themselves too readily to it, they will have occasion to repent. *But,* say the partizans of reform, (for it is the grand argument,) *the abuses are striking and incontestable: now can a formal abuse, a defect, be constitutional?* Yes, undoubtedly, it can be; for every political constitution has its essential faults, which belong to its nature, and which it is impossible to separate from it; and, that which should make all reformers tremble, is that these faults may be changed by circumstances; so that in showing that they are new, we cannot prove that they are not necessary. What prudent man, then, will not shudder in putting his hand to the work? Social harmony, like musical concord, is subject to the law of *temperament in the general key.* Adjust the *fifths* accurately, and the *octaves* will jar, and conversely. The dissonance being then inevitable, instead of excluding it, which is impossible, it must be *qualified* by distribution. Thus, on both sides, *imperfection is an element of possible perfection.* In this proposition there is only the form of a paradox.

[*XLII.*] Voltaire, who spoke of every thing, during an age, without having so much as penetrated below the surface, has reasoned very humourously on the sale of the offices of the magistracy which occurred in France; and no instance, perhaps, could be more apposite to make us sensible of the truth of the theory which I am setting forth. *That this sale is an abuse,* says he, *is proved by the fact, that it originated in another abuse.*[5] Voltaire does not mistake here as every man is liable to mistake. He shamefully mistakes. It is a total eclipse of common sense. *Everything which springs from an abuse, an abuse!* On the contrary; one of the most general and evident laws of this power, at once secret and striking, which acts and makes itself to be felt on every side, is, that the remedy of an abuse springs from an abuse, and that the evil, having reached a certain point, destroys itself.

[5] Précis du siècle de Louis XV, chap. 42.

[*XLIII.*] The error of this great writer proceeds from the fact, that, *divided between twenty sciences*, as he himself somewhere confesses, and constantly occupied in communicating instruction to the world, he rarely gave himself time to think. "A dissipated and voluptuous court, reduced to the greatest want by its foolish expenses, devises the sale of the offices of the magistracy, and thus creates" (what it never could have done freely, and with a knowledge of the cause,) "it creates," I say, "a rich magistracy, irremovable and independent; so that the infinite power *playing in the world* makes use of corruption for creating incorruptible tribunals" (as far as human weakness permits). There is nothing, indeed, so plausible to the eye of a true philosopher; nothing more conformable to great analogies, and to that incontestable law, which wills that the most important institutions should be the results not of deliberation, but of circumstances. Here is the problem almost solved when it is stated, as is the case with all problems. *Could such a country as France be better judged than by hereditary magistrates?* If it is decided in the affirmative, which I suppose, it will be necessary for me at once to propose a second problem which is this: *the magistracy being necessarily hereditary, is there, in order to constitute it at first, and afterwards to recruit it, a mode more advantageous than that which fills the coffers of the sovereign with millions at the lowest price, and which assures, at the same time, the opulence, independence, and even the nobility* (of a certain sort) *of the supreme judges?* If we only consider venality as a means to the right of inheritance, every just mind is impressed with this, which is the true point of view. This is not the place to enter fully into this question; but enough has been said to prove that Voltaire has not so much as perceived it.

[*XLIV.*] Let us now suppose a man like him at the head of affairs: he will not fail to act in accordance with his foolish theories of laws and of abuses. He will borrow at six and two thirds per cent. to reimburse his nominal incumbents, creditors at two per cent.: he will prepare minds by a multitude of paid writings, which will insult the magistracy and destroy public confidence in it. Soon Patronage, a thousand times more foolish than Chance, will open the long list of his blunders: the distinguished man, no longer perceiving in the right of inheritance a counterpoise to oppressive labours, will withdraw himself, never to return; and the great

tribunals will be abandoned to adventurers without name, without fortune, and without consideration.

[*XLV.*] Such is the natural picture of most reforms. Man in relation with his Creator is sublime, and his action is creative: on the contrary, so soon as he separates himself from God, and acts alone, he does not cease to be powerful, for this is a privilege of his nature; but his action is negative, and tends only to destroy.

[*XLVII.*] Withdrawn, by his vain sciences, from the single science which truly concerns him, man has believed himself endowed with power *to create*. He has believed,—he who has not the power of producing a single insect or a sprig of moss,—that he was the immediate author of Sovereignty, the most important, the most sacred, the most fundamental thing in the moral and political world; and that such a family, for example, reigns, because such a people wills it: while there are numerous and incontestable proofs, that every sovereign family reigns because it is chosen by a superior power. He has believed, that it was himself who invented languages; while, again, it belongs to him only to see that every human language is *learned* and never invented. He has believed that he could constitute nations; that is to say, in other terms, *that he could create that national unity, by virtue of which one nation is not another*. Finally, he has believed that, since he had the power of creating institutions, he had, with greater reason, that of borrowing them from other nations, and transferring them to his own country, all complete to his hand, with the name which they bore among the people from whom they were taken, in order, like those people, to enjoy them with the same advantages.

[*LX.*] If the formation of all empires, the progress of civilization, and the unanimous agreement of all history and tradition do not suffice still to convince us, the death of empires will complete the demonstration commenced by their birth. As it is the religious principle which has created every thing, so it is the absence of this same principle which has destroyed every thing. The sect of Epicurus, which might be called *ancient incredulity*, corrupted at first, and soon after destroyed every government which was so unfortunate as to give it admission. Every where *Lucretius* announced *Cesar*.

But all past experience disappears before the frightful example afforded by the last century. Still intoxicated with its fumes,

men are very far from being, at least in general, sufficiently composed, to contemplate this example in its true light, and especially to draw from it the necessary conclusions. It is then very important to direct our whole attention to this terrible scene.

[*LXIII.*] It was only in the first part of the eighteenth century, that impiety became really a power. We see it at first extending itself on every side with inconceivable activity. From the palace to the cabin, it insinuates itself every where, and infests every thing. Soon a simple system becomes a formal association, which, by a rapid gradation, changes into a confederacy, and at length into a grand conspiracy which covers Europe.

[*LXIV.*] Then that character of impiety which belongs only to the eighteenth century, manifests itself for the first time. It is no longer the cold tone of indifference, or at most the malignant irony of scepticism; it is a mortal hatred; it is the tone of anger, and often of rage. The writers of that period, at least the most distinguished of them, no longer treat Christianity as an immaterial human error; they pursue it as a capital enemy; they oppose it to the last extreme; it is a war to the death.

[*LXV.*] However entire Europe having been civilized by Christianity, the civil and religious institutions were blended, and, as it were, amalgamated in a surprising manner. It was then inevitable that the philosophy of the age should unhesitatingly hate the social institutions, from which it was impossible to separate the religious principle. This has taken place: every government, and all the establishments of Europe, were offensive to it, *because* they were Christian; and *in proportion* as they were Christian, an inquietude of opinion, an universal dissatisfaction, seized all minds. In France, especially, the philosophic rage knew no bounds; soon a single formidable voice, forming itself from many voices united, is heard to cry, in the midst of guilty Europe,

[*LXVI.*] "Depart from us! Shall we then forever tremble before the priests, and receive from them such instruction as it pleases them to give us? Truth, throughout Europe, is concealed by the fumes of the censer; it is high time that she come out of this noxious cloud. We shall speak no more of Thee to our children; it is for them to know, when they shall arrive at manhood, whether there is such a Being as Thyself, and what Thou art, and what Thou requirest of them. Every thing which now exists, displeases us, because Thy name is written upon every thing that exists. We

wish to destroy all, and to reconstruct the whole without Thee. Leave our councils, leave our schools, leave our houses: we would act alone: REASON suffices for us. Depart from us!"

How has God punished this execrable madness? He has punished it, as He created the light, by a single word. He spake, LET IT BE DONE!—and the political world has crumbled.

[*LXVII.*] Europe is guilty, for having closed her eyes against these great truths; and it is because she is guilty, that she suffers. Yet she still repels the light, and acknowledges not the arm which gives the blow. Few men, indeed, among this material generation, are in a condition to know the *date, nature, and enormity,* of certain crimes, committed by individuals, by nations, and by sovereignties; still less to comprehend the kind of expiation which these crimes demand, and the adorable prodigy which compels EVIL to purify, with its own hands, the place which the eternal architect has already measured by the eye for His marvelous constructions.

CHAPTER III. THE UTILITARIAN ANALYSIS OF THE STATE

I. FUNDAMENTALS OF UTILITARIANISM

A Fragment on Government (1776)

Jeremy Bentham (1748–1832)

In the very year in which the Declaration of Independence and the Virginia Declaration of Rights gave official recognition to the natural rights of the individual, there appeared in England a small book dealing with the problem of political authority in a manner equally foreign to the natural rights school and the followers of the conservative tradition. The acts of both governments and subjects were to be judged not with reference to a premised right, either rational or historical, but on the basis of their utility as manifested in their consequences. The utilitarian concept not only dispelled much political mysticism but also inspired numerous and varied reform movements in the post-Napoleonic period. Although Bentham's *Fragment on Government* antedated both the American and French Revolutions, it may be regarded as the platform of the post-revolutionary progressives.

At the age of sixteen Bentham heard Blackstone lecture at Oxford. A few years later he read Priestley's *Essay on Government* (1768), where he found the passage, "The good and happiness of the members, that is the majority of the members, of any state, is the great standard by which everything relating to that state must finally be determined." Bentham was as much impressed by Priestley as he was antagonized by Blackstone, and his *Fragment on Government* (1776) preached the greatest happiness principle in the course of a scathing criticism of Blackstone's *Commentaries on the Laws of England* (1765–69). *A Fragment on Government* was published anonymously and aroused great interest and curiosity until the pride of the author's father let out the secret that it was the work of a young man of twenty-eight.

Bentham's father was a well-to-do scrivener who intended his precocious son for a distinguished judicial career, but the son turned from legal practice in immediate distaste and devoted himself to a long life of independent study and writing. The general statement of his gospel of utilitarianism was given in his *Introduction to the Principles of Morals and Legislation* (1789), while subsequent works applied the principle in all directions, from prison reform to the democratization of Parliament and the codification of the law. Bentham's efforts to direct the reforms of the French Revolution were of little avail, but, on no less authority than that of Sir Henry Maine, all the law reforms subsequently effected in England

may be traced to his influence. Bentham became the leader of a noted school, of which Ricardo, James and John Stuart Mill, Austin, and Grote were prominent figures.

Except for the manner of presenting the quotations from Blackstone, the readings here given follow the text of F. C. Montague's edition of *A Fragment on Government* (Clarendon Press, Oxford, 1891). They are reprinted by permission of the Clarendon Press. All the footnotes are Bentham's own, but two of them, as also one quotation from Blackstone, have been slightly shifted in position by the present editor.

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A FRAGMENT ON GOVERNMENT
OR
A COMMENT ON THE COMMENTARIES

I. Natural Society and Political Society

[*Int.*, *i.*] The subject of this examination, is a passage contained in that part of Sir W. BLACKSTONE'S Commentaries on the Laws of England, which the Author has styled the Introduction.

[*Ch. I, ii.*] The only true and natural foundations of *society* are the wants and the fears of individuals. Not that we can believe, with some theoretical writers, that there ever was a time when there was no such thing as *society:* and that, from the impulse of reason, and through a sense of their wants and weaknesses, individuals met together in a large plain, entered into an *original contract*, and chose the tallest man present to be their governor. This notion of an actually existing unconnected *state of nature*, is too wild to be seriously admitted. But though *society* had not its formal beginning from any convention of individuals, actuated by their wants and fears; yet it is the *sense* of their weakness and imperfection that *keeps* mankind together; that demonstrates the necessity of this union; and that therefore is the solid and natural foundation, as well as the cement of *society:* And this is what we mean by the *original contract* of *society;* which, though perhaps in no instance it has ever been formally expressed at the first institution of a state, yet in nature and reason must always be understood and implied, in the very act of associating together: namely, that the community should guard the rights of each individual member, and that (in return for this protection) each individual should submit to the laws of the community.

For when *society* is once formed, *government* results of course, as necessary to preserve and to keep that *society* in order. Unless some superior were constituted, whose commands and decisions all the members are bound to obey, they would still remain as in a *state of nature*, without any judge on earth to define their several rights, and redress their several wrongs.

[*ix.*] The word "SOCIETY," I think it appears, is used, and that without notice, in two senses that are opposite. In the one, SOCIETY, or a STATE of SOCIETY, is put *synonymous* to a STATE of NATURE; and stands *opposed* to GOVERNMENT, or a STATE OF GOVERNMENT; in this sense it may be styled, as it commonly is, *natural* SOCIETY. In the other, it is put *synonymous* to GOVERNMENT, or a STATE OF GOVERNMENT; and stands *opposed* to a STATE OF NATURE. In this sense it may be styled, as it commonly is, *political* SOCIETY. Of the difference between these two states, a tolerably distinct idea, I take it, may be given in a word or two.

[*x.*] The idea of a natural society is a *negative* one. The idea of a political society is a *positive* one. 'Tis with the latter, therefore, we should begin.

When a number of persons (whom we may style *subjects*) are supposed to be in the *habit* of paying *obedience* to a person, or an assemblage of persons, of a known and certain description (whom we may call *governor* or *governors*) such persons altogether (*subjects* and *governors*) are said to be in a state of *political* SOCIETY.

[*xi.*] When a number of persons are supposed to be in the habit of *conversing* with each other, at the same time that they are not in any such habit as mentioned above, they are said to be in a state of *natural* SOCIETY.

[*xii.*] If we reflect a little, we shall perceive, that, between these two states, there is not that explicit separation which these names, and these definitions might teach one, at first sight, to expect. It is with them as with light and darkness: however distinct the ideas may be, the *things* themselves have no determinate bound to separate them. The circumstance that has been spoken of as constituting the difference between these two states, is the presence or absence of an *habit of obedience*. This habit, accordingly, has been spoken of simply as *present* (that is as being *perfectly* present), in the *one* case; it has been spoken of simply as *absent* (that is, as being *perfectly* absent); in the *other*. But neither of these manners of speaking, perhaps, is strictly just. Few, in fact, if any, are the instances of this habit being perfectly *absent;* and certainly none at all, of its being perfectly *present*. Governments accordingly, in proportion as the habit of obedience is more perfect, recede from, in proportion as it is less perfect, approach to, a state of nature.

[*xiii.*] On these considerations, the supposition of a *perfect state of nature*, or, as it may be termed, a state of *society perfectly natural*, may, perhaps, be justly pronounced, what our Author for the moment seemed to think it, an extravagant supposition: but then that of a *government* in this sense *perfect;* or, as it may be termed, a state of society *perfectly political*, is no less so.[1]

[*xiv.*] A remark there is, which, for the more thoroughly clearing up of our notions on this subject, it may be proper here to make.

[1] It is true that every person must, for some time, at least, after his birth, necessarily be in a state of subjection with respect to his parents, or those who stand in the place of parents to him; and that a perfect one, or at least as near to being a perfect one, as any that we see. But for all this, the sort of society that is constituted by a state of subjection thus circumstanced, does not come up to the idea that, I believe, is generally entertained by those who speak of a *political* society. To constitute what is meant in general by that phrase, a greater *number* of members is required, or, at least, a *duration* capable of a longer continuance. A society, to come within the notion of what is originally meant by a *political* one, must be such as, in its nature, is not incapable of continuing for ever in virtue of the principles which gave it birth. This, it is plain, is not the case with such a family society, of which a parent, or a pair of parents are at the head. In such a society, the only principle of union which is certain and uniform in its operation, is the natural weakness of those of its members that are in a state of subjection; that is, the children; a principle which has but a short and limited continuance. I question whether it be the case even with a family society, subsisting in virtue of *collateral* consanguinity; and that for the like reason.

To the expression "state of nature," no more than to the expression "state of political society," can any precise meaning be annexed, without reference to a party different from that one who is spoken of as being in the state in question. For one party to *obey*, there must be another party that is obeyed. Hence may one and the same party be conceived to obey and *not* to obey at the same time, so as it be with respect to different *persons*. Hence it is, then, that one and the same party may be said to *be* in a state of nature, and *not* to be in a state of nature, and that at one and the same time, according as it is this or *that* party that is taken for the other object of comparison.

[*xvii.*] In the same manner also it may be conceived how, in any political society, the same man may, with respect to the same individuals, be, at different periods, and on different occasions, alternately, in the state of governor and subject; to-day concurring, perhaps active, in the business of issuing a *general* command for the observance of the whole society, amongst the rest of another man in quality of *Judge:* to-morrow, punished, perhaps, by a *particular* command of that same Judge for not obeying the general command which he himself (I mean the person acting in the character of governor) had issued. I need scarce remind the reader how happily this alternate state of *authority* and *submission* is exemplified among ourselves.

[*xix.*] In the same manner, also, it may be conceived, how the same set of men considered *among themselves*, may at one time be in a state of nature, at another time in a state of government. For the habit of obedience, in whatever degree of perfection it be necessary it should subsist in order to constitute a government, may be conceived, it is plain, to suffer interruptions. At different junctures it may take place and cease.

[*xx.*] Instances of this state of things appear not to be unfrequent. The sort of society that has been observed to subsist among the AMERICAN INDIANS may afford us one. According to the accounts we have of those people, in most of their tribes, if not in all, the habit we are speaking of appears to be taken up only in time of war. It ceases again in time of peace. The necessity of acting in concert against a common enemy, subjects a whole tribe to the orders of a common Chief. On the return of peace each warrior resumes his pristine independence.

[*xxi.*] One difficulty there is that still sticks by us. It has been

started indeed, but not solved.—This is to find a note of distinction,—a characteristic mark, whereby to distinguish a society in which there *is* a habit of obedience, and that at the degree of perfection which is necessary to constitute a state of government, from a society in which there is *not*. I can find no such mark, I must confess, any where, unless it be this; the establishment of names of office: the appearance of a certain man, or set of men, with a certain name, serving to mark them out as objects of obedience: such as King, Sachem, Cacique, Senator, Burgomaster, and the like. This, I think, may serve tolerably well to distinguish a set of men in a state of political union among *themselves* from the *same* set of men not yet in such a state.

[*xxii.*] But suppose an incontestable political society, and that a large one, formed; and from that a smaller body to break off: by this breach the smaller body ceases to be in a state of political union with respect to the larger: and has thereby placed itself, with respect to that larger body, in a state of nature—What means shall we find of ascertaining the precise juncture at which this change took place? What shall be taken for the *characteristic mark* in this case? The appointment, it may be said, of new governors with new names. But no such appointment, suppose, takes place. The subordinate governors, from whom alone the people at large were in use to receive their commands under the old government, are the same from whom they receive them under the new one. The habit of obedience which these subordinate governors were in with respect to that single person, we will say, who was the supreme governor of the whole, is broken off insensibly and by degrees. The old names by which these subordinate governors were characterized, while they were subordinate, are continued now they are supreme. In this case it seems rather difficult to answer.

[*xxvi.*] As it is the obedience of individuals that constitutes a state of submission, so it is their disobedience that must constitute a state of revolt. Is it then every act of disobedience that will do as much? The affirmative, certainly, is what never can be maintained: for then would there be no such thing as government to be found any where. Here then a distinction or two obviously presents itself. Disobedience may be distinguished into *conscious* or *unconscious:* and that, with respect as well to the *law* as to the *fact.* Disobedience that is unconscious with respect to either, will readily, I suppose, be acknowledged not to be a revolt. Dis-

obedience again that is conscious with respect to *both*, may be distinguished into *secret* and *open;* or, in other words, into *fraudulent* and *forcible.* Disobedience that is only fraudulent will likewise, I suppose, be readily acknowledged not to amount to a revolt.

[*xxvii.*] The difficulty that will remain will concern such disobedience only as is both *conscious* and *forcible.* This disobedience, it should seem, is to be determined neither by *numbers* altogether (that is of the persons supposed to be disobedient) nor by *acts*, nor by *intentions:* all three may be fit to be taken into consideration. But having brought the difficulty to this point, at this point I must be content to leave it. To proceed any farther in the endeavour to solve it, would be to enter into a discussion of particular local jurisprudence. It would be entering upon the definition of Treason, as distinguished from such crimes as are spoken of as being of a more private nature. Suppose the definition of Treason settled, and the commission of an act of Treason is, as far as regards the person committing it, the characteristic mark we are in search of.

II. The Fiction of the Original Contract

[*Ch. I, xxxvi.*] As to the Original Contract, by turns embraced and ridiculed by our Author, a few pages, perhaps, may not be ill bestowed in endeavouring to come to a precise notion about its reality and use. The stress laid on it formerly, and still, perhaps, by some, is such as renders it an object not undeserving of attention. I was in hopes, however, till I observed the notice taken of it by our author, that this chimera had been effectually demolished by Mr. Hume.[2] I think we hear not so much of it now as formerly. The indestructible prerogatives of mankind have no need to be supported upon the sandy foundation of a fiction.

[*xxxvii.*] With respect to this, and other fictions, there was once a time, perhaps, when they had their use. With instruments of this temper, I will not deny but that some political work may have been done, and that useful work, which, under the then circumstances of things, could hardly have been done with any other. But the season of *Fiction* is now over: insomuch, that what formerly might have been tolerated and countenanced under that name, would, if now attempted to be set on foot, be censured and stigmatized under the harsher appellations of *in-*

[2] In the third Volume of his Treatise *on* Human Nature.

croachment or *imposture*. To attempt to introduce any *new* one, would be *now* a crime: for which reason there is much danger, without any use, in vaunting and propagating such as have been introduced already. In point of political discernment, the universal spread of learning has raised mankind in a manner to a level with each other, in comparison of what they have been in any former time: nor is any man now so far elevated above his fellows, as that he should be indulged in the dangerous licence of cheating them for their good.

[*xxxviii.*] As to the fiction now before us, it succeeded to admiration.

That compacts, by whomsoever entered into, *ought* to be kept; —that men are *bound* by compacts, are propositions which men, without knowing or enquiring why, were disposed universally to accede to. The observance of promises they had been accustomed to see pretty constantly enforced. They had been accustomed to see Kings, as well as others, behave themselves as if bound by them. This proposition, then, "that men are bound by *compacts;*" and this other, "that, if one party performs not his part, the other is released from his," being propositions which no man disputed, were propositions which no man had any call to prove. In theory they were assumed for axioms: and in practice they were observed as rules.

[*xxxix.*] A compact, then, it was said, was made by the King and people. The people, on their part, promised to the King a *general obedience*. The King, on his part, promised to *govern* the people in such a *particular* manner always, as should be *subservient* to their happiness. I insist not on the words: I undertake only for the sense; as far as an imaginary engagement, so loosely and so variously worded by those who have imagined it, is capable of any decided signification. Assuming then, as a general rule, that promises, when made, ought to be observed; and, as a point of fact, that a promise to this effect in particular had been made by the party in question, men were more ready to deem themselves qualified to judge when it was such a promise was *broken*, than to decide directly and avowedly on the delicate question, when it was that a King acted so far in *opposition* to the happiness of his people, that it were better no longer to obey him.

[*xl.*] It is manifest, on a very little consideration, that nothing was gained by this manoeuvre after all: no difficulty removed

by it. It was still necessary to determine, whether the King in question had, or had not acted so far in *opposition* to the happiness of his people, that it were better no longer to obey him; in order to determine, whether the promise he was supposed to have made, had, or had not been broken.

[*xli.*] Let it be said, that part at least of his promise was to govern in *subservience to Law:* that hereby a more precise rule was laid down for his conduct, by means of this supposal of a promise, than that other loose and general rule to govern in subservience to the *happiness of his people;* and that, by this means, it is the letter of the *Law* that forms the tenor of the rule.

Now true it is, that the governing in opposition to Law, is *one* way of governing in opposition to the happiness of the people: the natural effect of such a contempt of the Law being, if not actually to destroy, at least to threaten with destruction, all those rights and privileges that are founded on it: rights and privileges on the enjoyment of which that happiness depends. But still it is not this that can be safely taken for the entire purport of the promise here in question: and that for several reasons. *First*, Because the most mischievous, and under certain constitutions the most feasible, method of governing in opposition to the happiness of the people, is, by setting the Law itself in opposition to their happiness. *Secondly*, Because it is a case very conceivable, that a King may, to a great degree, impair the happiness of his people without violating the letter of any single Law. *Thirdly*, Because extraordinary occasions may now and then occur, in which the happiness of the people may be better promoted by acting, for the moment, in *opposition* to the Law, than in *subservience* to it. *Fourthly*, Because it is not any single violation of the Law, as such, that can properly be taken for a breach of his part of the contract, so as to be understood to have released the people from the obligation of performing theirs. For, to quit the fiction, and resume the language of plain truth, it is scarce ever any single violation of the Law that, by being *submitted to*, can produce so much mischief as shall surpass the probable mischief of *resisting* it. If every single instance whatever of such a violation were to be deemed an entire dissolution of the contract, a man who reflects at all would scarce find anywhere, I believe, under the sun, that Government which he could allow to subsist for twenty years together. It is plain, therefore, that to pass any sound decision upon the question

which the inventors of this fiction substituted instead of the true one, the latter was still necessary to be decided. All they gained by their contrivance was, the convenience of deciding it obliquely, as it were, and by a side wind—that is, in a crude and hasty way, without any direct and steady examination.

[*xlii.*] But, after all, for what *reason* is it, that men *ought* to keep their promises? The moment any intelligible reason is given, it is this: that it is for the *advantage* of society they should keep them: and if they do not, that, as far as *punishment* will go, they should be *made* to keep them. Such is the benefit to gain, and mischief to avoid, by keeping them, as much more than compensates the mischief of so much punishment as is requisite to oblige men to it. Whether the dependence of *benefit* and *mischief* (that is, of *pleasure* and *pain*) upon men's conduct in this behalf, be as here stated, is a question of *fact*, to be decided, in the same manner that all other questions of fact are to be decided, by testimony, observation, and experience.

[*xliii.*] This then, and no other, being the *reason* why men should be made to keep their promises, viz. that it is for the advantage of society that they should, is a reason that may as well be given at once, why *Kings*, on the one hand, in governing, should in general keep within established Laws, and (to speak universally) abstain from all such measures as tend to the unhappiness of their subjects: and, on the other hand, why *subjects* should obey Kings as long as they so conduct themselves, and no longer: why they should obey in short *so long as the probable mischiefs of obedience are less than the probable mischiefs of resistance:* why, in a word, taking the whole body together, it is their *duty* to obey, just so long as it is their *interest*, and no longer. This being the case, what need of saying of the one, that *he* PROMISED so to *govern;* of the other, that they PROMISED so to *obey*, when the fact is otherwise?

[*xliv.*] True it is, that, in this country, according to ancient forms, some sort of vague promise of *good government* is made by Kings at the ceremony of their coronation: and let the acclamations, perhaps given, perhaps not given, by chance persons out of the surrounding multitude, be construed into a promise of *obedience* on the part of the *whole* multitude: that whole multitude itself, a small drop collected together by chance out of the ocean of the state: and let the two promises thus made be deemed to

have formed a perfect *compact:*—not that either of them is declared to be the *consideration* of the other.[3]

[*xlv.*] Make the most of this concession, one experiment there is, by which every reflecting man may satisfy himself, I think, beyond a doubt, that it is the consideration of *utility*, and no other, that, secretly but unavoidably, has governed his judgment upon all these matters. The experiment is easy and decisive. It is but to reverse, in supposition, the import of the *particular* promise thus feigned. Suppose the King to promise that he would govern his subjects *not* according to Law; *not* in the view to promote their happiness;—would this be binding upon *him?* Suppose the people to promise they would obey him *at all events*, let him govern as he will; let him govern to their destruction. Would this be binding upon *them?*

[*xlvi.*] "No;" (it may perhaps be replied) "but for this reason; among promises, some there are that, as every one allows, are void: now these you have been supposing, are unquestionably of the number. A promise that is in itself *void*, cannot, it is true create any obligation. But allow the promise to be *valid*, and it is the promise itself that creates the obligation, and nothing else." The fallacy of this argument it is easy to perceive. For what is it then that the promise depends on for its *validity?* what is it that being *present* makes it *valid?* what is it that being *wanting* makes it *void?* To acknowledge that any *one* promise may be void, is to acknowledge that if any *other* is *binding*, it is not merely because it is a promise. That circumstance then, whatever it be, on which the validity of a promise depends, that circumstance, I say, and not the promise itself must be the cause of the obligation which a promise is apt in general to carry with it.

[*xlvii.*] But farther. Allow, for argument sake, what we have disproved: allow that the obligation of a promise is independent of every other: allow that a promise is binding *propriâ vi*—Binding then on whom? On him certainly who makes it. Admit this: For what reason is the same individual promise to be binding on those who *never* made it? The King, *fifty years ago*, promised my *Great-Grandfather* to govern him according to Law: my Great-Grandfather, *fifty years ago*, promised the King to obey him ac-

[3] A *compact* or *contract* (for the two words on this occasion, at least, are used in the same sense) may, I think, be defined, a pair of promises, by two persons reciprocally given, the one promise in consideration of the other.

cording to Law. The King, *just now*, promised my neighbour to govern him according to Law: my neighbour, *just now*, promised the King to obey him according to Law.—Be it so—What are these promises, all or any of them, to *me?* To make answer to this question, some other principle, it is manifest, must be resorted to, than that of the *intrinsic* obligation of promises upon those who make them.

[*xlviii.*] Now this *other* principle that still recurs upon us, what other can it be than the *principle of* UTILITY? The principle which furnishes us with that *reason*, which alone depends not upon any higher reason, but which is itself the sole and all-sufficient reason for every point of practice whatsoever.

III. FORMS OF GOVERNMENT

[*Ch. II, ii.*] The first object that strikes us in this division of our subject is the theological flourish it sets out with. In God may be said, though in a peculiar sense, to be our Author's strength.

[*iii.*] That governors, of some sort or other, we must have, is what he has been shewing. Now for *endowments* to qualify them for the exercise of their function.

[*iv.*] In general, all mankind will agree that government should be reposed in such persons in whom those qualities are most likely to be found, the perfection of which are among the attributes of Him who is emphatically styled the Supreme Being; the three grand requisites, I mean, of wisdom, goodness, and of power: wisdom, to discern the real interest of the community; goodness, to endeavour always to pursue that real interest; and strength or power, to carry this knowledge and intention into action. These are the natural foundations of sovereignty, and these are the requisites that ought to be found in every well-constituted frame of government.

[*xii.*] How the several forms of government we now see in the world at first actually began is matter of great uncertainty, and has occasioned infinite disputes. It is not my business or intention to enter into any of them. However they began, or by what right soever they subsist, there is and must be in all of them a supreme, irresistible, absolute, uncontrolled authority, in which the *jura summi imperii*, or the rights of sovereignty, reside. And this authority is placed in those hands, wherein (according to the OPINION of the FOUNDERS of such respective states, either expressly given or collected from their *tacit* APPROBATION) the qualities requisite for supremacy, wisdom, goodness, and power, are the most likely to be found.

[*xxiv.*] The political writers of antiquity will not allow more than three regular forms of government; the first, when the sovereign power

is lodged in an aggregate assembly, consisting of all the members of a community, which is called a Democracy; the second, when it is lodged in a council composed of select members, and then it is styled an Aristocracy; the last, when it is entrusted in the hands of a single person, and then it takes the name of Monarchy. All other species of government they say are either corruptions of, or reducible to these three.

[*xxvi.*] Having thus got three regular simple forms of Government and just as many qualifications to divide among them; of each of which, by what he told us a while ago, each form of Government must have some share, it is easy to see how their allotments will be made out. Each form of Government will possess one of these qualities in perfection, taking its chance, if one may say so, for its share in the two others.

[*xxvii.*] In a democracy where the right of making laws resides in the people at large, public virtue or goodness of intention is more likely to be found, than either of the other qualities of government. Popular assemblies are frequently foolish in their contrivance, and weak in their execution; but generally mean to do the thing that is right and just, and have always a degree of patriotism or public spirit. In aristocracies there is more wisdom to be found than in the other frames of Government; being composed, or intended to be composed, of the most experienced citizens; but there is less honesty than in a republic, and less strength than in a monarchy. A monarchy is indeed the most powerful of any, all the sinews of government being knit together and united in the hand of the prince; but then there is imminent danger of his employing that strength to improvident or oppressive purposes.

[*xxvii.*] Among these three different forms of government then, it should seem according to our Author's account of them, there is not much to choose. Each of them has a *qualification*, an *endowment*, to itself. Each of them is completely characterized by this qualification. No intimation is given of any pre-eminence among these qualifications, one above another. Should there be any dispute concerning the preference to be given to any of these forms of government, as proper a method as any of settling it, to judge from this view of them, is that of cross and pile.

[*xxix.*] At the end of the paragraph which gives us the definitions, one observation there is that is a little puzzling. "Other species of government," we are given to understand, there are besides these; but then those others, if not "reducible to," are but "corruptions of these." Now, what there is in any of these to be corrupted, is not so easy to understand. The essence of these

several forms of government, we must always remember, is placed, solely and entirely, in the article of *number:* in the ratio of the number of the Governors (for so for shortness we will style those in whose hands is lodged this "power of making laws") to that of the governed. If the number of the former be, to that of the latter, as *one* to *all*, then is the form of Government a Monarchy: if as *all* to *all*, then is it a Democracy: if as some number *between one and all* to *all*, then is it an Aristocracy. Now then, if we can conceive a fourth number, which not being more than all, is neither one nor all, nor any thing between one and all, we can conceive a form of Government, which, upon due proof, may appear to be a corruption of some one or other of these three. If not, we must look for the corruption somewhere else: Suppose it were in our Author's *reason.*

[*xxx.*] Not but that we may meet, indeed, with several other hard-worded names for forms of Government: but these names were only so many names for one or other of those three. We hear often of a *Tyranny:* but this is neither more nor less than the name a man gives to our Author's Monarchy, when out of humour with it. It is still the Government of number *one.* We hear now and then, too, of a sort of Government called an *Oligarchy:* but this is neither more nor less than the name a man gives to our Author's Aristocracy, in the same case. It is still the Government of some number or other, *between one and all.* In fine, we hear now and then of a sort of government fit to break one's teeth, called an *Ochlocracy:* but this is neither more nor less than the name a man gives to a Democracy in the same case. It is still that sort of government, which, according to our Author, is the Government of *all.*[4]

[*Ch. III, i.*] With a set of *data*, such as we have seen, we may judge whether our Author can meet with any difficulty in proving the British Constitution to be the best of all possible governments, or indeed any thing else that he has a mind.

[4] What is curious is, that the same persons who tell you (having read as much) that Democracy is a form of Government under which the supreme power is vested in all the members of a state, will also tell you (having also read as much) that the Athenian Commonwealth was a Democracy. Now the truth is, that in the Athenian Commonwealth, upon the most moderate computation, it is not one tenth part of the inhabitants of the Athenian state that ever at a time partook of the supreme power; women, children, and slaves, being taken into the account. Civil Lawyers, indeed, will tell you, with a grave face, that a slave is *nobody;* as Common Lawyers will, that a bastard is the *son* of *nobody.* But, to an unprejudiced eye, the condition of a state is the condition of all the individuals, without distinction, that compose it.

[*ii.*] As with us the executive power of the laws is lodged in a single person, they have all the advantages of strength and dispatch that are to be found in the most absolute monarchy: and, as the legislature of the kingdom is entrusted to three distinct powers entirely independent of each other; first, the King; secondly, the Lords Spiritual and Temporal, which is an aristocratical assembly of persons selected for their piety, their birth, their wisdom, their valour, or their property; and thirdly, the House of Commons, freely chosen by the people from among themselves, which makes it a kind of democracy; as this aggregate body, actuated by different springs, and attentive to different interests, composes the British Parliament, and has the supreme disposal of every thing; there can no inconvenience be attempted by either of the three branches, but will be withstood by one of the other two; each branch being armed with a negative power sufficient to repel any innovation which it shall think inexpedient or dangerous.

[*iv.*] The power, the only power our Author has been speaking of all along till now, is the *legislative*. 'Tis to this, and this alone, that he has given the name of "*sovereign power*." 'Tis this power, the different distributions of which he makes the characteristics of his three different forms of government. Coming now then to the British Constitution, it is in the superior degree in which these qualifications of the legislative body are possessed by it, that its peculiar excellence is to consist. It is by possessing the qualification of strength, that it possesses the advantage of a monarchy. But how is it then that, by his account, it possesses the qualification of strength? By any disposition made of the legislative power? By the legislative power's being lodged in the hands of a single person, as in the case of a monarchy? No; but to a disposition made of a new power, which comes in, as it were, in a parenthesis, a power which has not, by any description given of it, been distinguished from the legislative, an *executive*.

[*vi.*] In the next place we are told in a parenthesis (it being a matter so plain as to be taken for granted) that "each of these branches of the Legislature is *independent*,"—yes, "*entirely* independent," of the two others.—Is this really the case? Those who consider the influence which the King and so many of the Lords have in the election of members of the House of Commons; the power which the King has, at a minute's warning, of putting an end to the existence of any House of Commons; those who consider the influence which the King has over both Houses, by offices of dignity and profit given and taken away again at pleasure; those who consider that the King, on the other hand, depends for

his daily bread on both Houses, but more particularly on the House of Commons; not to mention a variety of other circumstances that might be noticed in the same view, will judge what degree of precision there was in our Author's meaning, when he so roundly asserted the affirmative.

[*viii.*] The more we consider the application he makes of the common-place notions concerning the three forms of Government to our own, the more we shall see the wide difference there is between reading and reflecting. Our own he finds to be a combination of these three. It has a Monarchical branch, an Aristocratical, and a Democratical. The Aristocratical is the House of Lords; the Democratical is the House of Commons. With respect then to the point of wisdom, the consequence is obvious. The House of Commons, however excellent in point of honesty, is an assembly of less *wisdom* than that of the House of Lords.

[*ix.*] Let us find out, if we can, whence this notion of the want of wisdom in the members of a Democracy, and of the abundance of it in those of an Aristocracy, could have had its rise. We shall then see with what degree of propriety such a notion can be transferred to *our* Houses of Lords and Commons.

In the members of a Democracy in particular, there is likely to be a want of wisdom—Why? The greater part being poor, are, when they begin to take upon them the management of affairs, uneducated: being uneducated, they are illiterate: being illiterate, they are ignorant. Ignorant, therefore, and *unwise*, if that be what is meant by ignorant, they *begin*. Depending for their daily bread on the profits of some petty traffic, or the labour of some manual occupation, they are nailed to the work-board, or the counter. In the business of Government, it is only by fits and starts that they have leisure so much as to *act:* they have no leisure to *reflect*. Ignorant therefore they *continue*.—But in what degree is this the case with the members of our House of Commons?

[*xi.*] But hold—Our Author, when he attributes to the members of an Aristocracy more wisdom than to those of a Democracy, has a reason of his own. In Aristocratical bodies, we are to understand there is more *experience;* at least it is intended by some body or other there *should be:* which, it seems, answers the same purpose as if there *was*.

[*xvi.*] It is from superiority of experience alone, that our Author derives superiority of wisdom. He has, indeed, the proverb in his favour: "Experience," it has been said of old, "is the Mother of Wisdom:" be it so;—but then Interest is the Father. There is even an Interest that is the Father of Experience. Among the members of the House of Commons, though none so poor as to be illiterate, are many whose fortunes, according to the common phrase, are yet to make. The fortunes of those of the House of Lords (I speak in general) are made already. The members of the House of Commons may hope to be members of the House of Lords. The members of the House of Lords have no higher House of Lords to rise to. Is it natural for those to be most active who have the *least*, or those who have the *most*, interest to be so. Are the experienced those who are the least, or those who are the most active? Does experience come to men when asleep, or when awake? Is it the members of the House of Lords that are the most active, or of the House of Commons? To speak plain, is it in the House of Lords that there is most business done, or in the House of Commons? In a word is there more wisdom ordinarily where there is least, or where there is most to gain by being wise?

[*xviii.*] Thus much concerning these two branches of our legislature, so long as they continue what, according to our Author's principles, they are at present; the House of Lords the Aristocratical branch: the House of Commons the Democratical. A little while and we shall see them so; but again a little while, perhaps, and we shall not see them so. By what characteristic does our Author distinguish an Aristocratical legislative body from a Democratical one? By that of *number:* By the number of persons that compose them: by that, and that alone. Now, therefore, to judge by that, the House of Lords, at present, indeed, *is* the Aristocratical branch: the House of Commons in comparison at least with the other, the Democratical. Thus far is well. But should the list of nobility swell at the rate we have sometimes seen it, there is an assignable period, and that, perhaps, at no very enormous distance, at which the assembly of the Lords will be more numerous than that of the Commons. Which will *then* be the Aristocratical branch of our Legislature? Upon our Author's principles, the House of Commons. Which the Democratical? The House of Lords.

IV. The Right of the Supreme Power to Make Laws

[*Ch. IV, i.*] We now come to the third topic touched upon in the digression; namely, the *right*, as our Author phrases it, which the Supreme Power has of making laws.

[*ii.*] What he is really aiming at, I take it, is, to inculcate a persuasion that in every state there must subsist, in some hands or other, a power that is *absolute*.

> Having thus cursorily considered the three usual species of government, and our own singular constitution, selected and compounded from them all, I proceed to observe, that, as the power of making laws constitutes the supreme authority, so wherever the supreme authority in any state resides, it is the right of that authority to make laws: that is, in the words of our definition, to prescribe the rule of civil action. And this may be discovered from the very end and institution of civil states. For a state is a collective body, composed of a multitude of individuals united for their safety and convenience, and intending to act together as one man.

[*xiii.*] The most emphatical passage is yet behind. He is there speaking of the several forms of government now in being. "However they began," says he, "or by what right soever they subsist, *there is* and *must be* in all of them a *supreme, irresistible, absolute, uncontrolled authority*, in which the *jura summi imperii*, or the rights of sovereignty, reside."

[*xvii.*] After all these pains taken to inculcate unreserved submission, would any one have expected to see our Author himself among the most eager to excite men to disobedience? and that, perhaps, upon the most frivolous pretences? in short, upon any pretence whatsoever? Such, however, upon looking back a little, we shall find him.

[*xviii.*] 'Tis in a passage antecedent to the digression we are examining, that, speaking of the pretended law of Nature, and of the law of revelation, "no human laws," he says, "should be suffered to contradict these." He then proceeds to give us an example. This example, one might think, would be such as should have the effect of softening the dangerous tendency of the rule:—on the contrary, it is such as cannot but enhance it; [5] and, in the

[5] It is that of murder. In the word here chosen there lurks a fallacy which makes the proposition the more dangerous as it is the more plausible. Murder is *killing* under certain *circumstances*.—Is the human law then to be allowed to define what shall be those *circumstances*, or is it not? If yes, the case of a "human law allowing or enjoining us to commit it," is a case that is not so much as supposable: if *no*,

application of it to the rule, the substance of the latter is again repeated in still more explicit and energetic terms. "Nay," says he, speaking of the act he instances, "if any human law should allow or enjoin us to commit it, we are BOUND TO TRANSGRESS that human law, or else we must offend both the natural and the divine."

[*xix.*] As to the LAW *of Nature*, if (as I trust it will appear) it be nothing but a phrase; if there be no other medium for proving any act to be an offence against it, than the mischievous tendency of such act; if there be no other medium for proving a law of the *state* to be contrary to it, than the *inexpediency* of such law, unless the bare unfounded disapprobation of any one who thinks of it be called a proof; if a test for distinguishing such laws as would be *contrary* to the LAW *of Nature* from such as, *without* being contrary to it, are simply *inexpedient*, be that which neither our Author, nor any man else, so much as pretended ever to give; if, in a word, there be scarce any law whatever but what those who have not liked it have found, on some account or another, to be repugnant to some text of scripture; I see no remedy but that the natural tendency of such doctrine is to impel a man, by the force of conscience, to rise up in arms against any law whatever that he happens not to like. What sort of government it is that can consist with such a disposition, I must leave to our Author to inform us.

[*xx.*] It is the principle of *utility*, accurately apprehended and steadily applied, that affords the only clue to guide a man through these straits. It is for that, if any, and for that alone to furnish a decision which neither party shall dare in *theory* to disavow.

[*xxi.*] In speaking of the supposed contract between King and people, I have already had occasion to give the description, and, as it appears to me, the only *general* description that *can* be given, of that juncture at which, and not before, resistance to government becomes *commendable*. It is *then*, we may say, and not till then, allowable to, if not incumbent on, every man, as well on the score of *duty* as of *interest*, to enter into measures of resistance; when, according to the best calculation he is able to make, *the probable mischiefs of resistance* (speaking with respect to the com-

adieu to all human laws: to the fire with our Statutes at large, our Reports, our Institutes, and all that we have hitherto been used to call our law books; our law books, the only law books we can be safe in trusting to, are Puffendorf and the Bible.

munity in general) *appear less to him than the probable mischiefs of submission.* This then is to him, that is to each man in particular, the *juncture for resistance.*

[*xxii.*] A natural question here is—by what *sign* shall this juncture be known? By what *common* signal alike conspicuous and perceptible to all? A question which is readily enough started, but to which, I hope, it will be almost as readily perceived that it is impossible to find an answer.

[*xxiii.*] Unless such a sign then, which I think impossible, can be shewn, the *field,* if one may say so, of the supreme governor's authority, though not *infinite,* must unavoidably, I think, *unless where limited by express convention,*[6] be allowed to be *indefinite.* Nor can I see any narrower, or other bounds to it, under this constitution, or under any other yet *freer* constitution, if there be one, than under the most *despotic. Before* the juncture I have been describing were arrived, resistance, even in a country like this, would come too soon: were the juncture arrived *already,* the time for resistance would be come already, under such a government even as any one should call *despotic.*

[*xxiv.*] In regard to a government that is *free,* and one that is *despotic,* wherein is it then that the difference consists? Is it that those persons in whose hands that power is lodged which is acknowledged to be supreme, have less power in the one than in the other, when it is from custom that they derive it? By no means. Is it not that the power of one any more than of the other has any certain bounds to it? The distinction turns upon circumstances of a very different complexion:—on the *manner* in which that whole mass of power, which, taken together, is supreme, is, in a free state, *distributed* among the several ranks of persons that are sharers in it:—on the *source* from whence their titles to it are successively derived:—on the frequent and easy *changes* of condition between govern*ors* and govern*ed:* whereby the interests of the one class are more or less indistinguishably blended with those of the other:—on the *responsibility* of the governors; or the right which a subject has of having the reasons publicly assigned and canvassed of every act of power that is exerted over him:—on the *liberty of the press;* or the security with which every man, be he of the one

[6] This respects the case where one state has, upon *terms,* submitted itself to the government of another: or where the governing bodies of a number of states agree to take directions in certain specified cases, from some *body* or other that is distinct from all of them: consisting of members, for instance, appointed out of each.

class or the other, may make known his complaints and remonstrances to the whole community:—on the *liberty of public association;* or the security with which malcontents may communicate their sentiments, concert their plans, and practise every mode of opposition short of actual revolt, before the executive power can be legally justified in disturbing them.

[*xxv.*] True then, it may be, that, owing to this last circumstance in particular, in a state thus circumstanced, the road to a revolution, if a revolution is necessary, is to appearance shorter; certainly more smooth and easy. More likelihood, certainly there is of its being such a revolution as shall be the work of a number; and in which, therefore, the interests of a number are likely to be consulted. Grant then, that by reason of these facilitating circumstances, the juncture itself may arrive sooner, and upon less provocation, under what is called a *free* government, than under what is called an *absolute* one: grant this;—yet till it *be* arrived, resistance is as much too soon under one of them as under the other.

[*xxvi.*] Let us avow then, in short, steadily but calmly, what our Author hazards with anxiety and agitation, that the authority of the supreme body cannot, *unless where limited by express convention,* be said to have any assignable, any certain bounds.—That to say there is any act they *cannot* do,—to speak of any thing of their's as being *illegal,*—as being *void;*—to speak of their exceeding their *authority* (whatever be the phrase)—their *power,* their *right,*—is, however common, an abuse of language.

[*xxvii.*] The legislature *can*not do it? The legislature *can*not make a law to this effect? Why cannot? What is there that should hinder them? Why not this, as well as so many other laws murmured at, perhaps, as inexpedient, yet submitted to without any question of the *right?*

[*xxviii.*] Grant even the proposition in general:—What are we the nearer? Grant that there *are* things which the legislature *can*not do;—grant that there *are* laws which exceed the *power* of the legislature to establish. What rule does this sort of discourse furnish us for determining whether any one that is in question is, or is not of the number? As far as I can discover, none. Either the discourse goes on in the confusion it began; either all rests in vague assertions and no intelligible argument at all is offered; or if any, such arguments as are drawn from the

principle of *utility:* arguments which, in whatever variety of words expressed, come at last to neither more nor less than this: that the tendency of the law is, to a greater or a less degree, pernicious. If this then be the result of the argument, why not come home to it at once? Why turn aside into a wilderness of sophistry, when the path of plain reason is straight before us?

[*xxix.*] What practical inferences those who maintain this language mean should be deduced from it, is not altogether clear; nor, perhaps, does every one mean the same. Some who speak of a law as being *void* would persuade us to look upon the authors of it as having *forfeited,* as the phrase is, their *whole* power: as well that of giving force to the particular law in question, as to any other. These are they who, had they arrived at the same practical conclusion through the principle of utility, would have spoken of the law as being to such a degree pernicious, as that, were the bulk of the community to see it in its true light, *the probable mischief of resisting it would be less than the probable mischief of submitting to it.* These point, in the first instance, at *hostile* opposition.

[*xxx.*] Those who say nothing about forfeiture are commonly less violent in their views. These are they who, were they to use our language, would have spoken of the law as being mischievous indeed, but without speaking of it as being mischievous to the degree that has been just mentioned. The mode of opposition which they point to is one which passes under the appellation of a *legal* one.

[*xxxi.*] Admit then the law to be void in their sense, and mark the consequences. The idea annexed to the epithet *void* is obtained from those instances in which we see it applied to a private instrument. The consequence of a *private* instrument's being void is, that all persons concerned are to act as if no such instrument had existed. The consequence, accordingly, of a *law's* being void must be, that people shall act as if there were no such law about the matter: and therefore that if any person in virtue of the mandate of the law should do any thing in coercion of another person, which without such law he would be punishable for doing, he would still be punishable. To whose office does it appertain to do those acts in virtue of which such punishment would be inflicted? To that of the Judges. Applied to practice then, the effect of this language is, by an appeal made to the Judges, to confer on those magistrates a controlling power over the acts of the legislature.

[*xxxii.*] By this management a *particular* purpose might perhaps, by chance be answered: and let this be supposed a good one. Still what benefit would, from the *general* tendency of such a doctrine, and such a practice in conformity to it, accrue to the body of the people is more than I can conceive. A Parliament, let it be supposed, is too much under the influence of the Crown: pays too little regard to the sentiments and the interests of the people. Be it so. The people at any rate, if not so great a share as they might and ought to have, have had, at least, *some* share in choosing it. Give to the Judges a power of annulling its acts; and you transfer a portion of the supreme power from an assembly which the people have had *some* share, at least, in choosing, to a set of men in the choice of whom they have not the least imaginable share: to a set of men appointed solely by the Crown: appointed *solely*, and avowedly and *constantly*, by that very magistrate whose partial and occasional influence is the very grievance you seek to remedy.

[*xxxiii.*] In the heat of debate, some, perhaps, would be for saying of this management that it was transferring at once the supreme authority from the legislative power to the judicial. But this would be going too far on the other side. There is a wide difference between a *positive* and a *negative* part in legislation. There is a wide difference again between a negative upon *reasons* given, and a negative without any. The power of *repealing* a law even for reasons given is a great power: too great indeed for Judges: but still very distinguishable from, and much inferior to that of *making* one.[7]

[*xxxiv.*] In denying the existence of any assignable bounds to the supreme power, I added, "unless where limited by express convention:" for this exception I could not but subjoin. Our Author indeed, in that passage in which, short as it is, he is the most explicit, leaves, we may observe, no room for it. "However they began," says he (speaking of the several forms of govern-

[7] Notwithstanding what has been said, it would be in vain to dissemble, but that, upon occasion, an appeal of this sort may very well answer, and has, indeed, in general, a tendency to answer, the purposes of those who espouse, or profess to espouse, the interests of the people. A public and authorised debate on the propriety of the law is by this means brought on. The artillery of the tongue is played off against the law, under cover of the law itself. An opportunity is gained of impressing sentiments unfavourable to it, upon a numerous and attentive audience. As to any other effects from such an appeal, let us believe that in the instances in which we have seen it made, it is the certainty of miscarriage that has been the encouragement to the attempt.

ment) "however they began, and by what right soever they subsist, there is and must be in ALL of them an authority that is absolute."—To say this, however, of *all* governments without exception;—to say that *no* assemblage of men can subsist in a state of government, without being subject to some *one* body whose authority stands unlimited so much as by convention; to say, in short, that not even by convention can any limitation be made to the power of that body in a state which in other respects is supreme, would be saying, I take it, rather too much: it would be saying that there is no such thing as government in the German Empire; nor in the Dutch Provinces; nor in the Swiss Cantons; nor was of old in the Achaean league.

[*xxxv.*] In this mode of limitation I see not what there is that need surprise us. By what is it that any degree of *power* (meaning *political power*) is established? It is neither more nor less, as we have already had occasion to observe, than a habit of, and disposition to obedience: *habit*, speaking with respect to *past* acts; *disposition*, with respect to *future*. This disposition it is as easy, or I am much mistaken, to conceive as being absent with regard to one sort of acts; as present with regard to other. For a body then, which is in other respects supreme, to be conceived as being with respect to a certain sort of acts, limited, all that is necessary is, that this sort of acts be in its description distinguishable from every other.

[*xxxvi.*] By means of a convention then we are furnished with that common signal, which, in other cases, we despaired of finding. A certain act is in the instrument of the convention specified, with respect to which the government is therein precluded from issuing a law to a certain effect. The issuing then of such a law (the sense of it, and likewise the sense of that part of the convention which provides against it being supposed clear) is a fact notorious and visible to all: in the issuing then of such a law we have a fact which is *capable* of being taken for that common signal we have been speaking of. These bounds the supreme body in question has marked out to its authority: of such a demarcation then what is the effect? either none at all, or this: that the disposition to obedience confines itself within these bounds. Beyond them the subject is no more prepared to obey the governing body of his own state, than that of any other. What difficulty, I say, there should be in conceiving a state of things to subsist in which the

supreme authority is thus limited—what greater difficulty in conceiving it with this limitation, than without any, I cannot see. The two states are, I must confess, to me alike conceivable: whether alike expedient,—alike conducive to the happiness of the people, is another question.

[*xxxvii.*] God forbid, that from anything here said it should be concluded that in any society any convention is or can be made, which shall have the effect of setting up an insuperable bar to that which the parties affected shall deem a reformation:—God forbid that any disease in the constitution of a state should be without its remedy. Such might by some be thought to be the case, where that supreme body which in such a convention, was one of the contracting parties, having incorporated itself with that which was the other, no longer subsists to give any new modification to the engagement. Many ways might however be found to make the requisite alteration, without any departure from the spirit of the engagement.[8]

V. The Duty of the Supreme Power to Make Laws

[*Ch. V, ii.*] Thus far as to the *right* of the supreme power to make laws; but farther, it is its *duty* likewise. *For since* the respective members are bound to conform themselves to the will of the state, it is expedient that they *receive directions* from the state declaratory of that its will.

[*iv.*] By this "*right*" we saw was meant, a right to make laws *in all cases whatsoever*. "But further," he now adds, "it is its *duty* likewise." Its *duty* then to do—what? to do the same thing that it was before asserted to be its *right* to do—to make laws in all cases whatsoever: or (to use another word, and that our Author's

[8] In Great Britain, for instance, suppose it were deemed necessary to make an alteration in the Act of Union. If in an article stipulated in favour of England, there need be no difficulty, so that there were a majority for the alteration among the English members, without reckoning the Scotch. The only difficulty would be with respect to an article stipulated in favour of Scotland; on account, to wit, of the small number of the Scotch members, in comparison with the English. In such a case, it would be highly expedient, to say no more, for the sake of preserving the public faith, and to avoid irritating the body of the nation, to take some method for making the establishment of the new law, depend upon their sentiments. One such method might be as follows. Let the new law in question be enacted in the common form. But let its commencement be deferred to a distant period, suppose a year or two: let it then, at the end of that period, be in force, unless petitioned against, by persons of such a description, and in such a number as might be supposed fairly to represent the sentiments of the people in general: persons, for instance, of the description of those who at the time of the Union constituted the body of electors. I offer this only as a general idea: and as one amongst many that perhaps might be offered in the same view. It will not be expected that I should here answer objections, or enter into details.

own, and that applied to the same purpose) that it is its duty to be "*absolute.*" A sort of duty this which will probably be thought rather a singular one.

[*v.*] Mean time the observation which, if I conjecture right, he really had in view to make, is one which seems very just indeed, and of no mean importance, but which is very obscurely expressed, and not very obviously connected with the purport of what goes before. The duty he here means is a duty, which respects, I take it, not so much the actual *making* of laws, as the taking of proper measures to *spread abroad* the knowledge of whatever laws happen to *have been* made: a duty which (to adopt some of our Author's own words) is conversant, not so much about *issuing* "directions," as about providing that such as *are* issued shall be "*received.*"

[*vi.*] Mean time to speak of the *duties* of a supreme power;—of a *legislature*, meaning a *supreme* legislature;—is what, I must own, I am not very fond of. Not that I would wish the subordinate part of the community to be a whit less watchful over their governors, or more disposed to unlimited submission in point of *conduct*, than if I were to talk with ever so much peremptoriness of the "*duties*" of these latter, and of the *rights* which the former have against them: what I am afraid of is, running into solecism and confusion in *discourse.*

[*vii.*] I understand, I think, pretty well, what is meant by the word *duty* (political duty) when applied to myself; and I could not persuade myself, I think, to apply it in the same sense in a regular didactic discourse to those whom I am speaking of as my supreme governors. That is my *duty* to do, which I am liable to be *punished*, accordingly to law, if I do not do: this is the original, ordinary, and proper sense of the word *duty.* Have these supreme governors any such duty? No: for if they are at all liable to punishment according to law, whether it be for *not* doing any thing, or for *doing*, then are they not, what they are supposed to be, supreme governors: those are the supreme governors, by whose appointment the former are liable to be punished.

[*viii.*] The word duty, then, if applied to persons spoken of as supreme governors, is evidently applied to them in a sense which is figurative and improper: nor therefore are the same conclusions to be drawn from any propositions in which it is used in this sense, as might be drawn from them if it were used in the other sense, which is its proper one.

[*xi.*] Not that the passage however is absolutely so remote from meaning, but that the inventive complaisance of a commentator of the admiring breed might find it pregnant with a good deal of useful matter. The design of disseminating the knowledge of the laws is glanced at by it at least, with a show of approbation. Were our Author's writings then as sacred as they are mysterious; and were they in the number of those which stamp the seal of authority on whatever doctrines can be fastened on them; what we have read might serve as a text, from which the obligation of adopting as many measures as a man should deem subservient to that design, might, without any unexampled violence, be deduced. In this oracular passage I might find inculcated as many points of legislative duty as should seem subservient to the purposes of *digestion* and *promulgation*. Thus fortified, I might press upon the legislature, and that on the score of "*duty*," to carry into execution, and that without delay, many a busy project as yet either unthought of or unheeded. I might call them with a tone of authority to their work: I might bid them go make provision forthwith for the bringing to light such scattered materials as can be found of the judicial decisions of time past,—sole and neglected materials of common law;—for the registering and publishing of all future ones as they arise;—for transforming, by a digest, the body of the common law thus completed, into statute-law;—for breaking down the whole together into *codes* or parcels, as many as there are classes of persons distinguishably concerned in it;—for introducing to the notice and possession of every person his respective code:—works which public necessity cries aloud for, at which professional interest shudders, and at which legislative indolence stands aghast.

[*xii.*] All these leading points, I say, of legislative economy, with as many points of detail subservient to each as a meditation not unassiduous has suggested, I might enforce, were it necessary, by our Author's oracular authority. For nothing less than what has been mentioned, I trust, is necessary, in order that every man may be made to know, in the degree in which he *might* and *ought* to be made to know, what (in our Author's words)

> to look upon as his own, what as another's; what absolute and what relative duties are required at his hands; what is to be esteemed honest, dishonest, or indifferent; what degree every man retains of his natural liberty; what he has given up as the price of the benefits of society; and

after what manner each person is to moderate the use and exercise of those rights which the state assigns him, in order to promote and secure the public tranquillity.

In taking my leave of our Author, I finish gladly with this pleasing peroration: a scrutinizing judgment, perhaps, would not be altogether satisfied with it; but the ear is soothed by it, and the heart is warmed.

II. THE AUSTINIAN THEORY OF SOVEREIGNTY

Lectures on Jurisprudence (1832)

John Austin (1790–1859)

The utilitarian philosophy furnished both a method of analysis and a norm of criticism. In most fields of application the second aspect was the more prominent, and utilitarianism was felt as a pressure for the radical alteration of established institutions. In jurisprudence, however, the Benthamites are remembered primarily for their analytical approach, and the Austinian theory of sovereignty is frequently regarded as a deification of the powers that be.

Bentham himself examined the nature of political authority in his *Fragment on Government*, but it was John Austin who systematically analyzed the concept of law and elaborated the utilitarian theory of sovereignty. Appointed to teach jurisprudence upon the establishment of the University of London in 1826, Austin prepared himself by studying in Germany and then lectured from 1828 to 1832 to classes that included such distinguished members as John Stuart Mill and Samuel Romilly. The opening lectures of this course were published in 1832 as *The Province of Jurisprudence Determined*. The book attracted little attention at the time, but after Austin's death it was republished by his widow, together with supplementary lecture notes, under the title of *Lectures on Jurisprudence* (1863). By this time English interest in jurisprudence had been notably revived, especially by Maine's *Ancient Law* (1861)—readings from which will be found in the following chapter—and the significance of Austin's work was at last recognized.

Austin knew no success in his lifetime. He entered the army but left it to study law and then gave up his practice after a few years at the Bar. His lectures at the University of London had to be discontinued because the students' fees furnished insufficient compensation. His work as Royal Commissioner of Malta was abruptly terminated before he had time to revise the judicial and legal system of the island. The conservative opposition to popular legislation expressed in his very latest work, *A Plea for the Constitution* (1859), presents a striking contrast to both the democracy and the optimism of the usual utilitarian creed.

The readings here given follow the text and the paragraph numbering of the selected chapters from *Lectures on Jurisprudence* edited by W. Jethro

Brown and entitled *The Austinian Theory of Law* (John Murray, London, 1906), and are reprinted by permission of John Murray. In a number of instances the order of paragraphs has been altered by the present editor.

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LECTURES ON JURISPRUDENCE

I. The Definition of Law

[*1.*] The matter of jurisprudence is positive law: law, simply and strictly so called: or law set by political superiors to political inferiors. But positive law is often confounded with objects to which it is related by resemblance, and with objects to which it is related in the way of analogy: with objects which are also signified, properly and improperly, by the large and vague expression law.

[*2.*] A law, in the most general and comprehensive acceptation in which the term, in its literal meaning, is employed, may be said to be a *rule laid down for the guidance of an intelligent being by an intelligent being having power over him.* In this the largest meaning which it has, without extension by metaphor or analogy, the term law embraces the following objects:—Laws set by God to his human creatures, and laws set by men to men.

[*3.*] The whole or a portion of the laws set by God to men is frequently styled the law of nature, or natural law: being, in truth, the only natural law of which it is possible to speak without a metaphor, or without a blending of objects which ought to be distinguished. But, rejecting the appellation Law of Nature as ambiguous and misleading, I name those laws or rules, the *Divine law*, or the *law of God.*

[*4.*] Laws set by men to men are of two leading or principal classes. Some are established by *political* superiors. To the rules thus established the term law, as used simply and strictly, is exclusively applied. But, as contradistinguished to natural law, the aggregate of the rules, established by political superiors, is frequently styled positive law, or law existing *by position.*

[*5.*] Though some of the laws or rules, which are set by men to men, are established by political superiors, others are not established by political superiors, or are not established by political superiors in that capacity or character.

[*150.*] Since no supreme government is in a state of subjection to another, an imperative law set by a sovereign to a sovereign is not set by its author in the character of political superior. Consequently, an imperative law set by a sovereign to a sovereign is not a positive law. But being imperative, it amounts to a law in the proper signification of the term.

[*6.*] Closely analogous to human laws of this second class, are a set of objects frequently but improperly termed laws, being rules set and enforced by *mere opinion,* that is, by the opinions or sentiments held or felt by an indeterminate body of men in regard to human conduct. Instances of such a use of the term *law* are the expressions—"The law of honour"; "The law set by fashion"; and rules of this species constitute much of what is usually termed "International law."

[*7.*] The aggregate of human laws properly so called belonging to the second of the classes above mentioned, with the aggregate of objects improperly but by close analogy termed laws, I place together in a common class, and denote them by the term *positive morality.*

[*8.*] Besides the various sorts of rules which are included in the literal acceptation of the term law, and those which are by a close and striking analogy, though, improperly, termed laws, there are numerous applications of the term law, which rest upon a slender analogy and are merely metaphorical or figurative. Such is the case when we talk of laws observed by the lower animals; of laws regulating the growth or decay of vegetables; of laws determining the movements of inanimate bodies or masses. For where intelligence is not, or where it is too bounded to conceive the purpose of a law, there is not the will which law can work on, or which duty can incite or restrain.

[*9.*] I shall now state the essentials of a *law* or *rule* (taken with the largest signification which can be given to the term *properly*).

[*10.*] Every *law* or *rule* is a *command.* Or, rather, laws or rules are a species of commands.

[*12.*] *If you express or intimate a wish that I shall do or forbear from some act, and if you will visit me with an evil in case I comply not with your wish, the expression or intimation of your wish is a command.* A command is distinguished from other significations of desire, not by the style in which the desire is signified, but by the power and the purpose of the party commanding to inflict an evil or pain in case the desire be disregarded. If you cannot or will not harm me in case I comply not with your wish, the expression of your wish is not a command, although you utter your wish in imperative phrase. If you are able and willing to harm me in case I comply not with your wish, the expression of your wish amounts to a command, although you are prompted by a spirit of courtesy to utter it in the shape of a request.

[*15.*] Being liable to evil from you if I comply not with a wish which you signify, I am *bound* or *obliged* by your command, or I lie under a *duty* to obey it. If, in spite of that evil in prospect, I comply not with the wish which you signify, I am said to disobey your command, or to violate the duty which it imposes.

[*17.*] The evil which will probably be incurred in case a command be disobeyed, is frequently called a *sanction*, or an *enforcement of obedience.* Or (varying the phrase) the command or the duty is said to be *sanctioned* or *enforced* by the chance of incurring the evil.

[*21.*] By some celebrated writers (by Locke, Bentham, and, I think, Paley), the term sanction is applied to conditional good as well as to conditional evil: to reward as well as to punishment. But, with all my habitual veneration for the names of Locke and Bentham, I think that this extension of the term is pregnant with confusion and perplexity.

[*23.*] If you expressed a desire that I should render a service, and if you proffered a reward as the motive or inducement to render it, you would scarcely be said to command the service, nor should I, in ordinary language, be obliged to render it.

[*34.*] Commands are of two species. Some are *laws* or *rules.* The others have not acquired an appropriate name. I must, therefore, note them as well as I can by the ambiguous and inexpressive name of "*occasional* or *particular* commands."

[*36.*] By every command, the party to whom it is directed is obliged to do or to forbear.

[*37.*] Now where it obliges *generally* to acts or forbearances of a *class*, a command is a law or rule. But where it obliges to a *specific* act or forbearance, a command is occasional or particular.

[*42.*] If Parliament prohibited simply the exportation of corn, either for a given period or indefinitely, it would establish a law or rule. But an order issued by Parliament to meet an impending scarcity, and stopping the exportation of corn *then shipped and in port*, would not be a law or rule, though issued by the sovereign legislature.

[*60.*] In language more popular but less distinct and precise, a law is a command which obliges a person or persons to a *course* of conduct.

[*61.*] Law and other commands are said to proceed from *superiors*, and to bind or oblige *inferiors*. I will, therefore, analyse the meaning of those correlative expressions; and will try to strip them of a certain mystery, by which that simple meaning appears to be obscured.

[*62.*] *Superiority* is often synonymous with precedence or excellence. We talk of superiors in rank; of superiors in wealth; of superiors in virtue: comparing certain persons with certain other persons; and meaning that the former precede or excel the latter in rank, in wealth, or in virtue.

[*63.*] But, taken with the meaning wherein I here understand it, the term *superiority* signifies might: the power of affecting others with evil or pain, and of forcing them, through fear of that evil, to fashion their conduct to one's wishes.

[*66.*] In short, whoever can oblige another to comply with his wishes, is the superior of that other, so far as the ability reaches: the party who is obnoxious to the impending evil, being, to that same extent, the inferior.

[*70.*] It appears, then, that the term *superiority* (like the terms *duty* and *sanction*) is implied by the term *command*. For superiority is the power of enforcing compliance with a wish: and the expression or intimation of a wish, with the power and the purpose of enforcing it, are the constituent elements of a command.

[*71.*] "That laws emanate from superiors" is, therefore, an identical proposition.

[*87.*] There are certain laws (properly so called) which may

seem not imperative. Accordingly, I will subjoin a few remarks upon laws of this dubious character.

[*88.*] There are laws, it may be said, which merely create rights. And, seeing that every command imposes a duty, laws of this nature are not imperative.

[*89.*] But there are no laws merely creating rights. There are laws, it is true, which merely create duties. But every law, really conferring a right, imposes expressly or tacitly a duty correlating with the right. If it specify the remedy to be given, in case the right shall be infringed, it imposes the relative duty expressly. If the remedy to be given is not specified, it refers tacitly to pre-existing law, and clothes the right which it purports to create with a remedy provided by that law. Every law, really conferring a right, is, therefore, imperative: as imperative, as if its only purpose were the creation of a duty.

[*90.*] According to an opinion which I must notice here, *customary laws* must be excepted from the proposition "that laws are a species of commands."

[*91.*] By many of the admirers of customary laws (and, especially, of their German admirers), they are thought to oblige legally (independently of the sovereign or state), because the citizens or subjects have observed or kept them. Agreeably to this opinion, they are not the creatures of the sovereign or state, although the sovereign or state may abolish them at pleasure. Agreeably to this opinion, they are positive law, inasmuch as they are enforced by the courts of justice: But, notwithstanding, they exist *as positive law* by the spontaneous adoption of the governed, and not by establishment on the part of political superiors. Consequently, customary laws are not commands.

[*92.*] An opinion less mysterious, but somewhat allied to this, is not uncommonly held by the adverse party: by the party which is strongly opposed to customary law. According to the latter opinion, all judge-made law is purely the creature of the judges by whom it is established immediately. To impute it to the sovereign legislature, or to suppose that it speaks the will of the sovereign legislature, is one of the foolish or knavish fictions with which lawyers, in every age and nation, have perplexed and darkened the simplest and clearest truths.

[*93.*] I think it will appear, on a moment's reflection, that each of these opinions is groundless: that customary law is imperative,

in the proper signification of the term: and that all judge-made law is the creature of the sovereign or state.

[*94.*] At its origin, a custom is a rule of conduct which the governed observe spontaneously, or not in pursuance of a law set by a political superior. The custom is transmuted into positive law, when it is adopted as such by the courts of justice, and when the judicial decisions fashioned upon it are enforced by the power of the state. But before it is adopted by the courts, and clothed with the legal sanction, it is merely a rule of positive morality: a rule generally observed by the citizens or subjects; but deriving the only force, which it can be said to possess, from the general disapprobation falling on those who transgress it.

[*95.*] Now when judges transmute a custom into a legal rule (or make a legal rule not suggested by a custom), the legal rule which they establish is established by the sovereign legislature. A subordinate or subject judge is merely a minister. The rules which he makes derive their legal force from authority given by the state. For, since the state may reverse the rules which he makes, and yet permits him to enforce them by the power of the political community, its sovereign will "that his rules shall obtain as law" is clearly evinced by its conduct.

[*96.*] The admirers of customary law love to trick out their idol with mysterious and imposing attributes. But to those who can see the difference between positive law and morality, there is nothing of mystery about it. Considered as rules of positive morality, customary laws arise from the consent of the governed. But, considered as moral rules turned into positive laws, customary laws are established by the state: established by the state directly, when the customs are promulgated in its statutes; established by the state circuitously, when the customs are adopted by its tribunals.

II. The Definition of Sovereignty

[*219.*] The essential difference of a positive law (or the difference that severs it from a law which is not a positive law) may be stated thus. Every positive law is set by a sovereign person, or a sovereign body of persons, to a member or members of the independent political society wherein that person or body is sovereign or supreme.

[*221.*] The notions of sovereignty and independent political society may be expressed concisely thus.—If a determinate human

superior, not in a habit of obedience to a like superior, receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent.

[*223.*] The party truly independent is not the society, but the sovereign portion of the society. By "an independent political society," or "an independent and sovereign nation," we mean a political society consisting of a sovereign and subjects, as opposed to a political society which is merely subordinate: that is to say, which is merely a limb or member of another political society, and which therefore consists entirely of persons in a state of subjection.

[*225.*] In order that a given society may form a society political, the generality or bulk of its members must be in a *habit* of obedience to a determinate and common superior.

[*226.*] In case the generality of its members obey a determinate superior, but obedience be rare or transient and not habitual or permanent, the relation of sovereignty and subjection is not created thereby between that certain superior and the members of that given society.

[*227.*] For example: In 1815 the allied armies occupied France; and so long as the allied armies occupied France, the commands of the allied sovereigns were obeyed by the French government, and, through the French government, by the French people generally. But since the commands and the obedience were comparatively rare and transient, they were not sufficient to constitute the relation of sovereignty and subjection between the allied sovereigns and the members of the invaded nation. In spite of those commands, and in spite of that obedience, the French government was sovereign or independent.

[*229.*] In order that a given society may form a society political, habitual obedience must be rendered, by the *generality* or *bulk* of its members, to a determinate and *common* superior.

[*230.*] For example: In case a given society be torn by intestine war, and in case the conflicting parties be nearly balanced, the given society is in one of two positions. If the bulk of each of the parties be in a habit of obedience to its head, the given society is broken into two or more societies, which, perhaps, may be styled independent political societies.—If the bulk of each of the parties be not in that habit of obedience, the given society is simply or absolutely in a state of nature or anarchy.

[*231.*] In order that a given society may form a society political, the generality or bulk of its members must habitually obey a superior *determinate* as well as common.

[*163.*] If a body of persons be determinate, *all* the persons who compose it are determined and assignable.

[*165.*] If a body be indeterminate, *all* the persons who compose it are not determined or assignable. For an indeterminate body consists of *some* of the persons who belong to another and larger aggregate. But how many of those persons are members of the indeterminate body, is not and cannot be known completely and exactly.

[*168.*] Where a so-called law is set by general opinion, most of the persons who belong to a determinate body or class opine or feel alike in regard to a kind of conduct. For example, a law set or imposed by the general opinion of a nation, by the general opinion of a legislative assembly, by the general opinion of a profession, or by the general opinion of a club, is an opinion or sentiment, relating to conduct of a kind, which is held or felt by most of those who belong to that certain body. But how many of that body, or which of that body in particular, hold or feel that given opinion or sentiment, is not and cannot be known completely and correctly.

[*169.*] A determinate body of persons is capable of *corporate* conduct. Every person who belongs to it is determined and may be indicated. Consequently, the entire body, or any proportion of its members, is capable, *as a body*, of positive or negative conduct: As, for example, of meeting at determinate times and places; of issuing expressly or tacitly a law or other command; of choosing and deputing representatives to perform its intentions or wishes; of receiving obedience from others, or from any of its own members.

[*170.*] An indeterminate body is incapable of corporate conduct, inasmuch as the several persons of whom it consists cannot be known and indicated completely and correctly. In case a portion of its members act or forbear in concert, that given portion of its members is, by that very concert, a determinate or certain body.

[*172.*] It follows that the one or the number which is sovereign in an independent political society is a determinate individual person or a determinate body of persons. If the sovereign one or number were not determinate or certain, it could not command

expressly or tacitly, and could not be an object of obedience to the subject members of the community.

[*235.*] A natural society, or a society in a state of nature, is composed of persons who are connected by mutual intercourse, but are not members of any society political. None of the persons who compose it lives in the positive state which is styled a state of subjection: or all the persons who compose it live in the negative state which is styled a state of independence.

[*236.*] Considered as entire communities, and considered in respect of one another, independent political societies live, it is commonly said, in a state of nature. The expression, however, is not perfectly apposite. Speaking strictly, the sovereign and subject members of each of the related societies form a society political: but the sovereign portion of each of the related societies lives in the negative condition which is styled a state of independence.

[*238.*] And hence it inevitably follows, that the law obtaining between nations is not positive law: for every positive law is set by a given sovereign to a person or persons in a state of subjection to its author. As I have already intimated, the law obtaining between nations is law (improperly so called) set by general opinion. The duties which it imposes are enforced by moral sanctions: by fear on the part of nations, or by fear on the part of sovereigns, of provoking general hostility, and incurring its probable evils, in case they shall violate maxims generally received and respected.

[*254.*] In order that an independent society may form a society political, it must not fall short of a *number* which cannot be fixed with precision, but which may be called considerable, or not extremely minute. A given independent society, whose number may be called inconsiderable, is commonly esteemed a natural, and not a political society, although the generality of its members be habitually obedient or submissive to a certain and common superior.

[*255.*] Let us suppose, for example, that a single family of savages lives in absolute estrangement from every other community. And let us suppose that the father, the chief of this insulated family, receives habitual obedience from the mother and children.—Now, since it is not a limb of another and larger community, the society formed by the parents and children is clearly an independent society. And, since the rest of its members habitually obey its

chief, this independent society would form a society political, in case the number of its members were not extremely minute. But, since the number of its members is extremely minute, it would (I believe) be esteemed a society in a state of nature: that is to say, a society consisting of persons not in a state of subjection. "La puissance politique" (says Montesquieu) "comprend nécessairement l'union de plusieurs familles."

III. Forms of Government

[*267.*] An independent political society is divisible into two portions: namely, the portion of its members which is sovereign or supreme, and the portion of its members which is merely subject. The sovereignty can hardly reside in *all* the members of a society: for it can hardly happen that some of those members shall not be naturally incompetent to exercise sovereign powers. In most actual societies, the sovereign powers are engrossed by a single member of the whole, or are shared exclusively by a very few of its members: and even in the actual societies whose governments are esteemed popular, the sovereign number is a slender portion of the entire political community. An independent political society governed by itself, or governed by a sovereign body consisting of the whole community, is not impossible; but the existence of such societies is so extremely improbable, that, with this passing notice, I throw them out of my account.

[*268.*] Every society political and independent is therefore divisible into two portions: namely, the portion of its members which is sovereign or supreme, and the portion of its members which is merely subject. In case that sovereign portion consists of a single member, the supreme government is properly a *monarchy*, or the sovereign is properly a *monarch*. In case that sovereign portion consists of a number of members, the supreme government may be styled an *aristocracy*.

[*269.*] In every monarchy, the monarch renders habitual deference to the opinions and sentiments held and felt by his subjects. But in almost every monarchy, he defers especially to the opinions and sentiments, or he consults especially the interests and prejudices, of some especially influential though narrow portion of the community. Hence it has been concluded, that there are no monarchies properly so called: that every supreme government is a government of a number. This, though plausible, is an error. If he

habitually obeyed the *commands* of a determinate portion of the community, either the sovereignty would reside in the miscalled monarch, with that determinate body of his miscalled subjects: or the sovereignty would reside exclusively in that determinate body, whilst he would be merely a minister of the supreme government. But habitual deference to opinions of the community, or to opinions of a portion of the community, consists with that independence which is one of the essentials of sovereignty. If it did not, none of the governments deemed supreme would be truly sovereign; for habitual deference to opinions of the community, or habitual and especial deference to opinions of a portion of the community, is rendered by every aristocracy, or by every government of a number, as well as by every monarch. The habitual independence which is one of the essentials of sovereignty, is merely habitual independence of laws imperative and proper. By laws which opinion imposes, every member of every society is habitually determined.

[*274.*] In all or most of the governments which are styled limited monarchies, a single individual shares the sovereign powers with an aggregate or aggregates of individuals: the share of that single individual, be it greater or less, surpassing or exceeding the share of any of the other individuals who are also constituent members of the supreme and heterogeneous body. Unlike a monarch in the proper acceptation of the term, that single individual is not a sovereign, but is one of a sovereign number, and lives in a state of subjection.

[*275.*] Limited monarchy, therefore, is not monarchy. It is one or another of those infinite forms of aristocracy which result from the infinite modes wherein the sovereign number may share the sovereign powers.

[*279.*] In many societies, many of the sovereign powers are exercised by the sovereign directly. This is the case even in some of the societies whose supreme governments are popular. For example: In all or most of the democracies of ancient Greece and Italy, the sovereign people or number, formally assembled, exercised directly many of its sovereign powers. And in some of the Swiss Cantons whose supreme governments are popular, the sovereign portion of the citizens, regularly convened, performs directly much of the business of government.

[*280.*] But in many of the societies whose supreme governments

are popular, the sovereign body (or any numerous body forming a component part of it) exercises through representatives, whom it elects and appoints, the whole, or nearly the whole, of its sovereign powers. In our own country, for example, one component part of the sovereign body is the numerous body of *the commons*, who share the sovereignty with the king and the peers, and elect the members of the commons' house. Now the commons exercise through representatives the whole of their sovereign powers, except their sovereign power of electing and appointing representatives to represent them in the British Parliament.

[*281.*] Where a sovereign body (or any smaller body forming a component part of it) exercises through representatives the whole of its sovereign powers, it may delegate its powers to its representatives, in either of two modes. 1. It may delegate its powers to its representatives, subject to a trust or trusts. 2. It may delegate its powers to its representatives, absolutely or unconditionally: insomuch that the representative body, during the period for which it is elected and appointed, is invested completely with the sovereign character of the latter.

[*282.*] For example: The commons delegate their powers to the members of the commons' house, in the second of the above-mentioned modes. During the period for which those members are elected, or during the parliament of which those members are a limb, the sovereignty is possessed by the king and the peers, with the members of the commons' house, and not by the king and the peers, with the delegating body of the commons. The powers of the commons are delegated so absolutely to the members of the commons' house, that this representative assembly might concur with the king and the peers in defeating the principal ends for which it is elected and appointed. It might concur, for instance, in making a statute which would lengthen its own duration from seven to twenty years; or which would annihilate completely the actual constitution of the government, by transferring the sovereignty to the king or the peers from the tripartite body wherein it resides at present.

[*283.*] But though the commons delegate their powers in the second of the above-mentioned modes, it is clear that they might delegate them subject to a trust or trusts. The representative body, for instance, might be bound to use those powers consistently with specific ends pointed out by the electoral: or it might be

bound, more generally and vaguely, not to annihilate, or alter essentially, the actual constitution of the supreme government. Where such a trust is imposed, the trust is enforced by legal, or by merely moral sanctions. The representative body is bound by a positive law or laws: or it is merely bound by a fear that it may offend the bulk of the community, in case it shall break the engagement which it has contracted with the electoral.

[*284.*] And here I may briefly remark, that this last is the position which really is occupied by the members of the commons' house. Adopting the language of most of the writers who have treated of the British Constitution, I commonly suppose that the king and the lords, with the members of the commons' house, form a tripartite body which is sovereign or supreme. But, speaking accurately, the members of the commons' house are merely trustees for the body by which they are elected or appointed: and, consequently, the sovereignty always resides in the king and the peers, with the electoral body of the commons. It were absurd to suppose that the delegating empowers the representative party to defeat or abandon any of the purposes for which the latter is appointed: to suppose, for example, that the commons empower their representatives in parliament to relinquish their share in the sovereignty to the king and the lords.—The supposition that the powers of the commons are delegated absolutely to the members of the commons' house probably arose from the following causes. 1. The trust imposed by the electoral body upon the body representing them in parliament, is tacit rather than express. The representatives are merely bound, generally and vaguely, to abstain from any such exercise of the delegated sovereign powers as would tend to defeat the purposes for which they are elected and appointed. 2. The trust is simply enforced by moral sanctions. In other words, that portion of constitutional law which regards the duties of the representative towards the electoral body, is positive morality merely.

[*295.*] It frequently happens that one government political and sovereign arises from a federal union of several political governments. By some of the writers on positive international law, the sovereign government of such a society is styled a *composite state.* But it might be styled more aptly a *supreme federal government.*

[*296.*] It also frequently happens, that several political societies which are severally independent are compacted by a permanent

alliance. By some of the writers on positive international law, the several societies or governments are styled *a system of confederated states.* But the several governments, considered as thus compacted, might be styled more aptly a *permanent confederacy of supreme governments.*

[*298.*] In the case of a *composite state,* or a *supreme federal government,* the several united governments of the several united societies, together with a government common to those several societies, are jointly sovereign in each of those several societies, and also in the larger society arising from the federal union. Or, since the political powers of the common or general government were relinquished and conferred upon it by those several united governments, the nature of a composite state may be described more accurately thus. As compacted by the common government which they have concurred in creating, and to which they have severally delegated portions of their several sovereignties, the several governments of the several united societies are jointly sovereign in each and all.

[*304.*] Consequently, the sovereignty of each of the united societies, and also of the larger society arising from the union of all, resides in the united governments *as forming one aggregate body:* that is to say, as signifying their joint pleasure, or the joint pleasure of a majority of their number, agreeably to the modes or forms determined by their federal compact. By that aggregate body, the powers of the general government were conferred and determined: and by that aggregate body, its powers may be revoked, abridged, or enlarged.—To that aggregate body, the several united governments, though not merely subordinate, are truly in a state of subjection.

[*302.*] To illustrate the nature of a composite state, I will add the following remark to the foregoing general description.—Neither the immediate tribunals of the common or general government, nor the immediate tribunals of the several united governments, are bound, or empowered, to administer or execute *every* command that the general government may issue. The political powers of the common or general government, are merely those portions of their several sovereignties, which the several united governments, as parties to the federal compact, have relinquished and conferred upon it. Consequently, its competence to make laws and to issue other commands, may and ought to be examined by its

own immediate tribunals, and also by the immediate tribunals of the several united governments. And if, in making a law or issuing a particular command, it exceed the limited powers which it derives from the federal compact, all those various tribunals are empowered and bound to disobey.—And since each of the united governments, as a party to the federal compact, has relinquished a portion of its sovereignty, its competence to make laws and issue other commands, may and ought to be examined by all those tribunals. And if it enact a law or issue a particular command, as exercising the sovereign powers which it has relinquished by the compact, all those tribunals are empowered and bound to disobey.

[*305.*] The supreme government of the United States of America, agrees (I believe) with the foregoing general description of a supreme federal government. I believe that the common government, or the government consisting of the congress and the president of the United States, is merely a subject minister of the United States' governments. I believe that none of the latter is properly sovereign or supreme, even in the state or political society of which it is the immediate chief. And, lastly, I believe that the sovereignty of each of the states, and also of the larger state arising from the federal union, resides in the states' governments *as forming one aggregate body:* meaning by a state's government, not its ordinary legislature, but the body of its citizens which appoints its ordinary legislature, and which, the union apart, is properly sovereign therein.

[*306.*] A *composite state,* and a *system of confederated states,* are broadly distinguished by the following essential difference. In the case of a composite state, the several united societies are one independent society, or are severally subject to one sovereign body: which, through its minister the general government, and through its members and ministers the several united governments, is habitually and generally obeyed in each of the united societies, and also in the larger society arising from the union of all. In the case of a system of confederated states, the several compacted societies are not one society, and are not subject to a common sovereign. Though the aggregate of the several governments was the framer of the federal compact, and may subsequently pass resolutions concerning the entire confederacy, neither the terms of that compact, nor such subsequent resolutions, are enforced in any of the societies by the authority of that aggregate body. To

each of the confederated governments, those terms and resolutions are merely articles of agreement which it spontaneously adopts: and they owe their legal effect, in its own political society, to laws and other commands which it makes or fashions upon them, and which, of its own authority, it addresses to its own subjects. In short, a system of confederated states is not essentially different from a number of independent governments connected by an ordinary alliance. So long as we abide in general expressions, we can only affirm generally and vaguely, that the compact of the former is intended to be permanent, whilst the alliance of the latter is commonly intended to be temporary: and that the ends or purposes which are embraced by the compact, are commonly more numerous, and are commonly more complicated, than those which the alliance contemplates.

[*307.*] I believe that the German Confederation, which has succeeded to the ancient Empire, is merely a system of confederated states. I believe that the present Diet is merely an assembly of ambassadors from several confederated but severally independent governments: that the resolutions of the Diet are merely articles of agreement which each of the confederated governments spontaneously adopts: and that they owe their legal effect, in each of the compacted communities, to laws and commands which are fashioned upon them by its own immediate chief.

IV. The Limits of Sovereign Power

[*310.*] Every positive law is set, directly or circuitously, by a sovereign person or body, to a member or members of the independent political society wherein that person or body is sovereign or supreme. It follows that the power of a monarch properly so called, or the power of a sovereign number in its collegiate and sovereign capacity, is incapable of *legal* limitation. Supreme power limited by positive law, is a flat contradiction in terms.

[*312.*] Monarchs and sovereign bodies have attempted to oblige themselves, or to oblige the successors to their sovereign powers. But in spite of such attempts the position that "sovereign power is incapable of legal limitation" will hold universally or without exception. The immediate author of a law of the kind, or any of the sovereign successors to that immediate author, may abrogate the law at pleasure. And though the law be not abrogated, the sovereign for the time being is not constrained to observe it by a

legal or political sanction. For if the sovereign for the time being were legally bound to observe it, that present sovereign would be in a state of subjection to a higher or superior sovereign. As it regards the successors to the sovereign or supreme powers, a law of the kind amounts, at the most, to a rule of positive morality. As it regards its immediate author, it is merely a law by a metaphor. For if we would speak with propriety, we cannot speak of a law set by a man to himself: though a man may adopt a principle as a guide to his conduct, and may observe it as he would observe it if he were bound to observe it by a sanction.

[*314.*] By the authors of the union between England and Scotland, an attempt was made to oblige the legislature, which, in consequence of that union, is sovereign in both countries. It is declared in the Articles and Acts, that the preservation of the Church of England, and of the Kirk of Scotland, is a fundamental condition of the union: or, in other words, that the Parliament of Great Britain shall not abolish those churches, or make an essential change in their structures or constitutions. Now, so long as the bulk of either nation shall regard its established church with love and respect, the abolition of the church by the British Parliament would be an immoral act; for it would violate positive morality which obtains with the bulk of the nation. But no man, talking with a meaning, would call a parliamentary abolition of either or both of the churches an illegal act. For if the parliament for the time being be sovereign in England and Scotland, it cannot be bound legally by that condition of the union which affects to confer immortality upon those ecclesiastical institutions. That condition of the union is not a positive law, but is counsel or advice offered by the authors of the union to future supreme legislatures.

[*316.*] In every independent political society, there are principles or maxims which the sovereign habitually observes, and which the bulk of the society, or the bulk of its influential members, regard with feelings of approbation. Not unfrequently, such maxims are expressly adopted by the sovereign or state. More commonly, they are not expressly adopted, but are simply imposed by opinions prevalent in the community. In either case the sovereign or state is bound to observe them by merely moral sanctions.

[*317.*] Now, if a law or other act of a monarch or sovereign number conflict with a maxim of the kind to which I have adverted above, the law or other act may be called unconstitutional (in

that more general meaning which is sometimes given to the epithet). For example: The *ex post facto* statutes which are styled acts of attainder, may be called unconstitutional, though they cannot be called illegal. For they conflict with a principle of legislation which parliament has habitually observed, and which is regarded with approbation by the bulk of the British community.

[*319.*] The epithet unconstitutional as applied to conduct of a sovereign, and as used with the meaning which is more special and definite, imports that the conduct in question conflicts with constitutional *law*. And by the expression *constitutional law*, I mean the positive morality, or the compound of positive morality and positive law, which fixes the constitution or structure of the given supreme government.

[*322.*] An act of the British parliament vesting the sovereignty in the king, or vesting the sovereignty in the king and the upper or lower house, would essentially alter the structure of our present supreme government, and might therefore be styled with propriety an unconstitutional law. In case the imagined statute were also generally pernicious, and in case it offended moreover the generality or bulk of the nation, it might be styled irreligious and immoral as well as unconstitutional. But to call it illegal were absurd: for if the parliament for the time being be sovereign in the united kingdom, it is the author, directly or circuitously, of all our positive law, and exclusively sets the measure of legal justice and injustice.

[*343.*] That the power of a sovereign is incapable of legal limitation has been doubted, and even denied. But the difficulty, like thousands of others, probably arose from a verbal ambiguity.—The foremost individual member of a so-called limited monarchy, is styled improperly *monarch* or *sovereign*. Now the power of a monarch or sovereign, thus improperly so styled, is not only capable of legal limitations, but is sometimes actually limited by positive law. But monarchs or sovereigns, thus improperly so styled, were confounded with monarchs, and other sovereigns, in the proper acceptation of the terms. And since the power of the former is capable of legal limitations, it was thought that the power of the latter might be bounded by similar restraints.

[*324.*] When I affirm that the power of a sovereign is incapable of legal limitation, I always mean by a "sovereign" a monarch properly so called, or a sovereign number in its collegiate and sovereign capacity. Considered collectively, or considered in its

corporate character, a sovereign number is sovereign and independent: but, considered severally, the individuals and smaller aggregates composing that sovereign number are subject to the supreme body of which they are component parts. Consequently, though the body is inevitably independent of legal or political duty, any of the individuals or aggregates whereof the body is composed may be legally bound by laws of which the body is the author. For example: A member of the house of lords or a member of the house of commons may be legally bound by an act of parliament, which, as one of the sovereign legislature, he has concurred with others in making.

[*334.*] But if sovereign or supreme power be incapable of legal limitation, wherein (it may be asked) doth political liberty consist, and how do the supreme governments which are commonly deemed free, differ from the supreme governments which are commonly deemed despotic?

[*335.*] I answer, that political or civil liberty is the liberty from legal obligation, which is left or granted by a sovereign government to any of its own subjects: and that, since the power of the government is incapable of legal limitation, the government is legally free to abridge their political liberty, at its own pleasure or discretion.

[*336.*] Political or civil liberty has been erected into an idol, and extolled with extravagant praises by doting and fanatical worshippers. But political or civil liberty is not more worthy of eulogy than political or legal restraint. The final cause or purpose for which government ought to exist, is the furtherance of the common weal to the greatest possible extent. In so far as it attains its appropriate purpose by conferring rights upon its subjects, government attains that purpose through the medium of political liberty. But since it must impose a duty wherever it confers a right, and should also impose duties which have no corresponding rights, it is less through the medium of political liberty, than through that of legal restraint, that government must attain the purpose for which it ought to exist. To say that political liberty ought to be its principal end, or to say that its principal end ought to be legal restraint, is to talk absurdly: for each is merely a mean to that furtherance of the common weal, which is the only ultimate object of good or beneficent sovereignty. But though both propositions are absurd, the latter of the two absurdities is the least remote from the truth.

[*337.*] Political or civil liberties rarely exist apart from corresponding legal restraints. Where persons in a state of subjection are free from legal duties, their liberties (generally speaking) would be nearly useless to themselves, unless they were protected in the enjoyment of their liberties, by legal duties on their fellows: that is to say, unless they had legal rights (importing such duties on their fellows) to those political liberties which are left them by the sovereign government. I am legally free, for example, to move from place to place, in so far as I can move from place to place consistently with my legal obligations: but this my political liberty would be but a sorry liberty unless my fellow-subjects were restrained by a political duty from assaulting and imprisoning my body. Consequently, political liberty is fostered by that very political restraint from which the devotees of the idol liberty are so fearfully and blindly averse.

[*339.*] Every supreme government is *free* from legal restraints; or (what is the same proposition dressed in a different phrase) every supreme government is legally *despotic*. The distinction, therefore, of governments into free and despotic, can hardly mean that some of them are freer from restraints than others: or that the subjects of the governments which are denominated free, are protected against their governments by positive law.

[*341.*] They who distinguish governments into free and despotic, probably mean this: In every political society, the government, in conferring rights and imposing duties, more or less disregards the common or general weal, and looks to the peculiar interests of a portion or portions of the community.—Now the governments which deviate less from that ethical principle or maxim, are better than the governments which deviate more. But the governments which deviate less are *popular* governments, meaning by a *popular* government any aristocracy which consists of such a number of the given political community as bears a large proportion to the number of the whole society. For it is supposed that, where the government is popular, the interests of the sovereign number, and the interests of the entire community, are nearly identical, or nearly coincide: but that, where the government is monarchical, or where the supreme powers reside in a comparatively few, the sovereign one or number has numerous interests which are not consistent with the good of the general.—Therefore, the duties which a government of many lays upon its subjects, are more

consonant to the general good than the duties which are laid upon its subjects by a government of one or a few. Consequently, though it leaves or grants not to its subjects, more of political liberty than is left or granted by a government of one or a few, it leaves or grants to its subjects more of the political liberty *which conduces to the common weal.* But, as leaving or granting to its subjects more of that useful liberty, a government of many may be styled free; whilst, as leaving or granting to its subjects less of that useful liberty, a government of one or a few may be styled not free, or may be styled despotic or absolute. Consequently, a free government is a popular government: whilst a despotic government is either a monarchy or an oligarchy.

[*348.*] A sovereign government of one, or a sovereign government of a number in its collegiate and sovereign capacity, has no *legal rights* (in the proper acceptation of the term) *against its own subjects.*

[*349.*] Every legal right is the creature of a positive law: and it answers to a relative duty imposed by that positive law, and incumbent on a person or persons other than the person or persons in whom the right resides. To every legal right, there are three several parties: namely, a party bearing the right; a party burthened with the relative duty; and a sovereign government setting the law through which the right and the duty are respectively conferred and imposed. A sovereign government cannot acquire rights through laws set by itself to its own subjects. A man is no more able to confer a right on himself, than he is able to impose on himself a law or duty. Every party bearing a right (divine, legal, or moral) has necessarily acquired the right through the might or power of another.

[*352.*] Consequently, when we say that a sovereign government, as against its own subjects, has or has not a right to do this or that, we necessarily mean by a right (supposing we speak exactly), a right Divine or moral.

[*353.*] But when we say that a government, as against its own subjects, has or has not a right to do this or that, we not uncommonly mean that we deem the act in question generally useful or pernicious. Consequently, an act which the government has a right to do, is an act which were generally useful: as an act which the government has not a right to do, is an act which were generally pernicious.

[*354.*] To ignorance or neglect of the palpable truths which I

have expounded in the present section, we may impute a pernicious jargon that was current in our own country on the eve of her horrible war with her North American children. By the great and small rabble in and out of Parliament, it was said that the government sovereign in Britain was also sovereign in the colonies; and that, since it was sovereign in the colonies, it had a *right* to tax their inhabitants. It was objected by Mr. Burke to the project of taxing the inhabitants, that the project was *inexpedient:* pregnant with probable evil to the inhabitants of the colonies, and pregnant with probable evil to the inhabitants of the mother country. But to that most rational objection, the sticklers for the scheme of taxation returned this asinine answer. They said that the British government had a right to tax the colonists; and that it ought not to be withheld by paltry considerations of expediency, from enforcing its sovereign right against its refractory subjects.—Now, assuming that the government sovereign in Britain was properly sovereign in the colonies, it had no legal right to tax its colonial subjects; although it was not restrained by positive law, from dealing with its colonial subjects at its own pleasure or discretion. If then, the sticklers for the scheme of taxation had any determinate meaning, they meant that the British government was empowered by the law of God to tax its American subjects. But it had not a Divine right to tax its American subjects, unless the project of taxing them accorded with general utility: for every Divine right springs from the Divine law; and to the Divine law, general utility is the index. Consequently, when the sticklers for the scheme of taxation opposed the right to expediency, they opposed the right to the only test by which it was possible to determine the reality of the right itself.

V. The Consent of the People

[*370.*] According to a current expression, the permanence and origin of every government are owing to the people's *consent:* that is to say, every government continues through the *consent* of the people, or the bulk of the political community: and every government arises through the *consent* of the people, or the bulk of the natural society from which the political is formed. According to the same opinion dressed in a different phrase, the power of the sovereign flows from the people, or the people is the fountain of sovereign power.

[*371.*] Now the permanence of every government depends on the habitual obedience which it receives from the bulk of the community. For if the bulk of the community were fully determined to destroy it, the might of the government would scarcely suffice to reduce them to subjection. But all obedience is *voluntary* or *free*, or every party who obeys consents to obey. In other words, every party who obeys wills the obedience which he renders.

[*372.*] But the position in question, as it is often understood, is taken with one or another of the two following meanings.

[*373.*] Taken with the first of those meanings, the position amounts to this: That the bulk of every community approve of the established government, or prefer it to every government which could be substituted for it: and that they consent to its continuance, or pay it habitual obedience, by reason of their approbation or their preference. As thus understood, the position is ridiculously false: the habitual obedience of the people in most or many communities, arising wholly or partly from their fear of the probable evils which they might suffer by resistance.

[*374.*] Taken with the second of those meanings, the position amounts to this: That, if the bulk of a community dislike the established government, the government ought not to continue. And, if every actual society were adequately enlightened, the position as thus understood would approach nearly to the truth. For the dislike of an enlightened people towards their established government, would beget a violent presumption that the government was faulty or imperfect. But, in every actual society, the government has neglected to instruct the people in sound political science; or pains have been taken by the government, or the classes that influence the government, to exclude the bulk of the community from sound political science, and to perpetuate or prolong the prejudices which weaken and distort their undertakings. Every society, therefore, is inadequately instructed or enlightened: And, in most or many societies the love or hate of the people towards their established government would scarcely beget a presumption that the government was good or bad. An ignorant people may love their established government, though, by cherishing pernicious institutions and fostering mischievous prejudices, it positively prevents the progress in useful knowledge and in happiness, which its subjects would make spontaneously if it simply were careless of their good. And as an ignorant people may love their

established government, though it positively crosses the purpose for which it ought to exist, so may an ignorant people hate their established government, though it labours strenuously and wisely to further the general weal. The dislike of the French people to the ministry of the godlike Turgot, amply evinces the melancholy truth. They stupidly thwarted the measures of their warmest and wisest friend, and made common cause with his and their enemies.

[*375.*] That the *permanence* of every government is owing to the people's consent, and that the *origin* of every government is owing to the people's consent, are two positions so closely allied, that what I have said of the former will nearly apply to the latter.

[*376.*] Every government has arisen through the consent of the people, or the bulk of the natural society from which the political was formed. For the bulk of the natural society from which a political is formed, submit freely to the inchoate political government.

[*377.*] But a special approbation of the government to which they freely submit, or a preference of that government to every other government, may not be their motive to submission. Although they submit to it freely, the government perhaps is forced upon them: that is to say, they could not withhold their submission from that particular government, unless they struggled through evils which they are loath to endure.

[*378.*] The expression "that every government arises through the people's consent," is often uttered with the following meaning: That the bulk of a natural society about to become a political, or the inchoate subjects of an inchoate political government, promise, expressly or tacitly, to obey the future sovereign. The expression, however, as uttered with the meaning in question, confounds consent and promise, and therefore is grossly incorrect. That the inchoate subjects of every inchoate government will or consent to obey it, is one proposition: that they promise, expressly or tacitly, to render it obedience, is another proposition.

[*390.*] To account for the duties of subjects towards their sovereign government, or for those of the sovereign government towards its subjects, is the scope of every writer who supposes an original covenant.—But we sufficiently account for the origin of those respective obligations, when we refer them simply to their apparent and obvious fountains: namely, the law of God, positive law, and positive morality.—Besides, although the formation of

an independent political society were really preceded by a fundamental civil pact, scarce any of the duties lying thereafter on the subjects, or on the sovereign, would be engendered or influenced by that foregoing convention.

[*399.*] The following (I think) is the only, or nearly the only case, wherein an original covenant, as being a covenant or pact, might generate or influence any of the duties lying on the sovereign or subjects.

[*400.*] It might be believed by the bulk of the subjects, that unless their sovereign government had *promised* so to govern, it would not be bound by the law of God, or would not be bound sufficiently by the law of God, to govern to what they esteemed its proper absolute end. It might be believed moreover by the bulk of the subjects, that the promise made by the original sovereign was a promise made in effect by each of the following sovereigns, and therefore that their sovereign government was bound religiously to govern to that absolute end, rather because it had so *promised* than by reason of the intrinsic worth belonging to the end itself.—Now, if the mass of the subjects potently believed these positions, the duties of the government towards its subjects, which the positive morality of the community imposed upon it, would be engendered or affected by the original covenant. They would be imposed upon it, wholly or in part, because the original covenant had preceded or accompanied the institution of the independent political society. For if it departed from any of the ends determined by the original covenant, the mass of its subjects would be moved to anger (and perhaps to eventual rebellion), by its breach of its *promise*, real or supposed, rather than by that misrule of which they esteemed it guilty.

[*402.*] An original covenant would be simply useless, if it merely determined the absolute end of the sovereign political government: if it merely determined that the absolute end of the government was the greatest possible advancement of the common happiness or weal. For though the covenant might give uniformity to the opinions of the mass of the subjects, that uniformity would hardly influence the conduct of their sovereign political government.

[*403.*] But the covenant might specify some of the means through which the government should rule to that absolute end. And as so doing, the original covenant would be simply useless, or positively pernicious.

[*404.*] If the covenant of the founders of the community did not affect the opinions of its following members, the covenant would be simply useless.

[*405.*] If the covenant of the founders of the community did affect the opinions of its following members, the covenant probably would be positively pernicious. The following members probably would impute to the subordinate ends specified by the original covenant, a worth extrinsic and arbitrary, or independent of their intrinsic merits. A belief that the specified ends were of a useful or beneficent tendency would not be their reason, or would not be their only reason, for regarding the ends with respect. They probably would respect the specified ends because the venerable founders of the independent political society had determined that those same ends were some of the ends or means through which the weal of the community might be furthered by its sovereign government. Now the venerable age or times wherein the community was founded, would probably be less enlightened than any of the ensuing and degenerate ages through which the community might endure. Consequently, the opinions held in an age comparatively ignorant, concerning the subordinate ends to which the government should rule, would unduly influence—through the medium of the covenant—the opinions held, concerning those ends, in ages comparatively knowing.

[*406.*] Let us suppose, for example, that the formation of the British community was preceded by a fundamental pact. Let us suppose that the ignorant founders of the community deemed foreign commerce hurtful to domestic industry, and that the government about to be formed promised for itself and its successors, to protect the industry of its own society, by forbidding and preventing the importation of foreign manufactures. Now if the fundamental pact made by our worthy ancestors were devoutly reverenced by many of ourselves, it would hinder the diffusion of sound œconomical doctrines through the present community. The present sovereign government would, therefore, be prevented by the pact, from legislating wisely and usefully in regard to our commercial intercourse with other independent nations. If the government attempted to withdraw the restrictions which the laws of preceding governments have laid on our foreign commerce, the fallacies which are now current, and the nonsense which now is in vogue, would not be the only fallacies, and would not be the

only nonsense, wherewith the haters of improvement would belabour the audacious innovators. All who delighted in "things ancient," would certainly accuse it of infringing a principle which was part of the very basis whereon the community rested: which the wise and venerable authors of the fundamental pact itself had formerly adopted and consecrated. Nay, the lovers of darkness would affirm, and probably would believe, that the government was incompetent to withdraw the restrictions which the laws of preceding governments have laid on our foreign commerce: that being, as it were, a privy of the first or original government, it was estopped by the solemn promise which that government had given.

[*416.*] It hardly is necessary to add, that the hypothesis of the original covenant, in any of its forms or shapes, has no foundation in actual facts. There is no historical evidence, that the hypothesis has ever been realized: that the formation of any society political and independent has actually been preceded by a proper original covenant, or by aught approaching to the idea.

CHAPTER IV. THE HISTORICAL APPROACH TO LAW

I. THE GERMAN HISTORICAL SCHOOL

Of the Vocation of Our Age for Legislation and Jurisprudence (1814)

Friedrich Karl von Savigny (1779–1861)

While the English utilitarians were explaining law in terms of sovereignty, there was developing in Germany a historical jurisprudence that minimized the function of the legislator. The code imposed by France upon the conquered German states in the Napoleonic period had aroused hostility to all codification. Although the multiplicity of legal systems in Germany before the French Revolution had been complicated and confusing, the historical jurists opposed the adoption of a uniform German code and advocated the natural and unplanned growth of a national law.

The founder of German historical jurisprudence was Gustav von Hugo, but Friedrich Karl von Savigny was the outstanding figure and the leader of the successful opposition to the post-Napoleonic movement for a German code. His pamphlet, *Of the Vocation of Our Age for Legislation and Jurisprudence* (1814) was able propaganda that attained its object. But the German historical jurists were more than propagandists. Unlike Burke and de Maistre, whose reverence for the past they shared, they were legal scholars who devoted their lives to the painstaking study of law at various stages of its development.

Born in Frankfort, Savigny was in his teens subjected to an intensive course in the history and theory of law, and in his university days became an eager follower of the historical school. Before he was thirty he had published his *Right of Possession* (1803), a study of the Roman law of possession which was declared by Austin to be the most consummate and masterly of all books on law. When the University of Berlin was founded in 1810, Savigny was offered the chair of law, which he occupied for more than thirty years. At this same time he sat on the University Appellate Tribunal, to which questions of law were referred by other tribunals. From 1842 until the revolutionary movement of 1848 he was Prussian Minister of Justice.

The readings here given are based on Abraham Hayward's translation of *Of the Vocation of Our Age for Legislation and Jurisprudence* (Littlewood, London, 1831).

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OF THE VOCATION OF OUR AGE FOR LEGISLATION AND JURISPRUDENCE

I. The Need for the Historical Method

[*VIII.*] We find ourselves in the midst of an immense mass of juridical notions and theories which have descended, and been multiplied, from generation to generation. At present, we do not possess and master this matter, but are controlled and mastered by it, whether we will or not. This is the ground of all the complaints of the present state of our law, which I admit to be well-founded: this, also, is the sole cause of the demand for codes. This matter encompasses and hems us in on all sides, often without our knowing it. People might think to annihilate it, by severing all historical associations, and beginning an entirely new life. But such an undertaking would be built on a delusion. For it is impossible to annihilate the impressions and modes of thought of the jurists now living,—impossible to change completely the nature of existing legal relations; and on this twofold impossibility rests the indissoluble organic connection of generations and ages; between which, development only, not absolute end and absolute beginning, is conceivable. There is no mode of avoiding this overruling influence of the existing matter; it will be injurious to us so long as we ignorantly submit to it; but beneficial, if we oppose to it a vivid creative energy,—obtain the mastery over it by a thorough grounding in history, and thus appropriate to ourselves the whole intellectual wealth of preceding generations. We have, therefore, no choice but either, as Bacon says, *sermocinari tamquam e vinculis*,[1] or to learn by the profound study of jurisprudence, how to use this historical matter freely as our instrument: there is no other alternative. Were we to adopt the last, the scientific principle, as the nobler part, might of itself gain on its own account: our present

[1] To discuss as if in bonds. (Present editor's note.)

position, too, affords particular grounds for this opinion. First, the general turn for science, which is natural to the Germans, and whereby they have been enabled to take the lead of other nations in many things; secondly, much in our political circumstances. For this reason, the experience of other nations or times cannot be adduced in opposition; neither the state of the law in England, nor the state of the law in the time of our forefathers.

Only when by zealous study we shall have perfected our knowledge, and, more particularly, sharpened our historical and political sense, will a sound judgment on the matter that has come down to us be possible. Until then it might be more prudent to pause before considering the existing law as loose practice, impolitic exclusiveness, and mere juridical apathy: but, most especially, to hesitate upon the application of the dissecting knife to our present system. In applying it we might strike unawares upon sound flesh, and thus charge ourselves with the heaviest of all responsibilities to posterity. The historical spirit, too, is the only protection against a species of self-delusion, which is ever and anon reviving in particular men, as well as in whole nations and ages; namely, the holding that which is peculiar to ourselves to be common to human nature in general. We meet with people daily, who hold their juridical notions and opinions to be the offspring of pure reason, for no earthly reason but because they are ignorant of their origin. When we lose sight of our individual connection with the great entirety of the world and its history, we necessarily see our thoughts in a false light of universality and originality. There is only the historical sense to protect us against this, to turn which upon ourselves is indeed the most difficult of applications.

In the history of all considerable nations we find a transition from circumscribed, but fresh and vigorous, individuality, to undefined universality. The law undergoes the same, and in it, likewise, the consciousness of nationality may, in the end, be lost. That the peculiar advantage by which the old law was characterised, is lost, is obvious. To talk of going back to this past time, were a vain and idle proposition; but it is a wholly different affair to keep its distinguishing excellencies fully in view, and thus fortify our minds against the narrowing influence of the present. History, even in the infancy of a people, is ever a noble instructress, but in ages such as ours she has yet another and holier duty to perform. For only through her can a lively connection with the

primitive state of the people be kept up; and the loss of this connection must take away from every people the best part of its spiritual life. That, consequently, by which the common law and the provincial laws are to become truly useful and unobjectionable as authorities, is the strict historical method of jurisprudence. Its character does not consist, as some recent opponents have strangely maintained, in an exclusive admiration of the Roman law; nor in desiring the unqualified preservation of any one established system, to which, indeed, it is directly opposed. On the contrary, its object is to trace every established system to its root, and thus discover an organic principle, whereby that which still has life, may be separated from that which is lifeless and only belongs to history.

II. The Origin and Growth of Law

[*II.*] In the earliest times to which authentic history extends, the law will be found to have already attained a fixed character, peculiar to the people, like their language, manners, and constitutions. Nay, these phenomena have no separate existence, they are but the particular faculties and tendencies of an individual people, inseparably united in nature, and only wearing the semblance of distinct attributes to our view. That which binds them into one whole is the common conviction of the people, the kindred consciousness of an inward necessity, excluding all notion of an accidental and arbitrary origin.

How these peculiar attributes of nations, by which they are first individualized, originated—this is a question which cannot be answered historically. Of late, the prevalent opinion has been that all lived at first a sort of animal life, advancing gradually to a more passable state, until at length the height on which they now stand, was attained. We may leave this theory alone, and confine ourselves to the mere matter of fact of that first authentic condition of the law. We shall endeavour to exhibit certain general traits of this period, in which the law, as well as the language, exists in the consciousness of the people.

This youth of nations is poor in ideas, but enjoys a clear perception of its relations and circumstances, and feels and brings the whole of them into play; whilst we, in our artificial complicated existence, are overwhelmed by our own riches, instead of enjoying and controlling them. This plain natural state is particularly

observable in the law; and as, in the case of an individual, his family relations and patrimonial property may possess an additional value in his eyes from the effect of association,—so, on the same principle, it is possible for the rules of the law itself to be amongst the objects of popular faith. But these moral faculties require some bodily existence to fix them. Such, for language, is its constant uninterrupted use: such, for the constitution, are palpable and public powers,—but what supplies its place with regard to the law? In our times it is supplied by rules, communicated by writing and word of mouth. This mode of fixation, however, presupposes a high degree of abstraction, and is, therefore, not practicable in the early times alluded to. On the contrary, we then find symbolical acts universally employed where rights and duties were to be created or extinguished: it is their palpableness which externally retains law in a fixed form; and their solemnity and weight correspond with the importance of the legal relations themselves, which have been already mentioned as peculiar to this period. These formal acts may be considered as the true grammar of law in this period; and it is important to observe that the principal business of the early Roman jurists consisted in the preservation and accurate application of them.

For law, as for language, there is no moment of absolute cessation; it is subject to the same movement and development as every other popular tendency; and this very development remains under the same law of inward necessity, as in its earliest stages. Law grows with the growth, and strengthens with the strength of the people, and finally dies away as the nation loses its nationality. But this inward progressive tendency, even in highly cultivated times, throws a great difficulty in the way of discussion. It has been maintained above, that the common consciousness of the people is the peculiar seat of law. This, for example, in the Roman law, is easily conceivable of its essential parts, such as the general definition of marriage, of property, etc., etc., but with regard to the endless detail, of which we have only a sample in the Pandects, every one must regard it as impossible.

This difficulty leads us to a new view of the development of law. With the progress of civilization, national tendencies became more and more distinct, and what otherwise would have remained common, becomes appropriated to particular classes; the jurists now become more and more a distinct class of the kind; law per-

fects its language, takes a scientific direction, and, as formerly it existed in the consciousness of the community, it now devolves upon the jurists, who thus, in this department, represent the community. Law is henceforth more artificial and complex, since it has a twofold life; first, as part of the aggregate existence of the community, which it does not cease to be; and, secondly, as a distinct branch of knowledge in the hands of the jurists. All the latter phenomena are explicable by the co-operation of those two principles of existence; and it may now be understood, how even the whole of that immense detail might arise from organic causes, without any exertion of arbitrary will or intention. For the sake of brevity, we call, technically speaking, the connection of law with the general existence of the people—the political element; and the distinct scientific existence of law—the technical element.

At different times, therefore, amongst the same people, law will be natural law (in a different sense from our law of nature), or learned law, as the one or the other principle prevails, between which a precise line of demarcation is obviously impossible. Under a republican constitution, the political principle will be able to preserve an immediate influence longer than in monarchical states; and under the Roman republic in particular, many causes co-operated to keep this influence alive, even during the progress of civilization. But in all times, and under all constitutions, this influence continues to shew itself in particular applications, as where the same constantly-recurring necessity makes a general consciousness of the people at large possible. Thus, in most cities, a separate law for menial servants and house-renting will grow up and continue to exist, equally independent of positive rules and scientific jurisprudence: such laws are the individual remains of the primitive legal formations. The sum, therefore, of this theory is, that all law is originally formed in the manner in which, in ordinary but not quite correct language, customary law is said to have been formed: i.e. it is first developed by custom and popular faith, next by jurisprudence,—everywhere, therefore, by internal silently-operating powers, not by the arbitrary will of a lawgiver.

III. The Task of Creating a Code

[*III.*] Legislation, properly so called, not unfrequently exercises an influence upon particular portions of the law: but the causes of this influence vary greatly. In the first place, the legisla-

tor, in altering the existing law, may be influenced by high reasons of state. That enactments of this kind easily become a baneful corruption of the law, and that they should be most sparingly employed, must strike any one who consults history. Of a much less doubtful character is a second influence of legislation upon the law. Particular rules may be doubtful, or from their very nature may have varying and ill-defined limits, as, for example, all prescription; whilst the administration of the law requires limits defined with the greatest possible precision. Here a kind of legislation may be introduced, which comes to the aid of custom, removes these doubts and uncertainties, and thus brings to the light, and keeps pure, the real law, the proper will of the people.

But these kinds of partial influence are not intended when, as in our times, the necessity of a code is spoken of. Rather, in this case, the following is meant:—The nation is to examine its whole stock of law, and put it into writing, so that the book, thus formed, shall henceforth be not one amongst other legal authorities, but that all others which have been hitherto in force, shall be in force no longer. The first question, therefore, is, where are the materials for this code to come from? It has been maintained by many, that these are to be supplied by the universal law of nature, without reference to any thing existing. But those who had to do with the execution of such plans, or were otherwise acquainted with practical law, have laid no stress upon this extravagant and wholly groundless theory; and it is unanimously agreed that the existing law is to be laid down with merely such alterations and improvements as might be thought necessary on grounds of expediency. The substance of a code would, accordingly, be twofold; it would be composed partly of the existing law, and partly of new provisions. So far as the last are concerned, they might have been proposed singly at any other time. In Germany, in particular, these new provisions would often be but apparently new, since that which was new in one state might have been already in force in another; so that the question would relate, not to new laws, but to already existing laws of kindred nations, with a mere change of jurisdiction. Not, therefore, to confuse our enquiry, we will lay new laws entirely aside, and look only to the essentials of the code. In this case we must consider the code as the exposition of the aggregate existing law, with exclusive validity conferred by the state itself.

That we should consider this last as essential in an undertaking of the kind, is natural in times so fruitful in writing as ours; when, with such a number of authors and such a rapid succession of books and authorities, no particular book can preserve a predominant and lasting influence otherwise than through the authority of the state. Nevertheless it is clear, that this difference consists merely in the originating cause and the confirmation on the part of the state, not in the nature of the work itself, for this in every case is wholly technical, and as such belongs to the jurists.

The requisites of such a code, and the expectations from it, are of two kinds. With regard to the condition of the law itself, the highest degree of precision is to be looked for, and, at the same time, the highest degree of uniformity in the application. The limits of its jurisdiction are to be more clearly defined and regulated, since a general national law is to replace a varying customary law. We here confine ourselves to the first benefit, as the second will be best discussed further on, in particular application to Germany.

That this first benefit depends upon the excellence of the execution, must be obvious to all, and, therefore, in this respect, it is just as possible to lose as to gain. Well deserving of consideration is what Bacon, from the magnitude of his intellect and his experience, said of a work of the kind. He is of opinion, that it should never be engaged in without a pressing necessity, and even then with particular care of the legal authorities in force; by, in the first place, the scrupulous adoption of every thing that is applicable in them, and secondly, by their being preserved and constantly consulted. Above all, he says, the work should only be undertaken in times which in civilization and knowledge surpass the preceding, for it would be truly lamentable were the productions of former times to be mutilated by the ignorance of the present.

As regards the substance, the code, as it is intended to be the only law-authority, is actually to contain, by anticipation, a decision for every case that may arise. This has been often conceived, as if it were possible and advantageous to obtain, by experience, a perfect knowledge of the particular cases, and then to decide each by a corresponding provision of the code. But whoever has considered law cases attentively, will see at a glance that this undertaking must fail; because there are positively no limits to

the varieties of actual combinations of circumstances. In all the new codes, indeed, all appearance of an attempt to obtain this material perfection has been given up, without, however, establishing any thing in its stead. The administration of justice is ostensibly regulated by the code, but really by something else, external to the code, acting as the true dominant authority. This false appearance, however, is productive of the most disastrous effects. For the code, by its novelty, its connection with the prevailing notions of the age, and its external influence, will infallibly attract all attention to itself, away from the real law-authority; so that the latter, left in darkness and obscurity, will derive no assistance from the moral energies of the nation, by which alone it can attain to a satisfactory state. The very notion and general nature of this true governing source of law, is misunderstood, as it then appears under the most opposite names, sometimes as natural law (*Naturrecht*), sometimes as *jurisprudence*, sometimes as analogical law.

But, besides the substance, the form of the code must be taken into consideration, for the framer may have fully studied the law on which he is at work, and his production may, notwithstanding, fail of its end, if he have not withal the art of exposition.

Putting together what has been said above concerning the requisites of a really good code, it is clear that very few ages will be found qualified for it. Young nations, it is true, have the clearest perceptions of their law, but their codes are defective in language and logical skill, and they are generally incapable of expressing what is best, so that they frequently produce no individual image, whilst their matter is in the highest degree individual. In declining ages, on the other hand, almost every thing is wanting—knowledge of the matter, as well as language. There thus remains only a middle period; that which, (as regards the law, although not necessarily in any other respect,) may be accounted the summit of civilization. But such an age has no need of a code for itself: it would merely compose one for a succeeding and less fortunate age, as we lay up provisions for winter. But an age is seldom disposed to be so provident for posterity.

IV. The Significance of the Roman Law

[*IV.*] The advocates of the Roman law have not unfrequently placed its principal value in its containing the eternal rules of

justice in peculiar purity, and thus being entitled to be itself considered a law of nature sanctioned as positive law. On looking closer, the larger part will appear to be little better than narrowness and subtlety, and our admiration is almost entirely confined to its theory of contracts. But this very remainder of the Roman law, so cited for its real excellence, is of so general a nature, that it might have been discovered by plain good sense, without any juridical cultivation; and for so slight a gain it is not worth while to invoke the laws and lawyers of two thousand years to help us. Let us take a somewhat nearer view of the characteristics of the Roman law. That it is characterised by something more than is intimated above, must have been already anticipated from its being the only law of a great people, who have had a long political existence, and enjoyed a wholly national undisturbed development; and, moreover, from its having been at all times cherished with marked affection by them.

In our science, every thing depends upon the possession of the leading principles, and it is this very possession which constitutes the greatness of the Roman jurists. The notions and axioms of their science do not appear to have been arbitrarily produced; these are actual beings, whose existence and genealogy have become known to them by long and intimate acquaintance. For this reason their whole mode of proceeding has a certainty which is found no where else, except in mathematics; and it may be said, without exaggeration, that they calculate with their notions. Law has no self-dependent existence; on the contrary, its essence is the life of man itself, viewed on one particular side. But this is the very point of view in which the method of the Roman jurists appears to the greatest advantage. If they have a case to decide, they proceed upon the liveliest perception of it; and we see the whole relation, formed and modified, step by step before our eyes. It is as if this very case were the starting point from which the whole system was to spring. Thus, properly speaking, their theory and practice are the same; their theory is framed for immediate application, and their practice is uniformly ennobled by scientific treatment.

This highly cultivated state of jurisprudence amongst the Romans at the beginning of the third century of the Christian æra, is so well worthy of note, that we must also pay some attention to its history. It would be very wrong to regard it as the pure

creation of a highly favoured age, unconnected with the preceding. On the contrary, the materials of their science were handed down to the jurists of this time, a great part of them even from the time of the free republic. Not only these materials, but that admirable method itself, had root in the time of freedom. What, indeed, made Rome great, was the quick, lively, political spirit, which made her ever ready so to renovate the forms of her constitution, that the new merely ministered to the development of the old,—a judicious mixture of the permanent and progressive principles. This spirit was equally operative in the constitution and the law; but, in the former, it was extinguished before the end of the republic, whilst, in the latter, it might still operate for centuries to come, because the same causes of corruption did not exist in it as in the constitution. The history of the Roman law, down to the classical age, exhibits every where a gradual, wholly-organic development. If a new form is framed, it is immediately bound up with an old established one, and thus participates in the maturity and fixedness of the latter.

From this representation it is plain, that the Roman law, like customary law, has formed itself almost entirely from within; and the more detailed history of it shows how little, on the whole, express legislation affected it, so long as it continued in a living state. So long as the law was in active progression, no code was discovered to be necessary, not even at the time when circumstances were most favourable for it. But when, at an earlier period Caesar, in the consciousness of his power and of the corruption of the age, resolved on being absolute in Rome, he is said to have formed the conception of a code in our meaning of the term. And when, in the sixth century, all intellectual life was dead, the wrecks of better times were collected to supply the demand of the moment. Hardly would works on the Roman law have been preserved, but for these compilations; and hardly would the Roman law have found entrance into modern Europe, had not Justinian's works been amongst them; in which alone, of all these, the spirit of the Roman law is discernible. The idea of these codes, however, was evidently suggested only by the extreme decay of the law.

V. The State of the Law in Germany

[*V.*] Up to a very recent period a uniform system of law was in practical operation throughout the whole of Germany under the

name of the common law, more or less modified by the provincial laws, but no where altogether without force. The principal sources of this common law were the law-books of Justinian, the mere application of which to Germany had of itself already introduced important modifications. To this common law, the scientific activity of the German jurists had always been principally devoted. But it is this very foreign element of our law which has long occasioned bitter complaints. The Roman law, it is said, has deprived us of our nationality, and nothing but the exclusive attention paid to it by our jurists, has hindered our indigenous law from attaining to an equally independent and scientific condition. Complaints of this kind have a degree of hollowness and groundlessness about them, insomuch as they assume that to be accidental and arbitrary, which would never have come to pass, or, at any rate, would never have endured, without some internal necessity. Besides, an exclusive national development, like that of the ancients, is not generally to be met with in the course which nature has indicated to the moderns. As the religion of nations is not peculiarly their own, and their literature as little free from the most powerful external influence,—upon the same principle, their having also a foreign and general system of law, does not appear unnatural.

The importance of the Roman law as an example of juridical method, has been shewn in a former chapter; historically, also, it is now of great importance to Germany, on account of its relation to the common law. It is a palpable mistake to limit this historical importance of the Roman law to the cases immediately decided by it. Not only is there in the provincial laws themselves, much law purely Roman, and only intelligible in its original Roman context; but even in those parts where its decisions have been designedly passed by, it has often decided the interpretation and execution of the newly introduced law, so that the question which ought to be solved by this new law, cannot be understood without the Roman law. This historical importance, however, the Roman law shares with the German law which is every where preserved in the provincial laws, so that these would remain unintelligible without reference to the common source.

The most important argument urged in favour of the uniformity of the law, is, that our love for our common country is enhanced by it, but weakened by a multiplicity of particular laws. If this

supposition be well founded, every German of good feeling will wish that Germany may have throughout the same system of law. But this very supposition is now the subject of discussion.

The well-being of every organic being, (consequently of states,) depends on the maintenance of an equipoise between the whole and its parts—on each having its due. For a citizen, a town, a province, to forget the state to which they belong, is a very common phenomenon, and every one will regard this as an unnatural and morbid state of things. But for this very reason a lively affection for the whole can only proceed from the thorough participation in all particular relations: and he only who takes good care of his own family, will be a truly good citizen. It is, therefore, an error, to suppose that the common weal would gain new life by the annihilation of all individual relations. Were it possible to generate a peculiar corporate spirit in every class, every town, nay, every village, the common weal would gain new strength from this heightened and multiplied individuality.—When, therefore, the influence of law on the love of country is the question, the particular laws of particular provinces and states are not to be regarded as obstacles. In this point of view, the law merits praise, in so far as it falls in, or is adapted to fall in, with the feelings and consciousness of the people; blame, if, like an uncongenial and arbitrary thing, it leaves the people without participation.

Indeed, for this political end, no state of law appears more favourable than that which was formerly general in Germany: great variety and individuality in particulars, but with the common law for the general foundation, constantly reminding all the Germanic nations of their indissoluble unity. The most pernicious, however, in this point of view, is the light and capricious alteration of law; and even were uniformity and fitness attainable by change, the advantage would not be worth naming in comparison with the political disadvantage just alluded to. That which is thus constructed by men's hands before our eyes, will always hold a very different place in popular estimation from that which has not so plain and palpable an origin; and when we, in our praiseworthy zeal, inveigh against this decision as a blind prejudice, we ought not to forget that all faith in, and feeling for, that which is not on a level with us, but more exalted than we, depends upon the same kind of spirit.

[*VIII.*] According to this view, no code would be formed in

countries where the common law prevails; but it by no means follows that civil legislation would be altogether dispensed with. Independently of legislative provisions on political grounds (which do not belong to this place), it might be employed for two purposes: the decision of controversies (disputed points), and the recording of old customs. Controversies, however, had perhaps better be decided in the form of provisional ordinances or directions to the courts, than by regular enactments, since the former would be less likely to prejudice the chance of a better foundation in theory.

The second object of legislation would be the recording of customary law, which might in this manner be subjected to a superintendance, such as that effected by means of the edict in Rome. It is not to be imagined that the code, hitherto opposed, would, after all, be let in in this manner, only under a different name; on the contrary, the difference concerns the very essence of the thing. For in this customary law, that only will be comprised which has been decided in actual practice, and this, now that the legislator has the decisions before him, will, beyond a doubt, be thoroughly comprehended; the code, on the contrary, is obliged to speak on every subject,—even when there is no immediate motive thereto, and no special observation supplies the requisite capacity,—merely in anticipation of future possible cases.

I have been hitherto considering what course is to be pursued by countries in which the common law prevails, in order to bring the law into a satisfactory state. I now proceed to state the higher object, which is attainable by the same course. Let jurisprudence be once generally diffused amongst the jurists and we again possess, in the legal profession, a subject for living customary law,—consequently, for real improvement. The historical matter of law, which now hems us in on all sides, will then be brought under subjection, and constitute our wealth. We shall then possess a truly national law, and a powerful expressive language will not be wanting to it. We may then give up the Roman law to history, and we shall have, not merely a feeble imitation of the Roman system, but a truly national and new system of our own. We shall have reached somewhat higher than to a merely sure and speedy administration of justice; that state of clear perceptiveness which is ordinarily peculiar to the law of young nations, will be combined with the height of scientific development. Then too, may future

degenerate times be provided for, and then will be the time for considering whether this be done best by codes or in another form. I do not say that this state of things will ever arrive; this depends upon the combination of the rarest and most fortunate circumstances. What we jurists can contribute towards it, is, an openness to conviction, and honest hearty co-operation; after doing so, we may quietly attend the result; but, above all, we must avoid destroying that which may advance us towards the object in view.

II. THE ENGLISH HISTORICAL SCHOOL

Ancient Law (1861)

Sir Henry Sumner Maine (1822–1888)

Historical jurisprudence was of later growth in England than in Germany. It is in periods of over-rapid change that the historical method is most likely to win favor, and in England the opening quarter of the nineteenth century was anything but a period of political or legal change. But by mid-century the current of reform, long dammed by the reaction against the French Revolution, was at last sweeping onward.

Sir Henry Sumner Maine, the founder of the English historical school, followed his German predecessors in giving his chief attention to the development of Roman law. There was, however, a significant difference in emphasis, due in part to the influence of the new concept of evolution. Maine took primitive institutions as the starting point for his investigations, and endeavored to discover general laws of growth and decay. He opposed the Austinian concept of law as far too narrow, and by his very opposition gave to Austin's views a prominence that they had not previously known.

From the days of undergraduate honors at Cambridge, Maine's life was an exceptionally successful one. He became professor of civil law at Cambridge at an early age and later in life held the chair of jurisprudence at Oxford. Meantime his earliest book, *Ancient Law*, achieved immediate success upon its publication in 1861, and shortly thereafter Maine was appointed to the Law Membership in the Council of the Governor-General of India. He spent seven years in India and was later a member of the Council of the Secretary of State for India. Aside from *Ancient Law*, Maine's most noteworthy productions were *Village Communities* (1871), *Early History of Institutions* (1875), *Dissertations on Early Law and Custom* (1883), and *Popular Government* (1885). This last was a most conservative criticism of the progress of democracy.

The readings here given are based on the text of the Everyman edition of *Ancient Law* (E. P. Dutton and Company, New York, 1917), and are reprinted by permission of E. P. Dutton and Company as the American publishers of Everyman's Library.

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ANCIENT LAW

I. Law in the Earliest Times

[*Ch. I.*] The earliest notions connected with the conception, now so fully developed, of a law or rule of life, are those contained in the Homeric words "Themis" and "Themistes." When a king decided a dispute by a sentence, the judgment was assumed to be the result of direct inspiration. The divine agent, suggesting judicial awards to kings or to gods, was *Themis*. The peculiarity of the conception is brought out by the use of the plural. *Themistes* are the awards themselves, divinely dictated to the judge. Kings are spoken of as if they had a store of "Themistes" ready to hand for use; but it must be distinctly understood that they are not laws, but judgments.

Even in the Homeric poems, we can see that these ideas are transient. Parities of circumstance were probably commoner in the simple mechanism of ancient society than they are now, and in the succession of similar cases awards are likely to follow and resemble each other. Here we have the germ or rudiment of a Custom, a conception posterior to that of Themistes or judgments. However strongly we, with our modern associations, may be inclined to lay down *à priori* that the notion of a Custom must precede that of a judicial sentence, and that a judgment must affirm a Custom or punish its breach, it seems quite certain that the historical order of the ideas is that in which I have placed them.

Before we quit this stage of jurisprudence, a caution may be

usefully given to the English student. Bentham, in his *Fragment on Government*, and Austin, in his *Province of Jurisprudence Determined*, resolve every law into a *command* of the lawgiver, an *obligation* imposed thereby on the citizen, and a *sanction* threatened in the event of disobedience; and it is further predicated of the *command*, which is the first element in a law, that it must prescribe, not a single act, but a series or number of acts of the same class or kind. The results of this separation of ingredients tally exactly with the facts of mature jurisprudence; and, by a little straining of language, they may be made to correspond in form with all law, of all kinds, at all epochs. It is not, however, asserted that the notion of law entertained by the generality is even now quite in conformity with this dissection; and it is curious that, the farther we penetrate into the primitive history of thought, the farther we find ourselves from a conception of law which at all resembles a compound of the elements which Bentham determined. It is certain that, in the infancy of mankind, no sort of legislature, not even a distinct author of law, is contemplated or conceived of. Law has scarcely reached the footing of custom; it is rather a habit. It is, to use a French phrase, "in the air." The only authoritative statement of right and wrong is a judicial sentence after the facts, not one presupposing a law which has been violated, but one which is breathed for the first time by a higher power into the judge's mind at the moment of adjudication. An Englishman should be better able than a foreigner to appreciate the historical fact that the "Themistes" preceded any conception of law, because, amid the inconsistent theories which prevail concerning the character of English jurisprudence, the most popular, or at all events the one which most affects practice, is certainly a theory which assumes that adjudged cases and precedents exist antecedently to rules, principles, and distinctions. The "Themistes" have, it should be remarked, the characteristic which, in the view of Bentham and Austin, distinguishes single or mere commands from laws. A true law enjoins on all the citizens indifferently a number of acts similar in class or kind; and this is exactly the feature of a law which has most deeply impressed itself on the popular mind, causing the term "law" to be applied to mere uniformities, successions, and similitudes. A *command* prescribes only a single act, and it is to commands, therefore, that "Themistes" are more akin than to laws. They are simply ad-

judications on insulated states of fact, and do not necessarily follow each other in any orderly sequence.

Heroic kingship depended partly on divinely given prerogative, and partly on the possession of supereminent strength, courage, and wisdom. Gradually, as the impression of the monarch's sacredness became weakened, and feeble members occurred in the series of hereditary kings, the royal power decayed, and at last gave way to the dominion of aristocracies.

The important point for the jurist is that these aristocracies were universally the depositaries and administrators of law. They seem to have succeeded to the prerogative of the king, with the important difference, however, that they do not appear to have pretended direct inspiration for each sentence. What the juristical oligarchy now claims is to monopolise the *knowledge* of the laws, to have the exclusive possession of the principles by which quarrels are decided. We have in fact arrived at the epoch of Customary Law. Customs or Observances now exist as a substantive aggregate, and are assumed to be precisely known to the aristocratic order or caste. Our authorities leave us no doubt that the trust lodged with the oligarchy was sometimes abused, but it certainly ought not to be regarded as a mere usurpation or engine of tyranny. Before the invention of writing, and during the infancy of the art, an aristocracy invested with judicial privileges formed the only expedient by which accurate preservation of the customs of the race or tribe could be at all approximated to. Their genuineness was, so far as possible, insured by confiding them to the recollection of a limited portion of the community.

From the period of Customary Law we come to another sharply defined epoch in the history of jurisprudence. We arrive at the era of Codes, those ancient codes of which the Twelve Tables of Rome were the most famous specimen. In Greece, in Italy, on the Hellenised sea-board of Western Asia, these codes all made their appearance at periods similar in point of the relative progress of each community. It must not for a moment be supposed that the refined considerations now urged in favour of what is called codification had any part or place in the change. The ancient codes were doubtless originally suggested by the discovery and diffusion of the art of writing. It is true that the aristocracies seem to have abused their monopoly of legal knowledge; and at all events their exclusive possession of the law was a formidable

impediment to the success of those popular movements which began to be universal in the western world. But, though democratic sentiment may have added to their popularity, the codes were certainly in the main a direct result of the invention of writing. Inscribed tablets were seen to be a better depositary of law, and a better security for its accurate preservation, than the memory of a number of persons however strengthened by habitual exercise.

The question was not so much whether there should be a code at all. The point on which turned the history of the race was, at what period, at what stage of their social progress, they should have their laws put into writing. In the western world the plebeian or popular element in each state successfully assailed the oligarchical monopoly, and a code was nearly universally obtained *early* in the history of the Commonwealth. But in the East the ruling aristocracies tended to become religious rather than military or political, and gained, therefore, rather than lost in power; while in some instances the physical conformation of Asiatic countries had the effect of making individual communities larger and more numerous than in the West; and it is a known social law that the larger the space over which a particular set of institutions is diffused, the greater is its tenacity and vitality. From whatever cause, the codes obtained by Eastern societies were obtained, relatively, much later than by Western, and wore a very different character. The religious oligarchies of Asia, either for their own guidance, or for the relief of their memory, or for the instruction of their disciples, seem in all cases to have ultimately embodied their legal learning in a code; but the opportunity of increasing and consolidating their influence was probably too tempting to be resisted. Their complete monopoly of legal knowledge appears to have enabled them to put off on the world collections, not so much of the rules actually observed as of the rules which the priestly order considered proper to be observed. The Hindoo code, called the Laws of Menu, which is certainly a Brahmin compilation, undoubtedly enshrines many genuine observances of the Hindoo race, but the opinion of the best contemporary orientalists is, that it does not, as a whole, represent a set of rules ever actually administered in Hindostan. It is, in great part, an ideal picture of that which, in the view of the Brahmins, *ought* to be the law. It is consistent with human nature and with the special motives of their authors, that

codes like that of Menu, should pretend to the highest antiquity and claim to have emanated in their complete form from the Deity. Menu, according to Hindoo mythology, is an emanation from the supreme God; but the compilation which bears his name, though its exact date is not easily discoverable, is, in point of the relative progress of Hindoo jurisprudence, a recent production.

Among the chief advantages which the Twelve Tables and similar codes conferred on the societies which obtained them, was the protection which they afforded against the frauds of the privileged oligarchy and also against the spontaneous depravation and debasement of the national institutions. The usages which a particular community is found to have adopted in its infancy and in its primitive seats are generally those which are on the whole best suited to promote its physical and moral well-being; and, if they are retained in their integrity until new social wants have taught new practices, the upward march of society is almost certain. But unhappily there is a law of development which ever threatens to operate upon unwritten usage. The customs are of course obeyed by multitudes who are incapable of understanding the true ground of their expediency, and who are therefore left inevitably to invent superstitious reasons for their permanence. A process then commences which may be shortly described by saying that usage which is reasonable generates usage which is unreasonable. After one kind of food has been interdicted for sanitary reasons, the prohibition is extended to all food resembling it, though the resemblance occasionally depends on analogies the most fanciful. From these corruptions the Romans were protected by their code. It was compiled while the usage was still wholesome, and a hundred years afterwards it might have been too late.

II. Instrumentalities for the Adaptation of the Law

[*Ch. II.*] When primitive law has once been embodied in a Code, there is an end to what may be called its spontaneous development. Henceforward the changes effected in it, if effected at all, are effected deliberately and from without. It is impossible to suppose that the customs of any race or tribe remained unaltered during the whole of the long—in some instances the immense—interval between their declaration by a patriarchal monarch and their publication in writing. It would be unsafe too to

affirm that no part of the alteration was effected deliberately. But from the little we know of the progress of law during this period, we are justified in assuming that set purpose had the very smallest share in producing change. Such innovations on the earliest usages as disclose themselves appear to have been dictated by feelings and modes of thought which, under our present mental conditions, we are unable to comprehend. A new era begins, however, with the Codes. Wherever, after this epoch, we trace the course of legal modification we are able to attribute it to the conscious desire of improvement, or at all events of compassing objects other than those which were aimed at in the primitive times.

It may seem at first sight that no general propositions worth trusting can be elicited from the history of legal systems subsequent to the codes. The field is too vast. But the undertaking will be seen to be more feasible, if we consider that after the epoch of codes the distinction between stationary and progressive societies begins to make itself felt. It is only with the progressive that we are concerned, and nothing is more remarkable than their extreme fewness. In spite of overwhelming evidence, it is most difficult for a citizen of western Europe to bring thoroughly home to himself the truth that the civilisation which surrounds him is a rare exception in the history of the world. It is indisputable that much the greatest part of mankind has never shown a particle of desire that its civil institutions should be improved since the moment when external completeness was first given to them by their embodiment in some permanent record.

I confine myself in what follows to the progressive societies. With respect to them it may be laid down that social necessities and social opinion are always more or less in advance of Law. We may come indefinitely near to the closing of the gap between them, but it has a perpetual tendency to reopen. Law is stable; the societies we are speaking of are progressive. The greater or less happiness of a people depends on the degree of promptitude with which the gulf is narrowed.

A general proposition of some value may be advanced with respect to the agencies by which Law is brought into harmony with society. These instrumentalities seem to me to be three in number, Legal Fictions, Equity, and Legislation. Their historical order is that in which I have placed them. Sometimes two of

them will be seen operating together, and there are legal systems which have escaped the influence of one or other of them. But I know of no instance in which the order of their appearance has been changed or inverted. The early history of one of them, Equity, is universally obscure, and hence it may be thought by some that certain isolated statutes, reformatory of the civil law, are older than any equitable jurisdiction. My own belief is that remedial Equity is everywhere older than remedial Legislation; but, should this be not strictly true, it would only be necessary to limit the proposition respecting their order of sequence to the periods at which they exercise a sustained and substantial influence in transforming the original law.

I employ the word "fiction" in a sense considerably wider than that in which English lawyers are accustomed to use it, and with a meaning much more extensive than that which belonged to the Roman "fictiones." Fictio, in old Roman law, is properly a term of pleading, and signifies a false averment on the part of the plaintiff which the defendant was not allowed to traverse; such, for example, as an averment that the plaintiff was a Roman citizen, when in truth he was a foreigner. But I now employ the expression "Legal Fiction" to signify any assumption which conceals, or affects to conceal, the fact that a rule of law has undergone alteration, its letter remaining unchanged, its operation being modified. The *fact* is that the law has been wholly changed; the *fiction* is that it remains what it always was. It is not difficult to understand why fictions in all their forms are particularly congenial to the infancy of society. They satisfy the desire for improvement, which is not quite wanting, at the same time that they do not offend the superstitious disrelish for change which is always present. At a particular stage of social progress they are invaluable expedients for overcoming the rigidity of law. We must, therefore, not suffer ourselves to be affected by the ridicule which Bentham pours on legal fictions wherever he meets them. To revile them as merely fraudulent is to betray ignorance of their peculiar office in the historical development of law. But at the same time it would be equally foolish to agree with those theorists, who, discerning that fictions have had their uses, argue that they ought to be stereotyped in our system.

The next instrumentality by which the adaptation of law to social wants is carried on I call Equity, meaning by that word

any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles. The Equity whether of the Roman Praetors or of the English Chancellors, differs from the Fictions which in each case preceded it, in that the interference with law is open and avowed. On the other hand, it differs from Legislation, the agent of legal improvement which comes after it, in that its claim to authority is grounded, not on the prerogative of any external person or body, not even on that of the magistrate who enunciates it, but on the special nature of its principles, to which it is alleged that all law ought to conform.

Legislation, the enactments of a legislature which, whether it take the form of an autocratic prince or of a parliamentary assembly, is the assumed organ of the entire society, is the last of the ameliorating instrumentalities. It differs from Legal Fictions just as Equity differs from them, and it is also distinguished from Equity, as deriving its authority from an external body or person. Its obligatory force is independent of its principles. The legislature, whatever be the actual restraints imposed on it by public opinion, is in theory empowered to impose what obligations it pleases on the members of the community. There is nothing to prevent its legislating in the wantonness of caprice. Legislation may be dictated by equity, if that last word be used to indicate some standard of right and wrong to which its enactments happen to be adjusted; but then these enactments are indebted for their binding force to the authority of the legislature and not to that of the principles on which the legislature acted; and thus they differ from rules of Equity, in the technical sense of the word, which pretend to a paramount sacredness entitling them at once to the recognition of the courts even without the concurrence of prince or parliamentary assembly.

III. The Study of Primitive Society

[*Ch. V.*] There is such wide-spread dissatisfaction with existing theories of jurisprudence, and so general a conviction that they do not really solve the questions they pretend to dispose of, as to justify the suspicion that some line of inquiry necessary to a perfect result has been incompletely followed or altogether omitted by their authors. And indeed there is one remarkable omission

with which all these speculations are chargeable, except perhaps those of Montesquieu. They take no account of what law has actually been at epochs remote from the particular period at which they made their appearance. Their originators carefully observed the institutions of their own age and civilisation, and those of other ages and civilisations with which they had some degree of intellectual sympathy, but, when they turned their attention to archaic states of society which exhibited much superficial difference from their own, they uniformly ceased to observe and began guessing. The mistake which they committed is therefore analogous to the error of one who, in investigating the laws of the material universe, should commence by contemplating the existing physical world as a whole, instead of beginning with the particles which are its simplest ingredients. One does not certainly see why such a scientific solecism should be more defensible in jurisprudence than in any other region of thought. It would seem antecedently that we ought to commence with the simplest social forms in a state as near as possible to their rudimentary condition.

The rudiments of the social state, as far as they are known to us at all, are known through testimony of three sorts—accounts by contemporary observers of civilisations less advanced than their own, the records which particular races have preserved concerning their primitive history, and ancient law. The first kind of evidence is the best we could have expected. As societies do not advance concurrently, but at different rates of progress, there have been epochs at which men trained to habits of methodical observation have really been in a position to watch and describe the infancy of mankind. Tacitus made the most of such an opportunity; but the *Germany*, unlike most celebrated classical books, has not induced others to follow the excellent example set by its author, and the amount of this sort of testimony which we possess is exceedingly small. Even the *Germany* has been suspected by some critics of sacrificing fidelity to poignancy of contrast and picturesqueness of narrative. Other histories too, which have been handed down to us among the archives of the people to whose infancy they relate, have been thought distorted by the pride of race or by the religious sentiment of a newer age. It is important then to observe that these suspicions, whether groundless or rational, do not attach to a great deal of archaic law. Much of the old law which has descended to us was preserved merely because

it was old. Those who practised and obeyed it did not pretend to understand it; and in some cases they even ridiculed and despised it. They offered no account of it except that it had come down to them from their ancestors. If we confine our attention, then, to those fragments of ancient institutions which cannot reasonably be supposed to have been tampered with, we are able to gain a clear conception of certain great characteristics of the society to which they originally belonged.

If I were attempting for the more special purposes of the jurist to express compendiously the characteristics of the situation in which mankind disclose themselves at the dawn of their history, I should be satisfied to quote a few verses from the *Odyssey* of Homer: "They have neither assemblies for consultation nor *themistes*, but every one exercises jurisdiction over his wives and his children, and they pay no regard to one another." These lines are applied to the Cyclops, and it may not perhaps be an altogether fanciful idea when I suggest that the Cyclops is Homer's type of an alien and less advanced civilisation. However that may be, the verses condense in themselves the sum of the hints which are given us by legal antiquities. Men are first seen distributed in perfectly insulated groups, held together by obedience to the parent. Law is the parent's word, but it is not yet in the condition of those *themistes* which were analyzed in the first chapter of this work. When we go forward to the state of society in which these early legal conceptions show themselves as formed, we find that they still partake of the mystery and spontaneity which must have seemed to characterise a despotic father's commands, but that at the same time, inasmuch as they proceed from a sovereign, they presuppose a union of family groups in some wider organisation. The next question is, what is the nature of this union and the degree of intimacy which it involves. It is just here that archaic law renders us one of the greatest of its services and fills up a gap which otherwise could only have been bridged by conjecture. It is full, in all its provinces, of the clearest indications that society in primitive times was not what it is assumed to be at present, a collection of *individuals*. In fact, and in the view of the men who composed it, it was *an aggregation of families*. The contrast may be most forcibly expressed by saying that the *unit* of an ancient society was the Family, of a modern society the Individual.

It would be a very simple explanation of the origin of society

if we could suppose that communities began to exist wherever a family held together instead of separating at the death of its patriarchal chieftain. In most of the Greek states and in Rome there long remained the vestiges of an ascending series of groups out of which the State was at first constituted. Are we at liberty to follow these indications, and to lay down that the commonwealth is a collection of persons united by common descent from the progenitor of an original family? Of this we may at least be certain, that all ancient societies regarded themselves as having proceeded from one original stock, and even laboured under an incapacity for comprehending any reason except this for their holding together in political union. The history of political ideas begins, in fact, with the assumption that kinship in blood is the sole possible ground of community in political functions. And yet we find that along with this belief, or, if we may use the word, this theory, each community preserved records or traditions which distinctly showed that the fundamental assumption was false. Adverting to Rome singly, we perceive that the primary group, the Family, was being constantly adulterated by the practice of adoption, while stories seem to have been always current respecting the exotic extraction of one of the original Tribes and concerning a large addition to the houses made by one of the early kings. The composition of the state, uniformly assumed to be natural, was nevertheless known to be in great measure artificial. This conflict between belief or theory and notorious fact is at first sight extremely perplexing: but what it really illustrates is the efficiency with which Legal Fictions do their work in the infancy of society. The earliest and most extensively employed of legal fictions was that which permitted family relations to be created artificially, and there is none to which I conceive mankind to be more deeply indebted. If it had never existed, I do not see how any one of the primitive groups, whatever were their nature, could have absorbed another, or on what terms any two of them could have combined, except those of absolute superiority on one side and absolute subjection on the other. No doubt, when with our modern ideas we contemplate the union of independent communities, we can suggest a hundred modes of carrying it out, the simplest of all being that the individuals comprised in the coalescing groups shall vote or act together according to local propinquity; but the idea that a number of persons should exercise po-

litical rights in common simply because they happened to live within the same topographical limits was utterly strange and monstrous to primitive antiquity. The expedient which in those times commanded favour was that the incoming population should *feign themselves* to be descended from the same stock as the people on whom they were engrafted; and it is precisely the good faith of this fiction, and the closeness with which it seemed to imitate reality, that we cannot now hope to understand. The conclusion then which is suggested by the evidence is, not that all early societies were formed by descent from the same ancestor, but that all of them which had any permanence and solidity either were so descended or assumed that they were. But though all this seems to me to be established with reference to the communities with whose records we are acquainted, the remainder of their history sustains the position as to the essentially transient and terminable influence of the most powerful Legal Fictions. At some point of time—probably as soon as they felt themselves strong enough to resist extrinsic pressure—all these states ceased to recruit themselves by factitious extensions of consanguinity. They necessarily, therefore, became Aristocracies, in all cases where a fresh population from any cause collected around them which could put in no claim to community of origin. Their sternness in maintaining the central principle of a system under which political rights were attainable on no terms whatever except connexion in blood, real or artificial, taught their inferiors another principle, which proved to be endowed with a far higher measure of vitality. This was the principle of *local contiguity*, now recognised everywhere as the condition of community in political functions. A new set of political ideas came at once into existence, which, being those of ourselves, our contemporaries, and in great measure of our ancestors, rather obscure our perception of the older theory which they vanquished and dethroned.

IV. From Family Authority to Individual Responsibility

[*Ch. V, cont.*] The Family is the type of an archaic society in all the modifications which it was capable of assuming; but the family here spoken of is not exactly the family as understood by a modern. The persons theoretically amalgamated into a family by their common descent are practically held together by common obedience to their highest living ascendant, the father, grand-

father, or great-grandfather. The patriarchal authority of a chieftain is as necessary an ingredient in the notion of the family group as the fact (or assumed fact) of its having sprung from his loins. It is this patriarchal aggregate which meets us on the threshold of primitive jurisprudence.

On a few systems of law the family organisation of the earliest society has left a plain and broad mark in the life-long authority of the Father or other ancestor over the person and property of his descendants, an authority which we may conveniently call by its later Roman name of Patria Potestas. No feature of the rudimentary associations of mankind is deposed to by a greater amount of evidence than this, and yet none seems to have disappeared so generally and so rapidly from the usages of advancing communities.

It is to be regretted that a chasm which exists in its history cannot be more completely filled. So far as regards the person, the parent, when our information commences, has over his children the *jus vitae necisque*, the power of life and death, and *à fortiori* of uncontrolled corporal chastisement; he can modify their personal condition at pleasure; he can give a wife to his son; he can give his daughter in marriage; he can divorce his children of either sex; he can transfer them to another family by adoption; and he can sell them. Late in the Imperial period we find vestiges of all these powers, but they are reduced within very narrow limits. The unqualified right of domestic chastisement has become a right of bringing domestic offences under the cognisance of the civil magistrate; the privilege of dictating marriage has declined into a conditional veto; the liberty of selling has been virtually abolished, and adoption itself, destined to lose almost all its ancient importance in the reformed system of Justinian, can no longer be effected without the assent of the child transferred to the adoptive parentage. In short, we are brought very close to the verge of the ideas which have at length prevailed in the modern world. But between these widely distant epochs there is an interval of obscurity, and we can only guess at the causes which permitted the Patria Potestas to last as long as it did by rendering it more tolerable than it appears. The active discharge of the most important among the duties which the son owed to the state must have tempered the authority of his parent if they did not annul it. We can readily persuade ourselves that the paternal despotism could not be

brought into play without great scandal against a man of full age occupying a high civil office. The military tribune and the private soldier who were in the field three-quarters of a year during the earlier contests, at a later period the proconsul in charge of a province, and the legionaries who occupied it, cannot have had practical reason to regard themselves as the slaves of a despotic master; and all these avenues of escape tended to multiply themselves. We may infer, I think, that a strong sentiment in favour of the relaxation of the Patria Potestas had become fixed by the time that the pacification of the world commenced on the establishment of the Empire. The first serious blows at the ancient institution are attributed to the earlier Caesars, and some isolated interferences of Trajan and Hadrian seem to have prepared the ground for a series of express enactments which, though we cannot always determine their dates, we know to have limited the father's powers on the one hand, and on the other to have multiplied facilities for their voluntary surrender.

The Civil laws of States first make their appearance as the Themistes of a patriarchal sovereign, and we can now see that these Themistes are probably only a developed form of the irresponsible commands which, in a still earlier condition of the race, the head of each isolated household may have addressed to his wives, his children, and his slaves. But, even after the State has been organised, the laws have still an extremely limited application. Whether they retain their primitive character as Themistes, or whether they advance to the condition of Customs or Codified Texts, they are binding not on individuals, but on Families. Ancient jurisprudence, if a perhaps deceptive comparison may be employed, may be likened to International Law, filling nothing, as it were, excepting the interstices between the great groups which are the atoms of society. In a community so situated, the legislation of assemblies and the jurisdiction of Courts reaches only to the heads of families, and to every other individual the rule of conduct is the law of his home, of which his Parent is the legislator. But the sphere of civil law, small at first, tends steadily to enlarge itself. The agents of legal change, Fictions, Equity, and Legislation, are brought in turn to bear on the primeval institutions, and at every point of the progress, a greater number of personal rights and a larger amount of property are removed from the domestic forum to the cognisance of the public tribunals. The

ordinances of the government obtain gradually the same efficacy in private concerns as in matters of state, and are no longer liable to be overriden by the behests of a despot enthroned by each hearthstone. We have in the annals of Roman law a nearly complete history of the crumbling away of an archaic system, and of the formation of new institutions from the recombined materials, institutions some of which descended unimpaired to the modern world, while others, destroyed or corrupted by contact with barbarism in the dark ages, had again to be recovered by mankind.

The movement of the progressive societies has been uniform in one respect. Through all its course it has been distinguished by the gradual dissolution of family dependency and the growth of individual obligation in its place. The advance has been accomplished at varying rates of celerity, and there are societies not absolutely stationary in which the collapse of the ancient organisation can only be perceived by careful study of the phenomena they present. But, whatever its pace, the change has not been subject to reaction or recoil, and apparent retardations will be found to have been occasioned through the absorption of archaic ideas and customs from some entirely foreign source. Nor is it difficult to see what is the tie between man and man which replaces by degrees those forms of reciprocity in rights and duties which have their origin in the Family. It is Contract. Starting, as from one terminus of history, from a condition of society in which all the relations of Persons are summed up in the relations of Family, we seem to have steadily moved towards a phase of social order in which all these relations arise from the free agreement of Individuals. In Western Europe the progress achieved in this direction has been considerable. Thus the status of the Slave has disappeared—it has been superseded by the contractual relation of the servant to his master. The status of the Female under Tutelage, if the tutelage be understood of persons other than her husband, has also ceased to exist; from her coming of age to her marriage all the relations she may form are relations of contract. So too the status of the Son under Power has no true place in law of modern European societies. If any civil obligation binds together the Parent and the child of full age, it is one to which only contract gives its legal validity. The apparent exceptions are exceptions of that stamp which illustrate the rule. The child before years of discretion, the orphan under guardian-

ship, the adjudged lunatic, have all their capacities and incapacities regulated by the Law of Persons. But why? The reason is differently expressed in the conventional language of different systems, but in substance it is stated to the same effect by all. The great majority of Jurists are constant to the principle that the classes of persons just mentioned are subject to extrinsic control on the single ground that they do not possess the faculty of forming a judgment on their own interests; in other words, that they are wanting in the first essential of an engagement by Contract.

The word Status may be usefully employed to construct a formula expressing the law of progress thus indicated, which, whatever be its value, seems to me to be sufficiently ascertained. All the forms of Status taken notice of in the Law of Persons were derived from, and to some extent are still coloured by, the powers and privileges anciently residing in the Family. If then we employ Status, agreeably with the usage of the best writers, to signify these personal conditions only, and avoid applying the term to such conditions as are the immediate or remote result of agreement, we may say that the movement of the progressive societies has hitherto been a movement *from Status to Contract.*

CHAPTER V. GERMAN IDEALISM

I. THE KANTIAN IDEA OF POLITICAL RIGHT

The Principles of Political Right (1793)—The Philosophy of Law (1796)

Immanuel Kant (1724-1804)

Three great schools of thought competed for the domination of political philosophy in the first half of the nineteenth century,—utilitarianism, historical conservatism, and idealism. The utilitarians judged institutions by their effect on the sum total of human happiness, and gladly espoused reforms that promised to right the balance between pain and pleasure. The historical school found in the study of history much the same justification for existing institutions that earlier conservatives had found in authoritative revelation. Meanwhile the idealists, rejecting both the greatest happiness principle and the standard of the *status quo* as merely empirical, erected their systems upon the foundation of the freedom of the will.

Idealism was first voiced in Germany, at the close of the eighteenth century, as a particular manifestation of the philosophical system of Immanuel Kant. Kant's political philosophy, like his ethics and metaphysics, drew largely on the Platonic concept of the reality of the idea, and there was also a decided indebtedness to Rousseau's doctrine of the general will. Kant was able to dignify the idea of the state without either debasing the individual or idealizing the use of force. Writing his political works in the troubled decade of the 1790's, he preached of a league of nations and perpetual peace.

Kant's entire life was spent in the old East Prussian city of Königsberg. The son of a poor saddler, he managed to attend the university of Konigsberg but was obliged to spend nine years as a private tutor before incurring the expense of taking his degree and qualifying as a *privatdocent* at the university. It was not until 1770 that he was appointed to the chair of logic and metaphysics at Königsberg, and he was almost sixty before his great work, *The Critique of Pure Reason* (1781), established his preeminence in philosophy. His political theory was the product of his closing years. It is systematically presented in *The Philosophy of Law* (1796) and is sketched in more popular style in the essay entitled *The Principles of Political Right* (1793). Mention should also be made of the well-known *Perpetual Peace* (1795).

The readings here given are based on the translations by W. Hastie in his volumes entitled *Principles of Politics*, including *Principles of Political Right* and *Perpetual Peace* (T. & T. Clark, Edinburgh, 1891), and *The*

Philosophy of Law (T. & T. Clark, Edinburgh, 1887). They are reprinted by permission of the publishers. Except as otherwise indicated, the footnotes are the author's.

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THE PRINCIPLES OF POLITICAL RIGHT

I. The Rational Principles of the Constitution of the Civil State

The establishment of a Civil Constitution in society is one of the most important facts in human history. In the principle on which it is founded this institution differs from all the other forms of social union among mankind. In all social contracts we find a union of a number of persons for the purpose of carrying out some one End which they all have in common. But a Union of a multitude of men, viewed as an end in itself that every person ought to carry out, and which consequently is a primary and unconditional duty amid all the external relations of men who cannot help exercising a mutual influence on one another,—is at once peculiar and unique of its kind. Such a Union is only to be found in a Society which, by being formed into a Civil State, constitutes a Commonwealth. Now the End which in such external relations is itself a duty and even the highest formal condition—the *conditio sine quâ non*—of all other external duties, is the realisation of THE RIGHTS OF MEN *under public compulsory Laws*, by which every individual can have what is his own assigned to him, and secured against the encroachments or assaults of others.

The idea of an external Right, however, arises wholly out of the idea of human Freedom or LIBERTY, in the external relations of men to one another. As such, it has nothing specially to do with the realisation of Happiness as a purpose which all men naturally have, or with prescription of the means of attaining it; and it is absolutely necessary that this End shall not be mixed up with the Laws of Right as their motive. RIGHT in general, may be defined as the limitation of the Freedom of any individual to the extent of its agreement with the freedom of all other individuals, in so far as this is possible by a universal Law. PUBLIC RIGHT, again, is the sum of the external Laws which make such a complete agreement of freedom in Society possible. Now as all limitation of freedom by external acts of the will of another, is a mode of *coercion* or *compulsion*, it follows that the Civil Constitution is a relation of *free* men who live under coercive Laws, without prejudicing their liberty otherwise in the whole of their connection with others. For, Reason itself wills this. By "Reason" is here meant the pure innate law-giving, Reason which gives no regard to any End that is derived from experience.

The Civil State, then, regarded merely as a social state that is regulated by laws of right, is founded upon the following rational principles:—

1. The LIBERTY of every Member of the Society AS A MAN;
2. The EQUALITY of every Member of the Society with every other, AS A SUBJECT;
3. The SELF-DEPENDENCY of every Member of the Commonwealth, AS A CITIZEN.

These Principles are not so much Laws given by the State when it is established, as rather fundamental conditions according to which alone the institution of a State is possible, in conformity with the pure rational Principles of external Human Right generally.

1. The LIBERTY of every Member of the State AS A MAN, is the first Principle in the constitution of a rational Commonwealth. I would express this Principle in the following form:—"No one has a right to compel me to be happy in the peculiar way in which he may think of the well-being of other men; but everyone is entitled to seek his own happiness in the way that seems to him best, if it does not infringe the liberty of others in striving after a similar end for themselves when their Liberty is capable of consisting with the Right of Liberty in all others according to possible universal

laws."—A Government founded upon the principle of Benevolence towards the people—after the analogy of a *father* to his children, and therefore called a *paternal Government*—would be one in which the Subjects would be regarded as children or minors unable to distinguish what is beneficial or injurious to them. These subjects would be thus compelled to act in a merely passive way; and they would be trained to expect solely from the Judgment of the Sovereign and just as he might will it, merely out of his goodness, all that *ought* to make them happy. Such a Government would be the greatest conceivable *Despotism;* for it would present a Constitution that would abolish all Liberty in the Subjects and leave them no Rights.

2. The EQUALITY of every member of the State AS A SUBJECT, is the second Principle in the Constitution of a rational Commonwealth. The formula of this Principle may be put thus:—"Every Member of the Commonwealth has rights against every other that may be enforced by compulsory Laws, from which only the Sovereign or Supreme Ruler of the State is excepted, because he is regarded not as a mere Member of the Commonwealth, but as its Creator or Maintainer; and he alone has the Right to compel without being himself subject to compulsory Law." For, should the Head of the State also be subject to compulsion, there would no longer be a Supreme Head, and the series of members subordinate and superordinate would go on upwards *ad infinitum.* Again, were there in the State two such powers as persons exempt from legal compulsion, neither of them would be subject to compulsory Laws, and as such the one could do no wrong to the other; which is impossible.

This thoroughgoing Equality of the individual men in a State as its subjects, is, however, quite compatible with the greatest *Inequality* in the extent and degrees of their possessions, whether consisting in corporeal or spiritual superiority over others, or in the external gifts of fortune, or in rights generally—of which there may be many—in relation to others. Thus the prosperity of the one may greatly depend on the will of another, as in the case of the poor in relation to the rich. One may even have of necessity to obey and another to command, as in the relation of children to parents, and of wife to husband. Again, one may have to work and another to pay, as in the case of a day labourer; and so on. But in relation to the involved law of Right, which as the expression of the

universal Will of the State can be only one, and which regards the *form* of the Right, and not the matter or object to which the Right refers: in all cases, the persons as Subjects, are to be regarded as all equal to one another. For no one has a right to compel or coerce anyone whomsoever in the State, otherwise than by the public Law and through the Sovereign or Ruler executing it; and anyone may resist another thus far, and through the same medium. On the other hand, no one can lose this right, as a title to proceed by legal compulsion against others, except by his own fault or a criminal act. Nor can anyone divest himself of it voluntarily, or by a compact, so as to bring it about by a supposed act of Right, that he should have no rights but only duties towards others; for in so doing he would be depriving himself of the right of making a compact, and consequently the act would annul itself.

Out of this idea of the Equality of men as Subjects in the Commonwealth, there arises the following formula:—"Every Member of the State should have it made possible for him to attain to any position or rank that may belong to any subject, to which his talent, his industry, or his fortune may be capable of raising him; and his fellow-subjects are not entitled to stand in the way by any *hereditary* prerogative, forming the exclusive privilege of a certain class, in order to keep him and his posterity for ever below them."

Now birth is not an *act* on the part of him who is born, and consequently it does not entail upon him any inequality in the state of Right, nor any subjection under laws of compulsion other than what is common to him, with all others, as a subject of the one supreme legislative Power; and, therefore, there can be no inborn privilege by way of Right in any member of the Commonwealth as a subject, before another fellow-subject. Nor, consequently, has anyone a right to transmit the privilege or prerogative of the *Rank* which he holds in the Commonwealth to his posterity so that they should be, as it were, qualified by birth for the rank of nobility; nor should they be prevented from attaining to the higher stages in the gradations of social rank, by their own merit. Everything else that partakes of the nature of a thing and does not relate to personality, may be bequeathed; and, since such things may be acquired as property, they may also be alienated or disponed. Hence after a number of generations a considerable inequality in external circumstances may arise among the members of a Commonwealth, producing such relations as those of Master and

Servant, Landlord and Tenant, etc. These circumstances and relations, however, ought not to hinder any of the subjects of the State from rising to such position as their talent, their industry, and their fortune may make it possible for them to fill. Under any conditions, he is to be regarded as happy who is conscious that it depends only on himself—that is on his faculty or earnest will—or on circumstances which he cannot impute to any other, and not on the irresistible will of others, that he does not rise to a state of Equality with others who as his fellow-subjects have no advantage over him as far as Right is concerned.

3. The SELF-DEPENDENCY of a member of the Commonwealth AS A CITIZEN, or fellow-legislator, is the third principle or condition of Right in the State. In the matter of the legislation itself, all are to be regarded as free and equal *under* the already existing public Laws; but they are not to be all regarded as equal in relation to the right to give or *enact* these laws. Those who are not capable of this right are, notwithstanding, subjected to the observance of the laws as members of the Commonwealth, and thereby they participate in the protection which is in accordance therewith; they are, however, not to be regarded as *Citizens* but as protected fellow-subjects.—All right, in fact, depends on the laws. A public law however, which determines for all what is to be legally allowed or not allowed in their regard, is the act of a public Will, from which all right proceeds and which therefore itself can do no wrong to anyone. For this, however, there is no other Will competent than that of the *whole* people, as it is only when all determine about all that each one in consequence determines about himself. For it is only to himself that one can do no wrong. But if it be another will that is in question, then the mere will of anyone different from it, could determine nothing for it which might not be wrong; and consequently the law of such a will would require another law to limit its legislation. And thus no particular will can be legislative for a Commonwealth.—Properly speaking, in order to make out this, the ideas of the external Liberty, Equality, and *Unity* of the will of all, are to be taken into account; and for the last of these Self-dependency is the condition, since the exercising of a vote is required when the former two ideas are taken along with it. The fundamental law thus indicated, which can only arise out of the universal united will of the people, is what is called the "*Original Contract.*"

Now anyone who has the right of voting in this system of Legislation, is a *Citizen* as distinguished from a Burgess. The quality requisite for this status, in addition to the natural one of not being a child or a woman,—is solely this, that the individual is his *own master* by right (*sui juris*); and, consequently, that he has some property that supports him,—under which may be reckoned any art or handicraft, or any fine art or science. Otherwise put, the condition in those cases in which the citizen must acquire from others in order to live, is that he only acquires it by alienation of what is his own, and not by a consent given to others to make use of his powers; and consequently that he *serves* no one but the Commonwealth, in the proper sense of the term.[1] In this relation those who are skilled in the arts, and large or small proprietors, are all equal to one another; as in fact each is entitled only to one vote.

Furthermore, *all* who have this right of voting must agree in order to realise the Laws of public justice, for otherwise there would arise a conflict of right between those who were not in agreement with it, and the others who were; and this would give rise to the need of a higher principle of right that the conflict might be decided. A universal agreement cannot be expected from a whole people; and consequently it is only a plurality of voices, and not even of those who immediately vote in a large nation, but only of their delegates as representative of the people that can be foreseen as practically attainable. And hence, even the principle of

[1] "The Apprentice of a Merchant or Tradesman, a Servant who is not in the employ of the State, a Minor (*naturaliter vel civiliter*), all Women, and, generally, every one who is compelled to maintain himself not according to his own industry, but as it is arranged by others (the State excepted), are without Civil Personality, and their existence is only, as it were, incidentally included in the State. The Woodcutter whom I employ on my estate; the Smith in India who carries his hammer, anvil, and bellows into the houses where he is engaged to work in iron, as distinguished from the European Carpenter or Smith, who can offer the independent products of his labour as wares for public sale; the resident Tutor as distinguished from the Schoolmaster; the Ploughman as distinguished from the Farmer and such like, illustrate the distinction in question. In all these cases, the former members of the contrast are distinguished from the latter by being mere subsidiaries of the Commonwealth and not active independent Members of it, because they are of necessity commanded and protected by others, and consequently possess no political Self-sufficiency in themselves. All they have a right in their circumstances to claim, may be no more than that whatever be the mode in which the positive laws are enacted, these laws must not be contrary to the natural Laws that demand the Freedom of all the people and the Equality that is conformable thereto; and it must therefore be made possible for them to raise themselves from this passive condition in the State, to the condition of active Citizenship."—Kant, *Philosophy of Law*, 46. (Present editor's note.)

making the majority of votes suffice as representing the general consent, will have to be taken as by compact; and it must thus be regarded as the ultimate basis of the establishment of any Civil Constitution.

II. The Original Contract as the Criterion of Right

We have next to consider what follows by way of *Corollary* from the principles thus enunciated. We have before us the idea of an "Original Contract" as the only condition upon which a civil and, therefore, wholly rightful, constitution can be founded among men, and as the only basis upon which a State can be established. But this fundamental condition—whether called an "original contract" or a "social compact"—may be viewed as the coalition of all the private and particular wills of a people into one common and public Will, having a purely juridical legislation as its end. But it is not necessary to presuppose this contract or compact, to have been actually a fact; nor indeed is it possible as a fact. In short, this idea is merely *an idea of Reason;* but it has undoubtedly a practical reality. For it ought to bind every legislator by the condition that he shall enact such laws as might have arisen from the united will of a whole people; and it will likewise be binding upon every subject, in so far as he will be a citizen, so that he shall regard the Law as if he had consented to it of his own will. This is the test of the rightfulness of every public law. If the law be of such a nature that it is *impossible* that the whole people could give their assent to it, it is not a just law. An instance of this kind would be a law, enacting that a certain class of subjects should have all the privileges of hereditary rank by mere birth. But if it be merely *possible* that a people could consent to a law, it is a duty to regard it as just, even supposing that the people were at the moment in such a position or mood, that if it were referred to them, their consent to it would probably be refused.[2]

[2] If, for example, a proportioned war-tax were imposed on all the subjects, they are not entitled, because it is burdensome, to say that it is unjust because somehow, according to their opinion, the war was unnecessary. For they are not entitled to judge of this; whereas because it is at least always *possible* that the war was inevitable and the tax indispensable, it must be regarded as rightful in the judgment of the subject. If, however, in such a war certain owners of property were to be burdened by imposts, from which others of the same class were spared, it is easily seen that a whole people could not concur in such a law, and it is entitled at the least to make protestation against it, because it could not regard this unequal distribution of the public burdens as just.

This limitation, however, manifestly applies only to the judgment of the Legislator and not to that of the Subject. If, then, under a certain actual state of the law, a people should conclude that the continuance of that law would probably take away their happiness, what would they have to do? Would it not be a duty to resist the law? The answer can only be that the people should do nothing but obey. For the question here does not turn upon the happiness which the subject may expect from some special institution or mode of administering the Commonwealth, but the primary concern is purely that of the Right which has thus to be secured to every individual. This is the supreme principle from which all the maxims relating to the Commonwealth must proceed; and it cannot be limited by anything else. In regard to the interest of happiness, no principle that could be universally applicable, can be laid down for the guidance of legislation; for not only the circumstances of the time, but the very contradictory and ever-changing opinions which men have of what will constitute happiness, make it impossible to lay down fixed principles regarding it; and so the idea of Happiness, taken by itself, is not available as a principle of legislation. No one can prescribe for another as to what he shall find happiness in. The principle, *salus publica suprema civitatis lex est*, remains undiminished in value and authority; and the public weal, which has first of all to be taken into consideration, is just the maintenance of that legal constitution by which the liberty of all is secured through the laws. Along with this, the individual is left undisturbed in his right to seek his happiness in whatever way may seem to him best, if only he does not infringe the universal liberty secured through the law, by violating the rights of other fellow-subjects. When the sovereign Power enacts laws which are directed primarily towards the happiness of the citizens, out of regard to their well-being, the state of the population and such like, this is not done from its being the end for which the civil constitution is established, but merely as a means of securing the state of Right, especially against the external enemies of the people. The Government must be capable of judging, and has alone to judge, whether such legislation belongs to the constitution of the Commonwealth, and whether it is requisite in order to secure its strength and steadfastness, both within itself and against foreign enemies; but this is not to be done as if the aim were to make the people happy even against their will, but only to bring it about that they shall

exist as a Commonwealth.[3] In thus judging whether any such measure can be taken prudently or not, the legislator may indeed err. But he does not err in so far as he considers whether the law does or does not agree with a principle of Right.

And in doing so he has an infallible criterion in the idea of the "original contract," viewed as an essential idea of reason; and hence he does not require—as would be the case with the principle of happiness—to wait for experience to instruct him about the utility rather than the rightness of his proposed measure. For if it is only not contradictory in itself that a whole people should agree to such a law, however unpleasant may be its results in fact, it would as such be conformable to Right. If a public law be thus conformable to Right, it is irreprehensible, and hence it will give the right to coerce; and, on the other hand, it would involve the prohibition of active resistance to the will of the legislator. The power in the State which gives effect to the law, is likewise irresistible; and no rightful commonwealth exists without such a power to suppress all internal resistance to it. For, such resistance would proceed according to a rule which if made universal would destroy all civil constitutionalism, and would annihilate the only state in which men can live in the actual possession of rights.

Hence it follows that all resistance to the Sovereign Legislative Power, every kind of instigation to bring the discontent of the subjects into active form, and rebellion or insurrection of every degree and kind, constitute the highest and most punishable crimes in the commonwealth; for they would destroy its very foundations. The prohibition of them is therefore absolute; so that even if the Supreme Power, or the Sovereign as its agent, were to violate the original contract, and thereby in the judgment of the subject to lose the right of making the laws, yet as the Government has been empowered to proceed even thus tyrannically, no right of resistance can be allowed to the subject as a power antagonistic to the State. The reason of this is that in the actually existing Civil Constitution the people have no longer the right to determine by their judgment how it is to be administered. For suppose they had such a right, and that it was directly opposed to the judgment

[3] Here belong certain prohibitions of imports in order that the means of acquisition may be promoted in the best interests of the subjects, and not for the advantage of strangers and the encouragement of the industry of others, because the State without the prosperity of the people, would not possess sufficient power to resist external enemies or to maintain itself as a Commonwealth.

of the actual Head of the State, who would there be to decide with which of them the right lay? Evidently neither of them could do this, as it makes them judges in their own cause. There would therefore have to be another sovereign Head above the sovereign Head to decide between it and the people, but this is a contradiction. Nor can some supposed *right of necessity*—which is at best a spurious thing, such as is the fancied right to do wrong in an extreme *physical* necessity—come in here as a lever for the removal of the barrier thus limiting the voluntary power of the people. For the Head of the State may just as well think to justify his hard procedure against the subjects by the fact of their obstinacy and intractability, as they to justify their revolt by complaining against him about their undue suffering. Who shall decide between them? It is only he who is in possession of the supreme public administration of right, or who is otherwise the Head of the State, who can do this; and no one in the commonwealth can have the right to contest his possession of the power to do it. Nevertheless I find excellent men asserting such a right on the part of the Subject to resist the higher authority under certain circumstances. Among these I shall only now refer to Achenwall, a very cautious, distinct, and careful writer. In his doctrine of Natural Right he says: "If the danger which threatens the commonwealth from longer toleration of the injustice of the sovereign, is greater than what may be anticipated from taking up arms, then the people may resist such a sovereign; and in order to maintain their rights they may break their compact of submission and dethrone him as a tyrant." And hence he infers that in this way the people return to the state of Nature in relation to their previous Head.

I am willing to believe that neither Achenwall nor any of the worthy men who agree with him in this sort of reasoning, would have ever given their advice or consent in any case to enterprises of so dangerous a nature. Nor can it well be doubted that if the revolutions by which Switzerland, the United Netherlands, and even Great Britain acquired the political Constitutions now so celebrated, had failed, the readers of history would have seen in the execution of the leaders now so highly lauded, only the punishment deserved by great political criminals. The result thus usually becomes intermingled with our judgment of the principles of right in question, although the former is always uncertain in fact, whereas the latter are always certain in themselves. It is, however,

clear that as regards these principles the people by their mode of seeking to assert their rights commit the greatest wrong, even if it be admitted that the rebellion might do no wrong to the ruling sovereign who had violated the actual compact upon which his relation to the people was founded. For if this mode of conduct were adopted as a maxim, all rightful political Constitution would be made uncertain and a natural state of utter lawlessness would be introduced, in which all right at least would cease to have effect.—With regard to this tendency in so many thoughtful writers to encourage the people to their own detriment, I will only observe that there are two influences commonly at work in determining it. It is partly caused by the common illusion which substitutes the principle of Happiness as the criterion of judgment, when the principle of Right is really in question. And again, where there is no record of anything like a compact actually proposed to the Commonwealth, or accepted by the Sovereign, or sanctioned by both, these thinkers have assumed the idea of an "original Contract" as a thing which must have *actually* happened; and thus they supposed that the right was always reserved to the people in the case of any gross violation of it in their judgment, to resile from it at pleasure.[4]

It thus becomes evident that the principle of Happiness, which is properly incapable of any definite determination as a principle, may be the occasion of much evil in the sphere of political Right, just as it is in the sphere of morals. And this will hold good even with the best intentions on the part of those who teach and inculcate it. The sovereign acting on this principle determines to make the people happy according to his notions, and he becomes a despot. The people will not give up their common human claim to what they consider their own happiness, and they become rebels. Now if at the outset it had been asked what is right and just by regard to the established principles of reason, without regard to the notions of the empiric, the idea underlying the theory of the social compact would always have incontestable authority. But it would not be correct to treat it as an empirical fact, as Danton

[4] However the actual compact of the People with the Ruler may be violated, the People cannot in fact directly offer opposition as a *Commonwealth*, but only by mutiny and rebellion. For the hitherto existing Constitution is then broken through by the People; whereas the organisation of a new Commonwealth has still to find place. In these circumstances the state of Anarchy arises with all the abominations, which are thereby at least made possible; and the wrong which thus ensues is what is inflicted by one party upon another in the People.

would have it; for he thought that apart from this fact all rights found in any existing civil constitution and all property, would have to be declared null and void. The idea in question is only to be taken as a rational principle for the estimation and judgment of all the public rights existing under a political constitution. And so regarded, it then becomes evident that, prior to the existence of a common Will, the people possess no right of coercion in relation to their ruler, because they can only bring such coercion to bear as a matter of right through him. And when this Will does exist, no coercion can be exercised by the people against him, because this would make them to be themselves the supreme ruler. Hence a right of compulsion or coercion in the form of a resistance in word or deed against the sovereign Head of the State can never belong of right to the people.

Further, we see this theory sufficiently confirmed in practice. In the constitution of Great Britain the people form such an important element that it is represented as a model for the whole world, and yet we find that it is entirely silent about any right pertaining to the people in case the monarch should transgress the contract of 1688; and, consequently, since there is no law upon the subject, if there is any right of rebellion against him should he violate the constitution, it can only be there by secret reservation. For, it would be a manifest contradiction that the constitution should contain a law providing for such a case. That would be to justify the overthrow of the subsisting constitution from which all particular laws arise; which would be absurd, even on the supposition that the contract was violated. Such a constitution would be contradictory for this reason that it would necessarily have to include a *publicly constituted counter power*, which consequently would be a second sovereign in the State, and its function would be to protect the rights of the people against the other sovereign.[5] But the existence of this second Sovereign would likewise require a third whose function would be to decide between these two and to determine on which side right and justice lay. But this view manifestly puts the constitution into contradiction with itself. Now if, in presence of these assertions, the objection

[5] No Law or Right in the State can be, as it were maliciously concealed by a secret reservation; least of all the Rights which people claim as belonging to the Constitution, because all its laws must be conceived as having sprung from a public will. If the Constitution allowed insurrection, it would therefore publicly have to define the right to it as well as the way in which it was to be put in practice.

is not raised against me, as it certainly should not, that I flatter the monarch too much by this view of his inviolability, I may hope to be also spared another objection from the opposite side. In a word, I hope to be spared the contrary objection that I assert too much in favour of the people, when I say that they have also their own inalienable rights as against the sovereign of the State, although these cannot be justly regarded as rights of coercion or constraint.

Hobbes is of the opposite opinion. In his view the sovereign as Head of the State is bound in nothing to the people by compact and can do no wrong to the citizens, however he act towards them. This proposition would be quite correct, if by "wrong" we understand that kind of lesion which allows to the injured party a right of coercion against the one who does the wrong. So it is in the special relation, but taken generally the proposition is repulsive and appalling. Any Subject who is not utterly intractable, must be able to suppose that his Sovereign does not really *wish* to do him wrong. Moreover, every man must be held to have his own inalienable rights which he cannot give up though he wish to do it, and about which he is himself entitled to judge. But the wrong in question which in his opinion is done to him, occurs according to that view only from error or ignorance of certain consequences that will ensue from the laws laid down by the sovereign power. Consequently the right must be conceded to the citizen, and with the direct consent of the sovereign, that he shall be able to make his opinion publicly known regarding what appears to him to be a wrong committed against the Commonwealth by the enactments and administration of the Sovereign. For to assume that the Sovereign Power can never err, or never be ignorant of anything, would amount to regarding that Power as favoured with heavenly inspiration and as exalted above the reach of mankind, which is absurd. Hence the *Liberty of the Press*, is the sole palladium of the rights of the people. But it must be exercised within the limits of reverence and love for the constitution as it exists, while it must be sustained by the liberal spirit of the subjects, which the constitution itself tends to inspire; and it must be so limited by the wise precautions of those who exercise it that their freedom be not lost. To refuse this Liberty to the people amounts to taking from them all claim to right in relation to the supreme Power; and this is the view of Hobbes. But more than this is involved. As the will of the

Sovereign only commands the subjects as citizens on the ground that he represents the general will of the people, to deprive the people of this liberty would be to withdraw from the Sovereign power all knowledge of what he would himself alter if he only knew it; and it would thus put him into contradiction with himself. Moreover to instil an anxiety into the sovereign that independent thinking and public utterance of it, would of themselves excite trouble in the State, would amount to exciting distrust against his own power or even awakening hatred against the people. There is then a general principle according to which the people may assert their rights *negatively*, so far as merely to judge that a certain thing is to be regarded as not *ordained* by the supreme legislation in accordance with their best will. This principle may be expressed in the following proposition: *What a People could not ordain over itself, ought not to be ordained by the Legislator over the People.*

For example, the question may be raised as to whether a Law, enacting that a certain regulated ecclesiastical constitution shall exist permanently and for all time, can be regarded as issuing from the proper will of the Lawgiver according to his real intention. In dealing with it, the position which first arises, is whether a people *may* make a law to itself to the effect that certain dogmas and external forms of religion, when once adopted, shall continue to be adopted for all time; and, therefore, whether it may prevent itself in its own descendants from advancing further in religious insight, or from altering any old errors when they have become recognised as such? It will thus become clear, that an "original contract" of the people which made such a position a law, would be in itself null and void, because it is inconsistent with the essential destination and purposes of mankind. Consequently, a law enacted to such an effect, is not to be regarded as the proper will of the monarch; and counter representations may therefore be made to him against it. In all cases, however, even when such things have been ordained by the supreme legislation, resistance is not to be offered to them in word or in deed, but they are only to be opposed by the influence of general and public judgments.

In every Commonwealth there must be *obedience* to coercive laws relating to the whole people and regulated by the mechanism of the political constitution. But at the same time there must be a *Spirit of Liberty* among the people; for every one needs to be convinced by reason in things relating to universal human duty, that

such coercion is in accordance with Right. Without this he would be in contradiction with his own nature. Obedience without the Spirit of Liberty, is the cause and occasion of all *Secret* Societies. For there is a natural tendency implanted in mankind to communicate to one another what is in them, especially in what bears upon man generally. Such Societies would therefore fall away if such liberty were more favoured. And how can governments obtain the knowledge which is necessary for furthering their own essential object otherwise than by giving scope in its origin and in its effects, to this estimable spirit of human Liberty?

There is a certain practical spirit that professes to disregard all principles of pure Reason; and it expresses itself nowhere with more presumption regarding theoretical truth than in reference to the question as to the requisites of a good political constitution. The cause of this is that where there has been a legal constitution long in existence the people have been gradually accustomed to take that state in which everything has hitherto advanced in a quiet course, as the rule by which to judge of their happiness as well as their rights. On this account they have not been accustomed to judge of their condition in these respects according to the conceptions which are furnished by reason regarding them. Thus it is that all constitutions that have subsisted for some length of time—whatever may be their defects—agree, amid all their differences in one result, namely, in producing a certain contentment with every one's own. Hence, when regard is given merely to the prosperity of the people, theory has properly no place but everything rests upon the practice that follows experience. But the question arises whether this conception is of binding force in the case of men who stand in antagonism to each other in virtue of their individual liberty? This involves the question as to the objective and practical reality of such a principle of Right, and whether it can be applied without regard to the mere well-being or ill-being which may arise from it, the knowledge of which can only rest upon experience. If there be such a basis of political Right, as has now been maintained, it must be founded upon the principle of pure Reason; for experience cannot teach what is right and just in itself. And, if it be so, there is a *Theory of Political Right*, and no Practice is valid which is not in conformity with it.

Against this position objection could only be taken in the following way. It might be alleged that, although men have in their

minds the idea of rights as belonging to them, they are still, on account of their obtuseness and refractoriness, incapable and unworthy of being treated in accordance with it. And hence it might be maintained that a supreme Power proceeding merely in accordance with rules of expediency, should and must keep them in order. This is a leap of despair, a *salto mortale;* and it is of such a kind that since Might only, and not Right, comes into consideration, the people may then also be justified in trying their best by force; and all legal constitution is thus made uncertain. If there be no human Right which compels respect directly by its rationality, then all influences put forth to control the arbitrary will and liberty of men, will be found unavailing. But if along with the sentiment of Benevolence, the principle of Right speaks aloud, Human Nature will show itself not to be so degenerate that its voice will not be heard with reverence.

THE PHILOSOPHY OF LAW

I. The Definition of Right

[*A.*] The SCIENCE OF RIGHT has for its object the Principles of all the Laws which it is possible to promulgate by external legislation. Where there is such a legislation, it becomes in actual application to it, a system of *positive* Right and Law; and he who is versed in the knowledge of this System is called a Jurist or Jurisconsult. A practical Jurisconsult, or a professional Lawyer, is one who is skilled in the knowledge of positive external Laws, and who can apply them to cases that may occur in experience. Such practical knowledge of positive Right, and Law, may be regarded as belonging to *Jurisprudence* in the original sense of the term. But the theoretical knowledge of Right and Law in Principle, as distinguished from positive Laws and empirical cases, belongs to the pure SCIENCE of RIGHT. The Science of Right thus designates the philosophical and systematic knowledge of the Principles of Natural Right. And it is from this Science that the immutable Principles of all positive Legislation must be derived by practical Jurists and Lawgivers.

[*B.*] What is Right? This question may be said to be about as embarrassing to the Jurist as the well-known question, "What is Truth?" is to the Logician. It is all the more so, if, on reflection, he strives to avoid tautology in his reply, and recognise the fact that a

reference to what holds true merely of the laws of some one country at a particular time, is not a solution of the general problem thus proposed. It is quite easy to state what may be right in particular cases, as being what the laws of a certain place and of a certain time say or may have said; but it is much more difficult to determine whether what they have enacted is right in itself, and to lay down a universal Criterion by which Right and Wrong in general, and what is just and unjust, may be recognised. All this may remain entirely hidden even from the practical Jurist until he abandon his empirical principles for a time, and search in the pure Reason for the sources of such judgments, in order to lay a real foundation for actual positive Legislation. In this search his empirical Laws may, indeed, furnish him with excellent guidance; but a merely empirical system that is void of rational principles is, like the wooden head in the fable of Phaedrus, fine enough in appearance, but unfortunately it wants brain.

1. The conception of RIGHT,—as referring to a corresponding Obligation which is the moral aspect of it,—in the *first* place, has regard only to the external and practical relation of one person to another, in so far as they can have influence upon each other, immediately or mediately, by their *Actions* as facts. 2. In the *second* place, the conception of Right does not indicate the relation of the action of an individual to the *wish* or the mere desire of another, as in acts of benevolence or of unkindness, but only the relation of his free action to the freedom of *action* of the other. 3. And, in the *third* place, in this reciprocal relation of voluntary actions, the conception of Right does not take into consideration the *matter* of the act of Will in so far as the end which any one may have in view in willing it, is concerned. In other words, it is not asked in a question of Right whether any one on buying goods for his own business realizes a profit by the transaction or not; but only the *form* of the transaction is taken into account, in considering the relation of the mutual acts of Will. Acts of Will or voluntary Choice are thus regarded only in so far as they are *free*, and as to whether the action of one can harmonize with the Freedom of another, according to a universal Law.

RIGHT, therefore, comprehends the whole of the conditions under which the voluntary actions of any one Person can be harmonized in reality with the voluntary actions of every other Person, according to a universal Law of Freedom.

[*C.*] "Every Action is *right* which in itself, or in the maxim on which it proceeds, is such that it can co-exist along with the Freedom of the Will of each and all in action, according to a universal Law."

If, then, my action or my condition generally can co-exist with the freedom of every other, according to a universal Law, any one does me a wrong who hinders me in the performance of this action, or in the maintenance of this condition. For such a hindrance or obstruction cannot co-exist with Freedom according to universal Laws.

It follows also that it cannot be demanded as a matter of Right, that this universal Principle of all maxims shall itself be adopted as my maxim, that is that I shall make it the *maxim* of my actions. For any one may be free, although his Freedom is entirely indifferent to me, or even if I wished in my heart to infringe it, so long as I do not actually violate that freedom by *my external action.* Ethics, however, as distinguished from Jurisprudence, imposes upon me the obligation to make the fulfilment of Right a *maxim* of my conduct.

The universal Law of Right may then be expressed thus: "Act externally in such a manner that the free exercise of thy Will may be able to co-exist with the Freedom of all others, according to a universal Law." This is undoubtedly a Law which imposes obligation upon me; but it does not at all imply and still less command that I *ought*, merely on account of this obligation, to limit my freedom to these very conditions. Reason in this connection says only that it *is* restricted thus far by its Idea, and may be likewise thus limited in fact by others; and it lays this down as a Postulate which is not capable of further proof. As the object in view is not to teach Virtue, but to explain what Right *is*, thus far the Law of Right, as thus laid down, may not and should not be represented as a motive-principle of action.

[*D.*] The resistance which is opposed to any hindrance of an effect, is in reality a furtherance of this effect and is in accordance with its accomplishment. Now, everything that is wrong is a hindrance of freedom, according to universal Laws; and Compulsion or Constraint of any kind is a hindrance or resistance made to Freedom. Consequently, if a certain exercise of Freedom is itself a hindrance of the Freedom that is according to universal Laws, it is wrong; and the compulsion or constraint which is

opposed to it is right, as being a *hindering of a hindrance of Freedom*, and as being in accord with the Freedom which exists in accordance with universal Laws. Hence, according to the logical principle of Contradiction, all Right is accompanied with an implied Title or warrant to bring compulsion to bear on any one who may violate it in fact.

II. The Form of the State

[*45.*] A state (*Civitas*) is the union of a number of men under juridical Laws. These Laws, as such, are to be regarded as necessary *à priori*,—that is, as following of themselves from the conceptions of external Right generally,—and not as merely established by Statute. The FORM of the State is thus involved in the *Idea* of the State, viewed as it ought to be according to pure principles of Right; and this ideal Form furnishes the normal criterion of every real union that constitutes a Commonwealth.

Every State contains in itself THREE POWERS, the universal united Will of the People being thus personified in a political triad. These are *the Legislative Power*, *the Executive Power*, and *the Judiciary Power*.—1. The *Legislative* Power of the Sovereignty in the State, is embodied in the person of the Lawgiver; 2. The Executive Power is embodied in the person of the Ruler who administers the Law; and 3. The Judiciary Power, embodied in the person of the Judge, is the function of assigning every one what is his own, according to the Law. These three Powers may be compared to the three propositions in a practical Syllogism:—the Major as the sumption laying down the universal *Law* of a Will, the Minor presenting the *command* applicable to an action according to the Law as the principle of the subsumption, and the Conclusion containing the Sentence or judgment of Right in the particular case under consideration.

[*48.*] The three Powers in the State, as regards their relations to each other, are—(1) *co-ordinate* with one another as so many Moral Persons, and the one is thus the Complement of the other in the way of completing the Constitution of the State; (2) they are likewise *subordinate* to one another, so that the one cannot at the same time usurp the function of the other by whose side it moves, each having its own Principle, and maintaining its authority in a particular person, but under the condition of the Will of a Superior; and, further, (3) by the *union* of both these relations,

they assign distributively to every subject in the State his own Rights.

Considered as to their respective Dignity, the three Powers may be thus described. The Will of the *Sovereign Legislator*, in respect of what constitutes the external Mine and Thine, is to be regarded as *irreprehensible;* the executive Function of the *supreme Ruler* is to be regarded as *irresistible;* and the judicial Sentence of the *Supreme Judge* is to be regarded as *irreversible*, being beyond appeal.

[*51.*] The three Powers in the State, involved in the conception of a Public Government generally, are only so many Relations of the united Will of the People which emanates from the *à priori* Reason; and viewed as such it is the objective practical realization of the pure Idea of a Supreme Head of the State. This Supreme Head is the Sovereign; but conceived only as a Representation of the whole People, the Idea still requires physical embodiment in a Person, who may exhibit the Supreme Power of the State, and bring the idea actively to bear upon the popular Will. The relation of the Supreme Power to the People, is conceivable in three different forms: Either *One* in the State rules over all; or *Some*, united in a relation of Equality with each other, rule over all the others; or *All* together rule over each and all individually, including themselves. The Form of the State is therefore either *autocratic*, or *aristocratic*, or *democratic*.—The expression "*monarchic*" is not so suitable as "autocratic" for the conception here intended; for a "Monarch" is one who has the *highest* power, an "Autocrat" is one who has *all* power, so that this latter *is* the Sovereign, whereas the former merely represents the Sovereignty.

As regards the *Administration* of Right in the State, it may be said that the simplest mode is also the best; but as regards its bearing on Right itself, it is also the most dangerous for the People, in view of the Despotism to which simplicity of Administration so naturally gives rise. It is undoubtedly a rational maxim to aim at simplification in the machinery which is to unite the People under compulsory Laws, and this would be secured were all the People to be passive and to obey only one person over them; but the method would not give Subjects who were also Citizens of the State. It is sometimes said that the People should be satisfied with the reflection that Monarchy, regarded as an Autocracy, is the best political Constitution, *if the Monarch is good*, that is, if he

has the judgment as well as the Will to do right. But this is a mere evasion, and belongs to the common class of wise tautological phrases. It only amounts to saying that "the best Constitution is that by which the supreme administrator of the State is made the best Ruler;" that is, that the best Constitution *is* the best!

[*52.*] It is vain to inquire into the historical Origin of the political Mechanism; for it is no longer possible to discover historically the point of time at which Civil Society took its beginning. Savages do not draw up a documentary Record of their having submitted themselves to Law; and it may be inferred from the nature of uncivilised men that they must have set out from a state of violence. To prosecute such an inquiry in the intention of finding a pretext for altering the existing Constitution by violence, is no less than penal. For such a mode of alteration would amount to a Revolution, that could only be carried out by an Insurrection of the People, and not by constitutional modes of Legislation. But Insurrection against an already existing Constitution, is an overthrow of all civil and juridical relations, and of Right generally; and hence it is not a mere alteration of the Civil Constitution, but a dissolution of it.

It must, however, be possible for the Sovereign to change the existing Constitution, if it is not actually consistent with the Idea of the Original Contract. In doing so it is essential to give existence to that form of Government which will properly constitute the People into a State.

The Forms of the State are only the *letter* of the original Constitution in the Civil Union; and they may therefore remain so long as they are considered, from ancient and long habit (and therefore only subjectively), to be necessary to the machinery of the political Constitution. But the *spirit* of that original Contract contains and imposes the obligation on the constituting Power to make the mode of the *Government* conformable to its Idea; and, if this cannot be effected at once, to change it gradually and continuously till it harmonize *in its working* with the only rightful Constitution, which is that of a *Pure Republic.*[1] Thus the old

[1] "The Republican Constitution is not to be confounded with the *Democratic* Constitution. But as this is commonly done, the following remarks must be made in order to guard against this confusion.— The various forms of the State may be divided either according to the difference of the *Persons* who hold the highest authority in the State, or according to the *mode of the governing* of the people through its supreme Head. The second principle of division is taken from the form of the Government: and viewing the Constitution as the act of the common or universal

empirical and statutory Forms, which serve only to effect the political *subjection* of the People, will be resolved into the original and rational Forms which alone take Freedom as their principle, and even as the condition of all compulsion and constraint. This is the only enduring political Constitution, as in it the LAW is itself Sovereign, and is no longer attached to a particular person. This is the ultimate End of all Public Right, and the state in which every citizen can have what is his own *peremptorily* assigned to him.

Every true Republic is and can only be constituted by a *Representative System* of the People. Such a Representative System is instituted in name of the People, and is constituted by all the Citizens being united together, in order, by means of their Deputies, to protect and secure their Rights. But as soon as a Supreme Head of the State in person—be it as King, or Nobility, or the whole body of the People in a democratic Union—becomes also representative, the United People then does not merely *represent* the Sovereignty, but they *are* themselves sovereign. When the Sovereignty of the People themselves is thus realized, the Republic is established.

II. THE HEGELIAN IDEA OF THE STATE

The Philosophy of Right (*1821*)

Georg W. F. Hegel (1770–1831)

In the Kantian idealistic philosophy the individual is the center of attention and the state little more than a logical necessity; but German idealism, like German politics and political geography, underwent a far-reaching transformation in the Napoleonic and post-Napoleonic periods. In the humiliation of defeat it appeared that a powerful state was the absolute essential of all freedom, even the freedom of the individual will;

will by which a number of men become a People, it regards the mode in which the State, founding on the Constitution, makes use of its supreme power. In this connection the form of government is either *republican* or *despotic*. Republicanism regarded as the constitutive principle of a State is the political severance of the Executive Power of the Government from the Legislative Power. Despotism is in principle the irresponsible executive administration of the State by laws laid down and enacted by the same power that administers them; and consequently the Ruler so far exercises his own private will as if it were the public Will. Of the three forms of the State, a *Democracy*, in the proper sense of the word, is necessarily a *despotism;* because it establishes an Executive power in which All resolve about, and, it may be, also against, any One who is not in accord with it, and consequently the All who thus resolve are really not all, which is a contradiction of the Universal Will with itself and with liberty."—Kant, *Perpetual Peace*, Second Section, 1. (Present editor's note.)

and in the wave of nationalism that followed Napoleon's downfall, reverence for the general will approximated adoration of a deified state.

The works of Johann Fichte marked a transition in the philosophy of idealism, but it was with Georg W. F. Hegel that the exaltation of the state reached its zenith. Lecturing at the University of Jena in 1806, the year of Napoleon's decisive victory of Jena, Hegel found his professional life disrupted and conceived a contempt for Prussian weakness and a vast admiration for Napoleon. He seemed almost to have seen with his own eyes the physical embodiment of the absolute; and the individual monarch was henceforth a cornerstone of his political philosophy.

The son of a Württemberg civil servant, Hegel received a gymnasium and university education and for six years earned his living as a private tutor. A small legacy then enabled him to join his university companion Schelling at Jena, where he subsequently qualified as a *privatdocent*, but Napoleon's victory uprooted him on the eve of the publication of his first important work, *The Phenomenology of Spirit* (1807). Hegel was now compelled to spend eight years as head of a gymnasium. However he won prompt recognition upon the publication of his *Logic* (1812–16), in which he developed his famous dialectical method, with its sequence of thesis, antithesis, and synthesis. As a result, in 1816 he was offered the chair of philosophy at three universities. He went first to Heidelberg and later to Berlin, the political center of the new Germany, where his association with the government was such that he was charged with being an "official" philosopher. It was in Berlin that he wrote *The Philosophy of Right* (1821), the exposition of his political theory.

The readings here given are based upon S. W. Dyde's translation of *The Philosophy of Right* (George Bell & Sons, London, 1896), and are reprinted by permission of the publishers.

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THE PHILOSOPHY OF RIGHT

I. The State as the Realized Idea of the Absolutely Free Will

[*27.*] The absolute character or, if you like, the absolute impulse of the free spirit is, that its freedom shall be for it an object. There is thus actualized as idea what the will is implicitly. Hence, the abstract conception of the idea of the will is in general the free will which wills the free will.

[*29.*] That a reality is the realization of the free will, this is what is meant by a right. Right, therefore, is, in general, freedom as idea.

In the Kantian Doctrine (Introduction to Kant's *Theory of Right*), now generally accepted, "the highest factor is a limitation of my freedom or caprice, in order that it may be able to subsist alongside of every other individual's caprice in accordance with a universal law." According to this view neither the absolute and rational will, nor the true spirit, but the will and spirit of the particular individual in their peculiar caprice, are the substantive and primary basis. When once this principle is accepted, the rational can announce itself only as limiting this freedom. Hence it is not an inherent rationality, but only a mere external and formal universal. This view is accordingly devoid of speculative thought, and is rejected by the philosophic conception.

[*33.*] According to the stages in the development of the idea of the absolutely free will,

A. The will is direct or immediate; its conception is therefore abstract, *i.e.*, personality, and its embodied reality is a direct external thing. This is the sphere of abstract or formal right.

B. The will, passing out of external reality, turns back into itself. Its phase is subjective individuality, and it is contrasted with the universal. This is the sphere of morality.

C. The unity and truth of these two abstract elements. The thought idea of the good is realized both in the will turned back into itself, and also in the external world. Thus freedom exists as real substance, which is quite as much actuality and necessity as it is subjective will. The idea here is its absolutely universal existence, viz., ethical observance. This ethical substance is again,

a. Natural spirit; the family,

b. The civic community, or spirit in its dual existence and mere appearance,

c. The state, or freedom, which, while established in the free self-dependence of the particular will is also universal and objective. This actual and organic spirit (α) is the spirit of a nation, (β) is found in relation to one another of national spirits, and (γ) passing through and beyond this relation is actualized and revealed in world history as the universal world-spirit, whose right is the highest.

When we speak of right, we mean not only civil right, which is the usual significance of the word, but also morality, ethical observance and world-history. Free will, in order not to remain abstract, must in the first instance give itself reality; the sensible materials of this reality are objects, *i.e.*, external things. This first phase of freedom we shall know as property. This is the sphere of formal and abstract right. But this direct reality is not adequate to freedom, and the negation of this phase is morality. In morality I am beyond the freedom found directly in this thing. I am free in myself, *i.e.*, in the subjective. In this sphere externality is established as indifferent. The good is now the universal end, which is not to remain merely internal to me, but to realize itself. Morality, like formal right, is also an abstraction, whose truth is reached only in ethical observance. Hence ethical observance is the unity of the will in its conception with the will of the individual or subject. The primary reality of ethical observance is in its turn natural, taking the form of love and feeling. This is the family. In the next stage is seen the loss of this peculiar ethical existence and substantive unity. Here the family falls asunder, and the members become independent one of another, being now held together merely by the bond of mutual need. This is the stage of the civic community, which has frequently been taken for the state. But the state does not arise until we reach the third stage, that stage of ethical observance or spirit, in which both individual independence and universal substantivity are found in gigantic union. The right of the state is, therefore, higher than that of the other stages. It is freedom in its most concrete embodiment, which yields to nothing but the highest absolute truth of the world-spirit.

[*257.*] The state is the realized ethical idea or ethical spirit. It is the will which manifests itself, makes itself clear and visible, substantiates itself. It is the will which thinks and knows

itself, and carries out what it knows, and in so far as it knows.

[*258.*] The state, which is the realized substantive will, having its reality in the particular self-consciousness raised to the plane of the universal, is absolutely rational. This substantive unity is its own motive and absolute end. In this end freedom attains its highest right. This end has the highest right over the individual, whose highest duty in turn is to be a member of the state.

Were the state to be considered as exchangeable with the civic society, and were its decisive features to be regarded as the security and protection of property and personal freedom, the interest of the individual as such would be the ultimate purpose of the social union. It would then be at one's option to be a member of the state.—But the state has a totally different relation to the individual. It is the objective spirit, and he has his truth, real existence, and ethical status only in being a member of it. Union, as such, is itself the true content and end, since the individual is intended to pass a universal life.

The state as a completed reality is the ethical whole and the actualization of freedom. The state is the spirit, which abides in the world and there realizes itself consciously; while in nature it is realized only as the other of itself or the sleeping spirit. Let man be aware of it or not, this essence realizes itself as an independent power, in which particular persons are only phases. The state is the march of God in the world. When thinking of the idea of the state, we must not have in our mind any particular state, or particular institution, but must rather contemplate the idea, this actual God, by itself. Although a state may be declared to violate right principles and to be defective in various ways, it always contains the essential moments of its existence, if, that is to say, it belongs to the full formed states of our own time. But as it is more easy to detect short-comings than to grasp the positive meaning, one easily falls into the mistake of dwelling so much upon special aspects of the state as to overlook its inner organic being. The state is not a work of art. It is in the world, in the sphere of caprice, accident, and error. Evil behaviour can doubtless disfigure it in many ways, but the ugliest man, the criminal, the invalid, the cripple, are living men. The positive thing, the life, is present in spite of defects, and it is with this affirmative that we have here to deal.

[*260.*] The state is the embodiment of concrete freedom. In this concrete freedom, personal individuality and its particular interests, as found in the family and civic community, have their complete development. In this concrete freedom, too, the rights of personal individuality receive adequate recognition. These interests and rights pass partly of their own accord into the interest of the universal. Partly, also, do the individuals recognize by their own knowledge and will the universal as their own substantive spirit, and work for it as their own end. Hence, neither is the universal completed without the assistance of the particular interest, knowledge, and will, nor, on the other hand, do individuals, as private persons, live merely for their own special concern.

[*268.*] Genuine patriotism is simply a result of the institutions which subsist in the state as in the actuality of reason. Hence, patriotic feeling is operative in the act, which is in accord with these institutions. Political sentiment is, in general, a confidence, which may pass over into a more or less intelligent insight; it is a consciousness that my substantive and particular interest is contained and preserved in the interest and end of another, here the state, in its relation to me, the individual. Wherefore the state is for me forthwith not another, and I in this consciousness am free.

II. The Function of the Prince in the Constitution of the State

[*273.*] The political state is divided into three substantive branches:

(*a*) The power to fix and establish the universal. This is legislation.

(*b*) The power, which brings particular spheres and individual cases under the universal. This is the function of government.

(*c*) The function of the prince, as the subjectivity with which rests the final decision. In this function the other two are brought into an individual unity. It is at once the culmination and beginning of the whole. This is constitutional monarchy.

[*275.*] The function of the prince contains of itself the three elements of the totality, (1) the universality of the constitution and the laws; (2) counsel, or reference of the particular to the universal; and (3) the final decision, or the self-determination, into which all else returns and from which it receives the beginning of its actuality. This absolute self-determination, constituting the

distinguishing principle of the princely function, as such, must be the first to be considered.

[*276.*] The basal principle of the political state is the substantive unity, which is the ideality of its elements. In this ideality the particular functions and offices of the state are just as much dissolved as retained. Indeed, they are retained only as having no independent authority, but such and so extensive an authority as is yielded them in the idea of the whole.

[*277.*] The particular offices and agencies of the state, being its essential elements, are intimately connected with it. To the individuals, who manage and control them, they are attached in virtue of their objective and universal qualities. With particular personality, as such, they are joined only externally and accidentally. The business and functions of the state cannot therefore be private property.

[*278.*] These two characteristics, namely, that the particular offices and functions of the state have independent and firm footing neither in themselves, nor in the particular will of individuals, but ultimately in the unity of the state as in their simple self, constitute the sovereignty of the state.

[*279.*] Sovereignty, at first only the universal thought of this ideality, exists merely as a subjectivity assured of itself, and as the abstract and so far groundless self-direction and ultimate decision of the will; by virtue of this quality the state is individual and one. But in the next place subjectivity exists in its truth only as a subject, and personality as a person. In the constitution, which has matured into rational reality, each of the three elements of the conception has its own independent, real, and separate embodiment. Hence, the element which implies absolute decision is not individuality in general but one individual, the monarch.

The phrase "sovereignty of the people," can be used in the sense that a people is in general self-dependent in its foreign relations, and constitutes its own state. Such are the people of Great Britain, for example. But the people of England, Scotland, Ireland, Venice, Genoa, or Ceylon, have ceased to be a sovereign people, since they no longer have independent princes, and the chief government is not exclusively their own. But the sovereignty of the people is usually in modern times opposed to the sovereignty of the monarch. This view of the sovereignty of the people may be traced to a confused idea of what is meant by "the people."

The people apart from their monarch, and the common membership necessarily and directly associated with him, is a formless mass. It is no longer a state. In it occur none of the characteristic features of an equipped whole, such as sovereignty, government, law-courts, magistrates, professions, etc., etc. When these elements of an organized national life make their appearance in a people, it ceases to be that undefined abstraction, which is indicated by the mere general notion "people."

In the organization of the state, that is to say, in constitutional monarchy, we must have before us nothing except the inner necessity of the idea. Everything referring merely to utility, externality, etc., must be excluded from a philosophic treatment. It is easy for one to grasp the notion that the state is the self-determining and completely sovereign will, whose judgment is final. It is more difficult to apprehend this "I will" as a person. By this is not meant that the monarch can be wilful in his acts. Rather is he bound to the concrete content of the advice of his councillors, and, when the constitution is established, he has often nothing to do but sign his name. But this name is weighty. It is the summit, over which nothing can climb. It may be said that an articulated organization has already existed in the beautiful democracy of Athens. Yet we see that the Greeks extracted the ultimate judgment from quite external phenomena, such as oracles, entrails of sacrificial animals, and the flight of birds, and that to nature they held as to a power, which in these ways made known and gave expression to what was good for mankind. Self-consciousness had at that time not yet risen to the abstraction of subjectivity, or to the fact that concerning the matter to be judged upon must be spoken a human "I will." This "I will" constitutes the greatest distinction between the ancient and the modern world, and so must have its peculiar niche in the great building of state. It is to be deplored that this characteristic should be viewed as something merely external, to be set aside or used at pleasure.

[*280.*] This ultimate self of the state's will is in this its abstraction an individuality, which is simple and direct. Hence its very conception implies that it is natural. Thus the monarch as a specific individual is abstracted from all other content, and is appointed to the dignity of monarch in a directly natural way, by natural birth.

It is often maintained that the position of monarch gives to the affairs of state a haphazard character. It is said that the monarch

may be ill-educated, and unworthy to stand at the helm of state, and that it is absurd for such a condition of things to exist under the name of reason. It must be replied that the assumption on which these objections proceed is of no value, since there is here no reference to particularity of character. In a completed organization we have to do with nothing but the extreme of formal decision, and for this office is needed only a man who says "Yes," and so puts the dot upon the "i." The pinnacle of state must be such that the private character of its occupant shall be of no significance. What beyond this final judgment belongs to the monarch devolves upon particularity, with which we have no concern. There may indeed arise circumstances, in which this particularity alone has prominence, but in that case the state is not yet fully, or else badly constructed. In a well-ordered monarchy only the objective side of law comes to hand, and to this the monarch subjoins merely the subjective "I will."

[*281.*] Both elements, the final motiveless self of the will, and the like motiveless existence on the side of nature, indissolubly unite in the idea of that which is beyond the reach of caprice, and constitute the majesty of the monarch. In this unity lies the actualized unity of the state. Only by means of its unmotived directness on both its external and its internal side is the unity taken beyond the possibility of degradation to the wilfulness, ends, and views of particularity. It is thus removed also from the enfeeblement and overthrow of the functions of state and from the struggle of faction against faction around the throne.

Freely to elect the monarch is readily taken as the most natural way. It is closely allied to the following shallow thought: "Because it is the concern and interest of the people which the monarch has to provide for, it must be left to the people to choose whom it will depute to provide for them, and only out of such a commission arises the right of governing." This view, as well as the idea that the monarch is chief-officer of state, and also the idea of a contract between him and the people, proceed from the will of the multitude, in the form of inclination, opinion, and caprice. That the election of a monarch is the worst of proceedings may be by ratiocination detected in the consequences. Through the relation involved in free choice the particular will gives the ultimate decision, and the constitution becomes a free-capitulation, that is, the abandonment of the functions of state

to the discretion of the particular will. The specific functions of state are thus transformed into private property, and there ensue the enfeeblement and injury of the sovereignty of the state, its internal dissolution and external overthrow.

III. The Function of the Executive

[*287.*] Decision is to be distinguished from its execution and application, and in general from the prosecution and preservation of what has been already resolved, namely, the existing laws, regulations, establishments for common ends, and the like. This business of subsumption or application is undertaken by the executive, including the judiciary and police. It is their duty directly to care for each particular thing in the civic community, and in these private ends make to prevail the universal interest.

[*289.*] To secure the universal interest of the state and to preserve the law in the province of particular rights, and also to lead these rights back to the universal interest, require the attention of subordinates of the executive. These subordinates are on one side executive officers and on the other a college of advisers. These two meet together in the highest offices of all, which are in contact with the monarch.

[*290.*] In the business of the executive also there is a division of labour. The organized executive officers have therefore a formal though difficult task before them. The lower concrete civil life must be governed from below in a concrete way. And yet the work must be divided into its abstract branches, specially officered by middlemen, whose activity in connection with those below them must from the lowest to the highest executive officers take the form of a continuous concrete oversight.

The main point which crops up in connection with the executive is the division of offices. This division is concerned with the transition from the universal to the particular and singular; and the business is to be divided according to the different branches. The difficulty is that the different functions, the inferior and superior, must work in harmony. The police and the judiciary proceed each on its own course, it is true, but they yet in some office or other meet again. The means used to effect this conjunction often consists in appointing the chancellor of state and the prime minister, ministers in council. The matter is thus simplified on its upper side. In this way also everything issues from above out of

the ministerial power, and business is, as they say, centralized. For some time past the chief task has been that of organization carried on from above: while the lower and bulky part of the whole was readily left more or less unorganized. Yet it is of high importance that it also should be organized, because only as an organism is it a power or force. Otherwise it is a mere heap or mass of broken bits. An authoritative power is found only in the organic condition of the particular spheres.

[*291.*] The offices of the executive are of an objective nature, which is already independently marked out in accordance with their substance. They are at the same time conducted by individuals. Between the objective element and individuals there is no direct, natural connecting tie. Hence individuals are not set aside for these offices by natural personality or by birth. There is required in them the objective element, namely, knowledge and proof of fitness. This proof guarantees to the state what it needs, and, as it is the sole condition, makes it possible for any citizen to devote himself to the universal class.

[*292.*] The subjective side is found in this, that out of many one individual must be chosen, and empowered to discharge the office. Since in this case the objective element does not lie in genius, as it does in art, the number of persons from whom the selection may be made is necessarily indefinite, and whom finally to prefer is beyond the possibility of absolute determination. The junction of individual and office, two phases whose relation is always accidental, devolves upon the princely power as decisive and sovereign.

[*293.*] The particular state-business, which monarchy transfers to executive officers, constitutes the objective side of the sovereignty inherent in the monarch. The distinguishing feature of this state-business is found in the nature of its matter. Just as the activity of the authorities is the discharge of a duty, so their office is not subject to chance but a right.

[*294.*] The individual, who by the act of the sovereign is given an official vocation, holds it on the condition that he discharges his duty, which is the substantive factor in his relation. By virtue of this factor the individual finds in his official employment his livelihood and the assured satisfaction of his particularity, and in his external surroundings and official activity is free from subjective dependence and influences.

The assured satisfaction of particular want does away with

external need. There is no occasion to seek the means for alleviating want at the cost of official activity and duty. In the universal function of state those who are commissioned with the affairs of state are protected also against the subjective side, the private passion of subjects, whose private interests, etc., may be injured by the furtherance of the universal.

[*295.*] Security for the state and its subjects against misuse of power by the authorities and their officers is found directly in their responsibility arising out of their nature as a hierarchy. But it is also found in the legitimate societies and corporations. They hold in check the inflow of subjective wilfulness into the power of the officers. They also supplement from below the control from above, which cannot reach down to the conduct of individuals.

[*296.*] Whether or no integrity of conduct, gentleness, and freedom from passion pass into social custom depends upon the nature of the direct ethical life and thought. These phases of character maintain the spiritual balance over against the merely mental acquisition of the so-called sciences, dealing with the objects of these spheres of government, against also the necessary practice of business, and the actual labour of mechanical and other trades. The greatness of the state is also a controlling element, by virtue of which the importance of family relations and other private ties is diminished, and revenge, hate, and the like passions become inoperative and powerless. In concern for the great interests of a large state, these subjective elements sink out of sight, and there is produced an habitual regard for universal interests and affairs.

[*297.*] The members of the executive and the state officials constitute the main part of the middle class, in which are found the educated intelligence and the consciousness of right of the mass of a people. The institutions of sovereignty operating from above and the rights of corporations from below prevent this class from occupying the position of an exclusive aristocracy and using their education and skill wilfully and despotically.

The state, if it has no middle class, is still at a low stage of development. In Russia, for example, there is a multitude of serfs and a host of rulers.

IV. The Function of the Classes of the Legislature

[*298.*] The legislature interprets the laws and also those internal affairs of the state whose content is universal. This function

is itself a part of the constitution. In it the constitution is presupposed, and so far lies absolutely beyond direct delimitation. Yet it receives development in the improvement of the laws, and the progressive character of the universal affairs of government.

[*299.*] These objects are defined in reference to individuals more precisely in two ways, (α) what of good comes to individuals to enjoy at the hands of the state, and (β) what they must perform for the state. The first division embraces the laws of private right in general, also the rights of societies and corporations. To these must be added universal institutions, and indirectly the whole of the constitution. But that which, on the other hand, is to be performed, is reduced to money as the existing universal value of things and services.

Military duty is perhaps the only remaining personal service. In former times claim was made to the concrete individual, who was summoned to work in accordance with his skill. Now the state buys what it needs. This may seem abstract, dead, and unfeeling. It may also seem as if to be satisfied with abstract services were for the state a retrograde step. But the principle of the modern state involves that everything which the individual does should be occasioned by his will. By means of money the justice implied in equality can be much better substantiated. The talented would be more heavily taxed than the man without talents if respect were had to concrete capacity. But now, out of reverence for subjective liberty, the principle is brought to light that only that shall be laid hold upon which is of a nature to be laid hold upon.

[*300.*] In the legislative function in its totality are active both the monarchical element and the executive. The monarchical gives the final decision, and the executive element advises. The executive element has concrete knowledge and oversight of the whole in its many sides and in the actual principles firmly rooted in them. It has also acquaintance with the wants of the offices of state. In the legislature are at last represented the different classes or estates.

It proceeds from a wrong view of the state to exclude the members of the executive from the legislature, as was at one time done by the constituent assembly. In England the ministers are rightly members of parliament, since those who share in the executive should stand in connection with and not in opposition to the

legislature. The idea that the functions of government should be independent contains the fundamental error that they should check one another. But this independence is apt to usurp the unity of the state, and unity is above all things to be desired.

[*301.*] By admitting the classes the legislature gives not simply implicit but actual existence to matters of general concern. The element of subjective formal freedom, the public consciousness, or the empirical universality of the views and thoughts of the many, here becomes a reality.

There are found in current opinion so unspeakably many perverted and false notions and sayings concerning the people, the constitution, and the classes, that it would be a vain task to specify, explain, and correct them. When it is argued that an assembly of estates is necessary and advantageous, it is meant that the people's deputies, or, indeed, the people itself, must best understand their own interest, and that it has undoubtedly the truest desire to secure this interest. But it is rather true that the people, in so far as this term signifies a special part of the citizens, does not know what it wills. To know what we will, and further what the absolute will, namely reason, wills, is the fruit of deep knowledge and insight, and is therefore not the property of the people.

It requires but little reflection to see that the services performed by the classes in behalf of the general well-being and public liberty cannot be traced to an insight special to these classes. The highest state officials have necessarily deeper and more comprehensive insight into the workings and needs of the state, and also greater skill and wider practical experience. They are able without the classes to secure the best results, just as it is they who must continually do this when the classes are in actual assembly. The classes, therefore, are specially marked out by their containing the subjective element of universal liberty. In them the peculiar insight and peculiar will of the sphere, which in this treatise has been called the civic community, is actualized in relation to the state.

The attitude of the government to the classes must not be in its essence hostile. The belief in the necessity of this hostile relation is a sad mistake. The government is not one party which stands over against another, in such a way that each is seeking to wrest something from the other. If the state should find itself in such a situation, it must be regarded as a misfortune and not as a sign of health. Further, the taxes, to which the classes give their

consent, are not to be looked upon as a gift to the state, but are contributed for the interest of the contributors. The peculiar significance of the classes or estates is this, that through them the state enters into and begins to share in the subjective consciousness of the people.

[*305.*] Of the classes of the civic community one contains the principle, which is really capable of filling this political position. This is the class, whose ethical character is natural. As its basis it has family life, and as regards subsistence it has the possession of the soil. As regards its particularity it has a will, which rests upon itself, and, in common with the princely function, it bears the mark of nature.

[*306.*] In its political position and significance this class becomes more clearly defined, when its means are made as independent of the wealth of the state as they are of the uncertainty of trade, the desire for gain, and the fluctuation of property. It is secure from the favour at once of the executive and of the multitude. It is further secured even from its own caprice, since the members of this class, who are called to this office, do without the rights exercised by the other citizens. They do not freely dispose of their property, nor do they divide it equally among their children, whom they love equally. This wealth becomes an inalienable inheritance burdened by primogeniture.

[*307.*] The right of this part of the substantive class is based upon the nature-principle of the family. But through heavy sacrifices for the state this principle is transformed, and by the transformation this class is set apart for political activity. Hence it is called and entitled to this sphere by birth, without the accident of choice.

[*308.*] Under the other part of the general class element is found the fluctuating side of the civic community, which externally because of its numerous membership, and necessarily because of its nature and occupation, takes part in legislation only through deputies. If the civic community appoints these deputies, it does so in accordance with its real nature. It is not a number of atoms gathering together merely for a particular and momentary act without any further bond of union, but a body systematically composed of constituted societies, communities, and corporations. These various circles receive in this way political unity.

[*309.*] Counsels and decisions upon universal concerns require delegates, who are chosen under the belief that they have a better understanding of state business than the electors themselves. They are trusted to prosecute not the particular interest of a community or a corporation in opposition to the universal, but the universal only. Hence, to the deputies are not committed specific mandates or explicit instructions. But just as little has the assembly the character merely of a lively gathering of persons, each of whom is bent upon instructing, convincing, and advising the rest.

[*311.*] Deputies from the civic community should be acquainted with the particular needs and interests of the body which they represent, and also with the special obstacles which ought to be removed. They should therefore be chosen from amongst themselves. Such a delegation is naturally appointed by the different corporations of the civic community by a simple process, which is not disturbed by abstractions and atomistic notions.

It is a manifest advantage to have amongst the delegates individuals who represent every considerable special branch of the community, such as trade, manufacture, etc. These individuals must be thoroughly acquainted with their branch and belong to it. In the idea of a loose, indefinite election this important circumstance is given over to accident. Every branch, however, has an equal right to be represented. To regard the deputies as representatives has a significance that is organic and rational, only if they are not representatives of mere separate individuals or of a mere multitude, but of one of the essential spheres of the community and of its larger interests. Representation no longer means that one person should take the place of another. Rather is the interest itself actually present in the person of the representative, since he is there in behalf of his own objective nature.

[*312.*] Of the two elements comprised under the classes, each brings into council a particular modification. The assembly of the classes is thus divided into two chambers.

[*313.*] By this separation the number of courts is increased, and there is a greater certainty of mature judgment. Moreover, an accidental decision, secured on the spur of the moment by a simple majority of the votes, is rendered much less probable. But these are not the main advantages. There is, besides, smaller opportunity or occasion for direct opposition to arise between the class element and the government.

[*314.*] The classes are not the sole investigators of the affairs of state and sole judges of the general interest. Rather do they form merely an addition. Their distinctive trait is that, as they represent the members of the civic community who have no share in the government, it is through their co-operating knowledge, counsel, and judgment that the element of formal freedom attains its right. Besides, a general acquaintance with state affairs is more widely extended through the publicity given to the transactions of the classes.

[*315.*] By means of this avenue to knowledge public opinion first attains to true thoughts, and to an insight into the condition and conception of the state and its concerns. It thus first reaches the capacity of judging rationally concerning them. It learns, besides, to know and esteem the management, talents, virtues, and skill of the different officers of state. While these talents by receiving publicity are given a strong impulse towards development and an honourable field for exhibiting their worth, they are also an antidote for the pride of individuals and of the multitude, and are one of the best means for their education.

[*316.*] Formal subjective freedom, implying that individuals as such should have and express their own judgment, opinion, and advice concerning affairs of state, makes its appearance in that aggregate, which is called public opinion. In it what is absolutely universal, substantive, and true is joined with its opposite, the independent, peculiar, and particular opinions of the many. This phase of existence is therefore the actual contradiction of itself.

[*318.*] Public opinion deserves, therefore, to be esteemed and despised; to be despised in its concrete consciousness and expression, to be esteemed in its essential basis. Since it has not within itself the means of drawing distinctions, nor the capacity to raise its substantive side into definite knowledge, independence of it is the first formal condition of anything great and reasonable, whether in actuality or in science. Of any reasonable end we may be sure that public opinion will ultimately be pleased with it, recognize it, and constitute it one of its prepossessions.

V. External Aspects of the State

[*329.*] The state has a foreign aspect, because it is an individual subject. Hence, its relation to other states falls within the princely function. Upon this function it devolves solely and directly to

command the armed force, to entertain relations with other states through ambassadors, to decide upon peace and war, and to conduct other negotiations.

In almost all European countries the individual summit is the princely function, which has charge of foreign affairs. Wherever the constitution requires the existence of classes or estates, it may be asked whether the classes, which in any case control the supplies, should not also resolve upon war and peace. In England, for example, no unpopular war can be waged. But if it is meant that princes and cabinets are more subject to passion than the houses, and hence that the houses should decide whether there should be war or peace, it must be replied, that often whole nations have been roused to a pitch of enthusiasm surpassing that of their princes. Frequently in England the whole people have insisted upon war, and in a certain measure compelled the ministers to wage it. The popularity of Pitt was due to his knowing how to meet what the nation willed. Not till afterwards did calm give rise to the consciousness that the war was utterly useless, and undertaken without adequate means. Moreover, a state is connected not only with another but with several others, and the complications are so delicate that they can be managed only by the highest power.

[*330.*] International law arises out of the relation to one another of independent states. Whatever is absolute in this relation receives the form of a command, because its reality depends upon a distinct sovereign will.

A state is not a private person, but in itself a completely independent totality. Hence, the relation of states to one another is not merely that of morality and private right. It is often desired that states should be regarded from the standpoint of private right and morality. But the position of private persons is such that they have over them a law court, which realizes what is intrinsically right. A relation between states ought also to be intrinsically right, and in mundane affairs that which is intrinsically right ought to have power. But as against the state there is no power to decide what is intrinsically right and to realize this decision. Hence, we must here remain by the absolute command. States in their relation to one another are independent, and look upon the stipulations which they make one with another as provisional.

[*333.*] International law, or the law which is universal, and is meant to hold absolutely good between states, is to be distinguished from the special content of positive treaties, and has at its basis the proposition that treaties, as they involve the mutual obligations of states, must be kept inviolate. But because the relation of states to one another has sovereignty as its principle, they are so far in a condition of nature one to the other. Their rights have reality not in a general will, which is constituted as a superior power, but in their particular wills. Accordingly the fundamental proposition of international law remains a good intention, while in the actual situation the relation established by the treaty is being continually shifted or abrogated.

There is no judge over states, at most only a referee or mediator, and even the mediatorial function is only an accidental thing, being due to particular wills. Kant's idea was that eternal peace should be secured by an alliance of states. This alliance should settle every dispute, make impossible the resort to arms for a decision, and be recognized by every state. This idea assumes that states are in accord, an agreement which, strengthened though it might be by moral, religious, and other considerations, nevertheless always rested on the private sovereign will, and was therefore liable to be disturbed by the element of contingency.

[*334.*] Therefore, when the particular wills of states can come to no agreement, the controversy can be settled only by war. Owing to the wide field and the varied relations of the citizens of different states to one another, injuries occur easily and frequently. What of these injuries is to be viewed as a specific breach of a treaty or as a violation of formal recognition and honour remains from the nature of the case indefinite. A state may introduce its infinitude and honour into every one of its separate compartments. It is all the more tempted to make or seek some occasion for a display of irritability, if the individuality within it has been strengthened by long internal rest, and desires an outlet for its pent-up activity.

[*337.*] The substantive weal of the state is its weal as a particular state in its definite interests and condition, its peculiar external circumstances, and its particular treaty obligations. Thus the government is a particular wisdom and not universal providence. So, too, its end in relation to other states, the principle justifying its wars and treaties, is not a general thought, such as philanthropy,

but the actually wronged or threatened weal in its definite particularity.

At one time a lengthy discussion was held with regard to the opposition between morals and politics, and the demand was made that politics should be in accordance with morality. Here it may be remarked merely that the commonweal has quite another authority than the weal of the individual, and that the ethical substance or the state has directly its reality or right not in an abstract but in a concrete existence. This existence, and not one of the many general thoughts held to be moral commands, must be the principle of its conduct. The view that politics in this assumed opposition is presumptively in the wrong depends on a shallow notion both of morality and of the nature of the state in relation to morality.

[*338.*] Although in war there prevails force, contingency, and absence of right, states continue to recognize one another as states. In this fact is implied a covenant, by virtue of which each state retains absolute value. Hence, war, even when actively prosecuted, is understood to be temporary, and in international law is recognized as containing the possibility of peace. Ambassadors, also, are to be respected. War is not to be waged against internal institutions, or the peaceable family and private life, or private persons.

[*339.*] For the rest, the capture of prisoners in time of war, and in time of peace the concession of rights of private intercourse to the subjects of another state, depend principally upon the ethical observances of nations. In them is embodied that inner universality of behaviour, which is preserved under all relations.

The nations of Europe form a family by virtue of the universal principle of their legislation, their ethical observances, and their civilization. Amongst them international behaviour is ameliorated, while there prevails elsewhere a mutual infliction of evils. The relation of one state to another fluctuates; no judge is present to compose differences; the higher judge is simply the universal and absolute spirit, the spirit of the world.

[*340.*] As states are particular, there is manifested in their relations to one another a shifting play of internal particularity of passions, interests, aims, talents, virtues, force, wrong, vice, and external contingency on the very largest scale. In this play even the ethical whole, national independence, is exposed to chance. The spirit of a nation is an existing individual having in partic-

ularity its objective actuality and self-consciousness. Because of this particularity it is limited. The destinies and deeds of states in their connection with one another are the visible dialectic of the finite nature of these spirits. Out of this dialectic the universal spirit, the spirit of the world, the unlimited spirit, produces itself. It has the highest right of all, and exercises its right upon the lower spirits in world-history. The history of the world is the world's court of judgment.

[*344.*] States, peoples, and individuals are established upon their own particular definite principle, which has systematized reality in their constitutions and in the entire compass of their surroundings. Of this systematized reality they are aware, and in its interests are absorbed. Yet are they the unconscious tools and organs of the world-spirit, through whose inner activity the lower forms pass away. Thus the spirit by its own motion and for its own end makes ready and works out the transition into its next higher stage.

[*345.*] Justice and virtue, wrong, force, and crime, talents and their results, small and great passions, innocence and guilt, the splendour of individuals, national life, independence, the fortune and misfortune of states and individuals, have in the sphere of conscious reality their definite meaning and value, and find in that sphere judgment and their due. This due is, however, as yet incomplete. In world-history, which lies beyond this range of vision, the idea of the world-spirit, in that necessary phase of it which constitutes at any time its actual stage, is given its absolute right. The nation, then really flourishing, attains to happiness and renown, and its deeds receive completion.

[*346.*] Since history is the embodiment of spirit in the form of events, that is, of direct natural reality, the stages of development are present as direct natural principles. Because they are natural, they conform to the nature of a multiplicity, and exist one outside the other. Hence, to each nation is to be ascribed a single principle, comprised under its geographical and anthropological existence.

[*353.*] In its first and direct revelation the world-spirit has as its principle the form of the substantive spirit, in whose identity individuality is in its essence submerged and without explicit justification.

In the second principle the substantive spirit is aware of itself. Here spirit is the positive content and filling, and is also at the same time the living form, which is in its nature self-referred.

The third principle is the retreat into itself of this conscious self-referred existence. There thus arises an abstract universality, and with it an infinite opposition to objectivity, which is regarded as bereft of spirit.

In the fourth principle this opposition of the spirit is overturned in order that spirit may receive into its inner self its truth and concrete essence. It thus becomes at home with objectivity, and the two are reconciled. Because the spirit has come back to its formal substantive reality by returning out of this infinite opposition, it seeks to produce and know its truth as thought, and as a world of established reality.

[*354.*] In accordance with these four principles the four world-historic empires are (1) the Oriental, (2) the Greek, (3) the Roman, and (4) the Germanic.

CHAPTER VI. INDIVIDUALISM

I. UTILITARIAN LIBERALISM

On Liberty (1859)—Considerations on Representative Government (1861)

John Stuart Mill (1806–1873)

The principle of utility does not necessarily lead to individualism. Present-day trends toward paternalism in the form of old age pensions and the like derive their principal strength from the fact that they are designed to secure the greatest happiness of the greatest number. But the original utilitarians were convinced that the *sine qua non* for happiness was unrestricted self-expression and self-dependence. They favored the extension of popular control over government but not of governmental control over the individual. Averse though the Benthamites were to the doctrine of natural rights, their conclusions bore striking resemblance to the natural rights philosophy of the American and French Revolutions.

Bentham himself was ahead of his time, but by the middle of the nineteenth century democratic liberalism was in the ascendant. The Reform Bills and the repeal of the Corn Laws marked its triumph in Parliament. In literature its classics are *On Liberty* (1859) and *Considerations on Representative Government* (1861), both written by John Stuart Mill, the last of the great utilitarian philosophers. Mill's teaching was neither the utilitarian fundamentalism of Bentham nor the analytical hair-splitting of Austin. He wrote with a moderation and mellowness that sometimes bordered on apostasy.

The eldest son of the economist James Mill, John Stuart Mill was subjected to an astounding education that indoctrinated him with utilitarianism almost from infancy. He came under the influence, not only of his father, but also of Bentham, Austin, and Grote. Following in his father's footsteps, Mill sought a professional career as a clerk in the India House, where he served with distinction until the India Act of 1858 deprived the East India Company of its authority. During his early manhood he engaged in political agitation as a principal contributor to the radical *Westminster* and *London Reviews*, and in 1865 he was elected to Parliament for a single term. Mill of course supported the Reform Bill of 1867 but seriously urged an amendment to provide for woman suffrage, his enthusiasm for which had been largely inspired by his wife. Among his principal writings, in addition to those already mentioned, were his *Logic* (1843), *Principles of Political Economy* (1848), *Utilitarianism* (1863), and *The Subjection of Women* (1869).

The readings here given are based on the Everyman edition of *Utilitarianism, Liberty and Representative Government* (E. P. Dutton and Company, New York, 1910), and are reprinted by permission of E. P. Dutton and Company as the American publishers of Everyman's Library.

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ON LIBERTY

I. The Struggle between Liberty and Authority

[*Ch. I.*] The struggle between Liberty and Authority is the most conspicuous feature in the portions of history with which we are earliest familiar, particularly in that of Greece, Rome, and England. But in old times this contest was between subjects, or some classes of subjects, and the Government. The aim of patriots was to set limits to the power which the ruler should be suffered to exercise over the community; and this limitation was what they meant by liberty. It was attempted in two ways. First, by obtaining a recognition of certain immunities, called political liberties or rights, which it was to be regarded as a breach of duty in the ruler to infringe, and which if he did infringe, specific resistance, or general rebellion, was held to be justifiable. A second, and generally a later expedient, was the establishment of constitutional checks, by which the consent of the community, or of a body of some sort, supposed to represent its interests, was made a necessary condition to some of the more important acts of the governing power.

A time, however, came, in the progress of human affairs, when men ceased to think it a necessity of nature that their governors

should be an independent power, opposed in interest to themselves. It appeared to them much better that the various magistrates of the State should be their tenants or delegates, revocable at their pleasure. As the struggle proceeded for making the ruling power emanate from the periodical choice of the ruled, some persons began to think that too much importance had been attached to the limitation of the power itself. *That* (it might seem) was a resource against rulers whose interests were habitually opposed to those of the people. What was now wanted was, that the rulers should be identified with the people; that their interest and will should be the interest and will of the nation. The nation did not need to be protected against its own will. There was no fear of its tyrannising over itself.

The notion, that the people have no need to limit their power over themselves, might seem axiomatic, when popular government was a thing only dreamed about, or read of as having existed at some distant period of the past. In time, however, a democratic republic came to occupy a large portion of the earth's surface, and made itself felt as one of the most powerful members of the community of nations; and elective and responsible government became subject to the observations and criticisms which wait upon a great existing fact. It was now perceived that such phrases as "self-government," and "the power of the people over themselves," do not express the true state of the case. The "people" who exercise the power are not always the same people with those over whom it is exercised; and the "self-government" spoken of is not the government of each by himself, but of each by all the rest. The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently *may* desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power. The limitation, therefore, of the power of government over individuals loses none of its importance when the holders of power are regularly accountable to the community, that is, to the strongest party therein. This view of things, recommending itself equally to the intelligence of thinkers and to the inclination of those important classes in European society to whose real or supposed interests democracy is adverse, has had no difficulty in establishing itself; and in political speculations "the

tyranny of the majority" is now generally included among the evils against which society requires to be on its guard.

Like other tyrannies, the tyranny of the majority was at first, and is still vulgarly, held in dread, chiefly as operating through the acts of the public authorities. But reflecting persons perceived that when society is itself the tyrant—society collectively over the separate individuals who compose it—its means of tyrannising are not restricted to the acts which it may do by the hands of its political functionaries. Society can and does execute its own mandates: and if it issues wrong mandates instead of right, or any mandates at all in things with which it ought not to meddle, it practises a social tyranny more formidable than many kinds of political oppression, since, though not usually upheld by such extreme penalties, it leaves fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself. There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.

But though this proposition is not likely to be contested in general terms, the practical question, where to place the limit—how to make the fitting adjustment between individual independence and social control—is a subject on which nearly everything remains to be done. All that makes existence valuable to any one, depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed, by law in the first place, and by opinion on many things which are not fit subjects for the operation of law. What these rules should be is the principal question in human affairs; but if we except a few of the most obvious cases, it is one of those which least progress has been made in resolving. No two ages, and scarcely any two countries, have decided it alike; and the decision of one age or country is a wonder to another. Yet the people of any given age and country no more suspect any difficulty in it, than if it were a subject on which mankind had always been agreed. The rules which obtain among themselves appear to them self-evident and self-justifying. This all but universal illusion is one of the examples of the magical influence of custom, which is not only, as the proverb says, a second nature, but is continually mistaken for the first.

The likings and dislikings of society, or of some powerful portion

of it, are the main thing which has practically determined the rules laid down for general observance, under the penalties of law or opinion. And in general, those who have been in advance of society in thought and feeling, have left this condition of things unassailed in principle, however they may have come into conflict with it in some of its details. They have occupied themselves rather in inquiring what things society ought to like or dislike, than in questioning whether its likings or dislikings should be a law to individuals. The only case in which the higher ground has been taken on principle and maintained with consistency, by any but an individual here and there, is that of religious belief. The great writers to whom the world owes what religious liberty it possesses, have mostly asserted freedom of conscience as an indefeasible right, and denied absolutely that a human being is accountable to others for his religious beliefs. Yet so natural to mankind is intolerance in whatever they really care about, that religious freedom has hardly anywhere been practically realised, except where religious indifference, which dislikes to have its peace disturbed by theological quarrels, has added its weight to the scale. Wherever the sentiment of the majority is still genuine and intense, it is found to have abated little of its claim to be obeyed.

There is, in fact, no recognised principle by which the propriety or impropriety of government interference is customarily tested. People decide according to their personal preferences. And it seems to me that in consequence of this absence of rule or principle, one side is at present as often wrong as the other; the interference of government is, with about equal frequency, improperly invoked and improperly condemned.

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him

to do so, because it will make him happier, because, in the opinion of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own mind and body, the individual is sovereign.

It is, perhaps, hardly necessary to say that this doctrine is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children, or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in a state to require being taken care of by others, must be protected against their own actions as well as against external injury. For the same reason, we may leave out of consideration those backward states of society in which the race itself may be considered as in its nonage. But as soon as mankind have attained the capacity of being guided to their own improvement by conviction or persuasion (a period long since reached in all nations with whom we need here concern ourselves), compulsion, either in the direct form or in that of pains and penalties for non-compliance, is no longer admissible as a means to their own good, and justifiable only for the security of others.

It is proper to state that I forego any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility. I regard utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being. Those interests, I contend, authorise the subjection of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people.

But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portion of a person's life and conduct which affects only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and participation. This, then, is the appropriate region of human liberty. It comprises, first, the

inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.

No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, *or* mental and spiritual. Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

II. Liberty of Thought and Discussion

[*Ch. II.*] Speaking generally, it is not, in constitutional countries, to be apprehended, that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public. But I deny the right of the people to exercise such coercion, either by themselves or by their government. The power itself is illegitimate. The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind. Were an opinion a personal possession of no value except

to the owner, it would make some difference whether the injury was inflicted only on a few persons or on many. But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error.

First: the opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility.

Unfortunately for the good sense of mankind, the fact of their fallibility is far from carrying the weight in their practical judgment which is always allowed to it in theory. Absolute princes, or others who are accustomed to unlimited deference, usually feel complete confidence in their own opinions on nearly all subjects. People more happily situated, who sometimes hear their opinions disputed, and are not wholly unused to be set right when they are wrong, place the same unbounded reliance on such of their opinions as are shared by all who surround them, or to whom they habitually defer; for in proportion to a man's want of confidence in his own solitary judgment, does he usually repose, with implicit trust, on the infallibility of "the world" in general.

The objection likely to be made to this argument would probably take some such form as the following. There is no greater assumption of infallibility in forbidding the propagation of error, than in any other thing which is done by public authority on its own judgment and responsibility. There is no such thing as absolute certainty, but there is assurance sufficient for the purposes of human life. We may, and must, assume our opinion to be true for the guidance of our own conduct: and it is assuming no more when we forbid bad men to pervert society by the propagation of opinions which we regard as false and pernicious.

I answer, that it is assuming very much more. There is the greatest difference between presuming an opinion to be true, because, with every opportunity for contesting it, it has not been

refuted, and assuming its truth for the purpose of not permitting its refutation. Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.

Strange it is, that men should admit the validity of the arguments for free discussion, but object to their being "pushed to an extreme;" not seeing that unless the reasons are good for an extreme case, they are not good for any case. Strange that they should imagine that they are not assuming infallibility, when they acknowledge that there should be free discussion on all subjects which can possibly be *doubtful*, but think that some particular principle or doctrine should be forbidden to be questioned because it is so *certain*, that is, because *they are certain* that it is certain. To call any proposition certain, while there is any one who would deny its certainty if permitted, but who is not permitted, is to assume that we ourselves, and those who agree with us, are the judges of certainty, and judges without hearing the other side.

In the present age the claims of an opinion to be protected from public attack are rested not so much on its truth, as on its importance to society. There are, it is alleged, certain beliefs so useful, not to say indispensable, to well-being that it is as much the duty of governments to uphold those beliefs, as to protect any other of the interests of society. In a case of such necessity, and so directly in the line of their duty, something less than infallibility may, it is maintained, warrant, and even bind, governments to act on their own opinion, confirmed by the general opinion of mankind. But those who thus satisfy themselves, do not perceive that the assumption of infallibility is merely shifted from one point to another. The usefulness of an opinion is itself matter of opinion; as disputable, as open to discussion, and requiring discussion as much as the opinion itself. And it will not do to say that the heretic may be allowed to maintain the utility or harmlessness of his opinion, though forbidden to maintain its truth. The truth of an opinion is part of its utility. In the opinion, not of bad men, but of the best men, no belief which is contrary to truth can be really useful: and can you prevent such men from urging that plea, when they are charged with culpability for denying some doctrine which they are told is useful, but which they believe to be false?

Mankind can hardly be too often reminded, that there was

once a man named Socrates, between whom and the legal authorities and public opinion of his time there took place a memorable collision. This acknowledged master of all the eminent thinkers who have since lived was put to death by his countrymen, after a judicial conviction, for impiety and immorality. Of these charges the tribunal, there is every ground for believing, honestly found him guilty, and condemned the man who probably of all then born had deserved best of mankind to be put to death as a criminal.

If ever any one, possessed of power, had grounds for thinking himself the best and most enlightened among his contemporaries, it was the Emperor Marcus Aurelius. This man, a better Christian in all but the dogmatic sense of the word than almost any of the ostensibly Christian sovereigns who have since reigned, persecuted Christianity. But it would be equally unjust to him and false to truth to deny, that no one plea which can be urged for punishing anti-Christian teaching was wanting to Marcus Aurelius for punishing, as he did, the propagation of Christianity.

Aware of the impossibility of defending the use of punishment for restraining irreligious opinions by any argument which will not justify Marcus Antoninus, the enemies of religious freedom, when hard pressed, occasionally accept this consequence, and say, with Dr. Johnson, that the persecutors of Christianity were in the right; that persecution is an ordeal through which truth ought to pass, and always passes successfully, legal penalties being, in the end, powerless against truth, though sometimes beneficially effective against mischievous errors. This is a form of the argument for religious intolerance sufficiently remarkable not to be passed without notice.

A theory which maintains that truth may justifiably be persecuted because persecution cannot possibly do it any harm, cannot be charged with being intentionally hostile to the reception of new truths; but we cannot commend the generosity of its dealing with the persons to whom mankind are indebted for them.

But, indeed, the dictum that truth always triumphs over persecution is one of those pleasant falsehoods which men repeat one after another till they pass into commonplaces, but which all experience refutes. Men are not more zealous for truth than they often are for error, and a sufficient application of legal or even of social penalties will generally succeed in stopping the propagation of either. The real advantage which truth has con-

sists in this, that when an opinion is true, it may be extinguished once, twice, or many times, but in the course of ages there will generally be found persons to rediscover it, until some one of its reappearances falls on a time when from favourable circumstances it escapes persecution until it has made such head as to withstand all subsequent attempts to suppress it.

It will be said, that we do not now put to death the introducers of new opinions: we are not like our fathers who slew the prophets, we even build sepulchres to them. But let us not flatter ourselves that we are yet free from the stain even of legal persecution. In the year 1857, at the Old Bailey, two persons, on two separate occasions, were rejected as jurymen, because they honestly declared that they had no theological belief; and a third, a foreigner, for the same reason, was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine, that no person can be allowed to give evidence in a court of justice who does not profess belief in a God (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but any one else may be robbed or assaulted with impunity, if the proof of the fact depends on their evidence. The rule, besides, is suicidal, and cuts away its own foundation. Under pretence that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood.

These, indeed, are but rags and remnants of persecution. For a long time past, the chief mischief of the legal penalties is that they strengthen the social stigma. It is that stigma which is really effective, and so effective is it, that the profession of opinions which are under the ban of society is much less common in England than is, in many other countries, the avowal of those which incur risk of judicial punishment. In respect to all persons but those whose pecuniary circumstances make them independent of the good will of other people, opinion, on this subject, is as efficacious as law; men might as well be imprisoned, as excluded from the means of earning their bread. Our merely social intolerance kills no one, roots out no opinions, but induces men to disguise them, or to abstain from any active effort for their diffusion. The price

paid for this sort of intellectual pacification is the sacrifice of the entire moral courage of the human mind.

But it is not the minds of heretics that are deteriorated most by the ban placed on all inquiry which does not end in the orthodox conclusions. The greatest harm done is to those who are not heretics, and whose whole mental development is cramped, and their reason cowed, by the fear of heresy. Who can compute what the world loses in the multitude of promising intellects combined with timid characters, who dare not follow out any bold, vigorous, independent train of thought, lest it should land them in something which would admit of being considered irreligious or immoral? Not that it is solely, or chiefly, to form great thinkers, that freedom of thinking is required. On the contrary, it is as much and even more indispensable to enable average human beings to attain the mental stature which they are capable of. There have been, and may again be, great individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people.

Let us now pass to the second division of the argument, and dismissing the supposition that any of the received opinions may be false, let us assume them to be true, and examine into the worth of the manner in which they are likely to be held, when their truth is not freely and openly canvassed. However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.

He who knows only his own side of the case, knows little of that. His reasons may be good, and no one may have been able to refute them. But if he is equally unable to refute the reasons on the opposite side; if he does not so much as know what they are, he has no ground for preferring either opinion. The rational position for him would be suspension of judgment, and unless he contents himself with that, he is either led by authority, or adopts, like the generality of the world, the side to which he feels most inclination. Nor is it enough that he should hear the arguments of adversaries from his own teachers, presented as they state them, and accompanied by what they offer as refutations. That

is not the way to do justice to the arguments, or bring them into real contact with his own mind. He must be able to hear them from persons who actually believe them; who defend them in earnest; and do their very utmost for them. He must know them in their most plausible and persuasive form.

To abate the force of these considerations, an enemy of free discussion may be supposed to say, that there is no necesssity for mankind in general to know and understand all that can be said against or for their opinions by philosophers and theologians. That it is not needful for common men to be able to expose all the misstatements or fallacies of an ingenious opponent. That it is enough if there is always somebody capable of answering, so that nothing likely to mislead uninstructed persons remains unrefuted.

Conceding to this view of the subject the utmost that can be claimed for it by those most easily satisfied with the amount of understanding of truth which ought to accompany the belief of it; even so, the argument for free discussion is no way weakened. If not the public, at least the philosophers and theologians who are to resolve the difficulties, must make themselves familiar with those difficulties in their most puzzling form; and this cannot be accomplished unless they are freely stated, and placed in the most advantageous light which they admit of. If the teachers of mankind are to be cognisant of all that they ought to know, everything must be free to be written and published without restraint.

If, however, the mischievous operation of the absence of free discussion, when the received opinions are true, were confined to leaving men ignorant of the grounds of those opinions, it might be thought that this, if an intellectual, is no moral evil, and does not affect the worth of the opinions, regarded in their influence on the character. The fact, however, is, that not only the grounds of the opinion are forgotten in the absence of discussion, but too often the meaning of the opinion itself. Instead of a vivid conception and a living belief, there remain only a few phrases retained by rote; or, if any part, the shell and husk only of the meaning is retained, the finer essence being lost.

But what! (it may be asked) Is the absence of unanimity an indispensable condition of true knowledge? Is it necessary that some part of mankind should persist in error to enable any to realise the truth? Does a belief cease to be real and vital as soon as it is

generally received—and is a proposition never thoroughly understood and felt unless some doubt of it remains?

I affirm no such thing. As mankind improve, the number of doctrines which are no longer disputed or doubted will be constantly on the increase: and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested. But though this gradual narrowing of the bounds of diversity of opinion is necessary in both senses of the term, being at once inevitable and indispensable, we are not therefore obliged to conclude that all its consequences must be beneficial. The loss of so important an aid to the intelligent and living apprehension of a truth, as is afforded by the necessity of explaining it to, or defending it against, opponents, though not sufficient to outweigh, is no trifling drawback from, the benefit of its universal recognition. Where this advantage can no longer be had, I confess I should like to see the teachers of mankind endeavouring to provide a substitute for it; some contrivance for making the difficulties of the question as present to the learner's consciousness, as if they were pressed upon him by a dissentient champion, eager for his conversion.

That, therefore, which when absent, it is so indispensable, but so difficult, to create, how worse than absurd it is to forego, when spontaneously offering itself! If there are any persons who contest a received opinion, or who will do so if law or opinion will let them, let us thank them for it, open our minds to listen to them, and rejoice that there is some one to do for us what we otherwise ought, if we have any regard for either the certainty or the vitality of our convictions, to do with much greater labour for ourselves.

We have hitherto considered only two possibilities: that the received opinion may be false, and some other opinion, consequently, true; or that, the received opinion being true, a conflict with the opposite error is essential to a clear apprehension and deep feeling of its truth. But there is a commoner case than either of these; when the conflicting doctrines, instead of being one true and the other false, share the truth between them: and the nonconforming opinion is needed to supply the remainder of the truth, of which the received doctrine embodies only a part. Popular opinions on subjects not palpable to sense, are often true, but seldom or never the whole truth. They are a part of the truth; sometimes a greater,

sometimes a smaller part, but exaggerated, distorted, and disjointed from the truths by which they ought to be accompanied and limited. Such being the partial character of prevailing opinions, even when resting on a true foundation, every opinion which embodies somewhat of the portion of truth which the common opinion omits, ought to be considered precious, with whatever amount of error and confusion that truth may be blended. No sober judge of human affairs will feel bound to be indignant because those who force on our notice truths which we should otherwise have overlooked, overlook some of those which we see.

Truth, in the great practical concerns of life, is so much a question of the reconciling and combining of opposites, that very few have minds sufficiently capacious and impartial to make the adjustment with an approach to correctness, and it has to be made by the rough process of a struggle between combatants fighting under hostile banners. On any of the great open questions, if either of the two opinions has a better claim than the other, not merely to be tolerated, but to be encouraged and countenanced, it is the one which happens at the particular time and place to be in a minority. That is the opinion which, for the time being, represents the neglected interests, the side of human well-being which is in danger of obtaining less than its share. When there are persons to be found who form an exception to the apparent unanimity of the world on any subject, even if the world is in the right, it is always probable that dissentients have something worth hearing to say for themselves, and that the truth would lose something by their silence.

III. Society and the Individual

[*Ch. III.*] Such being the reasons which make it imperative that human beings should be free to form opinions, and to express their opinions without reserve; and such the baneful consequences to the intellectual, and through that to the moral nature of man, unless this liberty is either conceded, or asserted in spite of prohibition; let us next examine whether the same reasons do not require that men should be free to act upon their opinions—to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril. This last proviso is of course indispensable. No one pretends that actions should be as free as opinions. On the con-

trary, even opinions lose their immunity when the circumstances in which they are expressed are such as to constitute their expression a positive instigation to some mischievous act. An opinion that corn-dealers are starvers of the poor, or that private property is robbery, ought to be unmolested when simply circulated through the press, but may justly incur punishment when delivered orally to an excited mob assembled before the house of a corn-dealer, or when handed about among the same mob in the form of a placard. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people. But if he refrains from molesting others in what concerns them, and merely acts according to his own inclination and judgment in things which concern himself, the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. As it is useful that while mankind are imperfect, there should be different opinions, so it is that there should be different experiments of living; that free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself.

[*Ch. IV.*] The distinction here pointed out between the part of a person's life which concerns only himself, and that which concerns others, many persons will refuse to admit. How (it may be asked) can any part of the conduct of a member of society be a matter of indifference to the other members? No person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them.

I fully admit that the mischief a person does to himself may seriously affect, both through their sympathies and their interests, those nearly connected with him and, in a minor degree, society at large. When, by conduct of this sort, a person is led to violate a distinct and assignable obligation to any other person or persons, the case is taken out of the self-regarding class, and becomes amenable to moral disapprobation in the proper sense of the term. If, for example, a man, through intemperance or extravagance, becomes unable to pay his debts, or, having undertaken

the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated, and might be justly punished; but it is for the breach of duty to his family or creditors, not for the extravagance. If the resources which ought to have been devoted to them, had been diverted from them for the most prudent investment, the moral culpability would have been the same. In like manner, when a person disables himself, by conduct purely self-regarding, from the performance of some definite duty incumbent on him to the public, he is guilty of a social offense. No person ought to be punished simply for being drunk; but a soldier or a policeman should be punished for being drunk on duty. Whenever, in short, there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law.

[*Ch. V.*] The principles asserted in these pages must be more generally admitted as the basis for discussion of details, before a consistent application of them to all the various departments of government and morals can be attempted with any prospect of advantage. The few observations I propose to make on questions of detail are designed to illustrate the principles, rather than to follow them out to their consequences.

In the first place, it must by no means be supposed, because damage, or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. Whoever succeeds in an overcrowded profession, or in a competitive examination; whoever is preferred to another in any contest for an object which both desire, reaps benefit from the loss of others, from their wasted exertion and their disappointment. But it is, by common admission, better for the general interest of mankind, that persons should pursue their objects undeterred by this sort of consequences.

Again, trade is a social act. Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society: accordingly, it was once held to be the duty of governments, in all cases which were considered of importance, to fix prices, and regulate the processes of manufacture. But it is now recognised, though not till after a long struggle, that both the cheapness and the good

quality of commodities are most effectually provided for by leaving the producers and sellers perfectly free, under the sole check of equal freedom to the buyers for supplying themselves elsewhere. This is the so-called doctrine of Free Trade, which rests on grounds different from, though equally solid with, the principle of individual liberty asserted in this Essay. Restrictions on trade, or on production for purposes of trade, are indeed restraints; and all restraint, *quâ* restraint, is an evil: but the restraints in question affect only that part of conduct which society is competent to restrain, and are wrong solely because they do not really produce the results which it is desired to produce by them. On the other hand, there are questions relating to interference with trade which are essentially questions of liberty; such as the Maine Law; the prohibition of the importation of opium into China; the restriction of the sale of poisons; all cases, in short, where the object of the interference is to make it impossible or difficult to obtain a particular commodity. These interferences are objectionable, not as infringements on the liberty of the producer or seller, but on that of the buyer.

One of these examples, that of the sale of poisons, opens a new question; the proper limits of what may be called the functions of police; how far liberty may legitimately be invaded for the prevention of crime, or of accident. It is one of the undisputed functions of government to take precautions against crime before it has been committed, as well as to detect and punish it afterwards. If poisons were never bought or used for any purpose except the commission of murder it would be right to prohibit their manufacture and sale. They may, however, be wanted not only for innocent but for useful purposes, and restrictions cannot be imposed in the one case without operating in the other. Again, it is a proper office of public authority to guard against accidents. Such a precaution as that of labelling the drug with some word expressive of its dangerous character, may be enforced without violation of liberty: the buyer cannot wish not to know that the thing he possesses has poisonous qualities. But to require in all cases the certificate of a medical practitioner would make it sometimes impossible, always expensive, to obtain the article for legitimate uses. The only mode apparent to me, in which difficulties may be thrown in the way of crime committed through this means, without any infringement worth taking into account upon the liberty of those who desire the

poisonous substance for other purposes, consists in providing what, in the apt language of Bentham, is called "preappointed evidence." The seller, for example, might be required to enter in a register the exact time of the transaction, the name and address of the buyer, the precise quality and quantity sold; to ask the purpose for which it was wanted, and record the answer he received.

The right inherent in society, to ward off crimes against itself by antecedent precautions, suggests the obvious limitations to the maxim, that purely self-regarding misconduct cannot properly be meddled with in the way of prevention or punishment. Drunkenness, for example, in ordinary cases, is not a fit subject for legislative interference; but I should deem it perfectly legitimate that a person, who had once been convicted of any act of violence to others under the influence of drink, should be placed under a special legal restriction, personal to himself; that if he were afterwards found drunk, he should be liable to a penalty, and that if when in that state he committed another offence, the punishment to which he would be liable for that other offence should be increased in severity. The making himself drunk, in a person whom drunkenness excites to do harm to others, is a crime against others. So, again, idleness, except in a person receiving support from the public, or except when it constitutes a breach of contract, cannot without tyranny be made a subject of legal punishment; but if, either from idleness or from any other avoidable cause, a man fails to perform his legal duties to others, as for instance to support his children, it is no tyranny to force him to fulfil that obligation, by compulsory labour, if no other means are available.

There is another question to which an answer must be found, consistent with the principles which have been laid down. In cases of personal conduct supposed to be blamable, but which respect for liberty precludes society from preventing or punishing, because the evil directly resulting falls wholly on the agent; what the agent is free to do, ought other persons to be equally free to counsel or instigate? The question is doubtful only when the instigator derives a personal benefit from his advice; when he makes it his occupation, for subsistence or pecuniary gain, to promote what society and the State consider to be an evil. Fornication, for example, must be tolerated, and so must gambling; but should a person be free to be a pimp, or to keep a gambling-house? There are arguments on both sides. On the side of toleration it may be said that

the act of following anything as an occupation, and living or profiting by the practice of it, cannot make that criminal which would otherwise be admissible; that the act should either be consistently permitted or consistently prohibited; that if the principles which we have hitherto defended are true, society has no business, *as* society, to decide anything to be wrong which concerns only the individual; that it cannot go beyond dissuasion, and that one person should be as free to persuade as another to dissuade. In opposition to this it may be contended, that although the public, or the State, are not warranted in authoritatively deciding, for purposes of repression or punishment, that such or such conduct affecting only the interests of the individual is good or bad, they are fully justified in assuming, if they regard it as bad, that its being so or not is at least a disputable question: That, this being supposed, they cannot be acting wrongly in endeavouring to exclude the influence of solicitations which are not disinterested, of instigators who cannot possibly be impartial—who have a direct personal interest on one side, and that side the one which the State believes to be wrong, and who confessedly promote it for personal objects only. There is considerable force in these arguments. I will not venture to decide whether they are sufficient to justify the moral anomaly of punishing the accessory, when the principal is (and must be) allowed to go free; of fining or imprisoning the procurer, but not the fornicator—the gambling-house keeper, but not the gambler. Still less ought the common operations of buying and selling to be interfered with on analogous grounds. Almost every article which is bought and sold may be used in excess, and the sellers have a pecuniary interest in encouraging that excess; but no argument can be founded on this, in favour, for instance, of the Maine Law; because the class of dealers in strong drinks, though interested in their abuse, are indispensably required for the sake of their legitimate use. The interest, however, of these dealers in promoting intemperance is a real evil, and justifies the State in imposing restrictions and requiring guarantees which, but for that justification, would be infringements of legitimate liberty.

A further question is, whether the State, while it permits, should nevertheless indirectly discourage conduct which it deems contrary to the best interests of the agent; whether, for example, it should take measures to render the means of drunkenness more

costly. On this as on most other practical questions, many distinctions require to be made. To tax stimulants for the sole purpose of making them more difficult to be obtained, is a measure differing only in degree from their entire prohibition; and would be justifiable only if that were justifiable. But it must be remembered that taxation for fiscal purposes is absolutely inevitable; that in most countries it is necessary that a considerable part of that taxation should be indirect; that the State, therefore, cannot help imposing penalties, which to some persons may be prohibitory, on the use of some articles of consumption. It is hence the duty of the State to consider, in the imposition of taxes, what commodities the consumers can best spare; and *à fortiori*, to select in preference those of which it deems the use, beyond a very moderate quantity, to be positively injurious. Taxation, therefore, of stimulants, up to the point which produces the largest amount of revenue (supposing that the State needs all the revenue which it yields) is not only admissible, but to be approved of.

I have already observed that, owing to the absence of any recognised general principles, liberty is often granted where it should be withheld, as well as withheld where it should be granted; and one of the cases in which, in the modern European world, the sentiment of liberty is the strongest, is a case where, in my view, it is altogether misplaced. It is in the case of children that misapplied notions of liberty are a real obstacle to the fulfilment by the State of its duties. One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them; more jealous than of almost any interference with his own freedom of action: so much less do the generality of mankind value liberty than power. Consider, for example, the case of education. Is it not almost a self-evident axiom, that the State should require and compel the education, up to a certain standard, of every human being who is born its citizen? Yet who is there that is not afraid to recognise and assert this truth? Hardly any one indeed will deny that it is one of the most sacred duties of the parents (or, as law and usage now stand, the father), after summoning a human being into the world, to give to that being an education fitting him to perform his part well in life towards others and towards himself. But while this is unanimously declared to be the father's duty, scarcely any-

body, in this country, will bear to hear of obliging him to perform it. Instead of his being required to make any exertion or sacrifice for securing education to his child, it is left to his choice to accept it or not when it is provided gratis!

If the government would make up its mind to require for every child a good education, it might save itself the trouble of providing one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them. The objections which are urged with reason against State education do not apply to the enforcement of education by the State, but to the State's taking upon itself to direct that education; which is a totally different thing. That the whole or any large part of the education of the people should be in State hands, I go as far as any one in deprecating. A general State education is a mere contrivance for moulding people to be exactly like one another: in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence.

The instrument for enforcing the law could be no other than public examinations, extending to all children, and beginning at an early age. An age might be fixed at which every child must be examined, to ascertain if he (or she) is able to read. If a child proves unable, the father, unless he has some sufficient ground of excuse, might be subjected to a moderate fine, to be worked out, if necessary, by his labour, and the child might be put to school at his expense. Once in every year the examination should be renewed, with a gradually extending range of subjects, so as to make the universal acquisition, and what is more, retention, of a certain minimum of general knowledge virtually compulsory. Beyond that minimum there should be voluntary examinations on all subjects, at which all who came up to a certain standard of proficiency might claim a certificate. The examinations, however, in the higher branches of knowledge should, I conceive, be entirely voluntary. It would be giving too dangerous a power to governments were they allowed to exclude any one from professions, even

from the profession of teacher, for alleged deficiency of qualifications: and I think that degrees, or other public certificates of scientific or professional acquirements, should be given to all who present themselves for examination, and stand the test; but that such certificates should confer no advantage over competitors other than the weight which may be attached to their testimony by public opinion.

CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT

I. The Ideally Best Form of Government

[*Ch. III.*] It has long (perhaps throughout the entire duration of British freedom) been a common saying, that if a good despot could be ensured, despotic monarchy would be the best form of government. I look upon this as a radical and most pernicious misconception of what good government is; which, until it can be got rid of, will fatally vitiate all our speculations on government.

The supposition is, that absolute power, in the hands of an eminent individual, would ensure a virtuous and intelligent performance of all the duties of government. Good laws would be established and enforced, bad laws would be reformed; the best men would be placed in all situations of trust; justice would be as well administered, the public burthens would be as light and as judiciously imposed, every branch of administration would be as purely and as intelligently conducted, as the circumstances of the country and its degree of intellectual and moral cultivation would admit. I am willing, for the sake of the argument, to concede all this; but I must point out how great the concession is; how much more is needed to produce even an approximation to these results than is conveyed in the simple expression, a good despot. Their realisation would in fact imply, not merely a good monarch, but an all-seeing one. He must be at all times informed correctly, in considerable detail, of the conduct and working of every branch of administration, in every district of the country, and must be able, in the twenty-four hours per day which are all that is granted to a king as to the humblest labourer, to give an effective share of attention and superintendence to all parts of this vast field; or he must at least be capable of discerning and choosing out, from among the mass of his subjects, not only a large abundance of honest and able

men, fit to conduct every branch of public administration under supervision and control, but also the small number of men of eminent virtues and talents who can be trusted not only to do without that supervision, but to exercise it themselves over others. So extraordinary are the faculties and energies required for performing this task in any supportable manner, that the good despot whom we are supposing can hardly be imagined as consenting to undertake it, unless as a refuge from intolerable evils, and a transitional preparation for something beyond. But the argument can do without even this immense item in the account. Suppose the difficulty vanquished. What should we then have? One man of superhuman mental activity managing the entire affairs of a mentally passive people. Their passivity is implied in the very idea of absolute power. The nation as a whole, and every individual composing it, are without any potential voice in their own destiny. All is decided for them by a will not their own, which it is legally a crime for them to disobey. What sort of human beings can be formed under such a regimen? What development can either their thinking or their active faculties attain under it? The only sufficient incitement to mental exertion, in any but a few minds in a generation, is the prospect of some practical use to be made of its results. Nor is it only in their intelligence that they suffer. Their moral capacities are equally stunted. Wherever the sphere of action of human beings is artificially circumscribed, their sentiments are narrowed and dwarfed in the same proportion. Let a person have nothing to do for his country, and he will not care for it.

It is not much to be wondered at if impatient or disappointed reformers should at times sigh for a strong hand to compel a recalcitrant people to be better governed. But those who look in any such direction for the realisation of their hopes leave out of the idea of good government its principal element, the improvement of the people themselves. One of the benefits of freedom is that under it the ruler cannot pass by the people's minds, and amend their affairs for them without amending them. If it were possible for the people to be well governed in spite of themselves, their good government would last no longer than the freedom of a people usually lasts who have been liberated by foreign arms without their own co-operation. It is true, a despot may educate the people; and to do so really, would be the best apology for his despotism. But any education which aims at making human beings other than

machines, in the long run makes them claim to have the control of their own actions.

The ideally best form of government does not mean one which is practicable or eligible in all states of civilisation, but the one which, in the circumstances in which it is practicable and eligible, is attended with the greatest amount of beneficial consequences, immediate and prospective. A completely popular government is the only polity which can make out any claim to this character. It is pre-eminent in both the departments between which the excellence of a political constitution is divided.

Its superiority in reference to present well-being rests upon two principles, of as universal truth and applicability as any general propositions which can be laid down respecting human affairs. The first is, that the rights and interests of every or any person are only secure from being disregarded when the person interested is himself able, and habitually disposed, to stand up for them. The second is, that the general prosperity attains a greater height, and is more widely diffused, in proportion to the amount and variety of the personal energies enlisted in promoting it.

The former proposition—that each is the only safe guardian of his own rights and interests—is one of those elementary maxims of prudence, which every person, capable of conducting his own affairs, implicitly acts upon, wherever he himself is interested. Many, indeed, have a great dislike to it as a political doctrine, and are fond of holding it up to obloquy, as a doctrine of universal selfishness. But I am inclined to think they do in reality believe that most men consider themselves before other people. It is not, however, necessary to affirm even thus much in order to support the claim of all to participate in the sovereign power. We need not suppose that when power resides in an exclusive class, that class will knowingly and deliberately sacrifice the other classes to themselves: it suffices that, in the absence of its natural defenders, the interest of the excluded is always in danger of being overlooked; and, when looked at, is seen with very different eyes from those of the persons whom it directly concerns. In this country, for example, what are called the working classes may be considered as excluded from all direct participation in the government. I do not believe that the classes who do participate in it have in general any intention of sacrificing the working classes to themselves. Yet does Parliament, or almost any of the members composing it, ever for an

instant look at any question with the eyes of a working man? On the question of strikes, for instance, it is doubtful if there is so much as one among the leading members of either House who is not firmly convinced that the reason of the matter is unqualifiedly on the side of the masters, and that the men's view of it is simply absurd. Those who have studied the question know well how far this is from being the case; and in how different, and how infinitely less superficial a manner the point would have to be argued, if the classes who strike were able to make themselves heard in Parliament.

It is an adherent condition of human affairs that no intention, however sincere, of protecting the interests of others can make it safe or salutary to tie up their own hands. Still more obviously true is it, that by their own hands only can any positive and durable improvement of their circumstances in life be worked out. Through the joint influence of these two principles, all free communities have been more exempt from social injustice and crime, and have attained more brilliant prosperity, than any others, or than they themselves after they lost their freedom.

It must be acknowledged that the benefits of freedom, so far as they have hitherto been enjoyed, were obtained by the extension of its privileges to a part only of the community; and that a government in which they are extended impartially to all is a desideratum still unrealised. But though every approach to this has an independent value, and in many cases more than an approach could not, in the existing state of general improvement, be made, the participation of all in these benefits is the ideally perfect conception of free government. In proportion as any, no matter who, are excluded from it, the interests of the excluded are left without the guarantee accorded to the rest, and they themselves have less scope and encouragement than they might otherwise have to that exertion of their energies for the good of themselves and of the community, to which the general prosperity is always proportioned.

Thus stands the case as regards present well-being; the good management of the affairs of the existing generation. If we now pass to the influence of the form of government upon character, we shall find the superiority of popular government over every other to be, if possible, still more decided and indisputable.

This question really depends upon a still more fundamental one, viz., which of two common types of character, for the general

good of humanity, it is most desirable should predominate—the active, or the passive type; that which struggles against evils, or that which endures them; that which bends to circumstances, or that which endeavours to make circumstances bend to itself.

The commonplaces of moralists, and the general sympathies of mankind, are in favour of the passive type. Energetic characters may be admired, but the acquiescent and submissive are those which most men personally prefer. A contented character is not a dangerous rival. Yet nothing is more certain than that improvement in human affairs is wholly the work of the uncontented characters; and, moreover, that it is much easier for an active mind to acquire the virtues of patience than for a passive one to assume those of energy.

Now there can be no kind of doubt that the passive type of character is favoured by the government of one or a few, and the active, self-helping type by that of the Many. Irresponsible rulers need the quiescence of the ruled more than they need any activity but that which they can compel. The will of superiors, and the law as the will of superiors, must be passively yielded to. Between subjection to the will of others, and the virtues of self-help and self-government, there is a mutual incompatibility.

Very different is the state of the human faculties where a human being feels himself under no other external restraint than the necessities of nature, or mandates of society which he has his share in imposing, and which it is open to him, if he thinks them wrong, publicly to dissent from, and exert himself actively to get altered. No doubt, under a government partially popular, this freedom may be exercised even by those who are not partakers in the full privileges of citizenship. But it is a great additional stimulus to any one's self-help and self-reliance when he starts from even ground, and has not to feel that his success depends on the impression he can make upon the sentiments and dispositions of a body of whom he is not one. What is still more important is the practical discipline which the character obtains from the occasional demand made upon the citizens to exercise, for a time and in their turn, some social function. It is not sufficiently considered how little there is in most men's ordinary life to give any largeness either to their conceptions or to their sentiments. Notwithstanding the defects of the social system and moral ideas of antiquity, the practice of the dicastery and the ecclesia raised the intellectual

standard of an average Athenian citizen far beyond anything of which there is yet an example in any other mass of men, ancient or modern. A benefit of the same kind, though far less in degree, is produced on Englishmen of the lower middle class by their liability to be placed on juries and to serve parish offices; which must make them very different beings, in range of ideas and development of faculties, from those who have done nothing in their lives but drive a quill, or sell goods over a counter. Still more salutary is the moral part of the instruction afforded by the participation of the private citizen, if even rarely, in public functions. He is called upon, while so engaged, to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good: and he usually finds associated with him in the same work minds more familiarised than his own with these ideas and operations, whose study it will be to supply reasons to his understanding, and stimulation to his feeling for the general interest. He is made to feel himself one of the public, and whatever is for their benefit to be for his benefit.

From these accumulated considerations it is evident that the only government which can fully satisfy all the exigencies of the social state is one in which the whole people participate. But since all cannot, in a community exceeding a single small town, participate personally in any but some very minor portions of the public business, it follows that the ideal type of a perfect government must be representative.

II. The Extension of the Suffrage

[*Ch. VIII.*] Among the foremost benefits of free government is that education of the intelligence and of the sentiments which is carried down to the very lowest ranks of the people when they are called to take a part in acts which directly affect the great interests of their country. Whoever, in an otherwise popular government, has no vote, and no prospect of obtaining it, will either be a permanent malcontent, or will feel as one whom the general affairs of society do not concern; for whom they are to be managed by others; who "has no business with the laws except to obey them," nor with public interests and concerns except as a looker-on. What he will know or care about them from this position may partly be measured by what an average woman of the middle class knows

and cares about politics, compared with her husband or brothers.

Independently of these considerations, it is a personal injustice to withhold from any one, unless for the prevention of greater evils, the ordinary privilege of having his voice reckoned in the disposal of affairs in which he has the same interest as other people. If he is compelled to pay, if he may be compelled to fight, if he is required implicitly to obey, he should be legally entitled to be told what for; to have his consent asked and his opinion counted at its worth, though not at more than its worth. No arrangement of the suffrage, therefore, can be permanently satisfactory in which any person or class is peremptorily excluded; in which the electoral privilege is not open to all persons of full age who desire to obtain it.

There are, however, certain exclusions, required by positive reasons, which do not conflict with this principle, and which, though an evil in themselves, are only to be got rid of by the cessation of the state of things which requires them. I regard it as wholly inadmissible that any person should participate in the suffrage without being able to read, write, and, I will add, perform the common operations of arithmetic. Justice demands, even when the suffrage does not depend on it, that the means of attaining these elementary acquirements should be within the reach of every person, either gratuitously, or at an expense not exceeding what the poorest who earn their own living can afford. If this were really the case, people would no more think of giving the suffrage to a man who could not read, than of giving it to a child who could not speak; and it would not be society that would exclude him, but his own laziness. When society has not performed its duty, by rendering this amount of instruction accessible to all, there is some hardship in the case, but it is a hardship that ought to be borne. No one but those in whom an *à priori* theory has silenced common sense will maintain that power over others, over the whole community, should be imparted to people who have not acquired the commonest and most essential requisites for taking care of themselves; for pursuing intelligently their own interests, and those of the persons most nearly allied to them.

It is also important, that the assembly which votes the taxes, either general or local, should be elected exclusively by those who pay something towards the taxes imposed. Those who pay no taxes, disposing by their votes of other people's money, have every motive to be lavish and none to economise. As far as money mat-

ters are concerned, any power of voting possessed by them is a violation of the fundamental principle of free government; a severance of the power of control from the interest in its beneficial exercise. That representation should be co-extensive with taxation, not stopping short of it, but also not going beyond it, is in accordance with the theory of British institutions. But to reconcile this, as a condition annexed to the representation, with universality, it is essential, as it is on many other accounts desirable, that taxation, in a visible shape, should descend to the poorest class. In this country, and in most others, there is probably no labouring family which does not contribute to the indirect taxes, by the purchase of tea, coffee, sugar, not to mention narcotics or stimulants. But this mode of defraying a share of the public expenses is hardly felt: the payer, unless a person of education and reflection, does not identify his interest with a low scale of public expenditure as closely as when money for its support is demanded directly from himself; and even supposing him to do so, he would doubtless take care that, however lavish an expenditure he might, by his vote, assist in imposing upon the government, it should not be defrayed by any additional taxes on the articles which he himself consumes. It would be better that a direct tax, in the simple form of a capitation, should be levied on every grown person in the community; or that every such person should be admitted an elector on allowing himself to be rated *extra ordinem* to the assessed taxes; or that a small annual payment, rising and falling with the gross expenditure of the country, should be required from every registered elector; that so every one might feel that the money which he assisted in voting was partly his own, and that he was interested in keeping down its amount.

However this may be, I regard it as required by first principles, that the receipt of parish relief should be a peremptory disqualification for the franchise. He who cannot by his labour suffice for his own support has no claim to the privilege of helping himself to the money of others. Those to whom he is indebted for the continuance of his very existence may justly claim the exclusive management of those common concerns, to which he now brings nothing, or less than he takes away. As a condition of the franchise, a term should be fixed, say five years previous to the registry, during which the applicant's name has not been on the parish books as a recipient of relief. To be an uncertified bankrupt, or

to have taken the benefit of the Insolvent Act, should disqualify for the franchise until the person has paid his debts, or at least proved that he is not now, and has not for some long period been, dependent on eleemosynary support. Non-payment of taxes, when so long persisted in that it cannot have arisen from inadvertence, should disqualify while it lasts. These exclusions are not in their nature permanent. They exact such conditions only as all are able, or ought to be able, to fulfil if they choose.

In the long run, therefore (supposing no restrictions to exist but those of which we have now treated), we might expect that all, except that (it is to be hoped) progressively diminishing class, the recipients of parish relief, would be in possession of votes, so that the suffrage would be, with that slight abatement, universal. That it should be thus widely expanded is, as we have seen, absolutely necessary to an enlarged and elevated conception of good government. Yet in this state of things, the great majority of voters, in most countries, and emphatically in this, would be manual labourers; and the twofold danger, that of too low a standard of political intelligence, and that of class legislation, would still exist in a very perilous degree. It remains to be seen whether any means exist by which these evils can be obviated.

They are capable of being obviated, if men sincerely wish it; not by any artificial contrivance, but by carrying out the natural order of human life, which recommends itself to every one in things in which he has no interest or traditional opinion running counter to it. In all human affairs, every person directly interested, and not under positive tutelage, has an admitted claim to a voice, and when his exercise of it is not inconsistent with the safety of the whole, cannot justly be excluded from it. But though every one ought to have a voice—that every one should have an equal voice is a totally different proposition.

No one but a fool, and only a fool of a peculiar description, feels offended by the acknowledgment that there are others whose opinion, and even whose wish, is entitled to a greater amount of consideration than his. To have no voice in what are partly his own concerns is a thing which nobody willingly submits to; but when what is partly his concern is also partly another's, and he feels the other to understand the subject better than himself, that the other's opinion should be counted for more than his own accords with his expectations, and with the course of things which

in all other affairs of life he is accustomed to acquiesce in. It is only necessary that this superior influence should be assigned on grounds which he can comprehend, and of which he is able to perceive the justice.

I hasten to say that I consider it entirely inadmissible, unless as a temporary makeshift, that the superiority of influence should be conferred in consideration of property. To connect plurality of votes with any pecuniary qualification would be not only objectionable in itself, but a sure mode of discrediting the principle, and making its permanent maintenance impracticable. The only thing which can justify reckoning one person's opinion as equivalent to more than one is individual mental superiority; and what is wanted is some approximate means of ascertaining that. If there existed such a thing as a really national education or a trustworthy system of general examination, education might be tested directly. In the absence of these, the nature of a person's occupation is some test. An employer of labour is on the average more intelligent than a labourer; for he must labour with his head, and not solely with his hands. A foreman is generally more intelligent than an ordinary labourer, and a labourer in the skilled trades than in the unskilled. A banker, merchant, or manufacturer is likely to be more intelligent than a tradesman, because he has larger and more complicated interests to manage. In all these cases it is not the having merely undertaken the superior function, but the successful performance of it, that tests the qualifications; for which reason, as well as to prevent persons from engaging nominally in an occupation for the sake of the vote, it would be proper to require that the occupation should have been persevered in for some length of time (say three years). Subject to some such condition, two or more votes might be allowed to every person who exercises any of these superior functions. The liberal professions, when really and not nominally practised, imply, of course, a still higher degree of instruction; and wherever a sufficient examination, or any serious conditions of education, are required before entering on a profession, its members could be admitted at once to a plurality of votes. The same rule might be applied to graduates of universities; and even to those who bring satisfactory certificates of having passed through the course of study required by any school at which the higher branches of knowledge are taught, under proper securities that the teaching is real, and not a mere pretence.

The plurality of votes must on no account be carried so far that those who are privileged by it, or the class (if any) to which they mainly belong, shall outweigh by means of it all the rest of the community. The distinction in favour of education, right in itself, is further and strongly recommended by its preserving the educated from the class legislation of the uneducated; but it must stop short of enabling them to practise class legislation on their own account. Let me add, that I consider it an absolutely necessary part of the plurality scheme that it be open to the poorest individual in the community to claim its privileges, if he can prove that, in spite of all difficulties and obstacles, he is, in point of intelligence, entitled to them. There ought to be voluntary examinations at which any person whatever might present himself, might prove that he came up to the standard of knowledge and ability laid down as sufficient, and be admitted, in consequence, to the plurality of votes. A privilege which is not refused to any one who can show that he has realised the conditions on which in theory and principle it is dependent would not necessarily be repugnant to any one's sentiment of justice: but it would certainly be so, if, while conferred on general presumptions not always infallible, it were denied to direct proof.

So much importance do I attach to the emancipation of those who already have votes, but whose votes are useless, because always outnumbered—that I should not despair of the operation even of equal and universal suffrage, if made real by the proportional representation of all minorities, on Mr. Hare's principle. But if the best hopes which can be formed on this subject were certainties, I should still contend for the principle of plural voting. I do not propose the plurality as a thing in itself undesirable, which, like the exclusion of part of the community from the suffrage, may be temporarily tolerated while necessary to prevent greater evils. It is not useful, but hurtful, that the constitution of the country should declare ignorance to be entitled to as much political power as knowledge. The American institutions have imprinted strongly on the American mind that any one man (with a white skin) is as good as any other; and it is felt that this false creed is nearly connected with some of the more unfavourable points in American character.

In the preceding argument for universal, but graduated suffrage, I have taken no account of difference of sex. I consider it

to be as entirely irrelevant to political rights as difference in height or in the colour of the hair. All human beings have the same interest in good government; the welfare of all is alike affected by it, and they have equal need of a voice in it to secure their share of its benefits. If there be any difference, women require it more than men, since, being physically weaker, they are more dependent on law and society for protection. Mankind have long since abandoned the only premises which will support the conclusion that women ought not to have votes. No one now holds that women should be in personal servitude; that they should have no thought, wish, or occupation, but to be the domestic drudges of husbands, fathers, or brothers. It is allowed to unmarried, and wants but little of being conceded to married women, to hold property, and have pecuniary and business interests, in the same manner as men. It is considered suitable and proper that women should think, and write, and be teachers. As soon as these things are admitted, the political disqualification has no principle to rest on.

But it is not even necessary to maintain so much in order to prove that women should have the suffrage. Were it as right, as it is wrong, that they should be a subordinate class, confined to domestic occupations and subject to domestic authority, they would not the less require the protection of the suffrage to secure them from the abuse of that authority. Men, as well as women, do not need political rights in order that they may govern, but in order that they may not be misgoverned. The majority of the male sex are, and will be all their lives, nothing else than labourers in corn-fields or manufactories; but this does not render the suffrage less desirable for them, nor their claim to it less irresistible, when not likely to make a bad use of it. Nobody pretends to think that women would make a bad use of the suffrage. The worst that is said is that they would vote as mere dependents, at the bidding of their male relations. If it be so, so let it be. If they think for themselves, great good will be done, and if they do not, no harm.

Let us hope that as the work proceeds of pulling down, one after another, the remains of the mouldering fabric of monopoly and tyranny, this one will not be the last to disappear; that the opinion of Bentham, of Mr. Samuel Bailey, of Mr. Hare, and many other of the most powerful political thinkers of this age and country (not to speak of others), will make its way to all minds not rendered obdurate by selfishness or inveterate prejudice; and

that, before the lapse of another generation, the accident of sex, no more than the accident of skin, will be deemed a sufficient justification for depriving its possessor of the equal protection and just privileges of a citizen.

II. THE APOTHEOSIS OF LAISSEZ-FAIRE

Social Statics (*1850*), with annotations from *Justice* (*1891*)

Herbert Spencer (1820–1903)

Toward the close of the nineteenth century the dominating concept in all fields of thought was that of evolution, and non-evolutionary systems suffered an inevitable decline. In political philosophy, the analytical liberalism of the utilitarians yielded to the historical conservatism of Maine and the sociological individualism of Herbert Spencer. However, although Spencer adopted an evolutionary approach even before the appearance of Darwin's *Origin of Species* (1859), evolution was hardly the inspiration of his noted apotheosis of *laissez-faire*. All the essential elements of his system are to be found in his early *Social Statics* (1850), and in *Social Statics* his fundamental law of equal freedom is based largely upon "the divine idea" of human happiness. It was not until forty years later that *Justice* (1891) reconstructed the reasoning of *Social Statics* upon a sociological foundation.

Especially in the United States, the Spencerian doctrine of *laissez-faire* has made for conservatism, but *Social Statics* presents a most original combination of conservative and radical propositions. Spencer discovered his law of equal freedom in entire ignorance of Kant's similar principle, and with similar independence he reasoned from his fundamental law as his own sense of logic directed him. With the passage of time, however, Spencer's conservatism became sifted from his radicalism much as wheat from chaff. *Justice* is almost unqualifiedly conservative.

The son of a teacher of pronounced individuality, Spencer received little formal education. He was left largely to his own resources and developed an aptitude for science but was never subjected to the usual university disciplines. In early manhood he took up engineering and experimented with various inventions, but in middle life he definitely adopted writing as a career. For more than thirty years, despite the handicap of serious ill-health, he worked on his system of *Synthetic Philosophy*, including works on biology, psychology, sociology, and ethics. In political philosophy his chief contribution, in addition to the works already mentioned, was the series of essays published under the title of *Man versus the State* (1884).

The readings here given are based on the third American edition of *Social Statics* (Appleton, New York, 1882). A considerable number of passages from *Justice* (Williams and Norgate, London, 1891) have been added as annotations by the present editor, with the permission of Williams and Norgate, and of D. Appleton-Century Company as the holders of the American rights in Spencer's works.

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SOCIAL STATICS

with annotations from

JUSTICE

I. The Law of Equal Freedom and Its Corollaries

[*Ch. VI, 1.*] Whether we reason our way from those fixed conditions under which only the Divine Idea—greatest happiness, can be realized—whether we draw our inferences from man's constitution, considering him as a congeries of faculties—or whether we listen to the monitions of a certain mental agency, which seems to have the function of guiding us in this matter, we are alike taught as the law of right social relationships, that—*Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man.*[1] We must therefore adopt this law of

[1] "A possible misapprehension must be guarded against. It may be said that if A strikes B, then, so long as B is not debarred from striking A in return, no greater freedom is claimed by the one than by the other; or it may be said that if A has trespassed on B's property, the requirement of the formula has not been broken so long as B can trespass on A's property. Such interpretations, however, mistake the essential meaning of the formula.

"For the truth to be expressed is that each in carrying on the actions which constitute his life for the time being, and conduce to the subsequent maintenance of his life, shall not be impeded further than by the carrying on of those kindred actions which maintain the lives of others. It does not countenance a superfluous interference with another's life, committed on the ground that an equal interference may balance it. Such a rendering of the formula is one which implies greater deductions from the lives of each and all than the associated state necessarily entails; and this is obviously a perversion of its meaning."—Spencer, *Justice*, sec. 273. (Present editor's note.)

equal freedom in its entirety, as the law on which a correct system of equity is to be based.

[*3.*] He who asserts that the law of equal freedom is not true, that is, he who asserts that men have *not* equal rights, has two alternatives. He may either say that men have no rights at all, or that they have unequal rights.

[*8.*] Neither of the alternatives is acceptable. The doctrine that men have naturally no rights leads to the awkward inferences, that might makes right, and that the Deity is a malevolent being. Whilst to say that men have unequal rights is to assume two impossibilities; namely, that we are able to determine the ratios of men's merits; and having done this, to assign to each his due proportion of privilege.

[*Ch. VIII, 1.*] If every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man, it is manifest that he has a claim to his life: for without it he can do nothing that he has willed; and to his personal liberty: for the withdrawal of it partially, if not wholly, restrains him from the fulfilment of his will. It is just as clear, too, that each man is forbidden to deprive his fellow of life or liberty.

[*Ch. IX, 2.*] Equity does not permit property in land. For if *one* portion of the earth's surface may justly become the possession of an individual, and may be held by him for his sole use and benefit, as a thing to which he has an exclusive right, then *other* portions of the earth's surface may be so held; and eventually the *whole* of the earth's surface. Supposing the entire habitable globe to be so enclosed, it follows that if the landowners have a valid right to its surface, all who are not landowners, have no right at all. Hence, such can exist on the earth by sufferance only. They are all trespassers.

[*5.*] It does indeed at first sight seem possible for the earth to become the exclusive possession of individuals by some process of equitable distribution. "Why," it may be asked, "should not men agree to a fair subdivision? If all are co-heirs, why may not the estate be equally apportioned, and each be afterwards perfect master of his own share?"

To this question it may in the first place be replied, that such a division is vetoed by the difficulty of fixing the values of respective tracts of land. Variations in productiveness, different degrees of accessibility, advantages of climate, proximity to the

centres of civilization—these, and other such considerations, remove the problem out of the sphere of mere mensuration into the region of impossibility.

But, waiving this, let us inquire who are to be the allottees. Is it proposed that each man, woman, and child, shall have a section? If so, what becomes of all who are born next year? And what will be the fate of those whose fathers sell their estates and squander the proceeds? These portionless ones must constitute a class already described as having no right to a resting place on earth—as living by the sufferance of their fellow-men—as being practically serfs. And the existence of such a class is wholly at variance with the law of equal freedom.

[*8.*] "But to what does this doctrine, that men are equally entitled to the use of the earth, lead? Must we return to the times of uninclosed wilds, and subsist on roots, berries, and game? Or are we to be left to the management of Messrs. Fourrier, Owen, Louis Blanc, and Co.?"

Neither. The change required would simply be a change of landlords. Separate ownerships would merge into the joint-stock ownership of the public. Instead of being in the possession of individuals, the country would be held by the great corporate body—Society. Instead of leasing his acres from an isolated proprietor, the farmer would lease them from the nation. Stewards would be public officials instead of private ones; and tenancy the only land tenure.

A state of things so ordered would be in perfect harmony with the moral law. Under it all men would be equally landlords; all men would be alike free to become tenants. A, B, C, and the rest, might compete for a vacant farm as now, and one of them might take that farm, without in any way violating the principles of pure equity. All would be equally free to bid; all would be equally free to refrain. And when the farm had been let to A, B, or C, all parties would have done that which they willed—the one in choosing to pay a given sum to his fellow-men for the use of certain lands—the others in refusing to pay that sum. Clearly, therefore, on such a system, the earth might be inclosed, occupied, and cultivated, in entire subordination to the law of equal freedom.

[*9.*] No doubt great difficulties must attend the resumption, by mankind at large, of their rights to the soil. The question of compensation to existing proprietors is a complicated one—one that

perhaps cannot be settled in a strictly equitable manner. Had we to deal with the parties who originally robbed the human race of its heritage, we might make short work of the matter. But, unfortunately, most of our present landowners are men who have, either mediately or immediately—either by their own acts, or by the acts of their ancestors—given for their estates, equivalents of honestly-earned wealth, believing that they were investing their savings in a legitimate manner. To justly estimate and liquidate the claims of such, is one of the most intricate problems society will one day have to solve. But with this perplexity and our extrication from it, abstract morality has no concern. Men having got themselves into the dilemma by disobedience to the law, must get out of it as well as they can; and with as little injury to the landed class as may be.[2]

[*Ch. X, 1.*] Thinkers, in their attempts to prove some of the first theorems of ethics, have commonly fallen into the error of referring back to an imaginary state of savage wildness, instead of

[2] "But granting all that is said about past inequities, and leaving aside all other obstacles in the way of an equitable re-arrangement, there is an obstacle which seems to have been overlooked. If we are to go back upon the past at all, we must take account not only of that which the people at large have lost by private appropriation of land, but also that which they have received in the form of a share of the returns—we must take account, that is, of Poor-Law relief.

"For observe that the landless have not an equitable claim to the land in its present state, but only in its primitive state: this only, it is, which belongs to the community. Hence the question arises—What is the relation between the original 'prairie value' of the land, and the amount which the poorer among the landless have received.

"When, in *Social Statics*, published in 1850, I drew from the law of equal freedom the corollary that the land could not equitably be alienated from the community, and argued that, after compensating its existing holders, it should be reappropriated by the community, I overlooked the foregoing considerations. Moreover, I did not clearly see what would be implied by the giving of compensation for all that value which the labour of ages has given to the land. While I adhere to the inference originally drawn, that the aggregate of men forming the community are the supreme owners of the land—an inference harmonizing with legal doctrine and daily acted upon in legislation—a fuller consideration of the matter has led me to the conclusion that individual ownership, subject to State-suzerainty, should be maintained.

"Even were it possible to rectify the inequitable doings which have gone on during past thousands of years, and by some balancing of claims and counter-claims, past and present, to make a re-arrangement equitable in the abstract, the resulting state of things would be a less desirable one than the present. Setting aside all financial objections to nationalization (which of themselves negative the transaction, since, if equitably effected, it would be a losing one), it suffices to remember the inferiority of public administration to private administration, to see that ownership by the State would work ill. Under the existing system of ownership, those who manage the land, experience a direct connexion between effort and benefit; while, were it under State-ownership, those who managed it would experience no such direct connexion. The vices of officialism would inevitably entail immense evils."—*Ibid.*, Appendix B. (Present editor's note.)

referring forward to an ideal civilization. To this circumstance is attributable that vagueness by which the arguments used to establish the right of property are characterized.

[*2.*] Under the system of land tenure pointed out as the only one that is consistent with the equal claims of all men to the use of the earth, difficulties disappear; and the right of property obtains a legitimate foundation.[3] We have seen that, without any infraction of the law of equal freedom, an individual may lease from society a given surface of soil, by agreeing to pay in return a stated amount of the produce he obtains from that soil. Having thus obtained, for a time, the exclusive use of that land by a definite agreement with its owners, it is manifest that an individual may, without any infringement of the rights of others, appropriate to himself that portion of produce which remains after he has paid to mankind the promised rent.

[*3.*] The doctrine that all men have equal rights to the use of the earth, does indeed, at first sight, seem to countenance a species of social organization, at variance with that from which the right of property has just been deduced; an organization, namely, in which the public, instead of letting out the land to individual members of their body, shall retain it in their own hands; cultivate it by joint-stock agency; and share the produce: in fact, what is usually termed Socialism or Communism.

Plausible though it may be, such a scheme is not capable of realization in strict conformity with the moral law. Of the two forms under which it may be presented, the one is ethically imperfect; and the other, although correct in theory, is impracticable.

Thus, if an equal portion of the earth's produce is awarded to every man, irrespective of the amount or quality of the labour he has contributed toward the obtainment of that produce, a breach of equity is committed. Our first principle requires, not that all shall have like shares of the things which minister to the gratifications of the faculties, but that all shall have like freedom to pursue those things. It is one thing to give to each an opportunity of acquiring the objects he desires; it is another, and quite a different thing, to give the objects themselves, no matter whether due endeavour has or has not been made to obtain them. If, therefore, out of many starting with like fields of

[3] Although this "legitimate foundation" is discarded in *Justice*, the right of property is retained without modification. Secs. 299, 300. (Present editor's note.)

activity, one obtains, by his greater strength, greater ingenuity, or greater application, more gratifications and sources of gratification than the rest, the moral law assigns him an exclusive right to all those extra gratifications and sources of gratification; nor can the rest take them from him without claiming for themselves greater liberty of action than he claims, and thereby violating that law. Whence it follows, that an equal apportionment of the fruits of the earth amongst all, is not consistent with pure justice.

If, on the other hand, each is to have allotted to him a share of produce proportionate to the degree in which he has aided production, the proposal, whilst it is abstractedly just, is no longer practicable. Were all men cultivators of the soil, it would perhaps be possible to form an approximate estimate of their several claims. But to ascertain the respective amounts of help given by different kinds of mental and bodily labourers, toward procuring the general stock of the necessaries of life, is an utter impossibility. We have no means of making such a division save that afforded by the law of supply and demand, and this means the hypothesis excludes.

[4.] An argument fatal to the communist theory, is suggested by the fact, that a desire for property is one of the elements of our nature. And if a propensity to personal acquisition be really a component of man's constitution, then that cannot be a right form of society which affords it no scope. Whence it follows that a system affording opportunity for its exercise must ever be retained; which means, that the system of private property must be retained; and this presupposes a *right* of private property, for by right we mean that which harmonizes with the human constitution as divinely ordained.

[*Ch. XIII, 1.*] Freedom to exchange his property for the property of others, is manifestly included in a man's general freedom. In claiming this as his right, he in no way transgresses the proper limit put to his sphere of action by the like spheres of action of others. The two parties in a trade transaction, whilst doing all that they will to do, are not assuming more liberty than they leave to others.[4]

[4] "Of course with the right of free exchange goes the right of free contract; a postponement in the completion of an exchange, serving to turn the one into the other.

"It is needless to do more than name contracts for services on certain terms;

[*2.*] To say that, as a corollary from this, all interference between those who would traffic with each other amounts to a breach of equity, is hardly needful. Nor is there any occasion here to assign reasons why the recognition of liberty of trade is expedient. Harmonizing as it does with the settled convictions of thinking people, the foregoing conclusion may safely be left to stand unsupported.

II. The Rights of Women and Children

[*Ch. XVI, 1.*] Equity knows no difference of sex. In its vocabulary the word *man* must be understood in a generic, and not in a specific sense. The law of equal freedom manifestly applies to the whole race. Hence the several rights deducible from that law must appertain equally to both sexes.

This might have been thought a self-evident truth, needing only to be stated to meet with universal acceptation. There are many, however, who either tacitly, or in so many words, express their dissent from it. It would be perfectly in order to assume that the law of equal freedom comprehends both sexes, until the contrary has been demonstrated. But without taking advantage of this, suppose we go at once into the controversy.

[*2.*] Whoso urges the mental inferiority of women in bar of their claim to equal rights with men, may be met in various ways.

In the first place, the alleged fact may be disputed. A defender of her sex might name many whose achievements in government, in science, in literature, and in art, have obtained no small share of renown.

But, waiving this point, let us contend with the proposition on its own premises. Let it be granted that the intellect of woman is less profound than that of man—that she is more uniformly ruled by feeling, more impulsive, and less reflective, than man is—let us see what basis such an admission affords to the doctrine, that the rights of women are not co-extensive with those of men.

For what is it that we mean by rights? Nothing else than freedom to exercise the faculties. And what is the meaning of the assertion that woman is mentally inferior to man? Simply that her faculties are less powerful. What then does the dogma, that

contracts for the uses of houses and lands, contracts for the completion of specified works; contracts for the loan of capital. These are samples of contracts which men voluntarily enter into without aggressing on any others—contracts, therefore, which they have a right to make."—*Justice*, sec. 315. (Present editor's note.)

because woman is mentally inferior to man she has less extensive rights, amount to? Just this—that because woman has weaker faculties than man, she ought not to have like liberty with him, to exercise the faculties she *has!*

[*8.*] There are many who think that authority, and its ally compulsion, are the sole agencies by which human beings can be controlled. By such as these, the doctrine that the reign of man over woman is wrong, will no doubt be combated on the ground that the domestic relationship can only exist by the help of such supremacy. It will be argued, that were they put upon a level husband and wife would be forever in antagonism—that the matrimonial bond would daily be endangered by the jar of opposing wills, and that such an arrangement of married life must necessarily be an erroneous one.

A very superficial conclusion this. The worse the condition of society, the more visionary must a true code of morality appear. The fact that any proposed principle of conduct is at once fully practicable—requires no reformation of human nature for its complete realization—is not a proof of its truth: is proof rather of its error.

But the never-ceasing process of adaptation will gradually remove this obstacle to domestic rectitude. Recognition of the moral law, and an impulse to act up to it, going hand in hand, equality of rights in the married state will become possible as fast as there arises a perception of its justness.

Married life under this ultimate state of things will not be characterized by perpetual squabbles, but by mutual concessions. Neither will have to stand on the defensive, because each will be solicitous for the rights of the other. And thus, instead of domestic discord, will come a higher harmony than any we yet know.[5]

[5] "Of those equal liberties with men which women have before marriage, we must say that in equity they retain after marriage all those which are not necessarily interfered with by the marital relation. Their claims can properly be qualified only in so far as they are traversed by the understood or expressed terms of the contract voluntarily entered into; and as these terms vary in different places and times, the resulting qualifications must vary. In default of definite measures, we must be content with approximations.

"In respect of property, for instance, it may be reasonably held that where the husband is exclusively responsible for maintenance of the family, property which would otherwise belong to the wife may equitably be assigned to him—the use, at least, if not the possession. Only if she is equally responsible with him for family-maintenance, does it seem right that she should have equally unqualified ownership of property. Yet, on the other hand, we cannot say that the responsibilities must

[9.] The extension of the law of equal freedom to both sexes will doubtless be objected to, on the ground that the political privileges exercised by men must thereby be ceded to women also. Of course they must; and why not? Is it that women are ignorant of state affairs? Why then their opinions would be those of their husbands and brothers; and the practical effect would be merely that of giving each male elector two votes instead of one. Is it that they might by-and-by become better informed, and might then begin to act independently? Why, in such case, they would be pretty much as competent to use their power with intelligence as the members of our present constituencies.[6]

be entirely reciprocal. The discharge of domestic and maternal duties by the wife may ordinarily be held a fair equivalent for the earning of an income by the husband.

"Respecting powers of control over one another's actions and over the household, the conclusions to be drawn are still more indefinite. When there arise conflicting wills of which both cannot be fulfilled, but one of which must issue in action, the law of equal freedom cannot, in each particular case, be conformed to; but can be conformed to only in the average of cases. We may, however, say that since, speaking generally, man is more judicially-minded than woman, the balance of authority should incline to the side of the husband; especially as he usually provides the means which make possible the fulfilment of the will of either. But in respect of this relation reasoning goes for little: the characters of those concerned determine the form it takes. The only effect which ethical considerations are likely to have is that of moderating the use of such supremacy as eventually arises.

"The remaining question concerns the possession and management of children. On the one hand, it may be said of the direct physical claims, otherwise equal, that that of the mother is rendered far greater by the continued nutrition before and after birth, than that of the father. On the other hand, it may be urged on the part of the father, that in the normal order the food by which the mother has been supported and the nutrition of the infant made possible, has been provided by his labour. Whether this counter-claim be or be not equivalent, it must be admitted that the claim of the mother cannot well be less than that of the father. Of the compromise respecting management which justice thus appears to dictate, we may perhaps reasonably say that the power of the mother may fitly predominate during the earlier part of a child's life, and that of the father during the later part. But it seems alike inequitable and inexpedient that the power of either should at any time be exercised to the exclusion of the power of the other. Of the respective claims to possession where separation takes place, some guidance is again furnished by consideration of children's welfare; an equal division, where it is possible, being so made that the younger remain with the mother and the elder go with the father. Evidently, however, nothing is here possible but compromise based on consideration of the special circumstances."—*Ibid.*, sec. 334. (Present editor's note.)

[6] "Are the political rights of women the same as those of men? The assumption that they are is now widely made. Along with that identity of rights arising from the human nature common to the two sexes, there is supposed to go an identity of rights in respect to the direction of public affairs. At first sight it seems that the two go together; but consideration shows that this is not so. Citizenship does not include only the giving of votes, joined now and again with the fulfilment of representative functions. It includes also certain serious responsibilities. Men, whatever political powers they may in any case possess, are at the same time severally liable to the loss of liberty, to the privation, and occasionally to the death, consequent on having to defend the country; and if women, along with the same political

[*Ch. XVII, 1.*] Unless the reader can show that the train of reasoning by which the law of equal freedom is deduced from the Divine will, does not recognize children, which he cannot; unless he can show exactly at what time the child becomes a man, which he cannot; unless he can show why a certain share of liberty naturally attaches to both childhood and manhood, and another share to only one, which he cannot; he must admit that the rights of the youth and the adult are co-extensive.

[*2.*] That the law of equal freedom applies to children as much as to adults; that consequently the rights of children are co-extensive with those of adults; that, as violating those rights, the use of coercion is wrong; and that the relationship now commonly existing between parents and children is therefore a vicious one—these are assertions which perhaps few will listen to with equanimity. Nevertheless, we shall do well to disregard all protests of feeling, and place implicit faith in the conclusions of abstract equity.[7]

powers, have not the same liabilities, their position is not one of equality, but one of supremacy.

"It should be added that of course this reason does not negative the claims of women to equal shares in local governments and administrations. If it is contended that these should be withheld, it must be for reasons of other kinds."—*Ibid.*, sec. 336.

"The question is whether rights, properly so called, are likely to be better maintained if women have votes than if they have not. There are some reasons for concluding that maintenance of them would be less rather than more satisfactory.

"The love of the helpless, stronger in women than in men, must in a still greater degree than in men prompt public actions that are unduly regardful of the inferior as compared with the superior. The present tendency of both sexes is to contemplate citizens as having claims in proportion to their needs—their needs being habitually proportionate to their demerits, and this tendency, stronger in women than in men, must, if it operates politically, cause a more general fostering of the worse at the expense of the better. Instead of that maintenance of rights which is but a systematic enforcement of the principle that each shall receive the good and evil results of his own conduct, there would come greater and more numerous breaches of them than at present.

"Another trait of nature by which women are distinguished, arises by adjustment, not to the maternal relation but to the marital relation. Authority, no matter how embodied—politically, ecclesiastically, or socially—sways women more than men. Possibly it may be thought that under present conditions a conservative influence of this kind would be beneficial; and did there not exist the trait above described, this might be so. But co-operating with the preference for generosity over justice, this power-worship in women, if allowed fuller expression, would increase the ability of public agencies to override individual rights in the pursuit of what were thought beneficent ends."—*Ibid.*, sec. 353. (Present editor's note.)

[7] "Preservation of the race implies both self-sustentation and sustentation of offspring. If, assuming preservation of the race to be a good end, we infer that it is right to achieve these two sustentations; it results that children have rights (or rather, for distinction sake, let us say rightful claims) to those materials and aids needful for life and growth, which, by implication, it is the duty of parents to supply. Whereas during mature life, the rights are so many forms of that general freedom of action which is requisite for the procuring of food, clothing, shelter,

[*9.*] One objection remains to be noticed. It will probably be said that if the rights of children are co-extensive with those of adults, it must follow that children are equally entitled with adults to citizenship, and ought to be similarly endowed with political power. This inference looks somewhat alarming; and it is easy to imagine the triumphant air of those who draw it, and the smiles with which they meditate upon the absurdities it suggests. Nevertheless the answer is simple and decisive. It is with the institution of government that the blame lies. Were the moral law universally obeyed, government would not exist; and did government not exist, the moral law could not dictate the political enfranchisement of children. Hence the alleged absurdity is traceable to the present evil constitution of society, and not to some defect in our conclusion.

III. The Constitution and Duty of the State

[*Ch. XX, 1.*] *No* government can have any ethical authority. The highest form it can assume is that in which the moral law remains passive with regard to it—tolerates it—no longer protests against it. The first condition of that form is that citizenship shall be voluntary; the second—that it shall confer equal privileges.

[*3.*] Against the position that to ensure justice to the nation at large all its members must be endowed with like powers, it is urged that, as the working classes constitute the majority, to endow all with like powers, is practically to make the working classes supreme. And it will probably be added that legislation in their hands would inevitably be twisted to serve the ends of labour regardless of the claims of property.

etc.; during immature life the rightful claims are to the food, clothing, shelter, etc., themselves."—*Ibid.*, sec. 337.

"Though the child has a rightful claim to food, clothing, shelter, and other aids to development, yet it has not a right to that self-direction which is the normal accompaniment of self-sustentation. There are two reasons for not admitting this right—the one that exercise of it would be mischievous to itself, and the other that it would imply an ignoring of the claim of parent on child which is the reciprocal of the claim of child on parent. For sustentation and other aids received there should be given whatever equivalent is possible in the form of obedience and the rendering of small services.

"Meanwhile, in view of the ultimate end—the welfare of the species—this reciprocal relation between mature and immature should be approximated to the relation between adults as fast as there are acquired the powers of self-sustentation and self-direction. To be fitted for independent or self-directed activities there must be practice in such activities, and to this end a gradually increased freedom."—*Ibid.*, sec. 339. (Present editor's note.)

Even were there no answer to this, the evidence would still preponderate in favour of popular enfranchisement. Surely, if one of the two parties must submit to injustice, it ought to be the rich hundreds, and not the poor thousands.

The foregoing objection, however, is not so sound as it looks. It is one thing for a comparatively small class to unite in the pursuit of a common advantage, and it is another thing for a dispersed multitude to do so. Their mass is too great, too incongruous, too scattered, for effective combination.

[*13.*] In this, as in other cases, it turns out that the possibility of fulfilling the injunctions of the moral law is proportionate to the advance men have made toward the moral state; political arrangements inevitably adjusting themselves to the popular character. So that whilst we may say to the ardent democrats—"Be sure that a democracy will be attained whenever the people are good enough for one"—we may on the other hand say to those of little faith—"Fear not that a democracy, when peacefully attained, can be attained too soon." [8]

[*Ch. XXI, 2.*] Freedom being the grand prerequisite to the fulfilment of the moral law, it follows that if a man is to be helped in fulfilling of the moral law, the first thing to be done is to secure to him this all-essential freedom. But the freedom that can be guaranteed to each is bounded by the like freedom to be guaranteed to all others. Hence we must infer that it is the function of

[8] "A generation ago, while agitations for the wider diffusion of political power were active, orators and journalists daily denounced the 'class-legislation' of the aristocracy. But there was no recognition of the truth that if, instead of the class at that time paramount, another class were made paramount, there would result a new class-legislation in place of the old. That it has resulted every day proves. Year after year more public agencies are established to give what seem *gratis* benefits, at the expense of those who pay taxes, local and general; and the mass of the people, receiving the benefits and relieved from the cost of maintaining the public agencies, advocate the multiplication of them.

"It is not true, then, that the possession of political power by all ensures justice to all. Contrariwise, experience makes obvious that which should have been obvious without experience, that with a universal distribution of votes the larger class will inevitably profit at the expense of the smaller class. Those higher earnings which more efficient actions bring to the superior, will not be all allowed to remain with them, but part will be drafted off in some indirect way to eke out the lower earnings of the less diligent or the less capable; and in so far as this is done, the law of equal freedom must be broken. Evidently the constitution of the State appropriate to that industrial type of society in which equity is fully realized, must be one in which there is not a representation of individuals but a representation of interests. For the health of the social organism and the welfare of its members, a balance of functions is requisite, and this balance cannot be maintained by giving to each function a power proportionate to the number of functionaries."—*Ibid.*, sec. 351. (Present editor's note.)

this chief institution which we call a government, to uphold the law of equal freedom.

Further confirmation may be drawn from the universal practice of mankind in this matter. Widely as people have differed respecting the proper bounds of legislative superintendence, all have held them to include the defence of the subject against aggression. Whilst, in various countries and times, a hundred different functions have been assigned to the state—whilst there have probably been no two governments that have entirely agreed in the number and nature of their functions—whilst the things specially attended to by some have been wholly neglected by others, and thereby proved non-essential, there is one office—that of protector—which has been common to all.

[*3.*] The question—What is the thing to be done by a government? being answered, there arises the other—Which is the most efficient mode of doing it? To the proposition—the administration of justice is the special duty of the state, there hangs the corollary—the state ought to employ the best methods of fulfilling that duty; and this brings us to the inquiry—What are they?

By our hypothesis the connection of each individual with the community as politically organized, must be voluntary. Citizenship then being willingly assumed, we must inquire what agreement is thereby tacitly entered into between the state and its members. Two things are conceivable. There may either be an understanding that whoever applies to the judicial power for assistance shall defray the costs thereupon incurred by it on his behalf, or it may be provided that the payment of a constant contribution toward the expenses of this judicial power shall entitle the contributor to its services whenever he needs them. The first of these arrangements does not seem altogether practicable; the other is one to which existing systems partially assimilate. In either case, however, it is taken for granted that equivalents of protection and taxation shall be exchanged.

Self-evident as is this interpretation of the agreement, which citizenship presupposes, judicial practice is little guided by it. Our system of jurisprudence takes a very one-sided view of the matter. It is indeed stringent enough in enforcing the claim of the state against the subject; but as to the reciprocal claim of the subject against the state it is comparatively careless. From certain infringements of rights, arbitrarily classed as criminal, it is

ready to defend every complainant; but against others, not so classed, it leaves every one to defend himself. It will rush to the defence of one who has been deprived of a few turnips by a half-starved tramp; but as to the estate on which these turnips grew, that may be stolen without risk, so long as the despoiled owner is left friendless and pennyless.[9] Now it is the injured man's champion; and now it throws down its weapons to sit as umpire, whilst oppressor and oppressed run a tilt at each other.

[5.] There are not wanting, however, men who defend this state of things—who actually argue that government should perform but imperfectly what they allow to be its special function. Whilst, on the one hand, they admit that administration of justice is the vital necessity of civilized life, they maintain, on the other, that justice may be administered too well! "For," say they, "were law cheap, all men would avail themselves of it. Men would rush into legal proceedings on the slightest provocation; and litigation would be so enormously increased as to make the remedy worse than the disease."

But if ten thousand litigations are worse than ten thousand injustices, then one litigation is worse than one injustice. Which means that it would be better to have no administration of justice at all! If for the sake of escaping this absurdity it be assumed that, as things now are, all *great* wrongs are rectified—that the costliness of law prevents insignificant ones only from being brought into court—then, either denial is given to the obvious fact that, by the poverty they inflict, many of the greatest wrongs incapacitate their victims from obtaining redress, and to the obvious fact that the civil injuries suffered by the masses, though *absolutely* small, are *relatively* great; or else it is taken for granted that on nine-tenths of the population, who are too poor to institute legal proceedings, no civil injuries of moment are ever inflicted!

Nor is this all. It is not necessarily true that making the law easy of access would increase litigation. An opposite effect might be produced. The prophecy is vitiated by that very common mistake of calculating the result of some new arrangement on the assumption that all other things would remain as they are.

[9] It is true that a plaintiff who can swear that he is not worth £5 may sue *in formâ pauperis*. But this privilege is almost a dead letter. Actions so instituted are usually found to fail, because those who conduct them, having to plead gratuitously, plead carelessly. (Spencer's own note.)

Were the administration of law prompt, gratuitous, and certain, those probabilities and possibilities which now beckon on to fraudulent acts would vanish. Civil injuries wittingly committed would almost cease. Only in cases where both parties sincerely believed themselves right, would judicial arbitration be called for; and the number of such cases is comparatively small. Litigation, therefore, so far from *increasing* on justice being made easy of obtainment, would probably *decrease*.

[*8.*] When we agreed that it was the essential function of the state to protect—to administer the law of equal freedom—to maintain men's rights—we virtually assigned to it the duty, not only of shielding each citizen from the trespasses of his neighbours, but of defending him, in common with the community at large, against foreign aggressions. Unquestionably war is immoral. But so likewise is the violence used in the execution of justice; so is all coercion. Ethical law is as certainly broken by the deeds of judicial authorities as by those of a defensive army. There is, in principle, no difference whatever between the blow of a policeman's baton and the thrust of a soldier's bayonet. Both are infractions of the law of equal freedom in the persons of those injured. Government employs the first to attack in detail ten thousand criminals who separately make war upon society; and it calls in the last when threatened by a like number of criminals in the shape of drilled troops. What is so manifest in its military acts is true of its civil acts, that it uses wrong to put down wrong.

Defensive warfare (and of course it is solely to this that the foregoing argument applies) must therefore be tolerated as the least of two evils.

IV. The Limit of State-Duty

[*Ch. XXII, 1.*] What is it that we call the state? Men politically associated. How associated? Voluntarily. For what purpose? For mutual protection. When rightly ordered, the conditions on which this voluntary association offers its services, must be such as enable it to afford the greatest amount of protection possible. So long as our joint-stock protection-society confines itself to guaranteeing the rights of its members, it is pretty certain to be co-extensive with the nation; for whilst such an organization is needed at all, most men will sacrifice something to secure its guardianship. But let an additional duty be assigned to it, and

there will immediately arise more or less schism. The dissenting minority may in such case consist of two parties; the one comprising those who have so great a repugnance to the contemplated arrangement, as to resolve upon seceding rather than consent to it; and a larger party consisting of those who grumble at the imposition of additional charges for the doing what they do not wish to be done, but who think well to submit rather than give up the benefits of protection. Toward both these parties the state fails in its duty. The one it drives away by disadvantageous terms; and from the other it exacts sacrifices beyond what are needful for the performance of its original function; and by so doing becomes an aggressor instead of a protector.

[*Ch. XXV, 1.*] The assumption by a government of the office of Reliever-general to the poor, is necessarily forbidden by the principle that a government cannot rightly do anything more than protect. In demanding from a citizen contributions for the mitigation of distress, the state is reversing its function, and diminishing that liberty to exercise the faculties which it was instituted to maintain. Possibly, some will assert that by satisfying the wants of the pauper, a government is in reality extending *his* liberty to exercise his faculties. But this statement of the case implies a confounding of two widely-different things. Insuring to each the right to pursue within the specified limits the objects of his desires without let or hindrance, is quite a separate thing from insuring him satisfaction.

[*6.*] Pervading all nature we may see at work a stern discipline, which is a little cruel that it may be very kind. That state of universal warfare maintained throughout the lower creation, to the great perplexity of many worthy people, is at bottom the most merciful provision which the circumstances admit of.

The poverty of the incapable, the distresses that come upon the imprudent, the starvation of the idle, and those shoulderings aside of the weak by the strong, which leave so many "in shallows and in miseries," are the decrees of a large, far-seeing benevolence. It seems hard that an unskilfulness which with all his efforts he cannot overcome, should entail hunger upon the artisan. It seems hard that a labourer incapacitated by sickness from competing with his stronger fellows, should have to bear the resulting privations. It seems hard that widows and orphans should be left to struggle for life or death. Nevertheless, when regarded not sepa-

rately, but in connection with the interests of universal humanity, these harsh fatalities are seen to be full of the highest beneficence—the same beneficence which brings to early graves the children of diseased parents, and singles out the low-spirited, the intemperate, and the debilitated as the victims of an epidemic.

To become fit for the social state, man has not only to lose his savageness, but to acquire the capacities needful for civilized life. Power of application must be developed; such modification of the intellect as shall qualify it for its new tasks must take place; and, above all, there must be gained the ability to sacrifice a small immediate gratification for a future great one. The state of transition will of course be an unhappy state. Misery inevitably results from incongruity between constitution and conditions. All that a poor-law, or any kindred institution can do, is to partially suspend the transition—to take off for awhile, from certain members of society, the painful pressure which is effecting their transformation. At best this is merely to postpone what must ultimately be borne. But it is more than this: it is to undo what has already been done. For the circumstances to which adaptation is taking place cannot be superseded without causing a retrogression—a partial loss of the adaptation previously effected; and as the whole process must some time or other be passed through, the lost ground must be gone over again, and the attendant pain borne afresh.

At first sight these considerations seem conclusive against *all* relief to the poor—voluntary as well as compulsory; and it is no doubt true that they imply a condemnation of whatever private charity enables the recipients to elude the necessities of our social existence. It is only against this injudicious charity that the foregoing argument tells. To that charity which may be described as helping men to help themselves, it makes no objections—countenances it rather. And in helping men to help themselves, there remains abundant scope for the exercise of a people's sympathies.

[7.] Objectionable as we find a poor-law to be, even under the supposition that it does what it is intended to do—diminish present suffering—how shall we regard it on finding that in reality it does no such thing—cannot do any such thing? Yet, paradoxical as the assertion looks, this is absolutely the fact.

A poors'-rate collector takes from the citizen a sum of money

equivalent to bread and clothing for one or more paupers. Had not this sum been so taken, it would either have been used to purchase superfluities, which the citizen now does without, or it would have been paid by him into a bank, and lent by the banker to a manufacturer, merchant, or tradesman; that is, it would ultimately have been given in wages either to the producer of the superfluities or to an operative, paid out of the banker's loan. But this sum having been carried off as poors'-rate, whoever would have received it as wages must now to that extent go without wages. The food which it represented having been taken to sustain a pauper, the artisan to whom that food would have been given in return for work done, must now lack food. And thus the transaction is simply a change of the parties by whom the insufficiency of food is felt.

Nay, the case is even worse. Manifestly, out of a given population, the greater the number living on the bounty of others, the smaller must be the production of food and other necessaries; and the smaller the production of necessaries, the greater must be the distress.

[*Ch. XXVI, 1.*] In the same way that our definition of state-duty forbids the state to administer charity, so likewise does it forbid the state to administer education. Inasmuch as the taking away, by government, of more of a man's property than is needful for maintaining his rights, is an infringement of his rights, and therefore a reversal of the government's function toward him; and inasmuch as the taking away of his property to educate his own or other people's children is not needful for the maintaining of his rights; the taking away of his property for such a purpose is wrong.

Should it be said that the rights of the children are involved, and that state-interposition is required to maintain these, the reply is that no cause for such interposition can be shown until the children's rights have been violated, and that their rights are not violated by a neglect of their education. The liberty to exercise the faculties is left intact. Omitting instruction in no way takes from the child's freedom to do whatsoever it wills in the best way it can; and this freedom is all that equity demands. Every agression, be it remembered—every infraction of rights, is necessarily *active;* whilst every neglect, carelessness, omission, is as necessarily *passive.* Consequently, however wrong the non-

performance of a parental duty may be, it does not amount to a breach of the law of equal freedom, and cannot therefore be taken cognizance of by the state.

[*9.*] Were there no direct disproof of the frequently alleged right to education at the hands of the state, the absurdities in which it entangles its assertors would sufficiently show its invalidity. Conceding for a moment that the government is bound to educate a man's children, then, what kind of logic will demonstrate that it is not bound to feed and clothe them? So that the alleged right cannot be established without annulling all parental responsibility whatever.

[*10.*] Of all qualities which is the one men most need? Self-restraint—the ability to sacrifice a small present gratification for a prospective great one. A labourer endowed with due self-restraint would never spend his Saturday-night's wages at the public-house. Had he enough self-restraint, the artisan would not live up to his income during prosperous times and leave the future unprovided for. More self-restraint would prevent imprudent marriages and the growth of a pauper population. And were there no drunkenness, no extravagance, no reckless multiplication, social miseries would be trivial.

Of all incentives to self-restraint, perhaps none is so strong as the sense of parental responsibility. And if so, to diminish that sense is to use the most effectual means of preventing self-restraint from being developed. We have ample proof of this in the encouragement of improvident marriages by a poor-law; and the effect which a poor-law produces by relieving men from the final responsibility of maintaining their children, must be produced in a smaller degree by taking away the responsibility of educating their children. The more the state undertakes to do for his family, the more are the expenses of the married man reduced, at the cost of the unmarried man, and the greater becomes the temptation to marry. Let not any think that the offer of apparently gratuitous instruction for his offspring would be of no weight with the working man deliberating on the propriety of taking a wife. Just as a man at an expensive dinner will eat more than he knows is good for him, on the principle of having his money's worth, so would the artisan find one excuse for marrying in the fact that, unless he did so, he would be paying education-rates for nothing.

Nor is it only thus that a state-education would encourage men

to obey present impulses. Many a man, who, as things are, can but just keep the mastery over some vicious or extravagant propensity, and whose most efficient curb is the thought that if he gives way it must be at the sacrifice of that book-learning which he is ambitious to give his family, would fall were this curb weakened—would not only cease to improve in power of self-control as he is now doing, but would probably retrograde, and bequeath his offspring to a lower instead of a higher phase of civilization.

Hence a government can educate in one direction only by *un*educating in another—can confer knowledge only at the expense of character. It retards the development of a quality universally needed—one in the absence of which poverty, and recklessness, and crime, must ever continue; and all that it may give a smattering of information.

[*Ch. XXVIII, 3.*] There is a manifest analogy between committing to government-guardianship the physical health of the people, and committing to it their moral health. The two proceedings are equally reasonable, may be defended by similar arguments, and must stand or fall together. He who thinks the state commissioned to administer spiritual remedies, may consistently think it should administer material ones. Contrariwise, the arguments employed by the dissenter to show that the moral sanity of the people is not a matter for state superintendence, are applicable, with a slight change of terms, to their physical sanity also.

[*4.*] The most specious excuse for not extending to medical advice the principles of free-trade, is the same as that given for not leaving education to be diffused under them; namely, that the judgment of the consumer is not a sufficient guarantee for the goodness of the commodity. The intolerance shown by orthodox surgeons and physicians, toward unordained followers of their calling, is to be understood as arising from a desire to defend the public against quackery. Ignorant people say they cannot distinguish good treatment from bad, or skilful advisers from unskilful ones: hence it is needful that the choice should be made for them. And then, following in the track of priesthoods, for whose persecutions a similar defence has always been set up, they agitate for more stringent regulations against unlicensed practitioners, and descant upon the dangers to which men are exposed by an unrestricted system.

Inconvenience, suffering, and death, are the penalties attached by nature to ignorance, as well as to incompetence—are also the means of remedying these. It is impossible in any degree to suspend this discipline by stepping in between ignorance and its consequences, without, to a corresponding degree, suspending the process. If to be ignorant were as safe as to be wise, no one would become wise. And all measures which tend to put ignorance upon a par with wisdom, inevitably check the growth of wisdom.

CHAPTER VII. END-CENTURY IDEALISM AND NATIONALISM

I. THE RISE OF ENGLISH IDEALISM

Lectures on the Principles of Political Obligation (1879–1880)

Thomas Hill Green (1836–1882)

The individualism taught by Mill and Spencer was in striking harmony with traditional American doctrine as expounded in *The Federalist*, and *laissez-faire* principles continued to dominate American political thought throughout the nineteenth century. In highly industrialized England, however, it earlier became doubtful whether individualism was actually leading, either immediately or eventually, to the maximum of human happiness. If only as an instrument of individual welfare, the state was perhaps something more than a necessary evil.

English thought had remained comparatively unaffected by either orthodox Hegelianism or its heterodox offshoot of Marxism, but in the last quarter of the nineteenth century Thomas Hill Green gave expression to a distinctively English type of idealism. Building upon Kant rather than Hegel, and deriving inspiration from Plato and Aristotle, Green found the key to political philosophy, as to ethics, in the doctrine of the realization of the moral self.

The son of a Yorkshire rector, Green was educated at Rugby and at Balliol College, Oxford, where he came under the influence of Benjamin Jowett, and where he subsequently spent most of his adult life as a college tutor. Active in both national and local politics as a pronounced liberal, he was the first tutor to be elected to the Oxford Town Council. He was much interested in the extension of education for children of limited means and served for years on the governing body of a system of schools in Birmingham. He was also greatly interested in temperance. In 1878 Green became professor of moral philosophy at Oxford, and in the next few years he delivered remarkable courses of lectures that were published after his death as *Prolegomena to Ethics* and *Principles of Political Obligation*. Among his other writings, special mention may be made of his *Lecture on Liberal Legislation and Freedom of Contract*, delivered during the election campaign of 1881.

The following readings from *Lectures on the Principles of Political Obligation* are based on the text found in the second volume of the American edition of *The Works of Thomas Hill Green* (Longmans, Green, New York, 1891), and are reprinted by permission of the publishers.

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LECTURES ON THE PRINCIPLES OF POLITICAL OBLIGATION

I. The Ideal of the Law of Nature

[*A. 6.*] The condition of a moral life is the possession of will and reason. Will is the capacity in a man of being determined to action by the idea of a possible satisfaction of himself. Practical reason is the capacity in a man of conceiving the perfection of his nature as an object to be attained by action.

[*7.*] The value of the institutions of civil life lies in their operation as giving reality to these capacities of will and reason. In their general effect they render it possible for a man to be freely determined by the idea of a possible satisfaction of himself, instead of being driven this way and that by external forces: and they enable him to realise his idea of self-perfection by acting as a member of a social organisation in which each contributes to the better-being of all the rest. So far as they do in fact thus operate they are morally justified, and may be said to correspond to the "law of nature," the *jus naturae*, according to the only sense in which that phrase can be intelligibly used.

[*10.*] The "jus naturae," thus understood, is at once distinguished from the sphere of moral duty, and relative to it. It is distinguished from it because admitting of enforcement by law. Moral duties do not admit of being so enforced. The question sometimes put, whether moral duties should be enforced by law, is really an unmeaning one; for they simply cannot be enforced. They are duties to act, it is true, and an act can be enforced: but they are duties to act from certain dispositions and with certain

motives, and these cannot be enforced. Nay, the enforcement of an outward act, the moral character of which depends on a certain motive and disposition, may often contribute to render that motive and disposition impossible. There is a moral duty in regard to obligations, but there can be no obligation in regard to moral duties.

[*15.*] Only outward acts *can* be matter of legal obligation; but what sort of outward acts *should* be matter of legal obligation? The answer to this question arises out of the consideration of the means which law employs to obtain the fulfilment of obligations, combined with the view of law as relative to a moral end. Those acts only should be matter of legal injunction or prohibition of which the performance or omission, irrespectively of the motive from which it proceeds, is so necessary to the existence of a society in which the moral end can be realised, that it is better for them to be done or omitted from that unworthy motive which consists in fear or hope of legal consequences than not at all.

[*18.*] The true ground of objection to "paternal government" is not that it violates the "laissez faire" principle and conceives that its office is to make people good, but that it rests on a misconception of morality. The real function of government being to maintain conditions of life in which morality shall be possible, and morality consisting in the disinterested performance of self-imposed duties, "paternal government" does its best to make it impossible by narrowing the room for the self-imposition of duties and for the play of disinterested motives.

[*20.*] A true theory of "jus naturae" is not to be had by inquiring how far actual law corresponds to the exercise of certain original or natural rights, if that is taken to mean that we know what rights are natural on grounds distinct from those on which we determine what laws are justifiable. "Natural rights," so far as there are such things, are themselves relative to the moral end to which perfect law is relative. We only discover what rights are natural by considering what powers must be secured to a man in order to the attainment of this end. Thus the consideration of what rights are "natural" and the consideration what laws are justifiable form one and the same process, each presupposing a conception of the moral vocation of man.

[*21.*] The doctrine here asserted, that all rights are relative to moral ends or duties, must not be confused with the ordinary state-

ment that every right implies a duty, or that rights and duties are correlative. This of course is true in the sense that possession of a right by any person both implies an obligation on the part of someone else, and is conditional upon the recognition of certain obligations on the part of the person possessing it. But what is meant is that the claim or right of the individual to have certain powers secured to him by society, and the counter-claim of society to exercise certain powers over the individual, alike rest on the fact that these powers are necessary to the fulfilment of man's vocation as a moral being.

II. Sovereignty and the General Will

[*F. 85.*] If those who adopt the Austinian definition of a sovereign mean no more than that in a thoroughly developed state there must be some determinate person or persons, with whom, in the last resort, lies the recognised power of imposing laws and enforcing their observance, over whom no legal control can be exercised, and that even in the most thorough democracy, it is still with determinate persons that this power resides, they are doubtless right. So far they only need to be reminded that the thoroughly developed state, as characterised by the existence of such definite sovereignty, is even among civilised people but imperfectly established.

[*86.*] But the Austinians, having found their sovereign, are apt to regard it as a much more important institution than—if it is to be identified with a determinate person or persons—it really is; they are apt to suppose that the sovereign, with the coercive power (i.e. the power of operating on the fears of the subjects) which it exercises, is the real determinant of the habitual obedience of the people. But this is not the case. It then needs to be pointed out that if we mean the real determinant of the habitual obedience of the people, we must look for its sources much more widely and deeply than the "analytical jurists" do; that it can no longer be said to reside in a determinate person or persons, but in that impalpable congeries of the hopes and fears of a people, bound together by common interests and sympathy, which we call the general will.

[*87.*] It may be objected that this view of the general will is at best only applicable to "self-governing" communities, not to those under a despotic sovereign. The answer is that in all organised

communities the power which practically commands the habitual obedience of the people is dependent on the general will of the community, but this power is often not sovereign in the sense in which the ruler of an independent state is sovereign. It may very well be that there is at the same time another power merely coercive, a power really operating on people simply through their fears; but where this is the case we shall find that such power is only in contact with the people, so to speak, at one or two points; that their actions and forbearances, as determined by law and custom, are in the main independent of it; that it cannot in any proper sense be said to be a sovereign power over them.

[*91.*] The essential thing in political society is a power which guarantees men rights, i.e. a certain freedom of action and acquisition conditionally upon their allowing a like freedom in others. It is the power of guaranteeing rights which the old writers on sovereignty and civil government supposed to be established by covenant of all with all, translating the common interest which men have in the maintenance of such a power into an imaginary historical act by which they instituted it. It was this power that they had chiefly in view when they spoke of sovereignty.

[*92.*] It is to be observed that the power may very well exist and serve its purpose where it is not sovereign in the sense of being exempt from any liability of being interfered with by a stronger coercive power, such as that of a tax-collecting military ruler. The occasional interference of the military ruler is a drawback to the efficiency with which freedom of action and acquisition is guaranteed, but does not nullify the general maintenance of rights. On the other hand, when the power by which rights are guaranteed is sovereign in the special sense of wielding coercive force not liable to control by any other human force, it is not this coercive force that determines the habitual obedience essential to the real maintenance of rights. That which determines this habitual obedience is a power residing in the common will and reason of men as determined by social relations, as interested in each other, as acting together for common ends. It is a power which this universal rational will exercises over the inclinations of the individual, and which only needs exceptionally to be backed by coercive force.

[*93.*] Thus, though it may be misleading to speak of the general will as anywhere either actually or properly sovereign, because the term "sovereign" is best kept to the ordinary usage in which it

signifies a determinate person or persons charged with the supreme coercive function of the state, yet it is true that the institutions of political society—those by which equal rights are guaranteed to members of such a society—are an expression of, and are maintained by, a general will. The sovereign should be regarded in connection with the whole complex of institutions of political society. It is as their sustainer, and thus as the agent of the general will, that the sovereign power must be presented to the minds of the people if it is to command habitual loyal obedience; and obedience will scarcely be habitual unless it is loyal, not forced.

[*94.*] Particular laws may, no doubt, be imposed and enforced by the sovereign, which conflict with the general will; not in the sense that if all the subject people could be got together to vote upon them, a majority would vote against them,—that might be or might not be,—but in the sense that they tend to thwart those powers of action, acquisition, and self-development on the part of the members of the society, which there is always a general desire to extend, and which it is the business of the law to sustain and extend. The extent to which laws of this kind may be intruded into the general "corpus juris" without social disruption it is impossible to specify. Probably there has never been a civilised state in which they bore more than a very small proportion to the amount of law which there was the strongest general interest in maintaining. But, so far as they go, they always tend to lessen the "habitual obedience" of the people, and thus to make the sovereign cease to be sovereign. The hope must be that this will result in the transfer of sovereignty to other hands before a social disruption ensues; before the general system of law has been so far perverted as to lose its hold on the people.

III. The Nature of Political Subjection

[*G. 116.*] The doctrine that the rights of government are founded on the consent of the governed is a confused way of stating the truth, that the institutions by which man is moralised, by which he comes to do what he sees that he must, as distinct from what he would like, express a conception of a common good; that through them that conception takes form and reality; and that it is in turn through its presence in the individual that they have a constraining power over him, a power which is not that of mere fear, still less a

physical compulsion, but which leads him to do what he is not inclined to because there is a law that he should.

[*117.*] Morality and political subjection thus have a common source. That common source is the rational recognition by certain human beings—it may be merely by children of the same parent—of a common well-being which is their well-being, and which they conceive as their well-being whether at any moment any one of them is inclined to it or no, and the embodiment of that recognition in rules by which the inclinations of the individuals are restrained, and a corresponding freedom of action for the attainment of well-being on the whole is secured.

[*118.*] From this common source morality and political subjection always retain two elements in common, one consisting in antagonism to some inclination, the other consisting in the consciousness that the antagonism to inclination is founded on reason or on the conception of some adequate good. How far in any particular act of conformity to law the fear of penalties may be operative, it is impossible to say. What is certain is, that a habit of subjection founded upon such fear could not be a basis of political or free society; for to this it is necessary, not indeed that everyone subject to the laws should take part in voting them, still less that he should consent to their application to himself, but that it should represent an idea of common good, which each member of the society can make his own so far as he is rational, however much particular passions may necessitate the use of force to prevent him from doing that which, so far as influenced by the conception of a common good, he would willingly abstain from.

[*119.*] Whether the legislative and administrative agencies of society can be kept in the main free from bias by private interests, and true to the idea of common good, without popular control; whether again, if they can, that "civil sense," that appreciation of common good on the part of the subjects, which is as necessary to a free or political society as the direction of law to the maintenance of a common good, can be kept alive without active participation of the people in legislative functions; these are questions of circumstances which perhaps do not admit of unqualified answers. The views of those who looked mainly to the highest development of political life in a single small society, have to be modified if the object sought for is the extension of political life

to the largest number of people. The size of modern states renders necessary the substitution of a representative system for one in which the citizens shared directly in legislation, and this so far tends to weaken the active interest of the citizens in the common weal, though the evil may partly be counteracted by giving increased importance to municipal or communal administration. In some states, from the want of homogeneity or facilities of communication, a representative legislature is scarcely possible. In others, where it exists, a great amount of power, virtually exempt from popular control, has to be left with what Rousseau would have called the "prince or magistrate." In all this there is a lowering of civil vitality as compared with that of the ancient, and perhaps of some exceptionally developed modern, commonwealths. But perhaps this is a temporary loss that we have to bear as the price of having recognised the claim to citizenship as the claim of all men. Certainly all political ideals, which require active and direct participation by the citizens in the functions of the sovereign state, fail us as soon as we try to conceive their realisation on the wide area even of civilised mankind. It is easy to conceive a better system than that of the great states of modern Europe, with their national jealousies, rival armies, and hostile tariffs; but the condition of any better state of things would seem to be the recognition of some single constraining power, which would be even more remote from the active co-operation of the individual citizen than is the sovereign power of the great states at present.

[*132.*] It is the necessity of a supreme coercive power to the existence of a state that gives plausibility to the view that the action of merely selfish passions may lead to the formation of states. They have been motive causes, it would seem, in the processes by which this "imperium" has been established; as the acquisition of military power by a tribal chieftain, the conquest of one tribe by another, the supersession of the independent prerogatives of families by a tyrant which was the antecedent condition of the formation of states in the ancient world, the supersession of feudal prerogatives by the royal authority which served the same purpose in modern Europe. It is not, however, supreme coercive power, simply as such, but supreme coercive power exercised in a certain way and for certain ends, that makes a state; viz. exercised according to law, written or customary, and

for the maintenance of rights. The fact that sovereign power can alter any laws, is apt to make us overlook the necessity of conformity to law on the part of the sovereign, if he is to be the sovereign of a state. A power that altered laws otherwise than according to law, according to a constitution, written or unwritten, would be incompatible with the existence of a state, which is a body of persons, recognised by each other as having rights, and possessing certain institutions for the maintenance of those rights. The office of the sovereign, as an institution of such a society, is to protect those rights from invasion, either from without, from foreign nations, or from within, from members of the society who cease to behave as such. If the power, existing for this end, is used on the whole otherwise than in conformity either with a formal constitution or with customs which virtually serve the purpose of a constitution, it is no longer an institution for the maintenance of rights and ceases to be the agent of a state.

IV. The Question of Rights against the State

[*H. 139.*] In analysing the nature of any right, we may conveniently look at it on two sides, and consider it as on the one hand a claim of the individual, arising out of his rational nature, to the free exercise of some faculty; on the other, as a concession of that claim by society, a power given by it to the individual of putting the claim in force. But we must be on our guard against supposing that these distinguishable sides have any really separate existence. It is only a man's consciousness of having an object in common with others, a well-being which is consciously his in being theirs and theirs in being his,—only the fact that they are recognised by him and he by them as having this object,—that gives him the claim described. But a claim founded on such a common consciousness is already a claim conceded; already a claim to which reality is given by social recognition, and thus implicitly a right.

[*141.*] A man may have rights as a member of a family or of human society in any other form, without being a member of a state at all,—rights which remain rights though any particular state or all states refuse to recognise them; and a member of a state, on the ground of that capability of living as a freeman among freemen which is implied in his being a member of a state, has rights as against all other states and their members. These latter rights are in fact during peace recognised by all civilised states. It is the

object of "private international law" to reduce them to a system. But though it follows from this that the state does not create rights, it may be still true to say that the members of a state derive their rights from the state, and have no rights against it. Every right is derived from some social relation. Now for the member of a state to say that his rights are derived from his social relations, and to say that they are derived from his position as member of a state, are the same thing. The state is for him the complex of those social relations out of which rights arise, so far as those rights have come to be regulated and harmonised according to a general law. The other forms of community 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. Nor can the citizen have any right against the state, in the sense of a right to act otherwise than as a member of some society, the state being for its members the society of societies, the society in which all their claims upon each other are mutually adjusted.

[*142.*] But what exactly is meant by the citizen's acting "as a member of his state"? What does the assertion that he can have no right to act otherwise than as a member of his state amount to? The only unqualified answer that can be given to it is one that may seem too general to be of much practical use, viz. that so far as the laws anywhere or at any time in force fulfil the idea of a state, there can be no right to disobey them; or, that there can be no right to disobey the law of the state except in the interest of the state; i.e. for the purpose of making the state in respect of its actual laws more completely correspond to what it is in tendency or idea, viz. the reconciler and sustainer of the rights that arise out of the social relations of men. On this principle there can be no right to disobey or evade any particular law on the ground that it interferes with any freedom of action, any right of managing his children or "doing what he will with his own," which but for that law the individual would possess. If upon new conditions arising, or upon elements of social good being taken account of which had been overlooked before, or upon persons being taken into the reckoning as capable of participation in the social well-being who had previously been treated merely as means to its attainment,—if in any of these ways or otherwise the reference to social well-

being suggest the necessity of some further regulation of the individual's liberty to do as he pleases, he can plead no right against this regulation, for every right that he has possessed has been dependent on that social judgment of its compatibility with general well-being which in respect to the liberties in question is now reversed.

[*143.*] The general principle that the citizen must never act otherwise than as a citizen, does not carry with it an obligation under all conditions to conform to the law of his state, since those laws may be inconsistent with the true end of the state as the sustainer and harmoniser of social relations. The assertion, however, by the citizen of any right which the state does not recognise must be founded on a reference to an acknowledged social good. No exercise of a power, however abstractedly desirable for the promotion of human good it might be, can be claimed as a right unless there is some common consciousness of utility shared by the person making the claim and those on whom it is made. It is not a question whether or no it ought to be claimed as a right; it simply cannot be claimed except on this condition. It would have been impossible, e.g., in an ancient state, where the symbol of social union was some local worship, for a monotheistic reformer to claim a right to attempt the subversion of that worship. Thus, just as it is not the exercise of every power, properly claimable as a right, that is a right in the full or explicit sense of being legally established, so it is not every power, of which the exercise would be desirable in an ideal state of things, that is properly claimable as a right. The condition of its being so claimable is that its exercise should be contributory to some social good which the public conscience is capable of appreciating, not necessarily one which in the existing prevalence of private interests can obtain due acknowledgment, but still one of which men in their actions and language show themselves to be aware.

[*144.*] Thus to the question, Has the individual no rights against enactments founded on imperfect views of social well-being? we may answer, He has no rights against them founded on any right to do as he likes. Whatever counter-rights he has must be founded on a relation to the social well-being, and that a relation of which his fellow-citizens are aware. He must be able to point to some public interest, generally recognised as such, which is involved in the exercise of the power claimed by

him as a right; to show that it is not the general well-being, even as conceived by his fellow-citizens, but some special interest of a class that is concerned in preventing the exercise of the power claimed. As a general rule, no doubt, even bad laws, laws representing the interests of classes or individuals as opposed to those of the community, should be obeyed. There can be no right to disobey them, even while their repeal is urged on the ground that they violate rights, because the public interest, on which all rights are founded, is more concerned in the general obedience to law than in the exercise of those powers by individuals or classes which the objectionable laws unfairly withhold. The maintenance of a duty prohibiting the import of certain articles in the interest of certain manufacturers would be no justification for smuggling these articles. The smuggler acts for his private gain, as does the man who buys of him; and no violation of the law for the private gain of the violator, however unfair the law violated, can justify itself by reference to a recognised public good, or consequently be vindicated as a right. On the other hand, there may be cases in which the public interest—not merely according to some remote philosopher's view of it, but according to conceptions which the people are able to assimilate,—is best served by a violation of some actual law. It is so in regard to slavery when the public conscience has come to recognise a capacity for right in a body of men to whom legal rights have hitherto been refused, but when some powerful class in its own interest resists the alteration of the law. In such a case the violation of the law on behalf of the slave is not only not a violation in the interest of the violator; the general sense of right on which the general observance of law depends being represented by it, there is no danger of its making a breach in the law-abiding habits of the people.

V. The Question of a Right of Resistance

[*F. 108.*] There can be no right of a majority of citizens, as such, to resist a sovereign. If by law, written or customary, the majority of citizens possess or share in the sovereign power, then any conflict that may arise between it and any power cannot be a conflict between it and the sovereign. The majority have a right to resist such a power, but it will not be a right to resist a *sovereign*. If, on the other hand, the majority of citizens have no share by law or custom in the supreme law-making and law-

enforcing power, they never can have a right, simply as a majority, to resist that power. In such a case, there may arise a social duty to resist, and the exercise of men's powers in fulfilment of that duty may be sustained by such a general recognition of its being for the public good, as to become a right; but the resistance may be a duty before a majority of the citizens approve it, and does not necessarily become a duty when a majority of them do approve it; while that general recognition of its exercise as being for the common good, through which the power of resistance becomes a right, must be something more habitual and sustained and penetrating than any vote of a majority can convey. Incidentally, however, the consideration of the attitude of the mass of the people in regard to a contemplated resistance to established government must always be most important in determining the question whether the resistance should be made. It should be made, indeed, if at all, not because the majority approve it, but because it is for the public good; but account must be taken of the state of mind of the majority in considering whether it is for the public good or no. The presumption must generally be that resistance to a government is not for the public good when made on grounds which the mass of the people cannot appreciate; and it must be on the presence of a strong and intelligent popular sentiment in favour of resistance that the chance of avoiding anarchy, of replacing the existing government by another effectual for its purpose, must chiefly depend. On the other hand, it is under the worst governments that the public spirit is most crushed; and thus in extreme cases there may be a duty of resistance in the public interest, though there is no hope of the resistance finding efficient popular support. (An instance is the Mazzinian outbreaks in Italy.) Its repeated renewal and repeated failure may afford the only prospect of ultimately arousing the public spirit which is necessary for the maintenance of a government in the public interest. And just as there may thus be a duty of resistance on the part of a hopeless minority, so on the other side resistance even to a monarchic or oligarchic government is not justified by the fact that a majority, perhaps in some temporary fit of irritation or impatience, is ready to support it, if, as may very well be, the objects for which government subsists—the general freedom of action and acquisition and self-development—are likely to suffer from an overthrow of the government in the popular interest.

[*109.*] No precise rule, therefore, can be laid down as to the conditions under which resistance to a despotic government becomes a duty. But the general questions which the good citizen should ask himself in contemplating such resistance will be, (*a*) What prospect is there of resistance to the sovereign power leading to a modification of its character or an improvement in its exercise without its subversion? (*b*) If it is overthrown, is the temper of the people such, are the influences on which the general maintenance of social order and the fabric of recognised rights depend so far separable from it, that its overthrow will not mean anarchy? (*c*) If its overthrow does lead to anarchy, is the whole system of law and government so perverted by private interests hostile to the public, that there has ceased to be any common interest in maintaining it?

[*110.*] Such questions are so little likely to be impartially considered at a time when resistance to a despotic government is in contemplation, and, however impartially considered, are so intrinsically difficult to answer, that it may seem absurd to dwell on them. No doubt revolutionists do and must to a great extent "go it blind." Such beneficent revolutions as there have been could not have been if they did not. In most of those questions of right and wrong in conduct, which have to be settled by consideration of the probable effects of the conduct, the estimate of effects which regulates our approval or disapproval upon a retrospective survey, and according to which we say that an act should or should not have been done, is not one which we could expect the agent himself to have made. The effort to make it would have paralysed his power of action.

VI. The Right of the State in International Relations

[*K. 166.*] According to its idea the state is an institution in which all rights are harmoniously maintained, in which all the capacities that give rise to rights have free-play given to them. No action in its own interest of a state that fulfilled this idea could conflict with any true interest or right of general society, of the men not subject to its law taken as a whole. There is no such thing as an inevitable conflict between states. There is nothing in the nature of the state that, given a multiplicity of states, should make the gain of the one the loss of the other. The more perfectly each one of them attains its proper object of giving free scope to

the capacities of all persons living on a certain range of territory, the easier it is for others to do so; and in proportion as they all do so the danger of conflict disappears.

[*169.*] It is nothing then in the necessary organisation of the state, but rather some defect of that organisation in relation to its proper function of maintaining and reconciling rights that leads to a conflict of apparent interests between one state and another. The wrong, therefore, which results to human society from conflicts between states cannot be condoned on the ground that it is a necessary incident of the existence of states. It is not the state, as such, but this or that particular state, which by no means fulfils its purpose, and might perhaps be swept away and superseded by another with advantage to the ends for which the true state exists, that needs to defend its interests by action injurious to those outside it. Hence there is no ground for holding that a state is justified in doing whatever its interests seem to require, irrespectively of effects on other men. Whether there is any justification for a particular state, which in defence of its interests inflicts an injury on some portion of mankind; whether, e.g., the Germans are justified in holding Metz, on the supposition that their tenure of such a thoroughly French town necessarily thwarts in many ways the healthy activity of the inhabitants, or the English in carrying fire and sword into Afghanistan for the sake of acquiring a scientific frontier; this must depend (1) on the nature of the interests thus defended, (2) on the impossibility of otherwise defending them, (3) on the question how they came to be endangered. If they are interests of which the maintenance is essential to those ends as a means to which the state has its value, if the state which defends them has not itself been a joint-cause of their being endangered, and if they cannot be defended except at the cost of injury to some portion of mankind, then the state which defends them is clear of the guilt of that injury. But the guilt is removed from it only to be somewhere else, however wide its distribution may be. It may be doubted, however, whether the second question could ever be answered altogether in favour of a state which finds it necessary to protect its interests at the cost of inflicting an injury on mankind.

[*170.*] It will be said, perhaps, that these formal arguments in proof of the unjustifiability of the policy which nations constantly adopt in defence of their apparent interests, carry very little con-

viction; that a state is not an abstract complex of institutions for the maintenance of rights, but a nation, a people, possessing such institutions; that the nation has its passions which inevitably lead it to judge all questions of international right from its own point of view, and to consider its apparent national interests as justifying anything; that if it were otherwise, if the cosmopolitan point of view could be adopted by nations, patriotism would be at an end; that whether this be desirable or no, such an extinction of national passions is impossible; that while they continue, wars are as inevitable between nations as they would be between individuals, if individuals were living in what philosophers have imagined to be the state of nature, without recognition of a common superior; that nations in short are in the position of men judging their own causes, which it is admitted that no one can do impartially; and that this state of things cannot be altered without the establishment of a common constraining power, which would mean the extinction of the life of independent states,—a result as undesirable as it is unattainable. Projects of perpetual peace, to be logical, must be projects of all-embracing empire.

[*171.*] There is some cogency in language of this kind. On the other hand, it must be remembered that the national passion, which in any good sense is simply the public spirit of the good citizen, may take, and every day is taking, directions which lead to no collision between one nation and another; and that though a nation, with national feeling of its own, must everywhere underlie a state, yet still, just so far as the perfect organisation of rights within each nation, which entitles it to be called a state, is attained, the occasions of conflict between nations disappear. The love of mankind, no doubt, needs to be particularised in order to have any power over life and action. Just as there can be no true friendship except towards this or that individual, so there can be no true public spirit which is not localised in some way. But there is no reason why this localised or nationalised philanthropy should take the form of a jealousy of other nations or a desire to fight them, personally or by proxy. Those in whom it is strongest are every day expressing it in good works which benefit their fellow-citizens without interfering with the men of other nations. Those who from time to time talk of the need of a great war to bring unselfish impulses into play, give us reason to suspect that they are too selfish themselves to recognise the unselfish activity

that is going on all round them. Till all the methods have been exhausted by which nature can be brought into the service of man, till society is so organised that everyone's capacities have free scope for their development, there is no need to resort to war for a field in which patriotism may display itself.

II. ENGLISH HEGELIANISM

The Philosophical Theory of the State (1899)

Bernard Bosanquet (1848–1923)

Whereas German idealism became state-deification in the cataclysm of the Napoleonic wars, Victorian England suffered no corresponding convulsion and English idealism never embraced the apotheosis of the state as power. Nevertheless, at the very close of the nineteenth century, an approximation to the German position was reached in the political philosophy of Bernard Bosanquet. Developing Rousseau's doctrine of the general will by fusing the ethics of Green with the metaphysics of Hegel, Bosanquet's *Philosophical Theory of the State* (1899) formed an ingenious compound that may well be termed English Hegelianism.

The Philosophical Theory of the State includes a remarkably intelligible exposition of Hegel's abstruse political philosophy, and presents interesting versions of such Hegelian concepts as the will that turns upon itself, and the family and the civic community as ethical ideas. Nor are there wanting passages that suggest the Hegelian position that the state is always right in both internal and external relations. But Bosanquet was far from an advocate of militarism or imperialism. At the height of the World War, his *Social and International Ideals* (1917) presented a non-militaristic conception of patriotism, and in 1919 his introduction to the third edition of *The Philosophical Theory of the State* (1920) bade the League of Nations God-speed.

Bosanquet was the son of a well-to-do Northumberland clergyman, and made a brilliant record at Harrow and at Oxford, where he came under the influence of Jowett and Green. He was early elected a fellow of University College, Oxford, and in later years held for a time the chair of moral philosophy at the Scotch University of St. Andrews. But during most of his life he devoted himself to independent study and writing. He was an advanced liberal in politics, and was interested in social work, especially in university extension lectures and the Charity Organisation Society. Important writings, other than those already mentioned, are his *Logic* (1888), *History of Aesthetic* (1892) and *The Value and Destiny of the Individual* (1913).

The readings here given are based on the third edition of *The Philosophical Theory of the State* (Macmillan, New York, 1920), and are reprinted by permission of The Macmillan Company and of Macmillan and Company, Ltd. The footnotes are Bosanquet's own, but the present editor has slightly altered their position.

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THE PHILOSOPHICAL THEORY OF THE STATE

I. The Paradox of Self-Government

[*Ch. III, 1.*] Let us take as our starting point the conception of "self-government," to which, it will be admitted on all hands, the thought and feeling of mature communities has clung both in ancient and modern times, as in some way containing the true root and ground of political obligation. But the rough and ready application of it which, for example, represents the individual as simply one with the community, and the community therefore as infallible in its action affecting him, is a pure example of fallacy, and may be justly characterised as a confusion pretending to be a synthesis. Of this idea as of so many we must say that those who have pronounced it to be self-contradictory have understood it much better than most of those who accept it as self-evident.

[*5.*] The paradox of self-government, so far from being theoretically solved by the development of political institutions to their highest known maturity, is simply intensified by this development. When the arbitrary and irrational powers of classes or of individuals have been swept away, we are left face to face, it would seem, with the coercion of some by others as a necessity in the nature of things. And, indeed, however perfectly "self-government" has been substituted for despotism, it is flying in the face of experience to suggest that the average individual self, as he exists in you or me, is *ipso facto* satisfied, and at home, in all the acts of the public power which is supposed to represent him. If he were so, the paradox of self-government would be resolved by the annihilation of one of its factors. The self would

remain, but "government" would be superfluous; or else "government" would be everything, and the self annihilated. If, on the other hand, we understand the "self" in "self-government" to stand for the whole sovereign group or community, which is usually called a "self-governing," as opposed to a subject, state, then we have before us the task of showing that this self is a reality in any sense which justifies the acceptance of what is done by the public power as an act of the whole community.

[*Ch. V, 2.*] What Rousseau means to indicate by his expression, "the General Will," may seem to many persons, as he clearly saw, to have no actual existence. It is of the nature of a principle operating among and underneath a great variety of confusing and disguising factors, and can only be defined by the help of an "as such" or "in so far as." It is, we might say, the will of the whole society "as such" or the wills of all individuals "in so far as" they aim at the common good. It is expressed in law, "in so far as" law is what it ought to be; and sovereignty, "as such" *i.e.* when truly itself because rightly acting for the common interest, is the exercise of the General Will. In its idea, as the key to the whole problem of self-government and freedom under law, it is that identity between my particular will and the wills of all my associates in the body politic which makes it possible to say that in all social co-operation, and in submitting even to forcible constraint, when imposed by society in the true common interest, I am obeying only myself, and am actually attaining my freedom. It postulates a will which in some sense transcends the individual whose will it is, and is directed upon an object of wider concern. And in one way or other, we know that this may be, and indeed always is the case, for our will is always directed to something which we are not.

We see the author's intention still more clearly when he maintains that the General Will is always right, and is indestructible. Though it is always right, as Will, yet the people may be misled in their knowledge and judgment of details; though it is indestructible in the human breast, yet a man may vote at the polling booth on another issue than that which he would have before him if he consulted the General Will. He may answer by his vote not the question, "Is this for the public good?" but the question, "Is this for my private good?" If so, he does not indeed extinguish the General Will in himself, but he evades it. Or, as we might say,

the man does not altogether cease, however ignorant or interested, to possess a man's leaning towards making the real best of himself, though his private interest may at times so master his mind as to throw the higher or common good into the second place. Thus, the relation of the general will to a community is plainly apprehended by Rousseau much in the spirit of the doctrine that man always aims at something which he takes to be good. And so the General Will is as much implied in the life of a society as some sort of will for good in the life of an individual. The two, in fact, are not merely analogous but to a great extent identical. The General Will seems to be, in the last resort, the ineradicable impulse of an intelligent being to a good extending beyond itself, in as far as that good takes the form of a common good. Though this impulse may be mastered or cheated in a degree, yet, if it were extinct, human life would have ceased.

[*Ch. VI, 1.*] We have now seen that the problem of Self-Government may be regarded from a point of view other than that which presented it as a contradiction in terms.

The difference of principle is that the average individual, such as each of us takes himself to be in his ordinary trivial moods, when he sees, or thinks he sees, nothing in life but his own private interest and amusement,—this average individual is no longer accepted as the real self or individuality. The centre of gravity of existence is thrown outside him. Even his personality, his unique and personal being, is not admitted to lie where a careless scrutiny, backed by theoretical prejudice, is apt to locate it. It is not in the nooks and recesses of the sensitive self, when the man is most withdrawn from things and persons and wrapped up in the intimacies of his feeling, that he enjoys and asserts his individual self to the full. This idea is a caricature of the genuine experience of individuality. The simplest machine will show us that it is the differences of the parts which enable them to make a whole. And so it is in the difference which contributes to the whole that the self feels itself at home and possesses its individuality.

Following up such thoughts as these, we see that there is a meaning in the suggestion that our real self or individuality may be something which in one sense we are not, but which we recognise as imperative upon us. As Rousseau has said of the social self, we say more generally of the self or life which extends beyond our average private existence, that it is more real than we are,

and we only feel ourselves real in proportion as we identify ourselves with it.

With such suggestions in our minds, we see the problem of liberty in a new light. Liberty, no doubt, is the essential quality of human life. It is so because it is the condition of our being ourselves. But now that it has occurred to us that in order to be ourselves we must be always becoming something which we are not, liberty cannot simply be something which we have, still less something which we have always had. It must be a condition relevant to our continued struggle to assert the control of something in us, which we recognise as imperative upon us or as our real self, but which we only obey in a very imperfect degree. Thus it is that we can speak, without a contradiction, of being forced to be free. It is possible for us to acquiesce in a law and order which on the whole makes for the possibility of asserting our true or universal selves, at the very moment when this law and order is constraining our particular private wills in a way which we resent, or even condemn. Such a law and order, maintained by force, which we recognise as on the whole the instrument of our greatest self-affirmation, is a system of rights; and our liberty may be identified with such a system considered as the condition and guarantee of our becoming the best that we have it in us to be, that is, of becoming ourselves. And because such an order is the embodiment up to a certain point of a self or system of will which we recognise as what ought to be, as against the indolence, ignorance, or rebellion of our casual private selves, we may rightly call it a system of self-government or free government; a system, that is to say, in which ourselves, in one sense, govern ourselves in another sense; by all of us, as casual private units, being subject to an order which expresses, up to a certain point, the rational self or will which we may be assumed to recognise as imperative.

[5.] It is such a "real" or rational will that thinkers after Rousseau have identified with the State. The idea is that in it, or by its help, we find at once discipline and expansion, the transfiguration of partial impulses, and something to do and to care for, such as the nature of a human self demands. If, that is to say, you start with a human being as he is in fact, and try to devise what will furnish him with an outlet and a stable purpose capable of doing justice to his capacities you will be driven on by the necessity of the facts at least as far as the State, and perhaps

further. Two points may be insisted on to make this conception less paradoxical to the English mind.

[*a.*] The State, as thus conceived, is not merely the political fabric. The term State accents indeed the political aspect of the whole, and is opposed to the notion of an anarchical society. But it includes the entire hierarchy of institutions by which life is determined, from the family to the trade, and from the trade to the Church and the University. It includes all of them, not as the mere collection of the growths of the country, but as the structure which gives life and meaning to the political whole, while receiving from it mutual adjustment, and therefore expansion and a more liberal air. The State, it might be said, is thus conceived as the operative criticism of all institutions—the modification and adjustment by which they are capable of playing a rational part in the object of human will. And criticism, in this sense, is the life of institutions. As exclusive objects, they are a prey to stagnation and disease—think of the temper which lives solely for the family or solely for the Church; it is only as taken up into the movement and circulation of the State that they are living spiritual beings. It follows that the State, in this sense, is, above all things, not a number of persons, but a working conception of life. It is, as Plato has taught us, the conception by the guidance of which every living member of the commonwealth is enabled to perform his function.

[*b.*] The State, as the operative criticism of all institutions, is necessarily force; and in the last resort, it is the only recognised and justified force. For the force of the State proceeds essentially from its character of being our own mind extended. All individuals are continually reinforced and carried on, beyond their average immediate consciousness, by the knowledge, resources, and energy which surround them in the social order, with its inheritance, of which the order itself is the greater part. And the return of this greater self, forming a system adjusted to unity, upon their isolated minds, as an expansion and stimulus to them, necessarily takes the shape of force, in as far as their minds are inert. And this must always be the case, not merely so long as wills are straightforwardly rebellious against the common good, but so long as the knowledge and energy of the average mind are unequal to dealing, on its own initiative and out of its own resources, with all possible conjunctions in which necessary conditions of the common good are to be maintained.

II. The End and Limit of State Action

[*Ch. VIII, 1.*] The only way in which the idea of means and end can be applied to the social whole and its parts, is to take Society when at its lower level, being dealt with under the aspect of mere plurality, as a means to what it is at its higher level, when realised as a communion of individualities at their best. But from this point of view we get no distinction of means and end as between Individuals and Society. What we get is Individuals and Society alike, as understood and partly existing at one level (that of commonplace Individualism and Collectivism), taken as a means to both Individuals and Society at a higher level.

[*3.*] We have hitherto spoken of the State and Society as almost convertible terms. And in fact it is part of our argument that the influences of Society differ only in degree from the powers of the State, and that the explanation of both is ultimately the same. But on the other hand, it is also part of our argument that the State as such is a necessary factor in civilised life; and that no true ideal lies in the direction of minimising its individuality or restricting its absolute power. By the State, then, we mean Society as a unit, recognised as rightly exercising control over its members through absolute physical power. The limits of the unit are, of course, determined by what looks like historical accident; but there is logic underneath the apparent accident, and the most tremendous political questions turn upon the delimitation of political units. A principle, so to speak, of political parsimony—*entia non sunt multiplicanda praeter necessitatem*, "two organisations will not survive when one can do the work"—is always tending to expand the political unit. The limits of the common experience necessary for effective self-government are always operating to control this expansion. We might therefore suggest, as a principle determining the area of states, "the widest territorial area compatible with the unity of experience which is demanded by effective self-government." But the State *de facto* (which is also *de jure*) is the Society which is recognised as exercising compulsory power over its members, and as presenting itself *qua* a single independent corporation among other independent corporations. Without such power, or where, if anywhere, it does not exist, there can be no ultimate and effective adjustment of the claims of individuals, and of the various social groups in which individuals are involved. It

is the need for this ultimate effective adjustment which constitutes the need that every individual in civilised life should belong to one state, and to one only. Otherwise conflicting adjustments might be imposed upon him by diverse authorities having equal power and right to enforce his obedience. That Society, then, is a State, which is habitually recognised as a unit lawfully exercising force.

[4.] But force is not *in pari materia* with the expansion of mind and character in their spiritual medium. And, thus, there at once appears an inadequacy of means to end as between the distinctive *modus operandi* of the State and the end in virtue of which it claims to represent the "real" will.

What is the bearing of this inadequacy? What is the most that the State can do towards promoting a form of life which it recognises as desirable?

[5.] The State, in its distinctive capacity, has no agency at its command for influencing conduct, but such as may be used to produce an external course of behaviour by the injunction or prohibition of external acts.[1]

The relation of such a means to the imperative end, on which we have seen that political obligation depends, must be in a certain sense negative. The means is one which cannot directly promote the end, and which even tends to narrow its sphere. What it can effect is to remove obstacles, to destroy conditions hostile to the realisation of the end. This brings us back to a principle laid down by Kant. When force is opposed to freedom, a force that repels that force is *right*.

The negative nature of our principle is to be seriously pressed. The State is in its right when it forcibly hinders a hindrance to the best life or common good. In hindering such hindrances it will indeed do positive acts. It may try to hinder illiteracy and intemperance by compelling education and by municipalising the liquor traffic. Why not, it will be asked, hinder also unemployment by universal employment, over-crowding by universal house-building, and immorality by punishing immoral and rewarding moral actions? Here comes the value of remembering that, according to our principle, State action is negative in its immediate bearing. On every problem the question must recur, "Is the proposed measure *bona fide* confined to hindering a hindrance, or is it at-

[1] Green, *Principles of Political Obligation*, pp. 34, 35.

tempting direct promotion of the common good by force?" For it should be remarked that every act done by the public power has one aspect of encroachment, however slight, on the sphere of character and intelligence, if only by using funds raised by taxation, or by introducing an automatic arrangement into life. It can, therefore, only be justified if it liberates resources of character and intelligence greater beyond all question than the encroachment which it involves. This relation is altogether perversely presented if it is treated as an encroachment of society upon individuals. All this is beside the mark. The serious point is, that it is an interference, *so far as compulsion operates in it*, of one type of action with another and higher type of action: of automatism, so to speak, with intelligent volition. The higher type of action, the embodiment of common good in logical growth, is so far from being merely individual as opposed to social, that it is the whole end and purpose in the name of which allegiance to society can be demanded from any individual.

However positive, as actual facts, are the conditions which it may become advisable to maintain, they may always, on the side which is distinctively due to State compulsion, be regarded as the hindrance of hindrances. We may think, for instance, of the problem involved in State maintenance of universities. It is easy to vote money, to build buildings, and to pass statutes. But none of these things will secure the objects of a university. Money and buildings may throw open an arena, so to speak, for the work of willing minds in learning and education. But the work itself is in a different medium from anything which can be produced by compulsion, and is so far less vital as it is conditioned by the operation of force upon minds which demand no work of the kind.

If first-rate educational apparatus is called into existence by a State endowment, the first-rateness of the apparatus is not due to the compulsion applied to taxpayers. It must be due, in one way or another, to the fact that first-rate ability in the way of devising apparatus was somewhere pressing for an outlet, which, by a stroke of the pickaxe, so to speak, the public power was able to provide for it. We must not confuse the element of compulsion, which is the side of social action distinctly belonging to State interference, with the whole of the material results which liberated intelligence produces.

But it is further true that material conditions which come close to life, such as houses, wages, educational apparatus, do not wholly escape our principle. They occupy a very interesting middle region between mere hindrances of hindrances and the actual stimulation of mind and will. On the one side they are charged with mind and character, and so far are actual elements in the best life. On the other side they depend on external actions, and therefore seem accessible to state compulsion. But what we have to observe is that, *as charged with mind and will*, these material facts may not be accessible to State compulsion, while, *as accessible to State compulsion* pure and simple, they may forfeit their character of being charged with mind and will.

The principle of the hindrance of hindrances is most valuable and luminous when rightly grasped, just in these middle cases. A pretty and healthy house, which its inhabitant is fond of, is an element in the best life. Who could doubt it who knows what home-life is? But in order that putting a family out of a bad house into a good one should give rise to such an element of the best life, it is strictly and precisely necessary that the case or policy should come under our principle. That is to say, unless there was a better life struggling to utter itself, and the deadlift of interference just removed an obstacle which bound it down, the good house will not be an element in a better life, and the encroachment on the ground of volition will have been made without compensation—a fact which may show itself in many fatal ways. If, on the other hand, the struggling tendency to a better life has power to effect the change without the deadlift from outside, then the result is certain and wholly to the good.

It ought to occur to the reader that the ground here assigned for the limitation of State action—that is, of social action through the public power—is not *prima facie* in harmony with the account of political obligation, according to which laws and institutions represented a real self or general will, recognised by individuals as implied in the common good which was imperative upon them. We spoke, for example, of being forced to be free, and of the system of law and order as representing the higher self. And yet we are now saying that, in as far as force is operative through compulsion and authoritative suggestion, it is a means which can only reach its end through a negation.

But this *prima-facie* contradiction is really a proof of the vitality

of our principle. The social system under which we live, taking it as one which does not demand immediate revolution, represents the general will and higher self as a whole to the community as a whole and can only stand by virtue of that representation being recognised. Our loyalty to it makes us men and citizens, and is the main spiritualising force of our lives. But something in all of us, and much in some of us, is recalcitrant through rebellion, indolence, incompetence, or ignorance. And it is only on these elements that the public power operates as power, through compulsion or authoritative suggestion. Thus, the general will when it meets us as force, and not as a social suggestion which we spontaneously rise to accept, comes to us *ex hypothesi* as something which claims to be ourself, but which, for the moment, we more or less fail to recognise. And, according to the adjustment between it and our complex and largely unintelligent self, it may abandon us to automatism, or stir in us rebellion or recognition, and so may hinder the fuller life in us or remove hindrances to it.

[*6.*] Rights are claims recognised by the State to the maintenance of conditions favourable to the best life. And if we ask in general for a definition and limitation of State action as such, the answer is that State action is coincident with the maintenance of rights.

[*d, ii.*] No right can be founded on my mere desire to do what I like. The wish for this is the sting of the claim to unrecognised rights. The matter is one of fact and logic, not of fancies and wishes. In other words, I must show that the alleged right is a requirement of the realisation of capacities for good, and, further, that it does not demand a sacrifice of capacities now being realised, out of proportion to the capacities which it would enable to assert themselves. I must show, in short, that in so far as the claim in question is not secured by the State, Society is inconsistent with itself, and falls short of what it professes to be, an organ of good life. And all my showing gives no *right*, till it has modified the law. To maintain a right against the State by force or disobedience is rebellion, and, in considering the duty of rebellion, we have to set the whole value of the existence of social order against the importance of the matter in which we think Society defective. There can hardly be a duty to rebellion in a State in which law can be altered by constitutional process.

III. Institutions as Ethical Ideas

[*Ch. XI, 2.*] The principles which constitute a society are facts as well as ideas, and purposes as well as facts. This threefold character is united in what we describe by the general term "institutions."

It is unnecessary to insist on the external aspect of institutions as facts in the material world; but it will be worth while to gather up the leading conceptions of our analysis by tracing the nature of some prominent "institutions," as ideas, constituent elements of the mind, which are also purposes; that is, as ethical ideas.

[*3.*] The family starts from the universal physical fact of parentage, but takes its ethical value mainly from the special phase of parental relation which leads to the formation of a household. The association of parents and children in a household, which is permanent until broken up into other households, is due to economic conditions. By demanding permanence, economic conditions elicit in the relation of parent and child the simplest form of universality necessary to an ethical idea.

The monogamous family, which is in the normal case also a household, has a unique place in the structure of the citizen mind.

Its peculiarity is in being a natural union of feeling with ideal purpose. The ideal purpose, a permanent interest in a comparatively permanent and external life, attaches itself by imperceptible links to the most universal incident of animal existence. The mere remaining together of the units, a demand of their physical needs, is almost enough of itself to transform their inevitable mutual dependence into a relation of intentional service, rooted in affection, and tinged with some degree of forethought.

[*4.*] It might seem fanciful to say that our district is to our family as space to time; but it would suggest something of the point of view from which it is well to look at the structure of our ethical ideas. It is desirable to realise how the simplest characters of our surroundings and their necessary connections are ethically important, not because they impose anything upon us, but because they respond to something within us, or rather, to a possibility which is to be realised by the world, as in us its variety strives towards unity.

The District or Neighbourhood, in short, as an ethical idea, is the unity of the region with which we are in sensuous contact, as

the family is that of the world bound to us by blood or daily needs.

We may illustrate the significance of Neighbourhood by the case in which it fails to be duly recognised, and that in which nothing else is recognised.

To a great extent, in the life of modern cities, especially when supplemented by suburban residence, the principle is disregarded. In a great city, the actual neighbourhood is more than can be dealt with, and has often no distinctive physical character—at least no attractiveness—and the idea of a special relation to it falls away. The total disregard of an ethical purpose connecting us with the surroundings nearest to us in bodily presence, tends to deprive the general life of its vitality, its sensuous health, strength, and beauty. We may observe that in as far as electoral districts are treated as mere circumscriptions of such and such numbers of electors, the life of a neighbourhood is disregarded. To make the constituency a mere number (Hare's scheme) would be the climax of this tendency.

In the ancient City-state, on the other hand, the district was all powerful. The State was almost a sensuous fact. The members of the State were essentially friends and neighbours, who for business or pleasure were meeting all day long. When the district thus absorbs the State, there is a want of what we call freedom, though there may be enough of sensuous unconstraint. The State and its ideal purposes are not clearly set above all flesh and blood. A great legal system is not created till the State ceases to be a neighbourhood. Individual intimacy and the "hard case" obscure the idea of universal law. The possibility of representative government, of a political faith which does not work by sight, is not conceived. The district, as a natural fact, was at first only a degree more liberating than the natural fact of kinship. It was not conceived that man, as man, belonged "neither to this place nor to Jerusalem." With the ideal unity of a modern nation such conceptions harmonise much more readily, and the neighbourhood can lend them flesh and blood without hiding them.

[5.] "Class" is in democratic countries no longer a political institution. A man's vote is secured to him on a minimum qualification, and his practical influence and acceptance depend neither on birth nor on occupation, but on the power which he can exercise by his qualities or his possessions.

But though occupation no longer determines either social or political class, in the sense of graduation by any formal bond, yet it remains and must always remain a determinant of class in a narrower sense, and one of the main ideas which constitute the ethical structure of the mind.

The necessities which we compared roughly to time and space —the proximate permanent group and the adjacent locality— give a value to man's animal routine, and a significance to the area of his every-day perceptions. It is when the division of labour, the requital of one service by a different one, becomes prominent in a community, that a further grasp is laid upon the distinctive capacities of the individual consciousness, in which must be reckoned the surroundings which constitute its horizon of possibilities. We still answer the general question, "What is he?" by naming a man's industry or profession. The family and the neighbourhood sustain and colour the individual life, but the vocation stamps and moulds it. The individual has his own nature communicated to him as he is summoned to fit himself for rendering a distinctive service to the common good. He becomes "something"; an incarnation of a factor in the social idea.

The Roman word "class," which the English language has adopted, not for every separate employment, but for the character and position roughly connected with a whole group of employments, has an origin worth recalling. Plato's classes were "*genera*" = clans, extended families. The German classes were "*Stände*" = statuses, positions, estates (compare the French "*état*," which practically = trade). But the Roman "*classis*" was "a summoning" to public service; the first and second classes were the first and second summonings; then indeed to military service in an order based on wealth. But the idea may survive. Our "class" may be thought of as the group or body in which we are called out for distinctive service.

[*6.*] The Nation-State, we have already suggested, is the widest organisation which has the common experience necessary to found a common life. This is why it is recognised as absolute in power over the individual, and as his representative and champion in the affairs of the world outside. It is obvious that there can be but one such absolute power in relation to any one person; and that, so far as the world is organised, there must be one; and, in fact, his discharge from one allegiance can only be effected by

his acceptance of another. It should be noted, however, that the principles of the family, the district, and the class, not only enter into the nation in these definite shapes, but affect the general fabric of the national State through the sense of race, of country, and of a pervading standard of life and culture.

The Nation-State as an ethical idea is, then, a faith or a purpose—we might say a mission, were not the word too narrow and too aggressive. It seems to be less to its inhabitant than the City-state to its citizens; but that is greatly because, as happens with the higher achievements of mind, it includes too much to be readily apprehended. The modern nation is a history and a religion rather than a clear cut idea. Its power as an idea-force is not known till it is tried. How little the outsider, and even members of the community concerned, were able to gauge beforehand the strength of the sentiment and conception that pervaded the United States through the war of secession. The place of the idea of the Nation-State in the whole of ethical ideas may be illustrated by the Greek conception of Happiness, as that organisation of aims, whatever it may be, which permits the fullest harmony to life.

IV. The Moral Criticism of the State

[*Ch. XI, 7.*] Our analysis of the Nation-State suggests a point of view which may be applied to the vexed question of whether State action is to be judged by the same moral tests as private action.

The State exists to promote good life, and what it does cannot be morally indifferent; but its actions cannot be identified with the deeds of its agents, or morally judged as private volitions are judged. Its acts proper are always public acts, and it cannot, as a State, act within the relations of private life in which organised morality exists. It has no determinate function in a larger community, but is itself the supreme community; the guardian of a whole moral world, but not a factor within an organised moral world. Moral relations presuppose an organised life; but such a life is only within the State, and not in relations between the State and other communities.

But all this, it may be urged, is beside the question. The question is not, can a State be a moral individual (though this is certainly one question)? but, does an interest of State justify what would otherwise be immorality or wrong-doing on the part of an officer of State?

We must distinguish between acts essentially private and acts essentially public. To steal or murder, to lie, or to commit personal immorality, for instance, cannot be a public act. Such acts cannot embody a general interest willed by the public will. A State agent who commits them in pursuit of information or to secure a diplomatic result cannot be justified on the ground that they are not his acts but the State's; and they are as immoral in him as in anyone else. Ultimately, indeed, it may be true that there is no act which is incapable of justification, supposing some extreme alternative; and in this sense, but in this sense only, it might be that, treating the interest of a commonwealth like any other ethically imperative interest, such acts might be relatively capable of justification. But this justification would only mean that some supreme interest was subserved by them, and would have no special relation to the supposed public character of the interest. It is then a case of the conflict of duties. And the commoner occurrence, which results in doubtful acts, probably is that an agent, charged with some public service, finds it easiest to promote it by some act of rascality, and acts on his idea. But over readiness to make capital out of an apparent conflict of duties is neither made worse nor better by the fact that one of the duties is the service of the State.

A public act which inflicts loss, such as war, confiscation, the repudiation of a debt, is wholly different from murder or theft. It is not the act of a private person. It is not a violation of law. It can hardly be motived by private malice or cupidity in the strict sense, and it is not a breach of an established moral order by a being within it and dependent upon it for the organisation and protection of his daily life. It is the act of a supreme power, which has ultimate responsibility for protecting the form of life of which it is the guardian, and which is not itself protected by any scheme of functions or relations, such as prescribes a course for the reconciliation of rights and secures its effectiveness. The means adopted by such a supreme power to discharge its responsibilities as a whole, are of course subject to criticism as respects the conception of good which they imply and their appropriateness to the task of realising it. But it is mere confusion to apply to them names borrowed from analogous acts of individuals within communities, and to pass moral judgment upon them in the same sense as on private acts. The nearest approach which we can im-

agine to public immorality would be when the organs which act for the State, as such, exhibit in their public action, on its behalf, a narrow, selfish, or brutal conception of the interests of the State as a whole, in which, so far as can be judged, public opinion at the time agrees. In such a case the State, as such, may really be said to be acting immorally, *i.e.* in contravention of its main duty to sustain the conditions of as much good life as possible. This case must be distinguished, if I am right, from the case in which the individuals, acting as the public authority, are corrupted in their own private interests not shared with the public. For then the case would rather be that the State, the organ of the public good, had not been given a chance to speak, but had simply been defrauded by those who spoke in its name.

We do not suggest, then, that the action of States is beyond moral criticism, nor that action of individuals in their interest is above or below morality, except in the sense in which one moral claim has constantly to be postponed to another. But we deny that States can be treated as the actors in private immoralities which their agents permit themselves in the alleged interest of the State; or, again, can be bound by the private honour and conscience of such agents; and we deny, moreover, that the avowed public acts of sovereign powers which cause loss or injury, can be imputed to individuals under the names of private offences; that someone is guilty of murder when a country carries on war, or of theft when it adopts the policy of repudiation, confiscation, or annexation.

[*8.*] It is obvious that the idea of humanity, of the world of intelligent beings on the surface of our earth, conceived as a unity, must hold such a place in any tolerably complete philosophical thinking, as in some way to control the idea of particular States, and to sum up the purposes and possibilities of human life. The idea of humanity is universal, and whatever limits we have tacitly in mind—whatever limits the Greek thinker had in mind while he based his ethics on the distinction between man and beast—yet, when we rely on the idea of man as man, we are committed to treat in some way of the world of mankind.

[*a.*] The first point which forces itself upon our attention is, that the idea which we tacitly entertain when we refer to humanity, is not true of the greater part of mankind. According to the current ideas of our civilisation, a great part of the lives which are being

lived and have been lived by mankind are not lives worth living, in the sense of embodying qualities for which life seems valuable to us.

[*b.*] This being so, it seems to follow that the object of our ethical idea of humanity is not really mankind as a single community. Putting aside the impossibilities arising from succession in time, we see that no such identical experience can be presupposed in all mankind as is necessary to effective membership of a common society and exercise of a general will. It does not follow from this that there can be no general recognition of the rights arising from the capacities for good life which belong to man as man. Though insufficient, as variously and imperfectly realised, to be the basis of an effective community, they may be a common element or tissue of connection. Such a relation as that of England and India brings the matter home. Englishmen cannot make one effective self-governed community with the Indian populations. It would be misery and inefficiency to both sides. But our State can recognise the primary rights of humanity as determined in the life of its Indian subjects, and enforce or respect these rights, whether India be a dependency or an independent community. The problem is not unlike that raised by the idea of a universal language. As a substitute for national languages, it would mean a dead level of intelligence unsuited to every actual national mind, the destruction of literature and poetry. As an addition to existing languages, or more simply, if it became customary for every people to be acquainted with the tongues of other nations, there would be a common understanding no less firm, and a vast gain of appreciation and enjoyment, a levelling up instead of levelling down. The recognition of human rights through communities founded on organic unity of experience may be compared in just these terms to the idea of a universal society including the entire human race.[2]

[*c.*] The respect of states and individuals for humanity is then, after all, in its essence, a duty to maintain a type of life, not general, but the best we know, which we call the most human, and in accordance with it to recognise and deal with the rights of alien

[2] The points which I consider fundamental and to which I adhere in principle, in relation to the problem of a world-community, are two: (*α*) the necessity of a complete integration of differences, as illustrated by the problem of a universal language; and (*β*) the necessity for a thoroughly coherent general will, as distinct from a superficial agreement based on a temporary coincidence of interests. I hope and trust we are in a way to see these realised. 1919.

individuals and communities. This conception is opposed to the treatment of all individual human beings as members of an identical community having identical capacities and rights. It follows our general conviction that not numbers but qualities determine the value of life.

Every people, as a rule, seems to find contentment in its own type of life. This cannot contradict, for us, the imperativeness of our own sense of the best. But it may make us cautious as to the general theory of progress, and ready to admit that one type of humanity cannot cover the whole ground of the possibilities of human nature. Our action must, no doubt, be guided by what we can understand of human needs, and this must depend ultimately on our own type of life. But it makes a difference whether we start from the hypothesis that our civilisation as such stands for the goal of progress, or admit that there is a necessity for covering the whole ground of human nature. And it may be that, as the ground is covered, our States may go the way which others have gone, without, however, leaving things as they are. If the State, moreover, is not ultimate nor above criticism, no more is any given idea of humanity; and reference to "the interests of mankind" only names the problem, which is to find out what those interests are, in terms of human qualities to be realised.

III. NATIONALISM

Politics (*c. 1880*)

Heinrich von Treitschke (1834–1896)

From Hegelianism to nationalism the transition is not a long one, the distinction between the two being primarily a matter of emphasis. Hegelianism deifies the idea of the state; nationalism glorifies some particular national state. Even the nationalism of a racial minority, although maintaining a sturdy opposition to the claims of the present dominant state, aspires to the independence of a new national state with all the rights, powers and privileges appertaining thereto.

At the close of the nineteenth century, the most vigorous manifestations of nationalism were to be found in the new national states of Italy and Germany, and the most clear-cut literary expression in the lectures of Heinrich von Treitschke. In 1874 and for many years thereafter—far longer than Green lectured on political obligation—Treitschke lectured on politics at the University of Berlin. His lectures drew an amazing attendance and exerted a profound influence. Later, the posthumous publication of his *Politics* in 1897–98 furnished a gospel for pre-war German nationalism.

Treitschke was the son of a Saxon army officer but was himself barred from a military career by almost total deafness. He studied history, political science, and economics at various universities, being particularly influenced by the historian Dahlmann at Bonn. In 1857 he qualified as a *privatdocent* and began to lecture on history at the University of Leipzig, but he soon came into conflict with the Saxon authorities on account of his pro-Prussian sympathies. Treitschke was subsequently professor of history at several universities, especially—from 1874—at Berlin. From 1871 until 1884 he was a member of the Reichstag, beginning as a National Liberal but changing his views until he was a partisan of every kind of reaction. His outstanding literary achievement was his *German History in the Nineteenth Century* (five volumes, 1879–94). His *Historical and Political Essays* (four volumes, 1886–97) should also be mentioned.

The readings here given are based on the translation of *Politics* by Blanche Dugdale and Torben de Bille (Constable and Company, London, 1916), and are reprinted by permission of the publishers.

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POLITICS

I. The Idea of the State

[*Ch. I.*] The State is the people, legally united as an independent entity. By the word "people" we understand briefly a number of families permanently living side by side. This definition implies that the State is primordial and necessary, that it is as enduring as history, and no less essential to mankind than speech.

We can imagine humanity without a number of important attributes; but humanity without government is simply unthinkable, for it would then be humanity without reason. Man is driven by his political instinct to construct a constitution as inevitably as he constructs a language.

If, then, political capacity is innate in man, and is to be further developed, it is quite inaccurate to call the State a necessary evil. We have to deal with it as a lofty necessity of Nature. Even as

the possibility of building up a civilization is dependent upon the limitation of our powers combined with the gift of reason, so also the State depends upon our inability to live alone. This Aristotle has already demonstrated. The State, says he, arose in order to make life possible; it endured to make good life possible.

This natural necessity of a constituted order is further displayed by the fact that the political institutions of a people, broadly speaking, appear to be the external forms which are the inevitable outcome of its inner life. Just as its language is not the product of caprice but the immediate expression of its most deep-rooted attitude towards the world, so also its political institutions regarded as a whole, and the whole spirit of its jurisprudence, are the symbols of its political genius and of the outside destinies which have helped to shape the gifts which Nature bestowed.

When we assert the evolution of the State to be something inherently necessary, we do not thereby deny the power of genius or of creative Will in history. For it is of the essence of political genius to be national. There has never been an example to the contrary. The summit of historical fame was never attained by Wallenstein because he was never a national hero, but a Czech who played the German for the sake of expediency. He was, like Napoleon, a splendid Adventurer of history. The truly great maker of history always stands upon a national basis.

If we have grasped that the State is the people legally constituted we thereby imply that it aims at establishing a permanent tradition throughout the Ages. A people does not only comprise the individuals living side by side, but also the successive generations of the same stock. This is one of the truths which Materialists dismiss as a mystical doctrine, and yet it is an obvious truth. Only the continuity of human history makes man a ζῶον πολιτικόν.[1] He alone stands upon the achievements of his forebears, and deliberately continues their work in order to transmit it more perfect to his children and children's children. There never was a form of Constitution without a law of inheritance. The rational basis for this is obvious, for by far the largest part of a nation's wealth was not created by the contemporary generation. The continuous legalized intention of the past, exemplified in the law of inheritance, must remain a factor in the distribution of property amongst posterity. In a nation's continuity with bygone genera-

[1] Political animal. (Present editor's note.)

tions lies the specific dignity of the State. It is consequently a contradiction to say that a distribution of property should be regulated by the deserts of the existing generation. Who would respect the banners of a State if the power of memory had fled? There are cases when the shadows of the past are invoked against the perverted will of the present, and prove more potent. To-day in Alsace we appeal from the distorted opinions of the Francophobes to Geiler von Kaisersberg and expect to see his spirit revive again. No one who does not recognize the continued action of the past upon the present can ever understand the nature and necessity of War. Gibbon calls Patriotism "the living sense of my own interest in society"; but if we simply look upon the State as intended to secure life and property to the individual, how comes it that the individual will also sacrifice life and property to the State? It is a false conclusion that wars are waged for the sake of material advantage. Modern wars are not fought for the sake of booty. Here the high moral ideal of national honour is a factor handed down from one generation to another, enshrining something positively sacred, and compelling the individual to sacrifice himself to it. This ideal is above all price and cannot be reduced to pounds, shillings, and pence. Kant says, "Where a price can be paid, an equivalent can be substituted. It is that which is above price and which consequently admits of no equivalent, that possesses real value." Genuine patriotism is the consciousness of co-operating with the body-politic, of being rooted in ancestral achievements and of transmitting them to descendants. Fichte has finely said, "Individual man sees in his country the realisation of his earthly immortality."

This involves that the State has a personality, primarily in the juridical, and secondly in the politico-moral sense. Every man who is able to exercise his will in law has a legal personality. Now it is quite clear that the State possesses this deliberate will; nay more, that it has the juridical personality in the most complete sense. In State treaties it is the will of the State which is expressed, not the personal desires of the individuals who conclude them, and the treaty is binding as long as the contracting State exists. When a State is incapable of enforcing its will, or of maintaining law and order at home and prestige abroad, it becomes an anomaly and falls a prey either to anarchy or a foreign enemy. The State therefore must have the most emphatic will that can be imagined.

The State has from all time been a legal person. It appears to be so still more clearly in the historico-moral sense. States must be conceived as the great collective personalities of history, thoroughly capable of bearing responsibility and blame. We may even speak of their legal guilt, and still more accurately of their individuality. Even as certain people have certain traits, which they cannot alter however much they try, so also the State has characteristics which cannot be obliterated.

We cannot imagine the Roman State humane, or encouraging Art and Science. It would be an implicit contradiction. Who cannot discern, in the course of German history, that excess of individual strength and violence whose centrifugal tendencies have made it so hard for us to establish a central authority? The State would no longer be what it has been and is, did it not stand visibly girt about with armed might. Sallust said truly that there is nothing more dangerous for a State founded by arms than to discard this essential principle of its strength.

If, then, we regard the State as the great collective personality, it is obviously misleading to look upon it as an organism, as many theorists do. This conception had a certain justification as against the mechanical view which prevailed earlier. In order to emphasize the doctrine that the State develops naturally, as an automatic product of the people's will, it became customary to speak of it as a natural organism. But it is dangerous to import the terminology of one science into another. The talk of organic development in the body politic has too often served as the excuse for indolence. Every one who had no will to will, contented himself with the dictum that these things would "develop organically." We must not eliminate will, that most precious quality of public life.

Treat the State as a person, and the necessary and rational multiplicity of States follows. Just as in individual life the ego implies the existence of the non-ego, so it does in the State. The State is power, precisely in order to assert itself as against other equally independent powers. War and the administration of justice are the chief tasks of even the most barbaric States. But these tasks are only conceivable where a plurality of States are found existing side by side. Thus the idea of one universal empire is odious—the ideal of a State co-extensive with humanity is no ideal at all. In a single State the whole range of culture could never be fully spanned; no single people could unite the virtues of ar-

istocracy and democracy. All nations, like all individuals, have their limitations, but it is exactly in the abundance of these limited qualities that the genius of humanity is exhibited. The rays of the Divine light are manifested, broken by countless facets among the separate peoples, each one exhibiting another picture and another idea of the whole. Every people has a right to believe that certain attributes of the Divine reason are exhibited in it to their fullest perfection.

II. The State as Power

[*Ch. I, cont.*] The rational task of a legally constituted people, conscious of a destiny, is to assert its rank in the world's hierarchy and in its measure to participate in the great civilizing mission of mankind.

Further, if we examine our definition of the State as "the people legally united as an independent entity," we find that it can be more briefly put thus: "The State is the public force for Offence and Defence." It is, above all, Power which makes its will to prevail, it is not the totality of the people as Hegel assumes in his deification of it. The nation is not entirely comprised in the State, but the State protects and embraces the people's life, regulating its external aspects on every side. It does not ask primarily for opinion, but demands obedience, and its laws must be obeyed, whether willingly or no.

A step forward has been taken when the mute obedience of the citizens is transformed into a rational inward assent, but it cannot be said that this is absolutely necessary. Powerful, highly-developed Empires have stood for centuries without its aid. Submission is what the State primarily requires; it insists upon acquiescence; its very essence is the accomplishment of its will. A State which can no longer carry out its purpose collapses in anarchy.

The State is not an Academy of Arts. If it neglects its strength in order to promote the idealistic aspirations of man, it repudiates its own nature and perishes. This is in truth for the State equivalent to the sin against the Holy Ghost.

We have described the State as an independent force. This pregnant theory of independence implies firstly so absolute a moral supremacy that the State cannot legitimately tolerate any power above its own, and secondly a temporal freedom entailing a variety

of material resources adequate to its protection against hostile influences. Legal sovereignty, the State's complete independence of any other earthly power, is so rooted in its nature that it may be said to be its very standard and criterion.

The State is born in a community whenever a group or an individual has achieved sovereignty by imposing its will upon the whole body.

Sovereignty, which is the peculiar attribute of the State, is of necessity supreme, and it is a ridiculous inconsistency to speak of a superior and inferior authority within it. The truth remains that the essence of the State consists in its incompatibility with any power over it. How proudly and truly statesmanlike is Gustavus Adolphus' exclamation, "I recognize no power over me but God and the conqueror's sword." This is so unconditionally true that we see at once that it cannot be the destiny of mankind to form a single State, but that the ideal towards which we strive is a harmonious comity of nations, who, concluding treaties of their own free will, admit restrictions upon their sovereignty without abrogating it.

For the notion of sovereignty must not be rigid, but flexible and relative, like all political conceptions. Every State, in treaty making, will limit its power in certain directions for its own sake. States which conclude treaties with each other thereby curtail their absolute authority to some extent. But the rule still stands, for every treaty is a voluntary curb upon the power of each, and all international agreements are prefaced by the clause "Rebus sic stantibus." No State can pledge its future to another. It knows no arbiter, and draws up all its treaties with this implied reservation. This is supported by the axiom that so long as international law exists all treaties lose their force at the very moment when war is declared between the contracting parties: moreover, every sovereign State has the undoubted right to declare war at its pleasure, and is consequently entitled to repudiate its treaties. Upon this constantly recurring alteration of treaties the progress of history depends; every State must take care that its treaties do not survive their effective value, lest another Power should denounce them by a declaration of war; for antiquated treaties must necessarily be denounced and replaced by others more consonant with circumstances.

It is clear that the international agreements which limit the

power of a State are not absolute, but voluntary self-restrictions. Hence, it follows that the establishment of a permanent Arbitration Court is incompatible with the nature of the State, which could at all events only accept the decision of such a tribunal in cases of second- or third-rate importance. When a nation's existence is at stake there is no outside Power whose impartiality can be trusted. Were we to commit the folly of treating the Alsace-Lorraine problem as an open question, by submitting it to arbitration, who would seriously believe that the award could be impartial? It is, moreover, a point of honour for a State to solve such difficulties for itself. International treaties may indeed become more frequent, but a finally decisive tribunal of the nations is an impossibility. The appeal to arms will be valid until the end of history, and therein lies the sacredness of war.

However flexible the conception of Sovereignty may be we are not to infer from that any self-contradiction, but rather a necessity to establish in what its pith and kernel consists. Legally it lies in the competence to define the limits of its own authority, and politically in the appeal to arms. An unarmed State, incapable of drawing the sword when it sees fit, is subject to one which wields the power of declaring war. A defenceless State may still be termed a Kingdom for conventional or courtly reasons, but science, whose first duty is accuracy, must boldly declare that in point of fact such a country no longer takes rank as a State.

This, then, is the only real criterion. The right of arms distinguishes the State from all other forms of corporate life, and those who cannot take up arms for themselves may not be regarded as States, but only as members of a federated constellation of States. The difference between the Prussian Monarchy and the other German States is here apparent, namely, that the King of Prussia himself wields the supreme command, and therefore Prussia, unlike the others, has not lost its sovereignty.

The other test of sovereignty is the right to determine independently the limits of its power, and herein lies the difference between a federation of States and a Federal State. In the latter the central power is sovereign and can extend its competence according to its judgment, whereas in the former, every individual State is sovereign. The various subordinate countries of Germany are not genuine States; they must at any moment be prepared to see a right, which they possess at present, withdrawn by virtue

of Imperial authority. Since Prussia alone has enough votes on the Federal Council to be in a position to prevent an alteration of the Constitution by its veto, it becomes evident that she cannot be outvoted on such decisive questions. She is therefore, in this second respect also, the only truly sovereign State which remains.

Over and above these two essential factors of the State's sovereignty there belongs to the nature of its independence what Aristotle called "*αὐτάρκεια*," *i.e.*, the capacity to be self-sufficing. This involves firstly that it should consist of a large enough number of families to secure the continuance of the race, and secondly, a certain geographical area. A ship an inch long, as Aristotle truly observes, is not a ship at all, because it is impossible to row it. Again, the State must possess such material resources as put it in a position to vindicate its theoretic independence by force of arms. Here everything depends upon the form of the community to which the State in question belongs. One cannot reckon its quality by its mileage, it must be judged by its proportionate strength compared with other States. The City State of Athens was not a petty State, but stood in the first rank in the hierarchy of nations of antiquity; the same is true of Sparta, and of Florence and Milan in the Middle Ages. But any political community not in a position to assert its native strength as against any given group of neighbours will always be on the verge of losing its characteristics as a State. This has always been the case. Great changes in the art of war have destroyed numberless States. It is because an army of twenty thousand men can only be reckoned to-day as a weak army corps that the small States of Central Europe cannot maintain themselves in the long run.

There are, indeed, States which do not assert themselves positively by virtue of their own strength, but negatively through the exigencies of the balance of power in Europe. Switzerland, Holland, and Belgium are cases in point. They are sustained by the international situation, a foundation which is, however, extremely solid, and so long as the present grouping of the Powers continues Switzerland may look forward to prolonged existence.

The entire development of European polity tends unmistakably to drive the second-rate Powers into the background, and this raises issues of immeasurable gravity for the German nation, in the world outside Europe. Up to the present Germany has always had too small a share of the spoils in the partition of non-European

territories among the Powers of Europe, and yet our existence as a State of the first rank is vitally affected by the question whether we can become a power beyond the seas. If not, there remains the appalling prospect of England and Russia dividing the world between them, and in such a case it is hard to say whether the Russian knout or the English money bags would be the worst alternative.

On close examination then, it becomes clear that if the State is power, only that State which has power realizes its own idea, and this accounts for the undeniably ridiculous element which we discern in the existence of a small State. Weakness is not itself ridiculous, except when masquerading as strength. In small States that puling spirit is hatched, which judges the State by the taxes it levies, and does not perceive that if the State may not enclose and repress like an egg-shell, neither can it protect. Such thinkers fail to understand that the moral benefits for which we are indebted to the State are above all price. It is by generating this form of materialism that small States have so deleterious an effect upon their citizens.

Examining closely, we find that culture in general, and in the widest sense of the word, matures more happily in the broader conditions of powerful countries than within the narrow limits of a little State. It must be obvious that the material resources favourable to Art and Science are more abundant in a large State: and if we inquire of history whether at any time the fairest fruit of human culture has ripened in a genuine petty State, the answer must be that in the normal course of a people's development the zenith of its political power coincides with that of its literary excellence. In this England affords us an enviable example. Chaucer, the poet of the Canterbury Pilgrimage, is contemporaneous with the Black Prince and the other heroic conquerors of France. Then follows another era of political power under Elizabeth, and of literary splendour culminating in Shakespeare. Later, side by side with Cromwell, we find the no less unique figure of the poet Milton. The contemporaries of the War of the Spanish Succession are Addison and the prose writers, who gave to modern English literature its peculiar characteristics, and directed it towards the novel of manners and the study of realism in fiction. During the struggle with the French Revolution, England produced Walter Scott and Byron as well as Nelson. It is

apparent from all this that the development has been a remarkably happy one.

III. The Nature of Society

[*Ch. I, cont.*] We come now to consider the last point which arises out of our definition of the State as the people legally united as an independent entity. Rightly to understand this proposition we must tackle the conception of civil society. That society is the whole range of the conditions of mutual interdependence which are implied in the natural inequality of man and the unequal division of property and attainments; which are daily reshaped by human intercourse into unending manifestations which include family relations, economic conditions, and class rivalries, to say nothing of all the groupings which spring from ecclesiastical, artistic, and scientific life. Among all these the economic conditions are of the chief importance to the State, inasmuch as they, like itself, belong to the sphere of external existence, while religion, art, and science lead a more intimate life, and therefore are less dependent on the State.

When we examine more closely the whole fabric of these conditions of mutual interdependence which we call society we find that under all its forms it tends naturally towards aristocracy. The Social Democrats imply in their very title the absurdity of their aspirations. Just as the State pre-supposes an irremovable distinction between those in whom authority is vested and those who must submit to it, so also does the nature of society imply differences of social standing and economic condition amongst its members. In short, all social life is built upon class organization. Wise legislation may prevent it from being oppressive and make the transition from class to class as easy as possible, but no power on earth will ever be able to substitute a new and artificial organization of society for the distinctions between its groups which have arisen naturally and automatically.

It is a fundamental rule of human nature that the largest portion of the energy of the human race must be consumed in supplying the primary necessities of existence. The chief aim of a savage's life is to make that life secure, and mankind is by nature so frail and needy that the immense majority of men, even on the higher levels of culture must always and everywhere devote themselves to bread-winning and the material cares of life. To put it simply:

the masses must for ever remain the masses. There would be no culture without kitchen-maids.

Obviously education could never thrive if there was nobody to do the rough work. Millions must plough and forge and dig in order that a few thousands may write and paint and study.

It sounds harsh, but it is true for all time, and whining and complaining can never alter it. Moreover the outcry against it does not spring from love of humanity but from the materialism and modern conceit of education. It is profoundly untrue to regard education as the essential factor in history, or as the rock on which human happiness is founded. Would it not be monstrous to maintain that women are less happy than men? Does the superior learning of the savant place him on a higher plane than the labourer? Personally I am not imbued with this arrogance of learning, and truly great natures have never been tainted with it. Happiness is not to be sought in intellectual attainments, but in the hidden treasures of the heart, in the strength of love and of an easy conscience, which are accessible to the humble as well as to the great.

It is precisely in the differentiation of classes that the moral wealth of mankind is exhibited. The virtues of wealth stand side by side with those of poverty, with which we neither could nor should dispense, and which by their vigour and sincerity put to shame the jaded victim of over-culture. There is a hearty joy in living which can only flourish under simple conditions of life. Herein we find a remarkable equalization of the apparently cruel classifications of society. Want is a relative conception. It is the task of government to reduce and mitigate distress, but its abolition is neither possible nor desirable. The economy of Nature has here set definite limits upon human endeavour, and on the other hand man's pleasure in life is so overwhelming that a healthy race will increase and spread wherever there is space for them.

Let us hear no clap-trap about the disinherited. No doubt there have been times when those in possession have grossly abused their power, but as a rule the social balance is kept.

There must be give and take between the higher and the lower grades of society, and in fact there is. The artisan can only pursue his craft by means of the upper classes, and it is the wholesale contractors who virtually direct labour.

From all this a result emerges which closer examination will

verify: that there is in fact no actual entity corresponding to the abstract conception of civil society which exists in the brain of the student. Where do we find its concrete embodiment? Nowhere. Any one can see for himself that society, unlike the State, is intangible. We know the State as a unit, and not as a mythical personality. Society, however, has no single will, and we have no duties to fulfil towards it. In all my life I have never once thought of my moral obligations towards society, but I think constantly of my countrymen, whom I seek to honour as much as I can. Therefore, when a savant like Jhering talks of the ethical aim which society is supposed to have set itself, he falls into a logical error. Society is composed of all manner of warring interests, which if left to themselves would soon lead to a *bellum omnium contra omnes*, for its natural tendency is towards conflict, and no suggestion of any aspiration after unity is to be found in it.

The most terrible of all wars are those provoked by social differences. This is taught by the Slave Wars of Rome, by the Peasant Wars of the Middle Ages, and in our own times by the conflagration of the Commune. Social passions once let loose are always appallingly fierce and foolish, and no class can boast of being superior to another in this respect.

IV. Society and the State

[*Ch. I, cont.*] It is then clear that society takes a thousand forms, and consequently that social science cannot be separated from political science. We can indeed treat the science of economics as an intellectual abstraction, but if we survey society with its struggles and its groupings, including those which are not economic in their nature, we find ourselves once more in presence of the State. For that is the legal unity which counterbalances this multiplicity of interests, and it is only playing with words to speak of political and social science as two separate things. Law and peace and order cannot spring from the manifold and eternally clashing interests of society, but from the power which stands above it, armed with the strength to restrain its wild passions. It is here that we first get a clear idea of what we may speak of as the moral sanctity of the State. The State it is which brings justice and mercy into this struggling world.

If we inspect more closely the mutual relations of State and society we find a continual interaction between them, involving

the subtlest scientific problems. The ideal aim is that the two should be commensurate, and that every living social force should find that place within the constituted order of things, which its importance demands. But this ideal can never be realized because society always lives and grows faster than the State.

Further there is a natural distinction between the social and the political conception of the State. It may be regarded from above from the point of view of government, and the question asked, "What safeguards its authority?" In pursuing this political train of thought the question of individual happiness is relegated to the second rank. On the other hand the social point of view looks upon the State with naïve egotism, and points clamorously to the new social forces for which it has not yet legislated. Everything which our century terms Liberalism tends towards the social view of the State. Were it the only one, were it not confronted by a stern political conception, the framework of our nationality would simply collapse, and Germany be disintegrated by the warring of innumerable social groups.

There are peoples whose entire existence is coloured and shaped by their relation to the State, others again in which the social outlook predominates. Broadly speaking, modern nations fall into the latter category, in contradistinction to the politically-minded communities of the ancient world. The difference between the two attitudes is very marked, even within a given epoch, and it is very curious to observe how the excess of either tendency may ruin a people. Thus did the gifted Spanish race drain its life-blood for the political idea of the supremacy of the Church. We cannot contemplate such stupendous political idealism without a kind of horror-stricken admiration. The moral dignity of labour was repudiated on principle, and thereby the country was ruined to such an extent that the catastrophe was instantaneous.

In modern history we more often see the momentous results of the exclusively social attitude of mind. The nation which lives only to justify those social appetites, whose only wish is to grow richer and to live more comfortably, must inevitably fall a prey to the lowest propensities of nature. What a glorious people were the Dutch in the days of their struggle against the power of Spain! But scarcely was their independence secured before the corroding influence of peace began to eat into their hearts. Misfortune is a tonic to noble nations, but in continued prosperity

even they run the risk of enervation. In this way the once courageous race of Holland have deteriorated physically as well as morally by becoming mere money-grubbers. This is the Nemesis of a people which spends itself entirely in social life and loses the sense of its political greatness.

A certain balance between political and social activity is the ideal. A people generally takes care of itself in this respect, and at intervals which defeat calculation reconstitutes itself by war. War is Politics κατ' ἐξοχήν.[2] Again and again it has been proved that it is war which turns a people into a nation, and that only great deeds, wrought in common, can forge the indissoluble links which bind them together. But the same reinvigorating force which war from time to time carries with it, is brought into daily life by a liberal Constitution, and here it is especially noteworthy that local self-government maintains better the balance of social and political activity than a Parliamentary activity can do. Self-government enlists the best elements in the community in the daily service of the State, and is thus of infinite value. Self-administered local bodies prepare the community, which would otherwise be disintegrated by the egotism of purely social activities, for political work towards a common end.

The interaction between State and society is infinitely complex, illogical and intricate. Human existence is not adapted to being woven by theorists into a flawless system. There are social forces which embody the idea of beauty or devote themselves to the search for truth, but however exalted the aims of these social efforts may be it is the common characteristic of them all to remain unsatisfied with the attained, and to be filled with the spirit of over-weening, the πλεονεξία. None of them, not even the Church, have the instinct of a mathematical equality in their conception of justice. The State alone can be universally and genuinely just, and this because it concerns itself with external order alone. Under primitive conditions it frequently happens that a particular class absorbs the governing power to such an extent that the State never attains to the consciousness of its duty to stand above social antagonisms. This is undoubtedly true of the Middle Ages. It was at a very late stage that the State began to realize that it was something more than the tool of a particular class. The more the conditions of its power make it independent of any social

[2] *Par excellence.* (Present editor's note.)

class, the more capable will it be of meting out justice to every one of them. All civil society is, as we have seen, aristocratic by nature. A monarchy as well as an aristocracy becomes part of this naturally ordained aristocratic division, while all democracy is rooted in a contradiction of nature, because it premises a universal equality which is nowhere actually existent.

When we draw our conclusions from all the foregoing we shall not follow Hegel in pronouncing the State to be absolutely the people's life.

In the State he saw the moral idea realized, which is able to accomplish whatever it may desire. Now the State, as we have seen, is not the whole of a nation's life, for its function is only to surround the whole, regulating and protecting it. When the Hegelian Philosophy was at its zenith, a number of gifted men tried to make out that the State, like the Leviathan, should swallow up everything. The modern man will not find this idea easy to accept. The State can only work by an outward compulsion: it is only the people as a force; but in saying this we express an endlessly wide and great ideal, for the State is not only the arena for the great primitive forces of human nature, it is also the framework of all national life. In short, a people which is not in a position to create and maintain under the wing of the State an external organization of its own intellectual existence deserves to perish. The Jewish race affords the most tragic example of a richly gifted nation, who were incapable of defending their State, and are now scattered to the ends of the earth. Their life is crippled, for no man can belong to two nations at once. The State, therefore, is not only a high moral good in itself, but is also the assurance for the people's endurance. Only through it can their moral development be perfected, for the living sense of citizenship inspires the community in the same way as a sense of duty inspires the individual.

CHAPTER VIII. FOUNDATIONS OF SOCIALISM

I. UTOPIAN SOCIALISM

Report to the Committee for the Relief of the Manufacturing Poor (1817)

A New View of Society (1813)

Robert Owen (1771–1858)

As the consequences of the Industrial Revolution worked themselves out in contrasts of disproportionate wealth and degraded poverty, economic considerations necessarily began to affect political philosophy. Late nineteenth century writers of the most diverse schools—the individualist Spencer, the idealist Bosanquet, and the nationalist Treitschke—alike felt constrained to discuss the relationship of the state to economic welfare. Meanwhile, the Industrial Revolution had already led to the rise of a new brand of political thought with no eighteenth century counterpart. When economic justice began to appear the only justice worth the name, modern socialism came to birth.

The communism of Plato's *Republic* and of Christian monasticism was designed to benefit those previously cumbered by riches, but it was the misery of the propertyless that inspired nineteenth century socialism of both the philanthropic and the proletarian schools. Of the two, the earlier was the humanitarian variety. Altruistic reformers sought to convert the world through the example of successful socialistic communities and not unnaturally received the nickname of Utopians. Robert Owen, the foremost English Utopian, was not even consciously a socialist like the contemporary French Saint-Simon and Fourier. He was merely attempting to ameliorate the distress that was particularly pronounced in the depression following the Napoleonic wars.

Of humble parentage and without schooling beyond the age of nine, Owen became one of the self-made capitalists of the era of the Industrial Revolution. As managing partner in great cotton mills at New Lanark on the Clyde in Scotland, he put many of his Utopian theories into practical operation in the "New Institution" described in his *New View of Society* (1813). His cherished scheme for unemployment relief through coöperative villages—described in his *Report to the Committee for the Relief of the Manufacturing Poor* (1817)—was rejected by the parliamentary committee examining the Poor Laws, but attracted much favorable attention until Owen made a public denunciation of religion as an obstacle to social progress. Owen later turned to America, where he bought a vast expanse of land in Indiana and established the coöperative

colony of "New Harmony," whose failure cost him four-fifths of his fortune. On his return to England he began for the first time to appeal to the common people for support, and played a conspicuous part in the formation of coöperative societies and in the infant trade union movement. In his last years he withdrew from the labor movement and fell back on the propagation of his fundamental principle that "Man's character is made for him, not by him." Of his many writings the most significant, in addition to those already mentioned, is his *Report to the County of Lanark* (1821).

The readings here given are based on the text in the Everyman edition of *A New View of Society and Other Writings* edited by G. D. H. Cole (E. P. Dutton and Company, New York, 1927), and are reprinted by permission of E. P. Dutton and Company as the American publishers of Everyman's Library.

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REPORT TO THE COMMITTEE FOR THE RELIEF OF THE MANUFACTURING POOR

I. The Need for Relief of the Poor

My Lords and Gentlemen,

Having been requested by you to draw up a detailed Report of a Plan for the general Relief of the Manufacturing and Labouring Poor, I have the honour to submit the following.

The immediate cause of the present distress is the depreciation of human labour. This has been occasioned by the general introduction of mechanism into the manufactures of Europe and America, but principally into those of Britain, where the change was greatly accelerated by the inventions of Arkwright and Watt.

The introduction of mechanism into the manufacture of objects

of desire in society reduced their price; the reduction of price increased the demand for them, and generally to so great an extent as to occasion more human labour to be employed after the introduction of machinery than had been employed before.

The first effects of these new mechanical combinations were to increase individual wealth, and to give a new stimulus to further inventions.

Now, however, new circumstances have arisen. The war demand for the productions of labour having ceased, markets could no longer be found for them; and the revenues of the world were inadequate to purchase that which a power so enormous in its effects did produce; a diminished demand consequently followed. When, therefore, it became necessary to contract the sources of supply, it soon proved that mechanical power was much cheaper than human labour; the former, in consequence, was continued at work, while the latter was superseded; and human labour may now be obtained at a price far less than is absolutely necessary for the subsistence of the individual in ordinary comfort.

A little reflection will show that the working classes have now no adequate means of contending with mechanical power; one of three results must therefore ensue:—

1. The use of mechanism must be greatly diminished; or,
2. Millions of human beings must be starved, to permit its existence to the present extent; or,
3. Advantageous occupation must be found for the poor and unemployed working classes, to whose labour mechanism must be rendered subservient, instead of being applied, as at present, to supersede it.

But under the existing commercial system, mechanical power could not in one country be discontinued, and in others remain in action, without ruin to that country in which it should be discontinued. No one nation, therefore, will discontinue it; and although such an act were possible, it would be a sure sign of barbarism, in those who should make the attempt. It would, however, be a far more evident sign of barbarism, and an act of gross tyranny, were any government to permit mechanical power to starve millions of human beings. The thought will not admit of one moment's contemplation; it would inevitably create unheard-of misery to all ranks. The last result therefore alone deserves to be considered, which is, "that advantageous occupation must be found for the unemployed working classes, to whose labour mechanism

must be rendered subservient, instead of being applied, as at present, to supersede it."

The circumstances of the times render a change in our internal policy respecting the poor and working classes absolutely necessary; and the first question to be decided by every man of all ranks is, Shall the alteration be made under the guidance of moderation and wisdom, foreseeing and gradually preparing each step, one regularly after another, thereby preventing a single premature advance—or shall the change be effected by ignorance and prejudice, under the baneful influence of the angry and violent passions? Should these prevail, then will the truly disinterested, those whose ardent wish is to ameliorate the condition of mankind, withdraw from the contest, and society be involved in confusion. But, surely, the experience of past ages will have taught men wisdom, and prepared the minds of all for a calm and dispassionate inquiry—how the evils which at present afflict society can best be remedied.

I proceed, therefore, with the subject, and shall endeavour to show in what manner advantageous employment can be found for all the poor and working classes, under an arrangement which will permit mechanical improvements to be carried to any extent.

Under the existing laws, the unemployed working classes are maintained by, and consume part of, the property and produce of the wealthy and industrious, while their powers of body and mind remain unproductive. They frequently acquire the bad habits which ignorance and idleness never fail to produce; they amalgamate with the regular poor, and become a nuisance to society.

Most of the poor have received bad and vicious habits from their parents; and so long as their present treatment continues, those bad and vicious habits will be transmitted to their children and, through them, to succeeding generations.

Any plan, then, to ameliorate their condition, must prevent bad and vicious habits from being taught to their children, and provide the means by which only good and useful ones may be given to them.

The labour of some individuals is far more valuable than that of others; and this arises principally from the training and instruction they receive.

Means should therefore be devised to give the most useful training and instruction to the children of the poor.

The same quantity and quality of labour, under one direction, will produce a much more valuable result than under another.

It is necessary, then, that the labour of the poor should be exerted under the best.

One mode of management as to their expenditure will create many more advantages and comforts than another.

Such arrangements should, therefore, be made in this department as would produce the largest benefits at the smallest expense.

Most of the vices and misery of the poor arise from their being placed under circumstances in which their apparent interest and their apparent duty are opposed to each other, and in consequence of their being surrounded by unnecessary temptations which they had not been trained to overcome.

It would, therefore, be a material improvement in the management of the poor, to place them under such circumstances as would obviously unite their real interest and duty, and remove them from unnecessary temptation.

Under this view of the subject, any plan for the amelioration of the poor should combine means to prevent their children from acquiring bad habits, and to give them good ones—to provide useful training and instruction for them—to provide proper labour for the adults—to direct their labour and expenditure so as to produce the greatest benefit to themselves and to society; and to place them under such circumstances as shall remove them from unnecessary temptations, and closely unite their interest and duty.

These advantages cannot be given either to individuals or to families separately, or to large congregated numbers.

They can be effectually introduced into practice only under arrangements that would unite in one establishment a population of from 500 to 1,500 persons, averaging about 1,000.

II. A Practical Plan for Relief

I now submit to the Committee the following plan, founded on the foregoing principles, which, it is presumed, will combine all the advantages that have been enumerated, and, in progress of time, lead to many others of equal importance.

As the seeming novelty of the plan might possibly induce a hasty or premature decision respecting it on the part of those who

have not had much practical experience among the poor, or who may be under the influence of some favourite theory of political economy, to which it might appear to be opposed, I beg to submit it as the result of daily experience among the poor and working classes, on an extensive scale, for twenty-five years; [1] and during which the most unceasing attention has been directed to discover the primary causes of their poverty and misery, and the best means of providing a remedy for both.

I beg leave to solicit the attention of the Committee to the drawings and explanations which accompany this Report.

The drawing exhibits, in the foreground, an establishment, with its appendages and appropriate quantity of land; and at due distances, other villages of a similar description.

Squares of buildings are here represented sufficient to accommodate about 1,200 persons each; and surrounded by a quantity of land, from 1,000 to 1,500 acres.

Within the squares are public buildings, which divide them into parallelograms.

The central building contains a public kitchen, mess-rooms, and all the accommodation necessary to economical and comfortable cooking and eating.

To the right of this is a building, of which the ground floor will form the infant school, and the other a lecture-room and a place of worship.

The building to the left contains a school for the elder children, and a committee-room on the ground floor; above, a library and a room for adults.

In the vacant space within the squares are enclosed grounds for exercise and recreation: these enclosures are supposed to have trees planted in them.

It is intended that three sides of each square shall be lodging houses, chiefly for the married, consisting of four rooms in each; each room to be sufficiently large to accommodate a man, his wife, and two children.

The fourth side is designed for dormitories for all the children exceeding two in a family, or above three years of age.

In the centre of this side of the square are apartments for those who superintend the dormitories; at one extremity of it the in-

[1] This experience is described in the accompanying selection from *A New View of Society*. (Present editor's note.)

firmary; and at the other a building for the accommodation of strangers who may come from a distance to see their friends and relatives.

In the centres of two sides of the square are apartments for the general superintendents, clergyman, schoolmasters, surgeon, etc.; and in the third are store-rooms for all the articles required for the use of the establishment.

On the outside, and at the back of the houses around the squares, are gardens, bounded by roads.

Immediately beyond these, on one side, are buildings for mechanical and manufacturing purposes. The slaughter-house, stabling, etc., to be separated from the establishment by plantations.

At the other side are offices for washing, bleaching, etc.; and at a still greater distance from the squares, are some of the farming establishments, with conveniences for malting, brewing, and corn-mills, etc.; around these are cultivated enclosures, pasture-land, etc., the hedgerows of which are planted with fruit-trees.

The plan represented is on a scale considered to be sufficient to accommodate about 1,200 persons.

And these are to be supposed men, women, and children, of all ages, capacities, and dispositions; most of them very ignorant; many with bad and vicious habits, possessing only the ordinary bodily and mental faculties of human beings, and who require to be supported out of the funds appropriated to the maintenance of the poor—individuals who are at present not only useless and a direct burthen on the public, but whose moral influence is highly pernicious, since they are the medium by which ignorance and certain classes of vicious habits and crimes are fostered and perpetuated in society.

It is evident that while the poor are suffered to remain under the circumstances in which they have hitherto existed, they and their children, with very few exceptions, will continue unaltered in succeeding generations.

In order to effect any radically beneficial change in their character, they must be removed from the influence of such circumstances, and placed under those which, being congenial to the natural constitution of man and the well-being of society, cannot fail to produce that amelioration in their condition which all classes have so great an interest in promoting.

Such circumstances, after incessant application to the subject,

I have endeavoured to combine in the arrangement of the establishment represented in the drawings, so far as the present state of society will permit. These I will now attempt to explain more particularly.

Each lodging-room within the squares is to accommodate a man, his wife, and two children under three years of age; and to be such as will permit them to have much more comforts than the dwellings of the poor usually afford.

It is intended that the children above three years of age should attend the school, eat in the mess-room, and sleep in the dormitories; the parents being, of course, permitted to see and converse with them at meals and all other proper times;—that before they leave school they shall be well instructed in all necessary and useful knowledge;—that every possible means shall be adopted to prevent the acquirement of bad habits from their parents or otherwise;—that no pains shall be spared to impress upon them such habits and dispositions as may be most conducive to their happiness through life, as well as render them useful and valuable members of the community to which they belong.

It is proposed that the women should be employed—

First,—In the care of their infants, and in keeping their dwellings in the best order.

Second,—In cultivating the gardens to raise vegetables for the supply of the public kitchen.

Third,—In attending to such of the branches of the various manufactures as women can well undertake; but not to be employed in them more than four or five hours in the day.

Fourth,—In making up clothing for the inmates of the establishment.

Fifth,—In attending occasionally, and in rotation, in the public kitchen, mess-rooms, and dormitories; and, when properly instructed, in superintending some parts of the education of the children in the schools.

It is proposed that the elder children should be trained to assist in gardening and manufacturing for a portion of the day, according to their strength; and that the men should be employed, all of them, in agriculture, and also in manufactures, or in some other occupation for the benefit of the establishment.

The ignorance of the poor, their ill-training, and their want of a rational education make it necessary that those of the present generation should be actively and regularly occupied through the day in some essentially useful work; yet in such a manner as

that their employment should be healthy and productive. The plan which has been described will most amply admit of this.

III. The Establishment of the Plan

In order to offer some practical idea of the expenses that would be incurred in founding such an establishment for 1,200 souls, the following items are submitted.

Schedule of Expenses for Forming an Establishment for 1,200 Men, Women, and Children

(*If the land be purchased*)

1,200 acres of land, at 30*l.* per acre	£36,000
Lodging apartments for 1,200 persons.	17,000
Three public buildings within the square.	11,000
Manufactory, slaughter-house, and washing-house.	8,000
Furnishing 300 lodging-rooms, at 8*l.* each.	2,400
Furnishing kitchen, schools, and dormitories.	3,000
Two farming establishments, with corn-mill and malting and brewing appendages.	5,000
Making the interior of the square and roads.	3,000
Stock for the farm under spade cultivation.	4,000
Contingencies and extras.	6,600
	£96,000

This sum, being divided by 1,200, gives a capital to be advanced of 80*l.* per head; or, at 5 per cent. per annum, 4*l.* each per year.

Thus, at so small an expense as a rental of 4*l.* per head, may the unemployed poor be put in a condition to maintain themselves; and, as may be easily conceived, quickly to repay the capital advanced, if thought necessary.

But, if the land be rented, only 60,000*l.* capital would be required.

There are several modes by which this plan may be effected.

It may be accomplished by individuals,—by parishes,—by counties,—by districts, &c., comprising more counties than one,—and by the nation at large, through its Government. Some may prefer one mode, some another; and it would be advantageous certainly to have the experience of the greatest variety of particular modes, in order that the plan which such diversified practice should prove to be the best might afterwards be generally adopted. It may therefore be put into execution by any parties according to their own localities and views.

It is impossible to find language sufficiently strong to express the

inconsistency, as well as the injustice, of our present proceedings towards the poor and working classes. They are left in gross ignorance; they are permitted to be trained up in habits of vice, and in the commission of crimes; and, as if purposely to keep them in ignorance and vice, and goad them on to commit criminal acts, they are perpetually surrounded with temptations which cannot fail to produce all those effects.

The system, or rather want of system, which exists with regard to the management of the poor, has been emphatically condemned by a long and painful experience.

The immense sums annually raised for their relief are lavished in utter disregard of every principle of public justice or economy. They offer greater rewards for idleness and vice than for industry and virtue; and thus directly operate to increase the degradation and misery of the classes whom they are designed to serve. No sum, however enormous, administered after this manner, could be productive of any other result: rather will pauperism and wretchedness increase along with the increase of an expenditure thus applied.

The poor and unemployed working classes, however, cannot, must not, be abandoned to their fate, lest the consequences entail misfortune on us all.

It may be hoped, that the Government of this country is now sufficiently alive to the necessity of abandoning the principle on which all our legislative measures on this subject have hitherto proceeded; for nothing short of this can place the empire in permanent safety. Until the preventive principles shall become the basis of legislative proceedings, it will be vain to look for any measures beyond partial temporary expedients, which will leave society unimproved, or involve it in a much worse state.

If such should be the conviction of Government, the change proposed in the management of the poor and unemployed working classes will be much better directed nationally than privately.

In fact, many of the benefits to be derived to society at large will not be realized until the plan becomes national.

Should the practical outline which is now submitted be approved, and engage the attention of Parliament, the next consideration would be, in what manner it may be carried into effect with the least loss of time, and without immediate or future injury to the resources of the country.

The money necessary for founding establishments on the principle of the plan now proposed, may be obtained by consolidating the funds of some of the public charities; by equalizing the poor rates and borrowing on their security. The poor, including those belonging to public charities, should be made national.

A summary of the advantages to be derived from the execution of such a plan may be presented under the following heads:

1. Expensive as such a system for the unemployed poor may appear to a superficial observer, it will be found, on mature investigation by those who understand all the consequences of such a combination, to be by far the most economical that has yet been devised.

2. Many of the unemployed poor are now in a state of gross ignorance, and have been trained in bad habits; evils which, under the present system, are likely to continue for endless generations. The arrangements proposed offer the most certain means, in a manner gratifying to all the parties interested, and to every liberal mind, of overcoming both their ignorance and their bad habits in one generation.

3. The greatest evils in society arise from mankind being trained in principles of disunion. The proposed measures offer to unite men in the pursuit of common objects for their mutual benefit, by presenting an easy practicable plan for gradually withdrawing the causes of difference among individuals, and making their interest and duty very generally the same.

4. This system will also afford the most simple and effectual means of giving the best habits and sentiments to all the children of the unemployed poor, accordingly as society shall be able to determine what habits and sentiments, or what character, ought to be given to them.

5. It will likewise offer the most powerful means of improving the habits and conduct of the present unemployed adult poor, who have been grossly neglected by society from their infancy.

6. Owing to the peculiar arrangement of the plan, it will give to the poor, in return for their labour, more valuable, substantial, and permanent comfort than they have ever yet been able to obtain.

7. In one generation it will supersede the necessity for poor-rates or any pecuniary gifts of charity, by preventing any one from being poor or subject to such unnecessary degradation.

8. It will offer the means of gradually increasing the population in unpopulous districts of Europe and America in which such increase may be deemed necessary, and of enabling a much greater population to subsist in comfort on a given spot, if requisite, than existed before; in short, of increasing the strength and political power of the country in which it shall be adopted more than tenfold.

9. It is so easy, that it may be put into practice with less ability and exertion than are necessary to establish a new manufacture in a new situation. Many individuals of ordinary talent have formed establishments which possess combinations much more complex. In fact, there would not be anything required which is not daily performed in common society, and which, under the proposed arrangement, might not be much more easily accomplished.

10. It will effectually relieve the manufacturing and labouring poor from their present deep distress, without violently or prematurely interfering with the existing institutions of society.

11. It will permit mechanical inventions and improvements to be carried to any extent; for by the proposed arrangement every improvement in mechanism would be rendered subservient to and in aid of human labour.

12. And lastly, every part of society would be essentially benefited by this change in the condition of the poor.

Some plan founded on such principles as have been developed herein, appears absolutely necessary, to secure the well-being of society, as well as to prevent the afflicting spectacle of thousands pining in want amidst a superabundance of means to well train, educate, employ, and support in comfort a population of at least four times our present numbers.

A NEW VIEW OF SOCIETY

I. The Experiment at New Lanark

[*Second Essay.*] In the year 1784 the late Mr. Dale, of Glasgow, founded a manufactory for spinning of cotton, near the falls of the Clyde, in the county of Lanark, in Scotland; and about that period cotton mills were first introduced into the northern part of the kingdom.

It was necessary to collect a new population to supply the infant establishment with labourers. This, however, was no light task;

for all the regularly trained Scotch peasantry disdained the idea of working early and late, day after day, within cotton mills. Two modes then only remained of obtaining these labourers; the one, to procure children from the various public charities of the country; and the other, to induce families to settle around the works.

To accommodate the first, a large house was erected, which ultimately contained about five hundred children, who were procured chiefly from workhouses and charities in Edinburgh. These children were to be fed, clothed, and educated.

To obtain the second, a village was built; and the houses were let at a low rent to such families as could be induced to accept employment in the mills; but such was the general dislike to that occupation at the time, that, with a few exceptions, only persons destitute of friends, employment, and character, were found willing to try the experiment; and of these a sufficient number to supply a constant increase of the manufactory could not be obtained.

Those who have a practical knowledge of mankind will readily anticipate the character which a population so collected and constituted would acquire. The population lived in idleness, in poverty, in almost every kind of crime; consequently, in debt, out of health, and in misery.

The boarding-house containing the children presented a very different scene. The benevolent proprietor spared no expense to give comfort to the poor children. The rooms provided for them were spacious, always clean, and well ventilated; the food was abundant, and of the best quality; the clothes were neat and useful; a surgeon was kept in constant pay, to direct how to prevent or cure disease; and the best instructors which the country afforded were appointed to teach such branches of education as were deemed likely to be useful to children in their situation. Kind and well-disposed persons were appointed to superintend all their proceedings. Nothing, in short, at first sight seemed wanting to render it a most complete charity.

But to defray the expense of these well-devised arrangements, and to support the establishment generally, it was absolutely necessary that the children should be employed within the mills from six o'clock in the morning till seven in the evening, summer and winter; and after these hours their education commenced. The directors of the public charities, from mistaken economy,

would not consent to send the children under their care to cotton mills, unless the children were received by the proprietors at the ages of six, seven, and eight.

It is not to be supposed that children so young could remain, with the intervals of meals only, from six in the morning until seven in the evening, in constant employment, on their feet, within cotton mills, and afterwards acquire much proficiency in education. And so it proved; for many of them became dwarfs in body and mind, and some of them were deformed. Their labour through the day and their education at night, became so irksome, that numbers of them continually ran away, and almost all looked forward with impatience and anxiety to the expiration of their apprenticeship of seven, eight, and nine years.

The error proceeded from the children being sent from the workhouses at an age much too young for employment. They ought to have been detained four years longer, and educated; and then some of the evils which followed would have been prevented.

If such be a true picture, not overcharged, of parish apprentices to our manufacturing system, under the best and most humane regulations, in what colours must it be exhibited under the worst?

Mr. Dale was advancing in years: he had no son to succeed him; and, finding the consequences just described to be the result of all his strenuous exertions, it is not surprising that he became disposed to retire from the cares of the establishment. He accordingly sold it to some English merchants and manufacturers; one [1] of whom, under the circumstances just narrated, undertook the management of the concern, and fixed his residence in the midst of the population.

At that time the lower classes in Scotland had strong prejudices against strangers having any authority over them, and particularly against the English. The persons employed at these works were therefore strongly prejudiced against the new director of the establishment.

In consequence, from the day he arrived amongst them every means which ingenuity could devise was set to work to counteract the plan which he attempted to introduce; and for two years it was a regular attack and defence of prejudices and malpractices between the manager and the population of the place, without the

[1] This was, of course, Robert Owen, who was Mr. Dale's son-in-law. (Present editor's note.)

former being able to make much progress, or convince the latter of the sincerity of his good intentions for their welfare.

Here then was a fair field on which to try the efficacy in practice of principles supposed capable of altering any characters. The manager formed his plans accordingly. He spent some time in finding out the full extent of the evil against which he had to contend, and in tracing the true causes which had produced and were continuing those effects. He soon discovered that theft was extended through almost all the ramifications of the community, and the receipt of stolen goods through all the country around. To remedy this evil, not one legal punishment was inflicted, not one individual imprisoned; but checks and other regulations of prevention were introduced; a short plain explanation of the immediate benefits they would derive from a different conduct was inculcated by those instructed for the purpose, who had the best powers of reasoning among themselves. They were at the same time instructed how to direct their industry in legal and useful occupations, by which, without danger or disgrace, they could really earn more than they had previously obtained by dishonest practices. Thus the difficulty of committing the crime was increased, the detection afterwards rendered more easy, the habit of honest industry formed, and the pleasure of good conduct experienced.

Drunkenness was attacked in the same manner; pot and public houses were gradually removed from the immediate vicinity of their dwellings; the health and comfort of temperance were made familiar to them: by degrees drunkenness disappeared, and many who were habitual bacchanalians are now conspicuous for undeviating sobriety.

Falsehood and deception met with a similar fate; they were held in disgrace; their practical evils were shortly explained; and every countenance was given to truth and open conduct. The pleasure and substantial advantages derived from the latter soon overcame the impolicy, error, and consequent misery, which the former mode of acting had created.

The system of receiving apprentices from public charities was abolished; permanent settlers with large families were encouraged, and comfortable houses were built for their accommodation.

The practice of employing children in the mills, of six, seven, and eight years of age, was discontinued, and their parents advised

to allow them to acquire health and education until they were ten years old. (It may be remarked, that even this age is too early to keep them at constant employment in manufactories.)

The children were taught reading, writing, and arithmetic, during five years, that is, from five to ten, in the village school, without expense to their parents. All the modern improvements in education have been adopted, or are in the process of adoption. All their instruction is rendered a pleasure and delight to them; they are much more anxious for the hour of school-time to arrive than to end; they therefore make a rapid progress.

During the period that these changes were going forward, attention was given to the domestic arrangements of the community.

Their houses were rendered more comfortable, their streets were improved, the best provisions were purchased, and sold to them at low rates, yet covering the original expense, and under such regulations as taught them how to proportion their expenditure to their income. Fuel and clothes were obtained for them in the same manner; and no advantage was attempted to be taken of them, or means used to deceive them.

They were taught to be rational, and they acted rationally. Thus both parties experienced the incalculable advantages of the system which had been adopted. Those employed became industrious, temperate, healthy, faithful to their employers, and kind to each other; while the proprietors were deriving services from their attachment, almost without inspection, far beyond those which could be obtained by any other means than those of mutual confidence and kindness.

II. The New Institution

[*Third Essay.*] It was in this stage of the progress of improvement, that it became necessary to form arrangements which should gradually prepare the individuals to receive and firmly retain domestic and social acquirements and habits. For this purpose a building, which may be termed the "New Institution," was erected in the centre of the establishment, with an inclosed area before it. The area is intended for a playground for the children of the villagers, from the time they can walk alone until they enter the school.

Into this playground the children are to be received as soon as

they can freely walk alone; to be superintended by persons instructed to take charge of them.

This part of the arrangement, therefore, will effect the following purposes:

The child will be removed, so far as is at present practicable, from the erroneous treatment of the yet untrained and untaught parents.

The parents will be relieved from the loss of time and from the care and anxiety which are now occasioned by attendance on their children from the period when they can go alone to that at which they enter the school.

The child will be placed in a situation of safety, where, with its future school-fellows and companions, it will acquire the best habits and principles, while at meal times and at night it will return to the caresses of its parents; and the affections of each are likely to be increased by the separation.

The area is also to be a place of meeting for the children from five to ten years of age, previous to and after school-hours, and to serve for a drill ground, the object of which will be hereafter explained; and a shade will be formed, under which in stormy weather the children may retire for shelter.

Those who have derived a knowledge of human nature from observation, know, that man in every situation requires relaxation from his constant and regular occupations, whatever they be: and that if he shall not be provided with or permitted to enjoy innocent and uninjurious amusements, he must and will partake of those which he can obtain, to give him temporary relief from his exertions, although the means of gaining that relief should be most pernicious.

In summer, the inhabitants of the village of New Lanark have their gardens and potato grounds to cultivate; they have walks laid out to give them health and the habit of being gratified with the ever-changing scenes of nature;—for those scenes afford not only the most economical, but also the most innocent pleasures which man can enjoy; and all men may be easily trained to enjoy them.

In winter the community are deprived of these healthy occupations and amusements; they are employed ten hours and three quarters every day in the week, except Sunday, and generally every individual continues during that time at the same work: and experience has shown that the average health and spirits of

the community are several degrees lower in winter than in summer; and this in part may be fairly attributed to that cause.

These considerations suggested the necessity of rooms for innocent amusements and rational recreation.

The uppermost story of the New Institution is arranged to serve for a School, Lecture Room, and Church. And these are intended to have a direct influence in forming the character of the villagers.

The time the children will remain under the discipline of the playground and school, will afford all the opportunity that can be desired, to create, cultivate, and establish, those habits and sentiments which tend to the welfare of the individual and of the community.

The boys and girls are to be taught in the school to read well, and to understand what they read; to write expeditiously a good legible hand; and to learn correctly, so that they may comprehend and use with facility the fundamental rules of arithmetic. The girls are also to be taught to sew, cut out, and make up useful family garments; and, after acquiring a sufficient knowledge of these, they are to attend in rotation in the public kitchen and eating rooms, to learn to prepare wholesome food in an economical manner, and to keep a house neat and well arranged.

Those who have been systematically impressed with early errors, and conscientiously think them to be truths, will of necessity, while such errors remain, endeavour to perpetuate them in their children. Some simple but general method, therefore, becomes necessary to counteract as speedily as possible an evil of so formidable a magnitude.

It was this view of the subject which suggested the utility of preparing the means to admit of evening lectures in the New Institution; and it is intended they should be given, during winter, three nights in the week, alternately with dancing.

Having alluded to the chief uses of the playground and exercise rooms, with the School, Lecture Room, and Church, it remains, to complete the account of the New Institution, that the object of the drill exercises, mentioned when stating the purposes of the playground, should be explained; and to this we now proceed.

Were all men trained to be rational, the art of war would be rendered useless. While, however, any part of mankind shall continue to be trained from infancy to think and act irrationally,

—that is, to acquire feelings of enmity, and to deem it a duty to engage in war against those who have been instructed to differ from them in sentiments and habits,—even the most rational must, for their personal security, learn the means of defence; and every community of such characters, while surrounded by men who have been thus improperly taught, should acquire a knowledge of this destructive art, that they may be enabled to over-rule the actions of irrational beings, and maintain peace.

To accomplish these objects to the utmost practical limit, and with the least inconvenience, every male should be instructed how best to defend, when attacked, the community to which he belongs. And these advantages are only to be obtained by providing proper means for the instruction of all boys in the use of arms and the arts of war.

As an example how easily and effectually this might be accomplished over the British Isles, it is intended that the boys trained and educated at the Institution at New Lanark shall be thus instructed; that the person appointed to attend the children in the playground shall be qualified to drill and teach the boys the manual exercise, and that he shall be frequently so employed; that afterwards, fire-arms, of proportionate weight and size to the age and strength of the boys, shall be provided for them, when also they might be taught to practise and understand the more complicated military movements.

Thus, in a few years, by foresight and arrangement, may almost the whole expense and inconvenience attending the local military be superseded, and a permanent force created, which in numbers, discipline, and principles, would be superior, beyond all comparison, for the purposes of defence; always ready in case of need, yet without the loss which is now sustained by the community of efficient and valuable labour. The expenditure which would be saved by this simple expedient, would be far more than competent to educate the whole of the poor and labouring classes of these kingdoms.

There is still another arrangement in contemplation for the community at New Lanark, and without which the establishment will remain incomplete.

It is an expedient to enable the individuals, by their own foresight, prudence, and industry, to secure to themselves in old age a comfortable provision and asylum.

Those now employed at the establishment contribute to a fund which supports them when too ill to work, or superannuated. This fund, however, is not calculated to give them more than a bare existence; and it is surely desirable that, after they have spent nearly half a century in unremitting industry, they should, if possible, enjoy a comfortable independence.

To effect this object, it is intended that in the most pleasant situation near the present village, neat and convenient dwellings should be erected, with gardens attached; that they should be surrounded and sheltered by plantations, through which public walks should be formed; and the whole arranged to give the occupiers the most substantial comforts.

That these dwellings, with the privileges of the public walks &c., shall become the property of those individuals who, without compulsion, shall subscribe such equitable sums monthly, as, in a given number of years will be equal to the purchase, and to create a fund from which, when these individuals become occupiers of their new residences, they may receive weekly, monthly, or quarterly payments, sufficient for their support; the expenses of which may be reduced to a very low rate individually, by arrangements which may be easily formed to supply all their wants with little trouble to themselves; and by their previous instruction they will be enabled to afford the small additional subscription which will be required for these purposes.

These, then, are the plans which are in progress or intended for the further improvement of the inhabitants of New Lanark. They have uniformly proceeded from the principles which have been developed through these Essays, restrained, however, hitherto, in their operations, by the local sentiments and unfounded notions of the community and neighbourhood, and by the peculiar circumstances of the establishment.

In every measure to be introduced at the place in question, for the comfort and happiness of man, the existing errors of the country were always to be considered; and as the establishment belonged to parties whose views were various, it became also necessary to devise means to create pecuniary gains from each improvement, sufficient to satisfy the spirit of commerce.

All, therefore, which has been done for the happiness of this community, which consists of between two and three thousand individuals, is far short of what might have been easily effected

in practice had not mankind been previously trained in error. Hence, in devising these plans, the sole consideration was not, what were the measures dictated by these principles, which would produce the greatest happiness to man; but what could be effected in practice under the present irrational systems by which these proceedings were surrounded?

Imperfect, however, as these proceedings must yet be, in consequence of the formidable obstructions enumerated, they will yet appear, upon a full minute investigation by minds equal to the comprehension of such a system, to combine a greater degree of substantial comfort to the individuals employed in the manufactory, and of pecuniary profit to the proprietors, than has hitherto been found attainable.

II. SCIENTIFIC SOCIALISM

The Communist Manifesto (1848)

Karl Marx (1818–1883) and Friedrich Engels (1820–1895)

While the generous Utopianism of Robert Owen finds its counterpart in much present-day parlor socialism, the whole course of European history has been affected by the very different scientific socialism proclaimed by Karl Marx and Friedrich Engels in the *Communist Manifesto*. In the fateful year 1848, the *Manifesto* raised a passionate war-cry to the oppressed working class and underlined the indignant outburst with a penetrating analysis similar to that of Marx's later masterpiece, *Capital*. Marx had been a careful student of both Hegelian dialectics and classical economics, but turned Hegelian idealism "right side out" into the materialistic interpretation of history, and developed the orthodox theory of subsistence wages into a revolutionary doctrine of surplus value. The concept of the class struggle became an axiom, and the inevitable overthrow of capitalism an article of faith.

Yet Marx was not himself of proletarian extraction. The son of a German lawyer—a Jew who had embraced Christianity—he received an excellent university education in which he specialized in jurisprudence and philosophy. He early showed the earnestness and brilliance that marked his later writings, but was disappointed in his hope of becoming a *privatdocent* at the University of Bonn, and so came to undertake the editorship of a liberal newspaper. He continued his studies, especially in economics, and had turned from liberalism to communism by 1847, when he wrote his *Poverty of Philosophy*, a scathing criticism of Proudhon's *Philosophy of Poverty*. By this time he had already begun his lifelong friendship with Engels, the son of a prosperous cotton manufacturer, a stern Protestant who had no sympathy with his son's radical leanings. The boy had been forced into a business office in Bremen at the age of

seventeen and had later been sent as his father's business agent to Manchester, where he engaged in liberal activities and published *The Condition of the Working Classes in England in 1844*, a severe indictment of capitalism. Marx and Engels became associated in the formation of groups of working class radicals, which in 1847 held their first congress in London and called themselves the Communist League. A second congress of the league commissioned Marx to draft a manifesto for the organization, and in collaboration with Engels he drew up the *Communist Manifesto.*

Marx and Engels participated in the revolutionary activities of 1848 in both France and Germany, but with the coming of reaction took refuge in England. There Engels unwillingly reëntered his father's business, largely that he might furnish financial assistance to Marx, who for ten years earned no regular income save as correspondent of the New York *Tribune.* Marx was influential in the formation of the First International in 1864 and directed it until the discord between his followers and the Bakuninist anarchists led to its decline and dissolution in the 1870's. Engels survived Marx by a dozen years, edited the posthumous second and third volumes of Marx's epoch-making *Capital*, and became a great organizer of the socialist movement and the recognized interpreter of Marxism. The various writings of Marx and Engels are so fully discussed in Lenin's *State and Revolution*, readings from which will be found in a subsequent chapter, that it is unnecessary even to mention them in this place.

The readings here given are based on the authorized English translation of the *Communist Manifesto*, edited and annotated by Engels (Charles H. Kerr and Co., Chicago, [n. d.]). The footnote is by Engels.

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THE COMMUNIST MANIFESTO

I. The Occasion of the Manifesto

A spectre is haunting Europe—the spectre of Communism. All the powers of old Europe have entered into a holy alliance to exorcise this spectre; Pope and Czar, Metternich and Guizot, French Radicals and German police-spies.

Where is the party in opposition that has not been decried as communistic by its opponents in power? Where the Opposition that has not hurled back the branding reproach of Communism, against the more advanced opposition parties, as well as against its reactionary adversaries?

Two things result from this fact.

I. Communism is already acknowledged by all European Powers to be itself a Power.

II. It is high time that Communists should openly, in the face of the whole world, publish their views, their aims, their tendencies, and meet this nursery tale of the Spectre of Communism with a Manifesto of the party itself.

To this end, Communists of various nationalities have assembled in London, and sketched the following manifesto, to be published in the English, French, German, Italian, Flemish and Danish languages.

II. The Rule of the Bourgeoisie [1]

[*1.*] The history of all hitherto existing society is the history of class struggles.

The modern bourgeois society that has sprouted from the ruins of feudal society, has not done away with class antagonisms. It has but established new classes, new conditions of oppression, new forms of struggle in place of the old ones.

Our epoch, the epoch of the bourgeoisie, possesses, however, this distinctive feature; it has simplified the class antagonisms. Society as a whole is more and more splitting up into two great hostile camps, into two great classes directly facing each other: Bourgeoisie and Proletariat.

Each step in the development of the bourgeoisie was accom-

[1] By bourgeoisie is meant the class of modern Capitalists, owners of the means of social production and employers of wage-labor. By proletariat, the class of modern wage-laborers who, having no means of production of their own, are reduced to selling their labor-power in order to live.

panied by a corresponding political advance of that class. An oppressed class under the sway of the feudal nobility, an armed and self-governing association in the mediaeval commune, here independent urban republic (as in Italy and Germany), there taxable "third estate" of the monarchy (as in France), afterwards, in the period of manufacture proper, serving either the semi-feudal or the absolute monarchy as a counterpoise against the nobility, and, in fact, corner stone of the great monarchies in general, the bourgeoisie has at last, since the establishment of Modern Industry and of the world-market, conquered for itself, in the modern representative State, exclusive political sway. The executive of the modern State is but a committee for managing the common affairs of the whole bourgeoisie.

The bourgeoisie, historically, has played a most revolutionary part.

The bourgeoisie, wherever it has got the upper hand, has put an end to all feudal, patriarchal, idyllic relations. It has pitilessly torn asunder the motley feudal ties that bound man to his "natural superiors," and has left remaining no other nexus between man and man than naked self-interest, than callous "cash payment." It has drowned the most heavenly ecstacies of religious fervor, of chivalrous enthusiasm, of philistine sentimentalism, in the icy water of egotistical calculation. It has resolved personal worth into exchange value, and in place of the numberless indefeasible chartered freedoms, has set up that single, unconscionable freedom —Free Trade. In one word, for exploitation, veiled by religious and political illusions, it has substituted naked, shameless, direct, brutal exploitation.

The bourgeoisie has stripped of its halo every occupation hitherto honored and looked up to with reverent awe. It has converted the physician, the lawyer, the priest, the poet, the man of science, into its paid wage-laborers.

The bourgeoisie has torn away from the family its sentimental veil, and has reduced the family relation to a mere money relation.

The bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society. Conservation of the old modes of production in unaltered form, was, on the contrary, the first condition of existence for all earlier industrial classes. Constant revolutionizing of production, uninterrupted

disturbance of all social conditions, everlasting uncertainty and agitation distinguish the bourgeois epoch from all earlier ones.

The bourgeoisie has through its exploitation of the world-market given a cosmopolitan character to production and consumption in every country. To the great chagrin of Reactionists, it has drawn from under the feet of industry the national ground on which it stood. In place of the old local and national seclusion and self-sufficiency, we have intercourse in every direction, universal inter-dependence of nations. And as in material, so also in intellectual production. The intellectual creations of individual nations become common property. National one-sidedness and narrow-mindedness become more and more impossible, and from the numerous national and local literatures there arises a world-literature.

The bourgeoisie, by the rapid improvement of all instruments of production, by the immensely facilitated means of communication, draws all, even the most barbarian, nations into civilization. The cheap prices of its commodities are the heavy artillery with which it batters down all Chinese walls, with which it forces the barbarians' intensely obstinate hatred of foreigners to capitulate. It compels all nations, on pain of extinction, to adopt the bourgeois mode of production; it compels them to introduce what it calls civilization into their midst, i.e., to become bourgeois themselves. In a word, it creates a world after its own image.

The bourgeoisie keeps more and more doing away with the scattered state of the population, of the means of production, and of property. It has agglomerated population, centralized means of production, and has concentrated property in a few hands. The necessary consequence of this was political centralization. Independent, or but loosely connected provinces, with separate interests, laws, governments and systems of taxation, became lumped together into one nation, with one government, one code of laws, one national class-interest, one frontier and one customs-tariff.

The bourgeoisie, during its rule of scarce one hundred years, has created more massive and more colossal productive forces than have all preceding generations together.

At a certain stage in the development of these means of production and of exchange, the conditions under which feudal society produced and exchanged, the feudal organization of agriculture

and manufacturing industry, in one word, the feudal relations of property became no longer compatible with the already developed productive forces; they became so many fetters. They had to burst asunder; they were burst asunder.

Into their places stepped free competition, accompanied by a social and political constitution adapted to it, and by the economical and political sway of the bourgeois class.

A similar movement is going on before our own eyes. Modern bourgeois society with its relations of production, of exchange and of property, a society that has conjured up such gigantic means of production and of exchange, is like the sorcerer, who is no longer able to control the powers of the nether world whom he has called up by his spells. For many a decade past the history of industry and commerce is but the history of the revolt of modern productive forces against modern conditions of production, against the property relations that are the conditions for the existence of the bourgeoisie and of its rule. It is enough to mention the commercial crises that by their periodical return put on its trial, each time more threateningly, the existence of the entire bourgeois society. In these crises a great part not only of the existing products, but also of the previously created productive forces, are periodically destroyed. In these crises there breaks out an epidemic that, in all earlier epochs, would have seemed an absurdity—the epidemic of over-production. Society suddenly finds itself put back into a state of momentary barbarism; it appears as if a famine, a universal war of devastation had cut off the supply of every means of subsistence; industry and commerce seem to be destroyed; and why? Because there is too much civilization, too much means of subsistence, too much industry, too much commerce. The productive forces at the disposal of society no longer tend to further the development of the conditions of bourgeois property; on the contrary, they have become too powerful for these conditions, by which they are fettered, and so soon as they overcome these fetters, they bring disorder into the whole of bourgeois society, endanger the existence of bourgeois property. The conditions of bourgeois society are too narrow to comprise the wealth created by them. And how does the bourgeoisie get over these crises? On the one hand by enforced destruction of a mass of productive forces; on the other, by the conquest of new markets, and by the more thorough exploitation of the old ones. That is

to say, by paving the way for more extensive and more destructive crises, and by diminishing the means whereby crises are prevented.

III. The Inevitable Victory of the Proletariat

[*I, cont.*] The weapons with which the bourgeoisie felled feudalism to the ground are now turned against the bourgeoisie itself.

But not only has the bourgeoisie forged the weapons that bring death to itself; it has also called into existence the men who are to wield those weapons—the modern working-class—the proletarians.

In proportion as the bourgeoisie, i.e., capital, is developed, in the same proportion is the proletariat, the modern working-class, developed, a class of laborers, who live only so long as they find work, and who find work only so long as their labor increases capital. These laborers, who must sell themselves piecemeal, are a commodity, like every other article of commerce, and are consequently exposed to all the vicissitudes of competition, to all the fluctuations of the market.

Owing to the extensive use of machinery and to division of labor, the work of the proletarians has lost all individual character, and, consequently, all charm for the workman. He becomes an appendage of the machine, and it is only the most simple, most monotonous, and most easily acquired knack that is required of him. Hence, the cost of production of a workman is restricted, almost entirely, to the means of subsistence that he requires for his maintenance, and for the propagation of his race. But the price of a commodity, and also of labor, is equal to its cost of production. In proportion, therefore, as the repulsiveness of the work increases, the wage decreases.

The lower strata of the Middle class—the small tradespeople, shopkeepers, and retired tradesmen generally, the handicraftsmen and peasants—all these sink gradually into the proletariat, partly because their diminutive capital does not suffice for the scale on which Modern Industry is carried on, and is swamped in the competition with the large capitalists, partly because their specialized skill is rendered worthless by new methods of production. Thus the proletariat is recruited from all classes of the population.

The proletariat goes through various stages of development. With its birth begins its struggle with the bourgeoisie. At first the contest is carried on by individual laborers, then by the work-

people of a factory, then by the operatives of one trade, in one locality, against the individual bourgeois who directly exploits them.

At this stage the laborers still form an incoherent mass scattered over the whole country, and broken up by their mutual competition. If anywhere they unite to form more compact bodies, this is not yet the consequence of their own active union, but of the union of the bourgeoisie, which class, in order to attain its own political ends, is compelled to set the whole proletariat in motion, and is moreover yet, for a time, able to do so. At this stage, therefore, the proletarians do not fight their enemies, but the enemies of their enemies, the remnants of absolute monarchy, the landowners, the non-industrial bourgeois, the petty bourgeoisie. Thus the whole historical movement is concentrated in the hands of the bourgeoisie; every victory so obtained is a victory for the bourgeoisie.

But with the development of industry the proletariat not only increases in number, it becomes concentrated in greater masses, its strength grows, and it feels that strength more. Thereupon the workers begin to form combinations (Trades' Unions) against the bourgeois; they club together in order to keep up the rate of wages; they found permanent associations in order to make provision beforehand for these occasional revolts. Here and there the contest breaks out into riots.

Now and then the workers are victorious, but only for a time. The real fruit of their battles lies, not in the immediate result, but in the ever expanding union of the workers. This union is helped on by the improved means of communication that are created by modern industry, and that place the workers of different localities in contact with one another. It was just this contact that was needed to centralize the numerous local struggles, all of the same character, into one national struggle between classes. But every class struggle is a political struggle.

Altogether collisions between the classes of the old society further, in many ways, the course of development of the proletariat. The bourgeoisie finds itself involved in a constant battle. At first with the aristocracy; later on, with those portions of the bourgeoisie itself, whose interests have become antagonistic to the progress of industry; at all times, with the bourgeoisie of foreign countries. In all these battles it sees itself compelled to appeal

to the proletariat, to ask for its help, and thus, to drag it into the political arena. The bourgeoisie itself, therefore, supplies the proletariat with its own elements of political and general education, in other words, it furnishes the proletariat with weapons for fighting the bourgeoisie.

Further, as we have already seen, entire sections of the ruling classes are, by the advance of industry, precipitated into the proletariat, or are at least threatened in their conditions of existence. These also supply the proletariat with fresh elements of enlightenment and progress.

Finally, in times when the class-struggle nears the decisive hour, the process of dissolution going on within the ruling class, in fact, within the whole range of old society, assumes such a violent, glaring character, that a small section of the ruling class cuts itself adrift, and joins the revolutionary class, the class that holds the future in its hands. Just as, therefore, at an earlier period, a section of the nobility went over to the bourgeoisie, so now a portion of the bourgeoisie goes over to the proletariat, and in particular, a portion of the bourgeois ideologists, who have raised themselves to the level of comprehending theoretically the historical movements as a whole.

Of all the classes that stand face to face with the bourgeoisie today, the proletariat alone is a really revolutionary class. The other classes decay and finally disappear in the face of modern industry; the proletariat is its special and essential product.

In the conditions of the proletariat, those of old society at large are already virtually swamped. The proletarian is without property; his relation to his wife and children has no longer anything in common with the bourgeois family-relations; modern industrial labor, modern subjection to capital, the same in England as in France, in America as in Germany, has stripped him of every trace of national character. Law, morality, religion, are to him so many bourgeois prejudices, behind which lurk in ambush just as many bourgeois interests.

All the preceding classes that got the upper hand, sought to fortify their already acquired status by subjecting society at large to their conditions of appropriation. The proletarians cannot become masters of the productive forces of society, except by abolishing their own previous mode of appropriation, and thereby also every other previous mode of appropriation. They have

nothing of their own to secure and to fortify; their mission is to destroy all previous securities for, and insurances of, individual property.

All previous historical movements were movements of minorities, or in the interest of minorities. The proletarian movement is the self-conscious, independent movement of the immense majority, in the interest of the immense majority. The proletariat, the lowest stratum of our present society, cannot stir, cannot raise itself up, without the whole superincumbent strata of official society being sprung into the air.

Though not in substance, yet in form, the struggle of the proletariat with the bourgeoisie is at first a national struggle. The proletariat of each country must, of course, first of all settle matters with its own bourgeoisie.

In depicting the most general phases of the development of the proletariat, we traced the more or less veiled civil war, raging within existing society, up to the point where that war breaks out into open revolution, and where the violent overthrow of the bourgeoisie, lays the foundation for the sway of the proletariat.

Hitherto, every form of society has been based, as we have already seen, on the antagonism of oppressing and oppressed classes. But in order to oppress a class, certain conditions must be assured to it under which it can, at least, continue its slavish existence. The serf, in the period of serfdom, raised himself to membership in the commune, just as the petty bourgeois, under the yoke of feudal absolutism, managed to develop into a bourgeois. The modern laborer, on the contrary, instead of rising with the progress of industry, sinks deeper and deeper below the conditions of existence of his own class. He becomes a pauper, and pauperism develops more rapidly than population and wealth. 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. Society can no longer live under this bourgeoisie, in other words, its existence is no longer compatible with society.

The essential condition for the existence, and for the sway of the bourgeois class, is the formation and augmentation of capital;

the condition for capital is wage-labor. Wage-labor rests exclusively on competition between the laborers. The advance of industry, whose involuntary promoter is the bourgeoisie, replaces the isolation of the laborers, due to competition, by their involuntary combination, due to association. The development of Modern Industry, therefore, cuts from under its feet the very foundation on which the bourgeoisie produces and appropriates products. What the bourgeoisie therefore produces, above all, are its own grave-diggers. Its fall and the victory of the proletariat are equally inevitable.

IV. The Communist Abolition of Private Property

[*II.*] In what relation do the Communists stand to the proletarians as a whole?

The Communists do not form a separate party opposed to other working-class parties.

They have no interests separate and apart from those of the proletariat as a whole.

They do not set up any sectarian principles of their own, by which to shape and mould the proletarian movement.

The Communists are distinguished from the other working class parties by this only: 1. In the national struggles of the proletarians of the different countries, they point out and bring to the front the common interests of the entire proletariat independently of all nationality. 2. In the various stages of development which the struggle of the working class against the bourgeoisie has to pass through, they always and everywhere represent the interests of the movement as a whole.

The Communists, therefore, are on the one hand, practically, the most advanced and resolute section of the working class parties of every country, that section which pushes forward all others; on the other hand, theoretically, they have over the great mass of the proletariat the advantage of clearly understanding the line of march, the conditions, and the ultimate general results of the proletarian movement.

The immediate aim of the Communists is the same as that of all the other proletarian parties; formation of the proletariat into a class, overthrow of the bourgeois supremacy, conquest of political power by the proletariat.

The theoretical conclusions of the Communists are in no way

based on ideas or principles that have been invented, or discovered, by this or that would-be universal reformer.

They merely express, in general terms, actual relations springing from an existing class struggle, from a historical movement going on under our very eyes. The abolition of existing property relations is not at all a distinctive feature of Communism.

All property relations in the past have continually been subject to historical change consequent upon the change in historical conditions.

The French Revolution, for example, abolished feudal property in favor of bourgeois property.

The distinguishing feature of Communism is not the abolition of property generally, but the abolition of bourgeois property. But modern bourgeois private property is the final and most complete expression of the system of producing and appropriating products, that is based on class antagonism, on the exploitation of the many by the few.

In this sense, the theory of the Communists may be summed up in the single sentence: Abolition of private property.

We Communists have been reproached with the desire of abolishing the right of personally acquiring property as the fruit of a man's own labor, which property is alleged to be the ground work of all personal freedom, activity and independence.

Hard-won, self-acquired, self-earned property! Do you mean the property of the petty artisan and of the small peasant, a form of property that preceded the bourgeois form? There is no need to abolish that; the development of industry has to a great extent already destroyed it, and is still destroying it daily.

Or do you mean modern bourgeois private property?

But does wage-labor create any property for the laborer? Not a bit. It creates capital, i.e., that kind of property which exploits wage-labor, and which cannot increase except upon condition of getting a new supply of wage-labor for fresh exploitation. Property, in its present form, is based on the antagonism of capital and wage-labor. Let us examine both sides of this antagonism.

To be a capitalist, is to have not only a purely personal, but a social status in production. Capital is a collective product, and only by the united action of many members, nay, in the last resort, only by the united action of all members of society, can it be set in motion.

Capital is therefore not a personal, it is a social power.

When, therefore, capital is converted into common property, into the property of all members of society, personal property is not thereby transformed into social property. It is only the social character of the property that is changed. It loses its class-character.

Let us now take wage-labor.

The average price of wage-labor is the minimum wage, i.e., that quantum of the means of subsistence, which is absolutely requisite to keep the laborer in bare existence as a laborer. What, therefore, the wage-laborer appropriates by means of his labor, merely suffices to prolong and reproduce a bare existence. We by no means intend to abolish this personal appropriation of the products of labor, an appropriation that is made for the maintenance and reproduction of human life, and that leaves no surplus wherewith to command the labor of others. All that we want to do away with is the miserable character of this appropriation, under which the laborer lives merely to increase capital, and is allowed to live only in so far as the interest of the ruling class requires it.

In bourgeois society, living labor is but a means to increase accumulated labor. In Communist society, accumulated labor is but a means to widen, to enrich, to promote the existence of the laborer.

In bourgeois society, therefore, the past dominates the present; in communist society, the present dominates the past. In bourgeois society capital is independent and has individuality, while the living person is dependent and has no individuality.

And the abolition of this state of things is called by the bourgeois, abolition of individuality and freedom! And rightly so. The abolition of bourgeois individuality, bourgeois independence, and bourgeois freedom is undoubtedly aimed at.

By freedom is meant, under the present bourgeois conditions of production, free trade, free selling and buying.

But if selling and buying disappears, free selling and buying disappears also. This talk about free selling and buying, and all the other "brave words" of our bourgeoisie about freedom in general, have a meaning, if any, only in contrast with restricted selling and buying, with the fettered traders of the Middle Ages, but have no meaning when opposed to the Communistic abolition of buying and selling, of the bourgeois conditions of production, and of the bourgeoisie itself.

You are horrified at our intending to do away with private property. But in your existing society, private property is already done away with for nine-tenths of the population; its existence for the few is solely due to its non-existence in the hands of those nine-tenths. You reproach us, therefore, with intending to do away with a form of property, the necessary condition for whose existence is, the non-existence of any property for the immense majority of society.

In one word, you reproach us with intending to do away with your property. Precisely so; that is just what we intend.

From the moment when labor can no longer be converted into capital, money, or rent, into a social power capable of being monopolized, i.e., from the moment when individual property can no longer be transformed into bourgeois property, into capital, from that moment, you say, individuality vanishes.

You must, therefore, confess that by "individual" you mean no other person than the bourgeois, than the middle-class owner of property. This person must, indeed, be swept out of the way, and made impossible.

Communism deprives no man of the power to appropriate the products of society: all that it does is to deprive him of the power to subjugate the labor of others by means of such appropriation.

It has been objected, that upon the abolition of private property all work will cease, and universal laziness will overtake us.

According to this, bourgeois society ought long ago to have gone to the dogs through sheer idleness; for those of its members who work, acquire nothing, and those who acquire anything, do not work. The whole of this objection is but another expression of the tautology: that there can no longer be any wage-labor when there is no longer any capital.

V. The Communist Revolution in Ideas

[*II, cont.*] All objections urged against the Communistic mode of producing and appropriating material products, have, in the same way, been urged against the Communistic modes of producing and appropriating intellectual products. Just as, to the bourgeois, the disappearance of class property is the disappearance of production itself, so the disappearance of class culture is to him identical with the disappearance of all culture.

That culture, the loss of which he laments, is, for the enormous majority, a mere training to act as a machine.

But don't wrangle with us so long as you apply, to our intended abolition of bourgeois property, the standard of your bourgeois notions of freedom, culture, law, etc. Your very ideas are but the outgrowth of the conditions of your bourgeois production and bourgeois property, just as your jurisprudence is but the will of your class made into a law for all, a will, whose essential character and direction are determined by the economic conditions of existence of your class.

The selfish misconception that induces you to transform into eternal laws of nature and of reason, the social forms springing from your present mode of production and form of property—historical relations that rise and disappear in the progress of production—this misconception you share with every ruling class that has preceded you. What you see clearly in the case of ancient property, what you admit in the case of feudal property, you are of course forbidden to admit in the case of your own bourgeois form of property.

Abolition of the family! Even the most radical flare up at this infamous proposal of the Communists.

On what foundation is the present family, the bourgeois family, based? On capital, on private gain. In its completely developed form this family exists only among the bourgeoisie. But this state of things finds its complement in the practical absence of the family among the proletarians, and in public prostitution.

The bourgeois family will vanish as a matter of course when its complement vanishes, and both will vanish with the vanishing of capital.

Do you charge us with wanting to stop the exploitation of children by their parents? To this crime we plead guilty.

But, you will say, we destroy the most hallowed of relations, when we replace home education by social.

And your education! Is not that also social, and determined by the social conditions under which you educate, by the intervention, direct or indirect, of society by means of schools, etc.? The Communists have not invented the intervention of society in education; they do but seek to alter the character of that intervention, and to rescue education from the influence of the ruling class.

The bourgeois clap-trap about the family and education, about

the hallowed co-relation of parent and child, becomes all the more disgusting, the more, by the action of Modern Industry, all family ties among the proletarians are torn asunder, and their children transformed into simple articles of commerce and instruments of labor.

But you Communists would introduce community of women, screams the whole bourgeoisie in chorus.

The bourgeois sees in his wife a mere instrument of production. He hears that the instruments of production are to be exploited in common, and, naturally, can come to no other conclusion, than that the lot of being common to all will likewise fall to the women.

He has not even a suspicion that the real point aimed at is to do away with the status of women as mere instruments of production.

For the rest, nothing is more ridiculous than the virtuous indignation of our bourgeois at the community of women which, they pretend, is to be openly and officially established by the Communists. The Communists have no need to introduce community of women; it has existed almost from time immemorial.

Our bourgeois, not content with having the wives and daughters of their proletarians at their disposal, not to speak of common prostitutes, take the greatest pleasure in seducing each others' wives.

Bourgeois marriage is in reality a system of wives in common and thus, at the most, what the Communists might possibly be reproached with, is that they desire to introduce, in substitution for a hypocritically concealed, an openly legalized community of women. For the rest, it is self-evident, that the abolition of the present system of production must bring with it the abolition of the community of women springing from that system, i.e., of prostitution both public and private.

The Communists are further reproached with desiring to abolish countries and nationalities.

The working men have no country. We cannot take from them what they have not got. Since the proletariat must first of all acquire political supremacy, must rise to be the leading class of the nation, must constitute itself the nation, it is, so far, itself national, though not in the bourgeois sense of the word.

National differences, and antagonisms between peoples, are daily more and more vanishing, owing to the development of the

bourgeoisie, to freedom of commerce, to the world-market, to uniformity in the mode of production and in the conditions of life corresponding thereto.

The supremacy of the proletariat will cause them to vanish still faster. United action, of the leading civilized countries at least, is one of the first conditions for the emancipation of the proletariat.

In proportion as the exploitation of one individual by another is put an end to, the exploitation of one nation by another will also be put an end to. In proportion as the antagonism between classes within the nation vanishes, the hostility of one nation to another will come to an end.

The charges against Communism made from a religious, a philosophical, and generally, from an ideological standpoint, are not deserving of serious examination.

Does it require deep intuition to comprehend that man's ideas, views, and conceptions, in one word, man's consciousness, changes with every change in the conditions of his material existence, in his social relations and in his social life?

What else does the history of ideas prove, than that intellectual production changes in character in proportion as material production is changed? The ruling ideas of each age have ever been the ideas of its ruling class.

When people speak of ideas that revolutionize society, they do but express the fact, that within the old society, the elements of a new one have been created, and that the dissolution of the old ideas keeps even pace with the dissolution of the old conditions of existence.

When the ancient world was in its last throes, the ancient religions were overcome by Christianity. When Christian ideas succumbed in the 18th century to rationalist ideas, feudal society fought its death-battle with the then revolutionary bourgeoisie. The ideas of religious liberty and freedom of conscience, merely gave expression to the sway of free competition within the domain of knowledge.

"Undoubtedly," it will be said, "religious, moral, philosophical, and juridical ideas have been modified in the course of historical development. But religion, morality, philosophy, political science, and law, constantly survived this change."

"There are, besides, eternal truths, such as Freedom, Justice,

etc., that are common to all states of society. But Communism abolishes eternal truths, it abolishes all religion, and all morality, instead of constituting them on a new basis; it therefore acts in contradiction to all past historical experience."

What does this accusation reduce itself to? The history of all past society has consisted in the development of class antagonisms, antagonisms that assumed different forms at different epochs.

But whatever form they may have taken, one fact is common to all past ages, viz., the exploitation of one part of society by the other. No wonder, then, that the social consciousness of past ages, despite all the multiplicity and variety it displays, moves within certain common forms, or general ideas, which cannot completely vanish except with the total disappearance of class antagonisms.

The Communist revolution is the most radical rupture with traditional property-relations; no wonder that its development involves the most radical rupture with traditional ideas.

VI. The Communist Program

[*II, cont.*] We have seen above, that the first step in the revolution by the working class, is to raise the proletariat to the position of ruling class, to win the battle of democracy.

The proletariat will use its political supremacy, to wrest, by degrees, all capital from the bourgeoisie, to centralize all instruments of production in the hands of the State, i.e., of the proletariat organized as the ruling class; and to increase the total of productive forces as rapidly as possible.

Of course, in the beginning, this cannot be effected except by means of despotic inroads on the rights of property, and on the conditions of bourgeois production; by means of measures, therefore, which appear economically insufficient and untenable, but which, in the course of the movement, outstrip themselves, necessitate further inroads upon the old social order, and are unavoidable as a means of entirely revolutionizing the mode of production.

These measures will of course be different in different countries.

Nevertheless in the most advanced countries the following will be pretty generally applicable:

1. Abolition of property in land and application of all rents of land to public purposes.
2. A heavy progressive or graduated income tax.
3. Abolition of all right of inheritance.

4. Confiscation of the property of all emigrants and rebels.

5. Centralization of credit in the hands of the state, by means of a national bank with State capital and an exclusive monopoly.

6. Centralization of the means of communication and transport in the hands of the State.

7. Extension of factories and instruments of production owned by the State; the bringing into cultivation of waste lands, and the improvement of the soil generally in accordance with a common plan.

8. Equal liability of all to labor. Establishment of industrial armies, especially for agriculture.

9. Combination of agriculture with manufacturing industries; gradual abolition of the distinction between town and country, by a more equable distribution of population over the country.

10. Free education for all children in public schools. Abolition of children's factory labor in its present form. Combination of education with industrial production, etc., etc.

When, in the course of development, class distinctions have disappeared, and all production has been concentrated in the hands of a vast association of the whole nation, the public power will lose its political character. Political power, properly so called, is merely the organized power of one class for oppressing another. If the proletariat during its contest with the bourgeoisie is compelled, by the force of circumstances, to organize itself as a class, if, by means of a revolution, it makes itself the ruling class, and, as such, sweeps away by force the old conditions of production, then it will, along with these conditions, have swept away the conditions for the existence of class antagonisms, and of classes generally, and will thereby have abolished its own supremacy as a class.

In place of the old bourgeois society, with its classes and class antagonisms, we shall have an association, in which the free development of each is the condition for the free development of all.

[*IV.*] The Communists fight for the attainment of the immediate aims, for the enforcement of the momentary interests of the working class; but in the movement of the present, they also represent and take care of the future of that movement.

In Germany they fight with the bourgeoisie whenever it acts in a revolutionary way, against the absolute monarchy, the feudal squirearchy, and the petty bourgeoisie.

But they never cease, for a single instant, to instill into the work-

ing class the clearest possible recognition of the hostile antagonism between bourgeoisie and proletariat, in order that the German workers may straightway use, as so many weapons against the bourgeoisie, the social and political conditions that the bourgeoisie must necessarily introduce along with its supremacy, and in order that, after the fall of the reactionary classes in Germany, the fight against the bourgeoisie itself may immediately begin.

The Communists turn their attention chiefly to Germany, because that country is on the eve of a bourgeois revolution, that is bound to be carried out under more advanced conditions of European civilization, and with a more developed proletariat, than that of England was in the seventeenth, and of France in the eighteenth century, and because the bourgeois revolution in Germany will be but the prelude to an immediately following proletarian revolution.

In short, the Communists everywhere support every revolutionary movement against the existing social and political order of things.

In all these movements they bring to the front, as the leading question in each, the property question, no matter what its degree of development at the time.

Finally, they labor everywhere for the union and agreement of the democratic parties of all countries.

The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at a Communistic revolution. The proletarians have nothing to lose but their chains. They have a world to win.

Working men of all countries, unite!

CHAPTER IX. ANARCHISM

I. THE ANARCHIST ANALYSIS OF SOCIETY

What is Property? (1840)

Pierre Joseph Proudhon (1809–1865)

When the Industrial Revolution began to make its mark upon social and political philosophy, the opposition to economic injustice did not confine itself within a single channel. Side by side with socialism of both the Utopian and scientific varieties, there developed, under the name of anarchism, a highly individualistic opposition to the institution of private property. The natural right of private property had been a watchword of the revolutionary individualists of seventeenth century England and eighteenth century America and France, but by 1840 it was clear that the hope for widespread acquisition of private property was an idle dream. In that year was published the *What is Property?* of Pierre Joseph Proudhon, the pioneer of the modern anarchist movement.

Priority as an anarchist is sometimes claimed for William Godwin, whose *Enquiry concerning Political Justice* had in 1793 denounced the state for the coercive maintenance of unjust economic conditions. However, Godwin did not advocate the complete elimination of political authority, whereas Proudhon taught the destruction of the state, root and branch. Not that he himself proposed a resort to arms. On the contrary, he placed his reliance on coöperative banks that should supply gratuitous credit through labor notes measured by units of labor. Private property would thus be rendered unprofitable and consequently eliminated, and the coercive state would give way to voluntary coöperation and federation.

Proudhon was the son of humble parents who worked in a brewery near Besançon. The boy made a brilliant record on a scholarship at the local academy but at nineteen became a proof-reader in a printing office. Several years later he successfully competed for a three-year fellowship offered by the Besançon academy, and *What is Property?* was the principal fruit of his subsequent studies. The revolutionary ideas in this book and its sequels led to Proudhon's examination before the assizes, but he conducted his own defense with remarkable dexterity and won his acquittal. During the short-lived Second Republic of 1848 he was elected to the constituent assembly, where he seated himself at the extreme left; and during the subsequent reaction he was so active against Louis Napoleon that he was sentenced to prison for libel just as he was about to open his projected bank without specie. A decade later Proudhon was sentenced to prison for his violent *Of Justice in the Revolution and in the Church* (1858), but managed to escape to Belgium, where he remained until the

unpopularity of a later book forced his return to France. Proudhon was a prolific writer. In addition to the books already mentioned, his most significant volumes were *The Philosophy of Poverty* (1846) in reply to which Marx wrote his *Poverty of Philosophy*, *The Solution of the Social Problem* (1848), and the posthumous *Political Capacity of the Working Classes.*

The readings here given are based upon the translation of *What is Property?* by Benjamin R. Tucker, himself a prominent American anarchist (Humboldt Publishing Co., New York, [n.d.]).

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WHAT IS PROPERTY?

I. The Nature of Property

[*Ch. I.*] If I were asked to answer the following question: *What is slavery?* and I should answer in one word, *It is murder*, my meaning would be understood at once. No extended argument would be required to show that the power to take from a man his thought, his will, his personality, is a power of life and death; and that to enslave a man is to kill him. Why, then, to this other question: *What is property?* may I not likewise answer, *It is robbery*, without the certainty of being misunderstood; the second proposition being no other than a transformation of the first?

Such an author teaches that property is a civil right, born of occupation and sanctioned by law; another maintains that it is a

natural right, originating in labor,—and both of these doctrines, totally opposed as they may seem, are encouraged and applauded. I contend that neither labor, nor occupation, nor law, can create property; that it is an effect without a cause: am I censurable?

[*Ch. II.*] The Roman law defined property as the right to use and abuse one's own within the limits of the law—*jus utendi et abutendi re suâ, quatenus juris ratio patitur.* A justification of the word *abuse* has been attempted, on the ground that it signifies, not senseless and immoral abuse, but only absolute domain. Vain distinction! invented as an excuse for property, and powerless against the frenzy of possession, which it neither prevents nor represses. The proprietor, may, if he chooses, allow his crops to rot under foot; sow his fields with salt; milk his cows on the sand; change his vineyard into a desert, and use his vegetable-garden as a park: do these things constitute abuse, or not? In the matter of property, use and abuse are necessarily indistinguishable.

There are different kinds of property: 1. Property pure and simple, the dominant and seigniorial power over a thing; or, as they term it, *naked property.* 2. *Possession.* "Possession," says Duranton, "is a matter of fact, not of right." Toullier: "Property is a right, a legal power; possession is a fact." The tenant, the farmer, the *commandité,* the usufructuary, are possessors; the owner who lets and lends for use, the heir who is to come into possession on the death of a usufructuary, are proprietors.

This double definition of property—domain and possession—is of the highest importance; and it must be clearly understood, in order to comprehend what is to follow.

[*Ch. IV.*] Axiom.—*Property is the Right of Increase claimed by the Proprietor over any thing which he has stamped as his own.*

This proposition is purely an axiom, because,—

1. It is not a definition, since it does not express all that is included in the right of property.

2. It is universally admitted. No one can deny it without denying the facts, without being instantly belied by universal custom.

3. It is self-evident, since property is always accompanied (either actually or potentially) by the fact which this axiom expresses; and through this fact, mainly, property manifests, establishes, and asserts itself.

Observation.—Increase receives different names according to the thing by which it is yielded: if by land, *farm-rent;* if by houses and

furniture, *rent;* if by life-investments, *revenue;* if by money, *interest;* if by exchange, *advantage, gain, profit* (three things which must not be confounded with the wages or legitimate price of labor).

COROLLARIES.—1. *The amount of increase is proportional to the thing increased.* Whatever be the rate of interest,—whether it rise to three, five, or ten percent., or fall to one-half, one-fourth, one-tenth,—it does not matter; the law of increase remains the same.

Observation.—The forms of increase known as farm-rent, income, and interest are paid annually; rent is paid by the week, the month, or the year; profits and gains are paid at the time of exchange. Thus, the amount of increase is proportional both to the thing increased, and the time during which it increases; in other words, usury grows like a cancer.

2. *The increase paid to the proprietor by the occupant is a dead loss to the latter.* For if the proprietor owed, in exchange for the increase which he receives, some thing more than the permission which he grants, his right of property would not be perfect—he would not possess *jure optimo, jure perfecto;* that is, he would not be in reality a proprietor. Then, all which passes from the hands of the occupant into those of the proprietor in the name of increase, and as the price of permission to occupy, is a permanent gain for the latter, and a dead loss and annihilation for the former; to whom none of it will return, save in the forms of gift, alms, wages paid for his services, or the price of merchandise which he has delivered. In a word, increase perishes so far as the borrower is concerned.

3. *The right of increase oppresses the proprietor as well as the stranger.* The master of a thing, as its proprietor, levies a tax for the use of his property upon himself as its possessor, equal to that which he would receive from a third party; so that capital bears interest in the hands of the capitalist, as well as in those of the borrower and the *commanditè.* If, indeed, rather than accept a rent of five hundred francs for my apartment, I prefer to occupy and enjoy it, it is clear that I shall become my own debtor for a rent equal to that which I deny myself. This principle is universally practised in business, and is regarded as an axiom by economists. Manufacturers, also, who have the advantage of being proprietors of their floating capital, although they owe no interest to any one, in calculating their profits subtract from them, not only their running expenses and the wages of their employees,

but also the interest on their capital. For the same reason, money-lenders retain in their possession as little money as possible; for, since all capital necessarily bears interest, if this interest is supplied by no one, it comes out of the capital, which is to that extent diminished. Thus, by the right of increase, capital eats itself up.

II. Communism and Property

[*Ch. V, pt. 2nd, sec. 1.*] Property, born of the reasoning faculty, intrenches itself behind comparisons. But, just as reflection and reason are subsequent to spontaneity, observation to sensation, and experience to instinct, so property is subsequent to communism. Communism—or association in a simple form—is the necessary object and original aspiration of the social nature, the spontaneous movement by which it manifests and establishes itself. It is the first phase of human civilization. In this state of society,—which the jurists have called *negative communism*,—man draws near to man, and shares with him the fruits of the field and the milk and flesh of animals. Little by little this communism—negative as long as man does not produce—tends to become positive and organic through the development of labor and industry. But it is then that the sovereignty of thought and the terrible faculty of reasoning logically or illogically, teach man that, if equality is the *sine qua non* of society, communism is the first species of slavery.

[*Sec. 2.*] Justice, after passing through the state of negative communism, called by the ancient poets the *age of gold*, commences as the right of the strongest. In a society which is trying to organize itself, inequality of faculties calls up the idea of merit; *équité* suggests the plan of proportioning not only esteem, but also material comforts, to personal merit; and since the highest and almost the only merit then recognized is physical strength, the strongest, αριστος, and consequently the best, αριστος, is entitled to the largest share; and if it is refused him, he very naturally takes it by force. From this to the assumption of the right of property in all things, it is but one step.

From the right of the strongest springs the exploitation of man by man, or bondage; usury, or the tribute levied upon the conquered by the conqueror; and the whole numerous family of taxes, duties, monarchical prerogatives, house-rents, farm-rents, &c.; in one word,—property.

[*Sec. 1.*] To express this idea by an Hegelian formula, I will say: Communism—the first expression of the social nature—is the first term of social development,—the *thesis;* property, the reverse of communism, is the second term,—the *antithesis.* When we have discovered the third term, the *synthesis,* we shall have the required solution. Now, this synthesis necessarily results from the correction of the thesis by the antithesis. Therefore it is necessary, by a final examination of their characteristics, to eliminate those features which are hostile to sociability. The union of the two remainders will give us the true form of human association.

[*Sec. 2.*] I ought not to conceal the fact that property and communism have been considered always the only possible forms of society. This deplorable error has been the life of property. The disadvantages of communism are so obvious that its critics never have needed to employ much eloquence to thoroughly disgust men with it. The irreparability of the injustice which it causes, the violence which it does to attractions and repulsions, the yoke of iron which it fastens upon the will, the moral torture to which it subjects the conscience, the debilitating effect which it has upon society; and, to sum it all up, the pious and stupid uniformity which it enforces upon the free, active, reasoning, unsubmissive personality of man, have shocked common sense, and condemned communism by an irrevocable decree.

Singularly enough, systematic communism—the deliberate negation of property—is conceived under the direct influence of the proprietary prejudice; and property is the basis of all communistic theories.

The members of a community, it is true, have no private property; but the community is the proprietor, and proprietor not only of the goods, but of the persons and wills. In consequence of this principle of absolute property, labor, which should be only a condition imposed upon man by Nature, becomes in all communities a human commandment, and therefore odious.

Communism is inequality, but not as property is. Property is the exploitation of the weak by the strong. Communism is the exploitation of the strong by the weak. In property, inequality of conditions is the result of force, under whatever name it be disguised: physical and mental force; force of events, chance, *fortune;* force of accumulated property, &c. In communism, inequality springs from placing mediocrity on a level with excellence.

Give them equal opportunities of labor, and equal wages, but never allow their jealousy to be awakened by mutual suspicion of unfaithfulness in the performance of the common task.

Thus, communism violates the sovereignty of the conscience, and equality; the first, by restricting spontaneity of mind and heart, and freedom of thought and action; the second, by placing labor and laziness, skill and stupidity, and even vice and virtue on an equality in point of comfort.

Property, in its turn, violates equality by the rights of exclusion and increase, and freedom by despotism. The former effect of property having been sufficiently developed, I will content myself here with establishing by a final comparison, its perfect identity with robbery.

Robbery is committed in a variety of ways, which have been very cleverly distinguished and classified by legislators according to their heinousness or merit, to the end that some robbers may be honored, while others are punished.

We rob,—1. By murder on the highway; 2. Alone, or in a band; 3. By breaking into buildings, or scaling walls; 4. By abstraction; 5. By fraudulent bankruptcy; 6. By forgery of the handwriting of public officials or private individuals; 7. By manufacture of counterfeit money.

This species includes all robbers who practise their profession with no other aid than force and open fraud. Bandits, brigands, pirates, rovers by land and sea,—these names were gloried in by the ancient heroes, who thought their profession as noble as it was lucrative. In our day, the robber—the warrior of the ancients—is pursued with the utmost vigor. His profession, in the language of the code, entails ignominious and corporal penalties, from imprisonment to the scaffold. A sad change in the opinions here below!

We rob,—8. By cheating; 9. By swindling; 10. By abuse of trust; 11. By games and lotteries.

This second species was encouraged by the laws of Lycurgus, in order to sharpen the wits of the young. Under Louis XIII. and Louis XIV., it was not considered dishonorable to cheat at play. To do so was a part of the game; and many worthy people did not scruple to correct the caprice of Fortune by dexterous jugglery. To-day even, and in all countries, it is thought a mark of merit among peasants, merchants, and shopkeepers to *know how to make a*

bargain,—that is, to deceive one's man. This is so universally accepted, that the cheated party takes no offence. Therefore the penal code—which much prefers intelligence to muscular vigor—has made, of the four varieties mentioned above, a second category, liable only to correctional, not to ignominious, punishments.

We rob,—12. By usury.

This species of robbery, so odious and so severely punished since the publication of the Gospel, is the connecting link between forbidden and authorized robbery. Owing to its ambiguous nature, it has given rise to a multitude of contradictions in the laws and in morals,—contradictions which have been very cleverly turned to account by lawyers, financiers, and merchants.

We rob,—13. By farm-rent, house-rent, and leases of all kinds.

We rob,—14. By commerce, when the profit of the merchant exceeds his legitimate salary.

We rob,—15. By making profit on our product, by accepting sinecures, and exacting exorbitant wages.

In those forms of robbery which are prohibited by law, force and artifice are employed alone and undisguised; in the authorized forms, they conceal themselves within a useful product, which they use as a tool to plunder their victim.

The direct use of violence and stratagem was early and universally condemned; but no nation has yet got rid of that kind of robbery which acts through talent, labor, and possession, and which is the source of all the dilemmas of casuistry and the innumerable contradictions of jurisprudence.

III. Royalty and Anarchy

[*Ch. V, pt. 2nd, sec. 2.*] What is to be the form of government in the future? I hear some of my younger readers reply: "Why, how can you ask such a question? You are a republican." "A republican! Yes; but that word specifies nothing. *Res publica;* that is, the public thing. Now, whoever is interested in public affairs—no matter under what form of government—may call himself a republican. Even kings are republicans."—"Well! you are a democrat?"—"No."—"What! you would have a monarchy."—"No."—"A constitutionalist?"—"God forbid!"—"You are then an aristocrat?"—"Not at all."—"You want a mixed government?"—"Still less."—"What are you, then?"—"I am an anarchist."

"Oh! I understand you; you speak satirically. This is a hit at the government."—"By no means. I have just given you my serious and well-considered profession of faith. Although a firm friend of order, I am (in the full force of the term) an anarchist. Listen to me."

Man naturally follows a chief. Originally, the chief is the father, the patriarch, the elder; in other words, the good and wise man, whose functions, consequently, are exclusively of a reflective and intellectual nature.

Those philosophers who (carrying into morals and into history their gloomy and factious whims) affirm that the human race had originally neither chiefs nor kings, know nothing of the nature of man. Royalty, and absolute royalty, is—as truly and more truly than democracy—a primitive form of government. Royalty dates from the creation of man; it existed in the age of negative communism. Ancient heroism (and the despotism which it engendered) commenced only with the first manifestation of the idea of justice; that is, with the reign of force. As soon as the strongest, in the comparison of merits, was decided to be the best, the oldest had to abandon his position, and royalty became despotic.

Royalty was at first elective, because—at a time when man produced but little and possessed nothing—property was too weak to establish the principle of heredity, and secure to the son the throne of his father; but as soon as fields were cleared, and cities built, each function was, like everything else, appropriated, and hereditary kingships and priesthoods were the result. The principle of heredity was carried into even the most ordinary professions,—a circumstance which led to class distinctions, pride of station, and abjection of the common people, and which confirms my assertion, concerning the principle of patrimonial succession, that it is a method suggested by Nature of filling vacancies in business, and completing unfinished tasks.

From time to time, ambition caused usurpers, or *supplanters* of kings, to start up; and, in consequence, some were called kings by right, or legitimate kings, and others *tyrants*. But we must not let these names deceive us. There have been execrable kings, and very tolerable tyrants. Royalty must always be good, when it is the only possible form of government; legitimate it is never. Neither heredity, nor election, nor universal suffrage, nor the ex-

cellence of the sovereign, nor the consecration of religion and of time, can make royalty legitimate. Whatever form it takes,—monarchic, oligarchic, or democratic,—royalty, or the government of man by man, is illegitimate and absurd.

Man, in order to procure as speedily as possible the most thorough satisfaction of his wants, seeks *rule*. In the beginning, this rule is to him living, visible, and tangible. It is his father, his master, his king. The more ignorant man is, the more obedient he is, and the more absolute is his confidence in his guide. But, it being a law of man's nature to conform to rule,—that is, to discover it by his powers of reflection and reason,—man reasons upon the commands of his chiefs. Now, such reasoning as that is a protest against authority,—a beginning of disobedience. At the moment that man inquires into the motives which govern the will of his sovereign,—at that moment man revolts. If he obeys no longer because the king commands, but because the king demonstrates the wisdom of his commands, it may be said that henceforth he will recognize no authority, and that he has become his own king. Unhappy he who shall dare to command him, and shall offer, as his authority, only the vote of the majority; for, sooner or later, the minority will become the majority, and this imprudent despot will be overthrown, and all his laws annihilated.

In proportion as society becomes enlightened, royal authority diminishes. That is a fact to which all history bears witness. At the birth of nations, men reflect and reason in vain. Without methods, without principles, not knowing how to use their reason, they cannot judge of the justice of their conclusions. Then the authority of kings is immense, no knowledge having been acquired with which to contradict it. But, little by little, experience produces habits, which develop into customs; then the customs are formulated in maxims, laid down as principles,—in short, transformed into laws, to which the king, the living law, has to bow. There comes a time when customs and laws are so numerous that the will of the prince is, so to speak, entwined by the public will; and that, on taking the crown, he is obliged to swear that he will govern in conformity with established customs and usages; and that he is but the executive power of a society whose laws are made independently of him.

Up to this point, all is done instinctively, and, as it were, unconsciously; but see where this movement must end.

By means of self-instruction and the acquisition of ideas, man finally acquires the idea of *science*,—that is, of a system of knowledge in harmony with the reality of things, and inferred from observation. He searches for the science, or the system, of inanimate bodies,—the system of organic bodies, the system of the human mind, and the system of the universe: why should he not also search for the system of society? But, having reached this height, he comprehends that political truth, or the science of politics, exists quite independently of the will of sovereigns, the opinion of majorities, and popular beliefs,—that kings, ministers, magistrates, and nations, as wills, have no connection with the science, and are worthy of no consideration. He comprehends, at the same time, that, if man is born a sociable being, the authority of his father over him ceases on the day when, his mind being formed and his education finished, he becomes the associate of his father; that his true chief and his king is the demonstrated truth; that politics is a science, not a stratagem; and that the function of the legislator is reduced, in the last analysis, to the methodical search for truth.

Thus, in a given society, the authority of man over man is inversely proportional to the stage of intellectual development which that society has reached; and the probable duration of that authority can be calculated from the more or less general desire for a true government,—that is, for a scientific government. And just as the right of force and the right of artifice retreat before the steady advance of justice, and must finally be extinguished in equality, so the sovereignty of the will yields to the sovereignty of the reason, and must at last be lost in scientific socialism. Property and royalty have been crumbling to pieces ever since the world began. As man seeks justice in equality, so society seeks order in anarchy.

Anarchy,—the absence of a master, of a sovereign,—such is the form of government to which we are every day approximating, and which our accustomed habit of taking man for our rule, and his will for law, leads us to regard as the height of disorder and the expression of chaos. The story is told, that a citizen of Paris in the seventeenth century having heard it said that in Venice there was no king, the good man could not recover from his astonishment, and nearly died from laughter at the mere mention of so ridiculous a thing. So strong is our prejudice. The most advanced

among us are those who wish the greatest possible number of sovereigns,—their most ardent wish is for the royalty of the National Guard. Soon, undoubtedly, some one, jealous of the citizen militia, will say, "Everybody is king." But, when he has spoken, I will say, in my turn, "Nobody is king; we are, whether we will or no, associated." Every question of domestic politics must be decided by departmental statistics. The science of government rightly belongs to one of the sections of the Academy of Sciences, whose permanent secretary is necessarily prime minister; and, since every citizen may address a memoir to the Academy, every citizen is a legislator. But, as the opinion of no one is of any value until its truth has been proven, no one can substitute his will for reason,—nobody is king.

All questions of legislation and politics are matters of science, not of opinion. The legislative power belongs only to the reason, methodically recognized and demonstrated. To attribute to any power whatever the right of veto or of sanction, is the last degree of tyranny. Justice and legality are two things as independent of our approval as is mathematical truth. To compel, they need only to be known; to be known, they need only to be considered and studied. What, then, is the nation, if it is not the sovereign,—if it is not the source of the legislative power? The nation is the guardian of the law—the nation is the *executive power*. Every citizen may assert: "This is true; that is just;" but his opinion controls no one but himself. That the truth which he proclaims may become a law, it must be recognized. Now, what is it to recognize a law? It is to verify a mathematical or a metaphysical calculation; it is to repeat an experiment, to observe a phenomenon, to establish a fact. Only the nation has the right to say, "Be it known and decreed."

I confess that this is an overturning of received ideas, and that I seem to be attempting to revolutionize our political system; but I beg the reader to consider that, having begun with a paradox, I must, if I reason correctly, meet with paradoxes at every step, and must end with paradoxes. For the rest, I do not see how the liberty of citizens would be endangered by entrusting to their hands, instead of the pen of the legislator, the sword of the law. The executive power, belonging properly to the will, cannot be confided to too many proxies. That is the true sovereignty of the nation.

The proprietor, the robber, the hero, the sovereign—for all these titles are synonymous—imposes his will as law, and suffers neither contradiction nor control; that is, he pretends to be the legislative and the executive power at once. Accordingly, the substitution of the scientific and true law for the royal will is accomplished only by a terrible struggle; and this constant substitution is, after property, the most potent element in history, the most prolific source of political disturbances. Examples are too numerous and too striking to require enumeration.

Now, property necessarily engenders despotism,—the government of caprice, the reign of libidinous pleasure. That is so clearly the essence of property that, to be convinced of it, one need but remember what it is, and observe what happens around him. Property is the right to *use* and *abuse*. If, then, government is economy,—if its object is production and consumption, and the distribution of labor and products,—how is government possible while property exists? And if goods are property, why should not the proprietors be kings, and despotic kings—kings in proportion to their *facultés bonitaires?* And if each proprietor is sovereign lord within the sphere of his property, absolute king throughout his own domain, how could a government of proprietors be any thing but chaos and confusion?

IV. The Synthesis of Communism and Property

[*Ch. V, pt. 2nd, sec. 3.*] Communism seeks *equality* and *law*. Property, born of the sovereignty of the reason, and the sense of personal merit, wishes above all things *independence* and *proportionality*.

But communism, mistaking uniformity for law, and levelism for equality, becomes tyrannical and unjust. Property, by its despotism and encroachments, soon proves itself oppressive and anti-social.

The objects of communism and property are good—their results are bad. And why? Because both are exclusive, and each disregards two elements of society. Communism rejects independence and proportionality; property does not satisfy equality and law.

Now, if we imagine a society based upon these four principles—equality, law, independence, and proportionality,—we find:—

1. That *equality*, consisting only in *equality of conditions*, that

is, *of means*, and not in *equality of comfort*,—which it is the business of the laborers to achieve for themselves, when provided with equal means,—in no way violates justice and *équité*.

2. That *law*, resulting from the knowledge of facts, and consequently based upon necessity itself, never clashes with independence.

3. That individual *independence*, or the autonomy of the private reason, originating in the difference in talents and capacities, can exist without danger within the limits of the law.

4. That *proportionality*, being admitted only in the sphere of intelligence and sentiment, and not as regards material objects, may be observed without violating justice or social equality.

This third form of society, the synthesis of communism and property, we will call *liberty*.

In determining the nature of liberty, we do not unite communism and property indiscriminately; such a process would be absurd eclecticism. We search by analysis for those elements in each which are true, and in harmony with the laws of Nature and society, disregarding the rest altogether; and the result gives us an adequate expression of the natural form of human society,—in one word, liberty.

Liberty is equality, because liberty exists only in society; and in the absence of equality there is no society.

Liberty is anarchy, because it does not admit the government of the will, but only the authority of the law; that is, of necessity.

Liberty is infinite variety, because it respects all wills within the limits of the law.

Liberty is proportionality, because it allows the utmost latitude to the ambition for merit, and the emulation of glory.

Man's social nature becoming *justice* through reflection, *équité* through the classification of capacities, and having *liberty* for its formula, is the true basis of morality,—the principle and regulator of all our actions. *Duty* and *right* are born of *need*, which, when considered in connection with others, is a *right*, and when considered in connection with ourselves, a *duty*.

We need to eat and sleep. It is our right to procure those things which are necessary to rest and nourishment. It is our duty to use them when Nature requires it.

We need to labor in order to live. To do so is both our right and our duty.

We need to love our wives and children. It is our duty to protect and support them. It is our right to be loved in preference to all others. Conjugal fidelity is justice. Adultery is high treason against society.

We need to exchange our products for other products. It is our right that this exchange should be one of equivalents; and since we consume before we produce, it would be our duty, if we could control the matter, to see to it that our last product shall follow our last consumption. Suicide is fraudulent bankruptcy.

We need to live our lives according to the dictates of our reason. It is our right to maintain our freedom. It is our duty to respect that of others.

We need to be appreciated by our fellows. It is our duty to deserve their praise. It is our right to be judged by our works.

Liberty is not opposed to the rights of succession and bequest. It contents itself with preventing violations of equality. "Choose," it tells us, "between two legacies, but do not take them both."

Liberty favors emulation, instead of destroying it. In social equality, emulation consists in accomplishing under like conditions; it is its own reward. No one suffers by the victory.

Liberty applauds self-sacrifice, and honors it with its votes, but it can dispense with it. Justice alone suffices to maintain the social equilibrium. Self-sacrifice is an act of supererogation. Happy, however, the man who can say, "I sacrifice myself."

Liberty is essentially an organizing force. To insure equality between men and peace among nations, agriculture and industry, and the centres of education, business, and storage, must be distributed according to the climate and the geographical position of the country, the nature of the products, the character and natural talents of the inhabitants, &c., in proportions so just, so wise, so harmonious, that in no place shall there ever be either an excess or a lack of population, consumption, and products. There commences the science of public and private right, the true political economy. It is for the writers on jurisprudence, henceforth unembarrassed by the false principle of property, to describe the new laws, and bring peace upon earth. Knowledge and genius they do not lack; the foundation is now laid for them.

Individual *possession* is the condition of social life; five thousand years of property demonstrate it. *Property* is the suicide of society. Possession is a right; property is against right. Suppress property

while maintaining possession, and, by this simple modification of the principle, you will revolutionize law, government, economy, and institutions; you will drive evil from the face of the earth.

Free association, liberty—whose sole function is to maintain equality in the means of production and equivalence in exchanges—is the only possible, the only just, the only true form of society.

Politics is the science of liberty. The government of man by man (under whatever name it be disguised) is oppression. Society finds its highest perfection in the union of order with anarchy.

II. THE ANARCHIST PROGRAM FOR SOCIETY

The Conquest of Bread (1888)

Piotr A. Kropotkin (1842–1921)

At the close of the nineteenth century, Russia, of all the great European countries, presented the outstanding example of conflict between liberty and the authority of the state. Russia was, therefore, fertile soil for the seeds of anarchism. In England, Green and Bosanquet combined radicalism in politics with idealism in philosophy; in Germany, Marxians as well as state socialists looked upon the authority of the state as an instrument of reform; but the important Russian contribution to political philosophy was an anarchism far more revolutionary than that of Proudhon. Only by violence could the coercive state be destroyed and the path prepared for voluntary coöperation. Many Russian anarchists even preached and practiced isolated acts of terrorism, although such activities were not countenanced by the great leaders of the movement.

The two outstanding figures in Russian anarchism were Bakunin, a contemporary of Marx, and Kropotkin, a generation younger. Bakunin excelled as an organizer and agitator, and contested with Marx the leadership of the First International. The Bakuninists were finally expelled in 1872, but the International itself was dissolved four years later. Kropotkin was no arm-chair radical—like Bakunin he experienced imprisonment and exile—but his great contribution was the presentation of the anarchist cause in finished literary form. A highly trained natural scientist, he agreed with Spencer that science proves the needlessness of the state, but at that point the two parted company. No conservative derived satisfaction from Kropotkin's picture of the stateless society.

Of noble birth, Kropotkin became interested in liberalism in early boyhood. He received his principal education in a military school, but specialized in scientific studies and after six years in the army resigned in disgust to devote himself to physical geography. Converted to anarchism through the indirect influence of Bakunin, he was arrested and imprisoned, but managed to escape abroad in 1876. Not until 1917 did he return to Russia, where he was disappointed by Communist developments but was honored by the offer of a state funeral, which, however, his family declined

to accept for him. During his exile he lived principally in England, supporting himself by his scientific writings and spreading the gospel of anarchism. Among his principal works in political philosophy are *The Conquest of Bread* (1888), *The State, Its Part in History* (1898), *Fields, Factories, and Workshops* (1899), *Mutual Aid, a Factor of Evolution* (1902), and *Modern Science and Anarchism* (1903).

The readings here given are based on the American edition (Putnam, New York, 1907) of the anonymous English translation of the French text of *The Conquest of Bread*, and are reprinted by permission of G. P. Putnam's Sons and of Chapman and Hall, the English publishers. A number of slight corrections in the translation have been made by the present editor.

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THE CONQUEST OF BREAD

I. Expropriation

[*Ch. II, i.*] Well-Being for all is not a dream. It is possible, realizable, owing to all that our ancestors have done to increase our powers of production.

But, if plenty for all is to become a reality, this immense capital—cities, houses, pastures, arable lands, factories, highways, education—must cease to be regarded as private property which the monopolist may dispose of at his pleasure.

This rich endowment, painfully won, builded, fashioned, or invented by our ancestors, must become common property, so that the collective interests of men may gain from it the greatest good for all.

There must be EXPROPRIATION. The well-being of all—the end; expropriation—the means.

[*ii.*] Expropriation, such then is the problem which History has put before the men of the twentieth century; the return to Communism in all that ministers to the well-being of man.

But this problem cannot be solved by means of legislation. No

one imagines that. The poor, no less than the rich, understand that neither the existing Governments, nor any which might arise out of possible political changes, would be capable of finding a solution. We feel the necessity of a social revolution; rich and poor alike recognize that this revolution is imminent, that it may break out in a very few years.

Well! What are we to do when the thunderbolt has fallen?

We have all been studying the dramatic side of revolution so much, and the practical work of revolution so little, that we are apt to see only the stage effects, so to speak, of these great movements; the fight of the first days; the barricades. But this fight, this first skirmish, is soon ended, and it is only after the overthrow of the old constitution that the real work of revolution can be said to begin.

The people suffer. With the childlike faith, with the good humour of the masses who believe in their leaders, they think that "yonder," in the House, in the Town Hall, in the Committee of Public Safety, their welfare is being considered. But "yonder" they are discussing everything under the sun except the welfare of the people. In 1793, while famine ravaged France and crippled the Revolution; whilst the people were reduced to the depths of misery, Robespierre was urging the Jacobins to discuss his treatise on the English Constitution.

The people suffer and ask: "How can we find the way out of these difficulties?"

[*iii.*] It must be so contrived that from the first day of the revolution the worker shall know that a new era is opening before him; that henceforward none need crouch under the bridges, with palaces hard by, none need fast in the midst of food, none need perish with cold near shops full of furs; that all is for all, in practice as well as in theory, and that at last, for the first time in history, a revolution has been accomplished which considers the NEEDS of the people before schooling them in their DUTIES.

This cannot be brought about by Acts of Parliament, but only by taking immediate and effective possession of all that is necessary to ensure the well-being of all. We must take possession, in the name of the people, of the granaries, the shops full of clothing, and the dwelling houses. Nothing must be wasted. We must organize without delay to feed the hungry, to satisfy all wants, to meet all needs.

[*Ch. IV, iii.*] All is interdependent in a civilized society: it is impossible to reform any one thing without altering the whole. Therefore, on the day we strike at private property, under any one of its forms, landed or industrial, we shall be obliged to attack them all. The very success of the Revolution will demand it.

Nevertheless, some Socialists still seek to establish a distinction. "Of course," they say, "the soil, the mines, the mills, and the factories must be expropriated. These are the instruments of production, and it is right we should consider them public property. But articles of consumption—food, clothes, and dwellings—should remain private property."

Popular common sense has got the better of this subtle distinction. We are not savages who can live in the woods, without other shelter than the branches. The civilized man needs a roof, a room, a hearth, and a bed. It is true that the bed, the room, and the house are a home of idleness for the non-producer. But for the worker, a room, properly heated and lighted, is as much an instrument of production as the tool or the machine. It is the place where his nerves and sinews gather strength for the work of the morrow. The rest of the workman is the daily repairing of the machine.

The same argument applies even more obviously to food. The so-called economists of whom we speak would hardly deny that the coal burnt in a machine is as necessary to production as the raw material itself. How then can food, without which the human machine could do no work, be excluded from the list of things indispensable to the producer?

The same with clothing. If the economists who draw this distinction between articles of production and of consumption dressed themselves in the fashion of New Guinea, we could understand their objection. But men who could not write a word without shirts on their backs are not in a position to draw such a hard and fast line between their shirts and their pens.

Whether we like it or not, this is what the people mean by a revolution. As soon as they have made a clean sweep of the Government, they will seek first of all to ensure themselves decent dwellings and sufficient food and clothes—free of capitalist rent.

And the people will be right. The methods of the people will be much more in accordance with science than those of the economists who draw so many distinctions between instruments of

production and articles of consumption. The people understand that this is just the point where the Revolution ought to begin; and they will lay the foundations of the only economic science worthy of the name—a science which might be called: "*The Study of the Needs of Humanity, and of the Economic Means to satisfy them.*"

II. Anarchist Communism

[*Ch. III, i.*] Every society which has abolished private property will be forced to organize itself on the lines of Communistic Anarchy. Anarchy leads to Communism, and Communism to Anarchy, both alike being expressions of the predominant tendency in modern societies, the pursuit of equality.

Time was when a peasant family could consider the corn which it grew, or the woollen garments woven in the cottage, as the products of its own toil.

But nowadays, in the present state of industry, when everything is interdependent, when each branch of production is knit up with all the rest, the attempt to claim an Individualist origin for the products of industry is absolutely untenable.

How, then, shall we estimate the share of each in the riches which ALL contribute to amass?

Looking at production from this general, synthetic point of view, we cannot hold with the Collectivists that payment proportionate to the hours of labour rendered by each would be an ideal arrangement, or even a step in the right direction.

The wage system arises out of the individual ownership of the land and the instruments of labour. It was the necessary condition for the development of capitalist production, and will perish with it, in spite of the attempt to disguise it as "profit-sharing." The common possession of the instruments of labour must necessarily bring with it the enjoyment in common of the fruits of common labour.

We are convinced that our first obligation, when the revolution shall have broken the power upholding the present system, will be to realize Communism without delay.

But ours is neither the Communism of Fourier and the Phalansteriens, nor that of the German State-Socialists. It is Anarchist Communism—Communism without government—the Communism of the Free. It is the synthesis of the two ideals pursued by humanity throughout the ages—Economic and Political Liberty.

[*ii.*] After having striven long in vain to solve the insoluble problem—the problem of constructing a government "that can constrain the individual to obedience without itself ceasing to be the servant of society"—men at last attempt to free themselves from every form of government and to satisfy their need for organization by free contract between individuals and groups pursuing the same aim. The independence of each small territorial unit becomes a pressing need; mutual agreement replaces law, and everywhere regulates individual interests in view of a common object.

We can already catch glimpses of a world in which the bonds which bind the individual are no longer laws, but social habits—the result of the need felt by each one of us to seek the support, the coöperation, the sympathy of his neighbours.

Assuredly the idea of a society without a State will give rise to at least as many objections as the political economy of a society without private capital. We have all been brought up from our childhood to regard the State as a sort of Providence.

Open any book on sociology or jurisprudence, and you will find there the Government, its organization, its acts, filling so large a place that we come to believe that there is nothing outside the Government and the world of statesmen.

And yet as soon as we pass from printed matter to life itself, as soon as we cast a glance at society, we are struck by the infinitesimal part played by the Government. Every day millions of transactions are made without Government intervention, and the greatest of them—those of commerce and of the Exchange—are carried on in such a way that the Government could not be appealed to if one of the contracting parties had the intention of not fulfilling his agreement. The man who does not feel the slightest remorse when poisoning his customers with noxious drugs covered with pompous labels thinks he is in honour bound to keep his engagements. Now, if this relative morality has developed under present conditions, when enrichment is the only incentive and the only aim, can we doubt its rapid progress when appropriation of the fruits of others' labour shall no longer be the basis of society?

Another striking fact, which especially characterizes our generation, speaks still more in favour of our ideas. It is the continual extension of the field of enterprise due to private initiative, and the prodigious development of free groups of all kinds.

The International Postal Union, the railway systems, and the learned societies give us examples of solutions based on free agreement in place and stead of law.

To-day, when groups scattered far and wide wish to organize for some object or other, they no longer elect an international parliament of Jacks-of-all-trades. No. Where it is impossible to meet directly or come to an agreement by correspondence, delegates versed in the question at issue are sent to treat, with the instructions: "Endeavour to come to an agreement on such and such a question, and then return, not with a law in your pocket, but with a proposed contract which we may or may not accept."

Such is the method of the great industrial companies, the learned societies, and the associations of every description, which already cover Europe and the United States. And such should be the method of an emancipated society. While bringing about expropriation, society cannot continue to be organized on the principle of parliamentary representation. A society founded on serfdom is in keeping with absolute monarchy; a society based on the wage system and the exploitation of the masses by the capitalists finds its political expression in parliamentarianism. But a free society, regaining possession of the common inheritance, must seek, in free groups and free federations of groups, a new organization, in harmony with the new economic phase of history.

Every economic phase has a political phase corresponding to it, and it would be impossible to touch property without finding at the same time a new mode of political life.

III. Food, Dwellings, and Clothing

[*Ch. V, vi.*] In 1793 the provinces starved the large towns, and killed the Revolution. And yet it is a known fact that the production of grain in France during 1792–93 had not diminished; indeed, the evidence goes to show that it had increased. But after having taken possession of the manorial lands, after having reaped a harvest from them, the peasants would not part with their grain for paper money.

As long as worthless paper money—whether called assignats or labour notes—is offered to the peasant producer, it will always be the same. The country will withhold its produce, and the towns will suffer want, even if the recalcitrant peasants are guillotined as before.

We must offer to the peasant in exchange for his toil not worthless paper money, but the manufactured articles of which he stands in immediate need. He lacks the proper implements to till the land, clothes to protect him properly from the inclemencies of the weather, lamps and oil to replace his miserable rushlight or tallow dip, spades, rakes, ploughs. All these things, under present conditions, the peasant is forced to do without, not because he does not feel the need of them, but because, in his life of struggle and privation, a thousand useful things are beyond his reach; because he has no money to buy them.

Let the town apply itself, without loss of time, to manufacturing all that the peasant needs, instead of fashioning gewgaws for the wives of rich citizens. Let the sewing machines of Paris be set to work on clothes for the country-folk: workaday clothes and clothes for Sunday too, instead of costly evening dresses. Let the factories and foundries turn out agricultural implements, spades, rakes, and such-like, instead of waiting till the English send them to France, in exchange for French wines!

Let the towns send no more inspectors to the villages, wearing red, blue, or rainbow-coloured scarves, to convey to the peasant orders to take his produce to this place or that, but let them send friendly embassies to the country-folk and bid them in brotherly fashion: "Bring us your produce, and take from our stores and shops all the manufactured articles you please." Then provisions would pour in on every side. The peasant would only withhold what he needed for his own use, and would send the rest into the cities, feeling *for the first time in the course of history* that these toiling townsfolk were his comrades—his brethren, and not his exploiters.

[*Ch. VI, iii.*] If the people of the Revolution expropriate the houses and proclaim free lodgings—the communalizing of houses and the right of each family to a decent dwelling—then the Revolution will have assumed a communistic character from the first, and started on a course from which it will be by no means easy to turn it. It will have struck a fatal blow at private property.

For the expropriation of dwellings contains in germ the whole social revolution. On the manner of its accomplishment depends the character of all that follows. Either we shall start on a good road leading straight to anarchist communism, or we shall remain sticking in the mud of despotic individualism.

It is easy to see the numerous objections—theoretic on the one hand, practical on the other—with which we are sure to be met. As it will be a question of maintaining injustice at any price, our opponents will of course protest "in the name of justice." "Is it not a crying shame," they will exclaim, "that the people of Paris should take possession of all these fine houses, while the peasants in the country have only tumble-down huts to live in?"

Do not let these disingenuous protests hold us back. We know that any inequality which may exist between town and country in the early days of the Revolution will be temporary and of a nature to right itself from day to day; for the village will not fail to improve its dwellings as soon as the peasant has ceased to be the beast of burden of the farmer, the merchant, the money-lender, and the State. In order to avoid an accidental and temporary inequality, shall we stay our hand from righting an ancient wrong?

The so-called practical objections are not very formidable either. We are bidden to consider the hard case of some poor fellow who by dint of privation has contrived to buy a house just large enough to hold his family. And we are going to deprive him of his hard-earned happiness, to turn him into the street! Certainly not. If his house is only just large enough for his family, by all means let him stay there. Let him work in his little garden too; our "boys" will not hinder him—nay, they will lend him a helping hand if he needs it. But suppose he lets lodgings, suppose he has empty rooms in his house; then the people will make the lodger understand that he need not pay his former landlord any more rent. "Stay where you are, but rent free. No more duns and collectors; Socialism has abolished all that!"

Or again, suppose that the landlord has a score of rooms all to himself, and some poor woman lives near by with five children in one room. In that case the people would see whether, with some alterations, these empty rooms could not be converted into a suitable home for the poor woman and her five children. Would not that be more just and fair than to leave the mother and her five little ones languishing in a garret while Sir Gorgeous Midas sat at his ease in an empty mansion? Besides, good Sir Gorgeous would probably hasten to do it of his own accord; his wife will be delighted to be freed from half her big, unwieldy house when there is no longer a staff of servants to keep it in order.

People would shake down amicably into the available dwellings with the least possible friction and disturbance. Have we not the example of the village communes redistributing fields and disturbing the owners of the allotments so little that one can only praise the intelligence and good sense of the methods they employ. Fewer fields change hands under the management of the Russian Commune than where personal property holds sway, and is for ever carrying its quarrels into courts of law. And are we to believe that the inhabitants of a great European city would be less intelligent and less capable of organization than Russian or Hindoo peasants?

The people commit blunder on blunder when they have to choose by ballot some hare-brained candidate who solicits the honour of representing them, and takes upon himself to know all, to do all, and to organize all. But when they take upon themselves to organize what they know, what touches them directly, they do it better than all the "talking-shops" put together. Is not the Paris Commune an instance in point? and the great dockers' strike? and have we not constant evidence of this fact in every village commune?

[*Ch. VII.*] When the houses have become the common heritage of the citizens, and when each man has his daily supply of food, another forward step will have to be taken. The question of clothing will of course demand consideration next, and again the only possible solution will be to take possession, in the name of the people, of all the shops and warehouses where clothing is sold or stored, and to throw open the doors to all, so that each can take what he needs. The communalization of clothing—the right of each to take what he needs from the communal stores, or to have it made for him at the tailors and outfitters—is a necessary corollary of the communalization of houses and food.

Obviously we shall not need to despoil all citizens of their coats, to put all the garments in a heap and draw lots for them, as our critics, with equal wit and ingenuity, suggest. Let him who has a coat keep it still—nay, if he have ten coats it is highly improbable that any one will want to deprive him of them, for most folk would prefer a new coat to one that has already graced the shoulders of some fat bourgeois; and there will be enough new garments and to spare, without having recourse to second-hand wardrobes.

We know how rapidly our great tailoring and dressmaking estab-

lishments work nowadays, provided as they are with machinery specially adapted for production on a large scale.

IV. The Elimination of Drudgery

[*Ch. VIII, ii.*] How many hours a day will man have to work to produce nourishing food, a comfortable home, and necessary clothing for his family? This question has often preoccupied Socialists, and they generally come to the conclusion that four or five hours a day would suffice, on condition, of course, that all men worked. At the end of the last century, Benjamin Franklin fixed the limit at five hours; and if the need for comfort is greater now, the power of production has augmented too, and far more rapidly.

Imagine a society, comprising a few million inhabitants, engaged in agriculture and a great variety of industries—Paris, for example, with the Department of Seine-et-Oise. Suppose that in this society all children learn to work with their hands as well as with their brains. Admit that all adults, save women engaged in the upbringing of their children, bind themselves to work *five hours a day* from the age of twenty or twenty-two to forty-five or fifty, and that they follow occupations they have chosen in any one branch of human work considered *necessary*. Such a society could in return guarantee well-being to all its members; that is to say, a more substantial well-being than that enjoyed to-day by the middle classes. And, moreover, each worker belonging to this society would have at his disposal at least five hours a day which he could devote to science, art, and individual needs which do not come under the category of *necessities*, but will probably do so later on, when man's productivity has augmented, and those objects no longer appear luxurious or inaccessible.

[*Ch. X, i.*] When Socialists declare that a society, emancipated from Capital, would make work agreeable, and would suppress all repugnant and unhealthy drudgery, they get laughed at. And yet even to-day we can see the striking progress made in this direction; and wherever this progress has been achieved, employers congratulate themselves on the economy of energy obtained thereby.

It is evident that a factory could be made as healthy and pleasant as a scientific laboratory. And it is no less evident that it would be advantageous to make it so. In a spacious and well-

ventilated factory work is better; it is easy to introduce small ameliorations, of which each represents an economy of time or of manual labour. And if most of the workshops we know are foul and unhealthy, it is because the workers count for nothing in the organization of factories, and because the most absurd waste of human energy is its distinctive feature.

Nevertheless, now and again, we already find some factories so well managed that it would be a real pleasure to work in them, provided, of course, that the work were not to last more than four or five hours a day, and that every one had the possibility of varying it according to his tastes.

It is the same with mines. We know what mines are like nowadays from Zola's descriptions and from newspaper reports. But the mine of the future will be well ventilated, with a temperature as easily regulated as that of a library; there will be no horses doomed to die below the earth: underground traction will be carried on by means of an automatic cable put in motion at the pit's mouth. Ventilators will be always working, and there will never be explosions. This is no dream. Such a mine is already to be seen in England; we went down it.

The same will come to pass as regards domestic work, which to-day society lays on the shoulders of that drudge of humanity—woman.

[*ii.*] Servant or wife, man always reckons on woman to do the housework.

But woman, too, at last claims her share in the emancipation of humanity. She no longer wants to be the beast of burden of the house. She considers it sufficient work to give many years of her life to the rearing of her children. She no longer wants to be the cook, the mender, the sweeper of the house. And, since American women take the lead in obtaining their claims, there is a general complaint of the dearth of women who will condescend to domestic work in the United States. My lady prefers art, politics, literature, or the card-table; as to working-girls, there are few who will consent to submit to apron-slavery, and servants are only found with difficulty in the States. Consequently, the solution, a very simple one, is pointed out by life itself. Machinery undertakes three-quarters of the household cares.

To emancipate woman is not only to open to her the gates of the university, the law court, or the parliament, for the "emanci-

pated" woman will always throw domestic toil onto another woman. To emancipate woman is to free her from the brutalizing toil of kitchen and washhouse; it is to organize the household in such a way as to enable her to rear her children, if she be so minded, while still retaining sufficient leisure to take her share of social life.

It will come to pass. As we have said, things are already improving. Only let us fully understand that a revolution, intoxicated with the beautiful words Liberty, Equality, Solidarity would not be a revolution if it maintained slavery in the household. Half humanity subjected to the slavery of the hearth would still have to rebel against the other half.

V. Free Agreement

[*Ch. XI, i.*] Accustomed as we are by hereditary prejudices and absolutely unsound education and training to see Government, legislation and magistracy everywhere around, we have come to believe that man would tear his fellow-man to pieces like a wild beast the day the police took their eyes off him; that chaos would come about if authority were overthrown during a revolution. And with our eyes shut we pass by thousands and thousands of human groupings which form freely, without any intervention of the law, and attain results infinitely superior to those achieved under governmental tutelage.

We know that Europe has a system of railways, 175,000 miles long, and that on this network you can nowadays travel from north to south, from east to west, from Madrid to Petersburg, and from Calais to Constantinople, without stoppages, without even changing carriages (when you travel by express). More than that: a parcel tossed into a station will find its addressee anywhere, in Turkey or in Central Asia, without more formality needed for sending it than writing its destination on a bit of paper.

This result might have been obtained in two ways. A Napoleon, a Bismarck, or whatever potentate had conquered Europe, might from Paris, Berlin, or Rome have drawn a railway map and regulated the hours of the trains. The Russian Tsar Nicholas I dreamt of taking such action. When he was shown rough drafts of railways between Moscow and Petersburg, he seized a ruler and drew on the map of Russia a straight line between these two capitals, saying, "Here is the plan." And the road was built in a straight

line, filling in deep ravines, building bridges of a giddy height, which had to be abandoned a few years later, at a cost of about £120,000 to £150,000 per English mile.

This is one way, but elsewhere things were managed differently. Railways were constructed piece by piece, the pieces were joined together, and the hundred different companies, to whom these pieces belonged, came to an understanding concerning the arrival and departure of their trains, and the running of carriages on their rails, from all countries, without unloading merchandise as it passes from one network to another.

All this was done by free agreement, by exchange of letters and proposals, by congresses at which delegates met to discuss certain special subjects, but not to make laws; after the congress, the delegates returned to their companies, not with a law, but with the draft of a contract to be accepted or rejected.

There were certainly obstinate men who would not be convinced. But the common interest finally led to agreement without need for the help of armies against refractory members.

And the most interesting thing in this organization is, that there is no European Central Government of Railways! Nothing! No minister of railways, no dictator, not even a continental parliament, not even a directing committee! Everything is done by contract.

[*iii.*] Imagine somebody saying twenty-five years ago: "The State, capable as it is of massacring twenty thousand men in a day, and of wounding fifty thousand more, is incapable of helping its own victims; as long as war exists private initiative must intervene, and men of goodwill must organize internationally for this humane work!" What mockery would not have met the man who dared thus to speak!

Now we know what happened. Red Cross societies were organized freely, everywhere, in all countries, in thousands of localities; and when the war of 1870–71 broke out, the volunteers set to work. Men and women offered their services. Thousands of hospitals and ambulances were organized; trains were started carrying ambulances, provisions, linen, and medicaments for the wounded. The English committees sent entire convoys of food, clothing, tools, grain for sowing, beasts of draught, even steam-ploughs with their attendants to help in the tillage of departments devastated by war!

As to the prophets ever ready to deny other men's courage,

good sense, and intelligence, and believing themselves to be the only ones capable of ruling the world with a rod, not one of their predictions was realized. The devotion of the Red Cross volunteers was beyond all praise. They were only too glad to occupy the most dangerous posts; and whereas the salaried doctors of the State fled with their staff when the Prussians approached, the Red Cross volunteers continued their work under fire, enduring the brutalities of Bismarck's and Napoleon's officers, lavishing their care on the wounded of all nationalities. Dutch, Italian, Swedes, Belgians, even Japanese and Chinese agreed remarkably well. They distributed their hospitals and their ambulances according to the needs of the occasion. They vied with one another especially in the hygiene of their hospitals. And there is many a Frenchman who still speaks with deep gratitude of the tender care he received from a Dutch or German volunteer in the Red Cross ambulances. But what is this to an authoritarian? His ideal is the regiment doctor, salaried by the State. What does he care for the Red Cross and its hygienic hospitals, if the nurses be not functionaries?

Even in matters pertaining to war, free agreement is appealed to; and to confirm our assertion let us mention the three hundred thousand British volunteers, the British National Artillery Association, and the Society, now in the course of organization, for the defence of England's coasts, as well as the appeals made to the commercial fleet, the Bicyclists' Corps, and the new organizations of private motor-cars and steam launches.

The State is abdicating and abandoning its sacred functions to private individuals. Everywhere free organization trespasses on its domain. And yet, the facts we have quoted let us catch only a glimpse of what free agreement has in store for us in the future, when the State shall be no more.

VI. Objections

[*Ch. XII, i.*] Let us now examine the principal objections put forth against Communism. Most of them are evidently caused by a simple misunderstanding, yet they raise important questions and merit our attention.

It is not for us to answer the objections raised to authoritarian Communism—we ourselves agree with them. Civilized nations have suffered too much in the long, hard struggle for the emancipation of the individual, to disown their past work and to tolerate a

Government that would make itself felt in the smallest details of a citizen's life, even if that Government had no other aim than the good of the community. Should an authoritarian Socialist society ever succeed in establishing itself, it could not last; general discontent would soon force it to break up, or to reorganize on principles of liberty.

It is of an Anarchist-Communist society that we are about to speak, a society that recognizes the absolute liberty of the individual, that does not admit of any authority, and makes use of no compulsion to drive men to work. Limiting our studies to the economic side of the question, let us see if such a society, composed of men as they are to-day, neither better nor worse, neither more nor less industrious, would have a chance of successful development.

The objection is known. "If the existence of each is guaranteed, and if the necessity of earning wages does not compel men to work, nobody will work. Every man will lay the burden of his work on another if he is not forced to do it himself."

But during our lifetime have we not heard the same fears expressed twice? By the anti-abolitionists in America before Negro emancipation, and by the Russian nobility before the liberation of the serfs? It was the refrain of the French noblemen in 1789, the refrain of the Middle Ages, a refrain as old as the world, and we shall hear it every time there is a question of sweeping away an injustice. And each time actual facts give it the lie. The liberated peasant of 1792 ploughed with a wild energy unknown to his ancestors, the emancipated Negro works more than his fathers, and the Russian peasant, after having honoured the honeymoon of his emancipation by celebrating Fridays as well as Sundays, has taken up work with as much more eagerness as his liberation is more complete. Where the soil is his, he works desperately; that is the exact word for it.

Moreover, who but economists taught us that if a wage-earner's work is indifferent, an intense and productive work is only obtained from a man who sees his wealth increase in proportion to his efforts? All hymns sung in honour of private property can be reduced to this axiom.

For it is remarkable that when economists, wishing to celebrate the blessings of property, show us how an unproductive, marshy, or stony soil is clothed with rich harvests when cultivated by the peasant proprietor, they in nowise prove their thesis in favour of

private property. By admitting that the only guarantee not to be robbed of the fruits of your labour is to possess the instruments of labour—which is true—the economists only prove that man really produces most when he works in freedom, when he has a certain choice in his occupations, when he has no overseer to impede him, and lastly, when he sees his work bringing in a profit to him and to others who work like him, but bringing in nothing to idlers. This is all we can deduce from their argumentation, and we maintain the same ourselves.

[*ii.*] Work indispensable to existence is essentially manual. We may be artists or scientists; but none of us can do without things obtained by manual work—bread, clothes, roads, ships, light, heat, etc. And, moreover, however highly artistic or however subtly metaphysical are our pleasures, they all depend on manual labour. And it is precisely this labour—the basis of life—that every one tries to avoid.

We understand perfectly well that it must be so nowadays.

Because, to do manual work now, means in reality to shut yourself up for ten or twelve hours a day in an unhealthy workshop, and to remain riveted to the same task for twenty or thirty years, and maybe for your whole life.

It means to be doomed to a paltry wage, to the uncertainty of the morrow, to want of work, often to destitution, more often than not to death in a hospital, after having worked forty years to feed, clothe, amuse, and instruct others than yourself and your children.

It means to bear the stamp of inferiority all your life, because, whatever the politicians tell us, the manual worker is always considered inferior to the brain worker, and the one who has toiled ten hours in a workshop has not the time, and still less the means, to give himself the high delights of science and art, or even to prepare himself to appreciate them; he must be content with the crumbs from the table of the privileged.

We understand that under these conditions manual labour is considered a curse of fate.

We understand that all men have but one dream—that of emerging from, or enabling their children to emerge from this inferior state; to create for themselves an "independent" position, which means what?—To live by other men's work!

As long as there is a class of manual workers and a class of "brain" workers, black hands and white hands, it will be thus.

It is precisely to put an end to this separation between manual and brain work that we want to abolish wagedom, that we want the Social Revolution. Then work will no longer appear a curse of fate: it will become what it should be—the free exercise of *all* the faculties of man.

[*iii.*] Those who have seriously studied the question do not deny any of the advantages of Communism, on condition, of course, that Communism be perfectly free, that is to say, Anarchist.

"But the danger," they say, "will come from that minority of loafers who will not work, and will not have regular habits in spite of excellent conditions that make work pleasant. Two or three sluggish or refractory workmen bring a spirit of disorder and rebellion into the workshop that makes work impossible; so that in the end we shall have to return to a system of compulsion that forces the ringleader back into the ranks. And is not the system of wages paid in proportion to work performed, the only one that enables compulsion to be employed, without hurting the feelings of the worker? Because all other means would imply the continual intervention of an authority that would be repugnant to free men." This, we believe, is the objection fairly stated.

It belongs to the category of arguments which try to justify the State, the Penal Law, the Judge, and the Gaoler.

We are, nevertheless, going to examine the objection, and see if there is any truth in it.

Is it not evident that if a society, founded on the principle of free work, were really menaced by loafers, it could protect itself without an authoritarian organization and without having recourse to wagedom?

Let us take a group of volunteers, combining for some particular enterprise. Having its success at heart, they all work with a will, save one of the associates, who is frequently absent from his post. Must they on his account dissolve the group, elect a president to impose fines, or maybe distribute markers for work done, as is customary in the Academy? It is evident that neither the one nor the other will be done, but that some day the comrade who imperils their enterprise will be told: "Friend, we should like to work with you; but as you are often absent from your post, and you do your work negligently, we must part. Go and find other comrades who will put up with your indifference!"

This way is so natural that it is practised everywhere nowadays,

in all industries, in competition with all possible systems of fines, docking of wages, supervision, etc.; a workman may enter the factory at the appointed time, but if he does his work badly, if he hinders his comrades by his laziness or other defects, and they quarrel with him on that account, there is an end of it; he is compelled to leave the workshop.

A certain standard of public morals is maintained in the same way. Authoritarians say it is due to rural guards, judges, and policemen, whereas in reality it is maintained *in spite of* judges, policemen, and rural guards.

When a railway company, federated with other companies, fails to fulfil its engagements, when its trains are late and goods lie neglected at the stations, the other companies threaten to cancel the contract, and that threat usually suffices.

It is generally believed, at any rate it is taught, that commerce only keeps to its engagements from fear of lawsuits. Nothing of the sort; nine times in ten the trader who has not kept his word will not appear before a judge. Where trade is very great, as in London, the sole fact of having driven a creditor to bring a lawsuit suffices for the immense majority of merchants to refuse for good to have any dealings with a man who has compelled one of them to go to law.

Then, why should means that are used to-day among mates in the workshop, traders, and railway companies, not be made use of in a society based on voluntary work?

Take, for example, an association stipulating that each of its members should carry out the following contract: "We undertake to give you the use of our houses, stores, streets, means of transport, schools, museums, etc., on condition that, from twenty to forty-five or fifty years of age, you consecrate four or five hours a day to some work recognized as necessary to existence. Choose yourself the producing groups which you wish to join, or organize a new group, provided that it undertake to produce necessaries. And as for the remainder of your time, combine together with those you like for recreation, art, or science, according to the bent of your taste.

"Twelve or fifteen hundred hours of work a year, in a group producing food, clothes, or houses, or employed in public health, transport, etc., is all we ask of you. For this work we guarantee to you all that these groups produce or have produced. But if not

one of the thousands of groups of our federation will receive you, whatever be their motive; if you are absolutely incapable of producing anything useful, or if you refuse to do it, then live like an isolated man or like an invalid. If we are rich enough to give you the necessaries of life we shall be delighted to give them to you. You are a man, and you have the right to live. But as you wish to live under special conditions, and leave the ranks, it is more than probable that you will suffer for it in your daily relations with other citizens. You will be looked upon as a ghost of bourgeois society, unless some friends of yours, discovering you to be a genius, kindly free you from all moral obligation towards society by doing necessary work for you.

"And lastly, if this does not please you, go and look for other conditions elsewhere in the wide world, or else seek adherents and organize with them on new principles. We prefer our own."

That is what could be done in a communist society in order to turn away sluggards if they became too numerous.

[*iv.*] We very much doubt that we need fear this contingency in a society really based on the entire freedom of the individual.

CHAPTER X. THE PHILOSOPHY OF THE CLASS STRUGGLE

I. SYNDICALISM

Reflections on Violence (1908)

Georges Sorel (1847–1922)

Syndicalism is both a practice and a profession. On its practical side it is the activity of the *syndicats*, or French trade unions, which have developed their own characteristic tactics. Thanks to the opposition of the French Revolution to the old monopolistic guilds, and the fear of workingmen's conspiracies felt by later conservative governments, associations in France were subjected until the 1880's to restrictive laws under which *syndicats* were illegal and hence tended to be revolutionary. When the development of large-scale industry at the very close of the century first furnished an economic background for widespread workmen's associations, the newly formed *Confédération Générale du Travail*, or national federation of *syndicats*, was ready to endorse sabotage as a normal method of industrial warfare and the general strike as the road to final victory.

As a philosophy, first taught by the short-lived Fernand Pelloutier and most fully expounded by Georges Sorel, syndicalism may be termed the hybrid offspring of socialism and anarchism. The *syndicats* are regarded as the armies of the workers in the Marxist class struggle and also as the prototypes of the anarchists' free associations. Sorel's teaching exerted little influence upon the practical syndicalists, but his "myth of the general strike" has played an important part in the world of radical thought.

Sorel was not himself of working class origin. He was educated in a polytechnic school and served for twenty-five years as a government engineer, but his contact with the bourgeoisie during his official career gave him a deep contempt for the middle class. In his late forties he became interested in Marxism, largely because of the scientific character of Marxist philosophy, but soon abandoned socialism for the revolutionary syndicalism of Pelloutier. Sorel was instrumental in founding the *Socialist Movement* in 1899 and contributed a series of articles on syndicalist philosophy, which formed the basis of his *Reflections on Violence* (1908). The World War emphasized Sorel's antipathy to democracy and the bourgeoisie, and the Bolshevik experiment in Russia found him a sympathetic but pessimistic observer. The success of this very experiment has put an end to the significance of his myth of the general strike.

The readings here given are based upon the translation of *Reflections on Violence* by T. E. Hulme (Allen and Unwin, London, 1916), and are reprinted by permission of the publishers.

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REFLECTIONS ON VIOLENCE

I. The Rôle of Proletarian Violence

[*Ch. I, ii.*] Social politics have introduced new elements which must now be taken into account. First of all, it must be noticed that the workers *count* to-day in the world by the same right as the different productive groups which demand to be protected; they must be treated with solicitude just as the vine-growers or the sugar manufacturers. There is nothing settled about Protectionism; the custom duties are fixed so as to satisfy the desires of very influential people who wish to increase their incomes; social politics proceed in the same manner.

The Protectionists succeed by subsidising a few important party leaders or by financing newspapers which support the politics of these party leaders; the workers have no money, but they have at their disposal a much more efficacious means of action; they can inspire *fear*, and for several years past they have availed themselves of this resource.

One of the things which appear to me to have most astonished the workers during the last few years has been the timidity of the

forces of law and order in the presence of a riot; magistrates who have the right to demand the services of soldiers dare not use their power to the utmost, and officers allow themselves to be abused and struck with a patience hitherto unknown in them. It is becoming more and more evident every day that working-class violence possesses an extraordinary efficacy in strikes: prefects, fearing that they may be obliged to use force against insurrectionary violence, bring pressure to bear on employers in order to compel them to give way; the safety of factories is now looked upon as a favour which the prefect may dispense as he pleases; consequently he arranges the use of his police so as to intimidate the two parties, and skilfully brings them to an agreement.

Trades union leaders have not been long in grasping the full bearing of this situation, and it must be admitted that they have used the weapon that has been put into their hands with great skill. They endeavour to intimidate the prefects by popular demonstrations which might lead to serious conflicts with the police, and they commend violence as the most efficacious means of obtaining concessions. At the end of a certain time the obsessed and frightened administration nearly always intervenes with the masters and forces an agreement upon them, which becomes an encouragement to the propagandists of violence.

A social policy founded on middle-class cowardice, which consists in always surrendering before the threat of violence, cannot fail to engender the idea that the middle class is condemned to death, and that its disappearance is only a matter of time. Thus every conflict which gives rise to violence becomes a vanguard fight, and nobody can foresee what will arise from such engagements; although the great battle never comes to a head, yet each time they come to blows the strikers hope that it is the beginning of the great *Napoleonic battle* (that which will definitely crush the vanquished); in this way the practice of strikes engenders the notion of a catastrophic revolution.

[*Ch. II, ii.*] According to Marx, capitalism by reason of the innate laws of its own nature, is hurrying along a path which will lead the world of to-day, with the inevitability of the evolution of organic life, to the doors of the world of to-morrow. This movement comprises a long period of capitalistic construction, and it ends by a rapid destruction, which is the work of the proletariat. Capitalism begets new ways of working; it throws the working

class into revolutionary organisations by the pressure it exercises on wages; it restricts its own political basis by competition, which is constantly eliminating industrial leaders. Thus, after having solved the great problem of the organisation of labour, to effect which Utopians have brought forward so many naïve or stupid hypotheses, capitalism provokes the birth of the cause which will overthrow it.

This doctrine will evidently be inapplicable if the middle class and the proletariat do not oppose each other implacably, with all the forces at their disposal; the more ardently capitalist the middle class is, the more the proletariat is full of a warlike spirit and confident of its revolutionary strength, the more certain will be the success of the proletarian movement.

If, on the contrary, the middle class, led astray by the *chatter* of the preachers of ethics and sociology, return to an *ideal of conservative mediocrity*, seek to correct the *abuses* of economics, and wish to break with the barbarism of their predecessors, then one part of the forces which were to further the development of capitalism is employed in hindering it, an arbitrary and irrational element is introduced, and the future of the world becomes completely indeterminate.

It is often urged, in objection to the people who defend the Marxian conception, that it is impossible for them to stop the movement of degeneration which is dragging both the middle class and the proletariat far from the paths assigned to them by Marx's theory. They can doubtless influence the working classes, and it is hardly to be denied that strike violences do keep the revolutionary spirit alive; but how can they hope to give back to the middle class an ardour which is spent?

It is here that the rôle of violence in history appears to us as singularly great, for it can, in an indirect manner, so operate on the middle class as to awaken them to a sense of their own class sentiment. Attention has often been drawn to the danger of certain acts of violence which compromised *admirable social works*, disgusted employers who were disposed to arrange the happiness of their workmen, and developed egoism where the most noble sentiments formerly reigned.

The day on which employers perceive that they have nothing to gain by works which promote the social peace, or by democracy, they will understand that they have been ill-advised by the people

who persuaded them to abandon their trade of creators of productive forces for the noble profession of educators of the proletariat. Then there is some chance that they may get back a part of their energy, and that moderate or conservative economics may appear as absurd to them as they appeared to Marx. In any case, the separation of classes being more clearly accentuated, the proletarian movement will have some chance of developing with greater regularity than to-day.

Proletarian violence not only makes the future revolution certain, but it seems also to be the only means by which the European nations—at present stupefied by humanitarianism—can recover their former energy. This kind of violence compels capitalism to restrict its attentions solely to its material rôle and tends to restore to it the warlike qualities which it formerly possessed. A growing and solidly organised working class can compel the capitalist class to remain firm in the industrial war; if a united and revolutionary proletariat confronts a rich middle class, eager for conquest, capitalist society will have reached its historical perfection.

Thus proletarian violence has become an essential factor of Marxism. Let us add that, if properly conducted, it will suppress the Parliamentary Socialists, who will no longer be able to pose as the leaders of the working classes and the guardians of order.

[*iii.*] Marx compared the passage from one historical era to another to a civil inheritance; the new age inherits prior acquisitions. If the revolution took place during a period of economic decadence, would not the inheritance be very much compromised, and in that case could there be any hope of the speedy reappearance of progress in the economic system? We have to ask whether history can furnish us with any guidance on this subject, which will enable us to guess what would be the result of a revolution accomplished in times of decadence.

The triumph of the Revolution astonished nearly all its contemporaries, and it seems that the most intelligent, the most deliberate, and the best informed as regards political matters, were the most surprised; this was because reasons drawn from theory could not explain this paradoxical success. It seems to me that even to-day the question is scarcely less obscure to historians than it was to our ancestors. The primary cause of this triumph must be sought in the economic progress of the time; it is because the Old Régime was struck by rapid blows, while production was

making great strides, that the contemporary world was born with comparatively little labour, and could so rapidly be assured of a vigorous life.

We possess, on the other hand, a dreadful historical experience of a great transformation taking place at a time of economic decadence; I mean the victory of Christianity and the fall of the Roman Empire which closely followed it.

The dangers which threaten the future of the world may be avoided, if the proletariat hold on with obstinacy to revolutionary ideas, so as to realise as much as possible Marx's conception. Everything may be saved, if the proletariat, by their use of violence, manage to re-establish the division into classes, and so restore to the middle class something of its former energy; that is the great aim towards which the whole thought of men—who are not hypnotised by the event of the day, but who think of the conditions of to-morrow—must be directed. Proletarian violence, carried on as a pure and simple manifestation of the sentiment of the class war, appears thus as a very fine and very heroic thing; it is at the service of the immemorial interests of civilisation; it is not perhaps the most appropriate method of obtaining immediate material advantages, but it may save the world from barbarism.

II. The Myth of the General Strike

[*Ch. IV, i.*] Every time that we attempt to obtain an exact conception of the ideas behind proletarian violence we are forced to go back to the notion of the general strike; and this same conception may render many other services, and throw an unexpected light on all the obscure parts of Socialism.

Military writers of to-day, when discussing the new methods of war necessitated by the employment of troops infinitely more numerous than those of Napoleon, equipped with arms much more deadly than those of his time, do not for all that imagine that wars will be decided in any other way than that of the Napoleonic battle. The detailed development of the combat will doubtless be quite different from what it used to be, but the end must always be the catastrophic defeat of the enemy. The methods of military instruction are intended to prepare the soldier for this great and terrible action, in which everybody must be ready to take part at the first signal. From the highest to the lowest, the

members of a really solid army have always in mind this catastrophic issue of international conflicts.

The revolutionary Syndicates argue about Socialist action exactly in the same manner as military writers argue about war; they restrict the whole of Socialism to the general strike; they look upon every combination as one that should culminate in this catastrophe; they see in each strike a reduced facsimile, an essay, a preparation for the great final upheaval.

The *new school*, which calls itself Marxist, Syndicalist, and revolutionary, declared in favour of the idea of the general strike as soon as it became clearly conscious of the true sense of its own doctrine, of the consequences of its activity, and of its own originality. It was thus led to leave the old official, Utopian, and political tabernacles, which hold the general strike in horror, and to launch itself into the true current of the proletarian revolutionary movement; for a long time past the proletariat had made adherence to the principle of the general strike the *test* by means of which the Socialism of the workers was distinguished from that of the amateur revolutionaries.

Syndicalism endeavours to employ methods of expression which throw a full light on things, which put them exactly in the place assigned to them by their nature, and which bring out the whole value of the forces in play. Oppositions, instead of being glozed over, must be thrown into sharp relief if we desire to obtain a clear idea of the Syndicalist movement; the groups which are struggling one against the other must be shown as separate and as compact as possible; in short, the movements of the revolted masses must be represented in such a way that the soul of the revolutionaries may receive a deep and lasting impression.

These results could not be produced in any very certain manner by the use of ordinary language; use must be made of a body of images which, *by intuition alone*, and before any considered analyses are made, is capable of evoking as an undivided whole the mass of sentiments which corresponds to the different manifestations of the war undertaken by Socialism against modern society. The Syndicalists solve this problem perfectly, by concentrating the whole of Socialism in the drama of the general strike; there is thus no longer any place for the reconciliation of contraries in the equivocations of the professors; everything is clearly mapped out, so that only one interpretation of Socialism is possible.

The possibility of the actual realisation of the general strike has been much discussed; it has been stated that the Socialist war could not be decided in one single battle. To the people who think themselves cautious, practical, and scientific the difficulty of setting great masses of the proletariat in motion at the same moment seems prodigious; they have analysed the difficulties of detail which such an enormous struggle would present. It is the opinion of the Socialist-sociologists, as also of the politicians, that the general strike is a popular dream, characteristic of the beginnings of a working-class movement; we have had quoted against us the authority of Sidney Webb, who has decreed that the general strike is an illusion of youth, of which the English workers—whom the monopolists of sociology have so often presented to us as the depositaries of the true conception of the working-class movement—soon rid themselves.

That the general strike is not popular in contemporary England, is a poor argument to bring against the historical significance of the idea, for the English are distinguished by an extraordinary lack of understanding of the class war; their ideas have remained very much dominated by medieval influences; the guild, privileged, or at least protected by laws, still seems to them the ideal of working-class organisation. We might therefore say that the aversion felt by England for the general strike should be looked upon as strong presumptive evidence in favour of the latter by all those who look upon the class war as the essence of Socialism.

Neither do I attach any importance to the objections made to the general strike based on considerations of a practical order. The attempt to construct hypotheses about the nature of the struggles of the future and the means of suppressing capitalism, on the model furnished by history, is a return to the methods of the Utopists. There is no process by which the future can be predicted scientifically, nor even one which enables us to discuss whether one hypothesis about it is better than another; it has been proved by too many memorable examples that the greatest men have committed prodigious errors in thus desiring to make predictions about even the least distant future.

And yet without leaving the present, without reasoning about this future, which seems forever condemned to escape our reason, we should be unable to act at all. Experience shows that the *framing of a future, in some indeterminate time*, may, when it is

done in a certain way, be very effective, and have very few inconveniences; this happens when the anticipations of the future take the form of those myths, which enclose with them all the strongest inclinations of a people, of a party or of a class, inclinations which recur to the mind with the insistence of instincts in all the circumstances of life; and which give an aspect of complete reality to the hopes of immediate action by which, more easily than by any other method, men can reform their desires, passions, and mental activity. We know, moreover, that these social myths in no way prevent a man profiting by the observations which he makes in the course of his life, and form no obstacle to the pursuit of his normal occupations.

The truth of this may be shown by numerous examples.

The first Christians expected the return of Christ and the total ruin of the pagan world, with the inauguration of the kingdom of the saints, at the end of the first generation. The catastrophe did not come to pass, but Christian thought profited so greatly from the apocalyptic myth that certain contemporary scholars maintain that the whole preaching of Christ referred solely to this one point. It must be admitted that the real developments of the Revolution did not in any way resemble the enchanting pictures which created the enthusiasm of its first adepts; but without those pictures would the Revolution have been victorious? In our own times Mazzini pursued what the wiseacres of his time called a mad chimera; but it can no longer be denied that, without Mazzini, Italy would never have become a great power, and that he did more for Italian unity than Cavour and all the politicians of his school.

A knowledge of what the myths contain in the way of details which will actually form part of the history of the future is then of small importance; they are not astrological almanacs; it is even possible that nothing which they contain will ever come to pass,—as was the case with the catastrophe expected by the first Christians. In our own daily life, are we not familiar with the fact that what actually happens is very different from our preconceived notion of it? And that does not prevent us from continuing to make resolutions.

The myth must be judged as a means of acting on the present; any attempt to discuss how far it can be taken literally as future history is devoid of sense. *It is the myth in its entirety which is alone*

important: its parts are only of interest in so far as they bring out the main idea. No useful purpose is served, therefore, in arguing about the incidents which may occur in the course of a social war, and about the decisive conflicts which may give victory to the proletariat.

The question whether the general strike is a partial reality, or only a product of popular imagination, is of little importance. All that it is necessary to know is, whether the general strike contains everything that the Socialist doctrine expects of the revolutionary proletariat.

To solve this question we are no longer compelled to argue learnedly about the future; we are not obliged to indulge in lofty reflections about philosophy, history, or economics; we are not on the plane of theories, and we can remain on the level of observable facts. We have to question men who take a very active part in the real revolutionary movement amidst the proletariat, men who do not aspire to climb into the middle class. These men may be deceived about an infinite number of political, economical, or moral questions; but their testimony is decisive, sovereign, and irrefutable when it is a question of knowing what are the ideas which most powerfully move them and their comrades, which most appeal to them as being identical with their socialistic conceptions, and thanks to which their reason, their hopes, and their way of looking at particular facts seem to make but one indivisible unity.

Thanks to these men, we know that the general strike is indeed what I have said: the *myth* in which Socialism is wholly comprised, *i.e.* a body of images capable of evoking instinctively all the sentiments which correspond to the different manifestations of the war undertaken by Socialism against modern society. Strikes have engendered in the proletariat the noblest, deepest, and most moving sentiments that they possess; the general strike groups them all in a co-ordinated picture, and, by bringing them together, gives to each one of them its maximum of intensity; appealing to their painful memories of particular conflicts, it colours with an intense life all the details of the composition presented to consciousness. We thus obtain that intuition of Socialism which language cannot give us with perfect clearness—and we obtain it as a whole, perceived instantaneously.

We may urge yet another piece of evidence to prove the power of the idea of the general strike. If that idea were a pure chimera,

as is so frequently said, Parliamentary Socialists would not attack it with such heat; I do not remember that they ever attacked the senseless hopes which the Utopists have always held up before the dazzled eyes of the people.

They struggle against the conception of the general strike, because they recognise, in the course of their propagandist rounds, that this conception is so admirably adapted to the working-class mind that there is a possibility of its dominating the latter in the most absolute manner, thus leaving no place for the desires which the Parliamentarians are able to satisfy They perceive that this idea is so effective as a motive force that once it has entered the minds of the people they can no longer be controlled by leaders, and that thus the power of the deputies would be reduced to nothing. In short, they feel in a vague way that the whole Socialist movement might easily be absorbed by the general strike, which would render useless all those compromises between political groups in view of which the Parliamentary régime has been built up.

III. Marxism and the General Strike

[*Ch. IV, ii.*] When the *new school* had acquired a full understanding of the general strike, and had thus obtained a profound intuition of the working-class movement, it saw that all the Socialist theories, interpreted in the light of this powerful construction, took on a meaning which till then they had lacked; it perceived that the clumsy and rickety apparatus which had been manufactured in Germany to explain Marx's doctrines, must be rejected if the contemporary transformation of the proletarian idea was to be followed exactly; it discovered that the conception of the general strike enabled them to explore profitably the whole vast domain of Marxism, which until then had remained practically unknown to the big-wigs who professed to be guiding Socialism. Thus the fundamental principles of Marxism are perfectly intelligible only with the aid of the picture of the general strike, and, on the other hand, the full significance of this picture, it may be supposed, is apparent only to those who are deeply versed in the Marxian doctrine.

[*A.*] First of all, I shall speak of the class war, which is the point of departure for all Socialist thought, and which stands in such great need of elucidation, since sophists have endeavoured to give a false idea of it.

[*1.*] Marx speaks of society as if it were divided into two fundamentally antagonistic groups; observation, it has often been urged, does not justify this division, and it is true that a certain effort of will is necessary before we can find it verified in the phenomena of everyday life.

The organisation of a capitalistic workshop furnishes a first approximation, and piece-work plays an essential part in the formation of the class idea; in fact, it throws into relief the very clear opposition of interests about the price of commodities; the workers feel themselves under the thumb of the employers in the same way that peasants feel themselves in the power of the merchants and the money-lenders of the towns. Piece-work also shows that in the wage-earning world there is a group of men somewhat analogous to the retail shopkeepers, possessing the confidence of the employer, and not belonging to the proletariat class.

The strike throws a new light on all this; it separates the interests and the different ways of thinking of the two groups of wage-earners—the foremen clerks, engineers, etc., as contrasted with the workmen who alone go on strike—much better than the daily circumstances of life do; it then becomes clear that the administrative group has a natural tendency to become a little aristocracy.

But all oppositions become extraordinarily clear when conflicts are supposed to be enlarged to the size of the general strike; then all parts of the economico-judicial structure, in so far as the latter is looked upon from the point of view of the class war, reach the summit of their perfection; society is plainly divided into two camps, and only into two, on a field of battle. No philosophical explanation of the facts observed in practical affairs could throw such vivid light on the situation as the extremely simple picture called up by the conception of the general strike.

[*B, 2.*] I have already called attention to the danger for the future of civilisation presented by revolutions which take place in a period of economic decadence; many Marxists do not seem to have formed a clear idea of Marx's thought on this subject. The latter believed that the great catastrophe would be preceded by an enormous economic crisis, but the crisis Marx had in mind must not be confused with an economic decadence; crises appeared to him as the result of a too risky venture on the part of production, which creates productive forces out of proportion to the means of regulation which the capitalistic system automatically

brings into play. Such a venture supposes that the future was looked upon as favourable to very large enterprises, and that the conception of economic progress prevailed absolutely at the time. In order that the lower middle classes, who are still able to find tolerable conditions of existence under the capitalist régime, may join hands with the proletariat, it is essential that they shall be able to picture the future of production as bright with hope, just as the conquest of America formerly appeared to the English peasants, who left Europe to throw themselves into a life of adventure.

The general strike leads to the same conclusions. The workers are accustomed to seeing their revolts against the restrictions imposed by capitalism succeed during periods of prosperity; so that it may be said that if you once identify revolution and general strike it then becomes impossible to conceive of an essential transformation of the world taking place in a time of economic decadence. The workers are equally well aware that the peasants and the artisans will not join hands with them unless the future appears so rosy-coloured that industrialism will be able to ameliorate the lot not only of the producers, but of everybody.

[*3.*] Too great stress cannot be laid on the fact that Marxism condemns every hypothesis about the future manufactured by the Utopists. Marx considered that the proletariat had no need to take lessons from the learned inventors of solutions to social problems, but simply to take up production where capitalism left it. There was no need for programmes of the future; the programmes were already worked out in the workshops. The idea of a technological continuity dominates the whole of the Marxian position.

Experience gained in strikes leads us to a conception identical with that of Marx. Workmen who put down their tools do not go to their employers with schemes for the better organisation of labour, and do not offer them assistance in the management of their business; in short, Utopias have no place in economic conflicts.

[*C.*] Marx was firmly convinced that the social revolution of which he spoke would constitute an *irrevocable transformation*, and that it would mark an absolute separation between two historical eras; he often returned to this idea, and Engels has endeavoured to show, by means of images which were sometimes a little grandiose, how economic enfranchisement would be the point of departure of an era having no relationship with the past. Rejecting all Utopias, these two founders of modern Socialism

renounced all the resources by which their predecessors had rendered the prospect of a great revolution less formidable; but however strong the expressions which they employed might have been, the effects which they produced are still very inferior to those produced by the evocation of the general strike. This conception makes it impossible for us to ignore the fact that a kind of irresistible wave will pass over the old civilisation.

There is something really terrifying in all this; but I believe that it is very essential that this feature of Socialism should be insisted on if the latter is to have its full educational value. Socialists must be convinced that the work to which they are devoting themselves is a *serious, formidable, and sublime work;* it is only on this condition that they will be able to bear the innumerable sacrifices imposed on them by a propaganda, which can procure them neither honours, profits, nor even immediate intellectual satisfaction. Even if the only result of the idea of the general strike was to make the Socialist conception more heroic, it should on that account alone be looked upon as having an incalculable value.

[*iii, C.*] We are perfectly well aware that the historians of the future are bound to discover that we laboured under many illusions, because they will see behind them a finished world. We, on the other hand, must act, and nobody can tell us to-day what these historians will know; nobody can furnish us with the means of modifying our motor images in such a way as to avoid their criticism.

To proceed scientifically means, first of all, to know what forces exist in the world, and then to take measures whereby we may utilise them, by reasoning from experience. That is why I say that, by accepting the idea of the general strike, although we know that it is a myth, we are proceeding exactly as a modern physicist does who has complete confidence in his science, although he knows that the future will look upon it as antiquated. It is we who really possess the scientific spirit, while our critics have lost touch both with modern science and modern philosophy; and having proved this, we are quite easy in our minds.

IV. The Political General Strike

[*Ch. V, i.*] Recent events have given a very great impetus to the idea of the political general strike. The Belgians obtained the

reform of the Constitution by a display which has been decorated, perhaps rather ambitiously, with the name of general strike. It now appears that these events did not have the tragic aspect they have sometimes been credited with: the ministry was very pleased to be put in a position to compel the House to accept an electoral bill which the majority disapproved of; many Liberal employers were very much opposed to this ultra-clerical majority; what happened, therefore, was something quite contrary to a proletarian general strike, since the workers served the ends of the State and of the capitalists. Since those already far-off times there has been another attempt to bring pressure to bear on the central authority, with a view to establishing a more democratic system of suffrage; this attempt failed completely; the ministry, this time, was no longer secretly on the side of the promoters of the bill, and did not force its adoption. Many Belgians were very much astonished at their failure, and could not understand why the king did not dismiss his ministers to please the Socialists; he had formerly insisted on the resignation of his clerical ministers in face of a display of Liberal feeling.

[*ii.*] We have seen that the idea of the Syndicalist general strike contains within itself the whole of proletarian Socialism. It would be impossible to find any image which would represent equally well the political form of Socialism; yet, by making the political general strike the pivoting point in the tactics of those Socialists who are at the same time revolutionary and Parliamentary, it becomes possible to obtain an exact notion of what it is that separates the latter from the Syndicalists.

[*B, 2.*] If the Syndicalist general strike is connected with the idea of an era of great economic progress, the political general strike calls up rather that of a period of decadence. Prosperous classes may often act very imprudently, because they have too much confidence in their own strength; they face the future with too much boldness, and they are overcome for the moment by a frenzied desire for renown. Enfeebled classes habitually put their trust in people who promise them the protection of the State, without ever trying to understand how this protection could possibly harmonise their discordant interests.

[*iii, B.*] The great differences which exist between the two general strikes (*i.e.* between the two kinds of Socialism) become still more obvious when social struggles are compared with war;

in fact, war also may give rise to two opposite systems of ideas, so that quite contradictory things can be said about it, all based on incontestable facts.

War may be considered from its noble side, *i.e.* as it has been considered by poets celebrating armies which have been particularly illustrious; proceeding thus we find in war:

The idea that the profession of arms cannot compare to any other profession—that it puts the man who adopts this profession in a class which is superior to the ordinary conditions of life,—that history is based entirely on the adventures of warriors, so that the economic life only existed to maintain them.

There is no need for me to insist on these features of war at any great length; my readers will understand the part played in ancient Greece by this conception of war. In our own times, the wars of Liberty have been scarcely less fruitful in ideas than those of the ancient Greeks.

There is another aspect of war which does not possess this character of nobility, and on which the pacifists always dwell. The object of war is no longer war itself; its object is to allow politicians to satisfy their ambitions: the foreigner must be conquered in order that they themselves may obtain great and immediate material advantages; the victory must also give the party which led the country during the time of success so great a preponderance that it can distribute great favours to its followers; finally, it is hoped that the citizens will be so intoxicated by the spell of victory they will overlook the sacrifices which they are called upon to make, and will allow themselves to be carried away by enthusiastic conceptions of the future. Under the influence of this state of mind, the people permit the Government to develop its authority in an improper manner, without any protest, so that every conquest abroad may be considered as having for its inevitable corollary a conquest at home made by the party in office.

The Syndicalist general strike presents a very great number of analogies with the first conception of war: the proletariat organises itself for battle, separating itself distinctly from the other parts of the nation, and regarding itself as the great motive power of history, all other social considerations being subordinated to that of combat; it is very clearly conscious of the glory which will be attached to its historical rôle and of the heroism of its militant

attitude; it longs for the final contest in which it will give proof of the whole measure of its valour. Pursuing no conquest, it has no need to make plans for utilising its victories: it counts on expelling the capitalists from the productive domain, and on taking their place in the workshop created by capitalism.

Politicians adopt the other point of view; they argue about social conflicts in exactly the same manner as diplomats argue about international affairs; all the actual fighting apparatus interests them very little; they see in the combatants nothing but instruments. They apply themselves to the task of training the proletariat, because they are in a hurry to win quickly the great battles which will deliver the State into their hands; they keep up the ardour of their men, as the ardour of troops of mercenaries has always been kept up, by promises of pillage, by appeals to hatred, and also by the small favours which their occupancy of a few political places enables them to distribute already. But the proletariat for them is *food for cannon*, and nothing else, as Marx said in 1873.

[*iv.*] The study of the political strike leads us to a better understanding of a distinction we must always have in mind when we reflect on contemporary social questions. Sometimes the terms *force* and *violence* are used in speaking of acts of authority, sometimes in speaking of acts of revolt. It is obvious that the two cases give rise to very different consequences. I think it would be better to adopt a terminology which would give rise to no ambiguity, and that the term *violence* should be employed only for acts of revolt; we should say, therefore, that the object of force is to impose a certain social order in which the minority governs, while violence tends to the destruction of that order. The middle class have used force since the beginning of modern times, while the proletariat now reacts against the middle class and against the State by violence.

For a long time I was convinced that it is very important that the theory of social forces should be thoroughly investigated; but I was not able to perceive the capital distinction in question here until I had come to consider the problem of the general strike. Moreover, I do not think that Marx had ever examined any other form of social constraint except force.

The people who pride themselves on being orthodox Marxians have made no attempt to add anything essential to what their

master has written, and they have always imagined that, in order to argue about the proletariat, they must make use of what they had learned from the history of middle-class development. They have never suspected, therefore, that a distinction should be drawn between the *force* that aims at authority, endeavouring to bring about an automatic obedience, and the *violence* that would smash that authority. According to them, the proletariat must acquire force just as the middle class acquired it, use it as the latter used it, and end finally by establishing a Socialist State which will replace the middle-class State.

As the State formerly played a most important part in the revolutions which abolished the old economic systems, so it must again be the State which should abolish capitalism. The workers should therefore sacrifice everything to one end alone—that of putting into power men who promise them solemnly to ruin capitalism for the benefit of the people; that is how a Parliamentary Socialist party is formed.

The *new school* approaches the question from quite another point of view: it cannot accept the idea that the historical mission of the proletariat is to imitate the middle class; it cannot conceive that a revolution as vast as that which would abolish capitalism could be attempted for a trifling and doubtful result, for a change of masters, for the satisfaction of theorists, politicians, and speculators—all worshippers and exploiters of the State. It does not wish to restrict itself to the formulas of Marx; although he gave no other theory than that of middle-class force, that, in its eyes, is no reason why it should confine itself to a scrupulous imitation of middle-class force.

We know now the reason for his attitude: he did not know the distinction, which appears to us nowadays so obvious, between middle-class force and proletarian violence, because he did not move in circles which had acquired a satisfactory notion of the general strike. We find in the attitude of the revolutionaries towards the State a means of elucidating ideas which were still very confused in Marx's mind.

V. The Ethics of the Producers

[*Ch. VII, iv.*] The problem that we shall now try to solve is the most difficult of all those which a Socialist writer can touch upon. We are about to ask how it is possible to conceive the transforma-

tion of the men of to-day into the free producers of to-morrow working in manufactories where there are no masters.

A satisfactory result can be arrived at, by starting from the curious analogies which exist between the most remarkable qualities of the soldiers who took part in the wars of Liberty, the qualities which engendered the propaganda in favour of the general strike, and those that will be required of a free worker in a highly progressive state of society. I believe that these analogies constitute a new (and perhaps decisive) proof, in favour of revolutionary syndicalism.

In the wars of Liberty each soldier considered himself as an *individual* having something of importance to do in the battle, instead of looking upon himself as simply one part of the military mechanism committed to the supreme direction of a leader. In the literature of those times one is struck by the frequency with which the *free men* of the republican armies are contrasted with the *automatons* of the royal armies; this was no mere figure of rhetoric employed by the French writers; I have convinced myself as a result of a thorough first-hand study of one of the wars of that time, that these terms corresponded perfectly to the actual feelings of the soldiers.

If we wished to find, in these first armies, what it was that took the place of the later idea of discipline, we might say that the soldier was convinced that the slightest failure of the most insignificant private might compromise the success of the whole and the life of all his comrades, and that the soldier acted accordingly. There is some truth then in the statement that the incredible French victories were due to intelligent bayonets.

The same spirit is found in the working-class groups who are eager for the general strike; these groups, in fact, picture the Revolution as an immense uprising which yet may be called individualistic; each working with the greatest possible zeal, each acting on his own account, and not troubling himself much to subordinate his conduct to a great and scientifically combined plan.

The upholders of the general strike are accused of anarchical tendencies; as a matter of fact, it has been observed during the last few years that anarchists have entered the syndicates in great numbers, and have done a great deal to develop tendencies favourable to the general strike.

This movement becomes understandable when we bear the pre-

ceding explanations in mind; because the general strike, just like the wars of Liberty, is a most striking manifestation of *individualistic force in the revolted masses.* It seems to me, moreover, that the official Socialists would do well not to insist too much on this point; they would thus avoid some reflections which are not altogether to their advantage. We might, in fact, be led to ask if our official Socialists, with their passion for discipline, and their infinite confidence in the genius of their leaders, are not the authentic inheritors of the traditions of the royal armies, while the anarchists and the upholders of the general strike represent at the present time the spirit of the revolutionary warriors who, against all the rules of the art of war, so thoroughly thrashed the fine armies of the coalition.

[*v.*] I want now to point out some analogies which show how revolutionary syndicalism is the greatest educative force that contemporary society has at its disposal for the preparation of the system of production, which the workmen will adopt, in a society organised in accordance with the new conceptions.

[*A.*] The free producer in a progressive and inventive workshop must never evaluate his own efforts by any external standing; he ought to consider the models given him as inferior, and desire to surpass everything that has been done before. Constant improvement in quality and quantity will be thus assured to production; the idea of continual progress will be realised in a workshop of this kind.

This state of mind is, moreover, exactly that which was found in the first armies which carried on the wars of Liberty and that possessed by the propagandists of the general strike. This passionate individualism is entirely wanting in the working classes who have been educated by politicians; all they are fit for is to change their masters.

[*B.*] The soldier of the wars of Liberty attached an almost superstitious importance to the carrying out of the smallest order. As a result of this he felt no pity for the generals or officers whom he saw guillotined after a defeat on the charge of dereliction of duty; he did not look at these events as the historians of to-day do; he had no means of knowing whether the condemned had really committed treason or not; in his eyes failure could only be explained by some grave error on the part of his leaders.

It is not difficult to see that the same spirit is met with in strikes; the beaten workmen are convinced that their failure is due to the

base conduct of a few comrades who have not done all that might have been expected of them; numerous accusations of treason are brought forward; for the beaten masses, treason alone can explain the defeat of heroic troops; the sentiment, felt by all, of the thoroughness that must be brought to the accomplishment of their duties, will therefore be accompanied by many acts of violence. I do not think that the authors who have written on the events which follow strikes, have sufficiently reflected on this analogy between strikes and the wars of Liberty, and, consequently, between these acts of violence and the executions of generals accused of treason.

[*C.*] There would never have been great acts of heroism in war, if each soldier, while acting like a hero, yet at the same time claimed to receive a reward proportionate to his deserts. When a column is sent to an assault, the men at the head know they are sent to their death, and that the glory of victory will be for those who passing over their dead bodies enter the enemy's position. However, they do not reflect on this injustice, but march forward.

This striving towards perfection which manifests itself, in spite of the absence of any personal, immediate, and proportional reward, constitutes the *secret virtue* which assures the continued progress of the world.

Economic progress goes far beyond the individual life, and profits future generations more than those who create it; but does it give glory? Is there an economic epic capable of stimulating the enthusiasm of the workers?

There is only one force which can produce to-day that enthusiasm without whose co-operation no morality is possible, and that is the force resulting from the propaganda in favour of a general strike. The preceding explanations have shown that the idea of the general strike (constantly rejuvenated by the feelings roused by proletarian violence) produces an entirely epic state of mind, and at the same time bends all the energies of the mind to that condition necessary to the realisation of a workshop carried on by free men, eagerly seeking the betterment of the industry; we have thus recognised that there are great resemblances between the sentiments aroused by the idea of the general strike and those which are necessary to bring about a continued progress in methods of production. We have then the right to maintain that the modern world possesses that prime mover which is necessary to the creation of the ethics of the producers.

II. COMMUNISM

State and Revolution (*1917*)

Vladimir I. Lenin (1870–1924)

While practically all Marxists are pronounced unbelievers in revealed religion, Marxism itself has taken on the guise of a revelation. Just as texts from the gospels are quoted by both Catholics and Protestants, so the words of Marx and Engels are invoked as final authority both by revolutionary or "orthodox" Marxists and by "opportunists" or parliamentary socialists. When a Marxist has significant ideas to propound, he prefers to present them as commentaries on the oracular utterances of the masters. Lenin claims no originality for any of the doctrines expounded in his *State and Revolution* (1917).

Although the conflict between opportunists and revolutionaries arose first in Germany, it had its greatest significance in the history of the Russian Social Democratic Party. This party was organized in 1898 and developed a sharp cleavage as early as its second congress, which was held in London in 1903. Although Russia had not been industrialized, but was overwhelmingly a nation of peasants, the extremists, led by Lenin, favored immediate preparation for revolution, and soon managed to become the majority or "Bolsheviki" of the Social Democrats, leaving the moderates as the minority or "Mensheviki." Upon the overthrow of the Czar in the March revolution of 1917, the Mensheviks were ready to accept for the time being the bourgeois democratic Kerensky government, but the Bolsheviks soon secured leadership in the *soviets*, or councils, of soldiers and workers. In a few months they were directing the November *coup d'état* that made revolutionary socialism and the dictatorship of the proletariat accomplished facts.

Nikolai Lenin was a pseudonym assumed by Vladimir I. Ulyanov, the son of a government inspector of schools all six of whose children became revolutionaries. Vladimir made a brilliant record at school, but was early interested in revolutionary activity and was expelled from the University of Kazan for radical political activity in the first month of his law studies. He later managed to secure a law degree as a non-resident at the University of St. Petersburg, but soon abandoned his practice to engage in socialist activities. In 1895, his preparations for publishing a socialist newspaper were interrupted by a year's imprisonment followed by three years of exile in Siberia, and most of his subsequent life was spent in foreign countries under the name of Lenin. Even in the days of the Kerensky government he had to flee to Finland to escape prosecution as a traitor, but with the November revolution he became, and remained until his death, the unquestioned leader of the Russian government. It was during his final exile in Finland that Lenin wrote *State and Revolution*. Other important works were *The Development of Capitalism in Russia* (1899), *Materialism and Empirio-Criticism* (1909), *Socialism and War* (1915), and *Imperialism, the Final Stage of Capitalism* (1917).

The readings here given are based upon the revised English translation of *State and Revolution* (International Publishers Co., New York, 1932), and are reprinted by permission of the publishers. The few unlabeled footnotes are Lenin's own; a single note by the present editor is so designated; the numerous notes marked—*Ed.* are those of the editor of the English translation.

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STATE AND REVOLUTION

I. Marxist Doctrine on Violent Revolution

[*Ch. I, 1.*] What is now happening to Marx's doctrine has, in the course of history, often happened to the doctrines of other revolutionary thinkers and leaders of oppressed classes struggling for emancipation. During the lifetime of great revolutionaries, the oppressing classes have visited relentless persecution on them and received their teaching with the most savage hostility, the most furious hatred, the most ruthless campaign of lies and slanders. After their death, attempts are made to turn them into harmless icons, canonise them, and surround their *names* with a certain halo for the "consolation" of the oppressed classes and with the object of duping them, while at the same time emasculating and vulgarising the *real essence* of their revolutionary theories and blunting their revolutionary edge. At the present time, the bourgeosie and the opportunists within the labour movement are co-operating in this work of adulterating Marxism. They omit, obliterate, and destroy the revolutionary side of its teaching, its revolutionary soul. They push to the foreground and extol what is, or seems, acceptable to the bourgeoisie. All the social-chauvinists are now "Marxists"—joking aside! And more and more do German bourgeois professors, erstwhile specialists in the demolition of Marx, speak now of the "national-German" Marx, who,

they aver, has educated the labour unions which are so splendidly organised for conducting the present predatory war!

In such circumstances, the distortion of Marxism being so widespread, it is our first task to *resuscitate* the real teachings of Marx on the state. For this purpose it will be necessary to quote at length from the work of Marx and Engels themselves.

[4.] Engels' words regarding the "withering away" of the state enjoy such popularity, they are so often quoted, and they show so clearly the essence of the usual adulteration by means of which Marxism is made to look like opportunism, that we must dwell on them in detail. Let us quote the whole passage from which they are taken.

> The proletariat seizes state power, and then transforms the means of production into state property. But in doing this, it puts an end to itself as the proletariat, it puts an end to all class differences and class antagonisms, it puts an end also to the state as the state. Former society, moving in class antagonisms, had need of the state, that is, an organisation of the exploiting class at each period for the maintenance of its external conditions of production; therefore, in particular, for the forcible holding down of the exploited class in the conditions of oppression (slavery, bondage or serfdom, wage-labour) determined by the existing mode of production. The state was the official representative of society as a whole, its embodiment in a visible corporate body; but it was this only in so far as it was the state of that class which itself, in its epoch, represented society as a whole: in ancient times, the state of the slave-owning citizens; in the Middle Ages, of the feudal nobility; in our epoch, of the bourgeoisie. When ultimately, it becomes really representative of society as a whole, it makes itself superfluous. As soon as there is no longer any class of society to be held in subjection; as soon as, along with class domination and the struggle for individual existence based on the former anarchy of production, the collisions and excesses arising from these have also been abolished, there is nothing more to be repressed, and a special repressive force, a state, is no longer necessary. The first act in which the state really comes forward as the representative of society as a whole—the seizure of the means of production in the name of society—is at the same time its last independent act as a state. The interference of a state power in social relations becomes superfluous in one sphere after another, and then becomes dormant of itself. Government over persons is replaced by the administration of things and the direction of the processes of production. The state is not "abolished," *it withers away*. It is from this standpoint that we must appraise the phrase "people's free state"—both its justification at times for agitational purposes, and its ultimate scientific inadequacy—and also the demand of the so-called Anarchists that the state should be abolished overnight.[1]

[1] Friedrich Engels, *Anti-Dühring*, London and New York, 1933.—*Ed.*

The current popular conception, if one may say so, of the "withering away" of the state undoubtedly means a slurring over, if not a negation, of revolution.

Yet, such an "interpretation" is the crudest distortion of Marxism, which is advantageous only to the bourgeoisie; in point of theory, it is based on a disregard for the most important circumstances and considerations pointed out in the very passage summarising Engels' ideas, which we have just quoted in full.

In the first place, Engels at the very outset of his argument says that, in assuming state power, the proletariat by that very act "puts an end to the state as the state." The bourgeois state does not "wither away," according to Engels, but is "put an end to" by the proletariat in the course of the revolution. What withers away after the revolution is the proletarian state or semi-state.

Secondly, the state is a "special repressive force." It follows from this that the "special repressive force" of the bourgeoisie for the suppression of the proletariat, of the millions of workers by a handful of the rich, must be replaced by a "special repressive force" of the proletariat for the suppression of the bourgeoisie (the dictatorship of the proletariat). It is just this that constitutes the destruction of "the state as the state." It is just this that constitutes the "act" of "the seizure of the means of production in the name of society."

Thirdly, as to the "withering away" or, more expressively and colourfully, as to the state "becoming dormant," Engels refers quite clearly and definitely to the period *after* "the seizure of the means of production [by the state] in the name of society," that is, *after* the Socialist revolution. We all know that the political form of the "state" at that time is complete democracy. The bourgeois state can only be "put an end to" by a revolution. The state in general, *i.e.*, most complete democracy, can only "wither away."

Fourthly, having formulated his famous proposition that "the state withers away," Engels at once explains concretely that this proposition is directed equally against the opportunists and the Anarchists.

Fifthly, in the same work of Engels, from which every one remembers his argument on the "withering away" of the state, there is also a disquisition on the significance of a violent revolu-

tion. The historical analysis of its rôle becomes, with Engels, a veritable panegyric on violent revolution.

Here is Engels' argument:

> That force, however, plays another rôle (other than that of a diabolical power) in history, a revolutionary rôle; that, in the words of Marx, it is the midwife of every old society which is pregnant with the new; that it is the instrument with whose aid social movement forces its way through and shatters the dead, fossilised political forms—of this there is not a word in Herr Dühring. It is only with sighs and groans that he admits the possibility that force will perhaps be necessary for the overthrow of the economic system of exploitation—unfortunately! because all use of force, forsooth, demoralises the person who uses it. And this in spite of the immense moral and spiritual impulse which has resulted from every victorious revolution! [2]

How can this panegyric on violent revolution be combined with the theory of the "withering away" of the state to form one doctrine?

The replacement of the bourgeois by the proletarian state is impossible without a violent revolution. The abolition of the proletarian state, *i.e.*, of all states, is only possible through "withering away."

[*Ch. II, 1.*] "The state, *i.e.*, the proletariat organised as the ruling class" [3]—this theory of Marx's is indissolubly connected with all his teaching concerning the revolutionary rôle of the proletariat in history. The culmination of this rôle is proletarian dictatorship, the political rule of the proletariat.

II. State Machinery and Its Replacement

[*Ch. II, 2.*] The centralised state power peculiar to bourgeois society came into being in the period of the fall of absolutism. Two institutions are especially characteristic of this state machinery: bureaucracy and the standing army. In their works, Marx and Engels mention repeatedly the thousand threads which connect these institutions with the bourgeoisie.

[*Ch. III, 2.*] The experiment of the Commune, meagre as it was, was subjected by Marx to the most careful analysis in his *The Civil War in France.* Let us quote the most important passages of this work.

[2] *Ibid.*—*Ed.*

[3] Karl Marx and Friedrich Engels, *Manifesto of the Communist Party*, authorised English translation of 1888, London and New York, 1932, p. 30.—*Ed.*

> The Commune was formed of municipal councillors, chosen by universal suffrage in various wards of the town, responsible and revocable at short terms. The majority of its members were naturally working men, or acknowledged representatives of the working class. . . . Instead of continuing to be the agent of the Central Government, the police was at once stripped of its political attributes, and turned into the responsible and at all times revocable agent of the Commune. So were the officials of all other branches of the administration. From the members of the Commune downwards, the public service had to be done at *workmen's wages*. The vested interests and the representation allowances of the high dignitaries of state disappeared along with the high dignitaries themselves. . . .
>
> Having once got rid of the standing army and the police, the physical force elements of the old government, the Commune was anxious to break the spiritual forces of repression, the "parson power." . . .
>
> The judicial functionaries were to be divested of [their] sham independence. . . . Like the rest of public servants, magistrates and judges were to be elective, responsible and revocable.[4]

Thus the Commune would appear to have replaced the shattered state machinery "only" by fuller democracy: abolition of the standing army; all officials to be fully elective and subject to recall. But, as a matter of fact, this "only" signifies a gigantic replacement of one type of institution by others of a fundamentally different order. Here we observe a case of "transformation of quantity into quality": democracy, introduced as fully and consistently as is generally thinkable, is transformed from capitalist democracy into proletarian democracy; from the state (*i.e.*, a special force for the suppression of a particular class) into something which is no longer really the state in the accepted sense of the word.

It is still necessary to suppress the bourgeoisie and crush its resistance. This was particularly necessary for the Commune; and one of the reasons of its defeat was that it did not do this with sufficient determination. But the organ of suppression is now the majority of the population, and not a minority, as was always the case under slavery, serfdom, and wage labour. And, once the majority of the people *itself* suppresses its oppressors, a "special force" for suppression is *no longer necessary*. In this sense the state *begins to wither away*. Instead of the special institutions of a privileged minority (privileged officialdom, heads of a standing army), the majority can itself directly fulfil all these functions; and the more the discharge of the functions of state power devolves

[4] Karl Marx, *The Civil War in France*, London and New York, 1933.—*Ed.*

upon the people generally, the less need is there for the existence of this power.

> [3.] The Commune—says Marx—was to be a working, not a parliamentary body, executive and legislative at the same time. . . .
>
> Instead of deciding once in three or six years which member of the ruling class was to represent the people in Parliament, universal suffrage was to serve the people, constituted in Communes, as individual suffrage serves every other employer in the search for the workmen and managers in his business.[5]

The way out of parliamentarism is to be found, of course, not in the abolition of the representative institutions and the elective principle, but in the conversion of the representative institutions from mere "talking shops" into working bodies.

"A working, not a parliamentary body"—this hits the vital spot of present-day parliamentarians and the parliamentary Social-Democratic "lap-dogs"! Take any parliamentary country, from America to Switzerland, from France to England, Norway and so forth—the actual work of the "state" there is done behind the scenes and is carried out by the departments, the offices and the staffs. Parliament itself is given up to talk for the special purpose of fooling the "common people."

The venal and rotten parliamentarism of bourgeois society is replaced in the Commune by institutions in which freedom of opinion and discussion does not degenerate into deception, for the parliamentarians must themselves work, must themselves execute their own laws, must themselves verify their results in actual life, must themselves be directly responsible to their electorate. Representative institutions remain, but parliamentarism as a special system, as a division of labour between the legislative and the executive functions, as a privileged position for the deputies, *no longer exists*. Without representative institutions we cannot imagine democracy, not even proletarian democracy; but we can and *must* think of democracy without parliamentarism, if criticism of bourgeois society is not mere empty words for us, if the desire to overthrow the rule of the bourgeoisie is our serious and sincere desire, and not a mere "election cry" for catching workingmen's votes, as it is with the Mensheviks and S.-R.'s.[6]

[5] *Ibid.—Ed.*

[6] S.-R.'s were Social Revolutionaries, members of a Russian socialist party primarily interested in arousing the peasantry. Most of the S.-R.'s coöperated with the Kerensky government. (Present editor's note).

To destroy officialdom immediately, everywhere, completely—this cannot be thought of. That is a Utopia. But to *break up* at once the old bureaucratic machine and to start immediately the construction of a new one which will enable us gradually to reduce all officialdom to naught—this is *no* Utopia, it is the experience of the Commune, it is the direct and urgent task of the revolutionary proletariat.

We are not Utopians, we do not indulge in "dreams" of how best to do away *immediately* with all administration, with all subordination; these Anarchist dreams, based upon a lack of understanding of the task of proletarian dictatorship, are basically foreign to Marxism, and, as a matter of fact, they serve but to put off the Socialist revolution until human nature is different. No, we want the Socialist revolution with human nature as it is now, with human nature that cannot do without subordination, control, and "managers."

But if there be subordination, it must be to the armed vanguard of all the exploited and the labouring—to the proletariat. The specific "commanding" methods of the state officials can and must begin to be replaced—immediately, within twenty-four hours—by the simple functions of "managers" and bookkeepers, functions which are now already within the capacity of the average city dweller and can well be performed for "workingmen's wages."

We organise large-scale production, starting from what capitalism has already created; we workers *ourselves*, relying on our own experience as workers, establishing a strict, an iron discipline, supported by the state power of the armed workers, shall reduce the rôle of the state officials to that of simply carrying out our instructions as responsible, moderately paid "managers" (of course, with technical knowledge of all sorts, types, and degrees). This is *our* proletarian task, with this we can and must *begin* when carrying through a proletarian revolution. Such a beginning, on the basis of large-scale production, of itself leads to the gradual "withering away" of all bureaucracy, to the gradual creation of a new order, an order without quotation marks, an order which has nothing to do with wage slavery, an order in which the more and more simplified functions of control and accounting will be performed by each in turn, will then become a habit, and will finally die out as *special* functions of a special stratum of the population.

III. Miscellaneous Observations by Engels

[*Ch. IV.*] Marx gave the fundamentals on the question of the meaning of the experience of the Commune. Engels returned to the same question repeatedly, elucidating Marx's analysis and conclusions, sometimes so forcibly throwing *other* sides of the question into relief that we must dwell on these explanations separately.

[*2.*] Why do the anti-authoritarians not confine themselves to crying out against political authority, against the state? All Socialists are agreed that the state, and political authority along with it, will disappear as the result of the coming social revolution, *i.e.*, that public functions will lose their political character and be transformed into simple administrative functions of watching over social interests. But the anti-authoritarians demand that the political state should be abolished at one stroke, even before the social relations which gave birth to it have been abolished. They demand that the first act of the social revolution should be the abolition of authority.

Have these gentlemen ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, *i.e.*, by highly authoritative means, and the victorious part is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reactionaries. Would the Paris Commune have lasted a single day had it not relied on the authority of the armed people against the bourgeoisie? Are we not, on the contrary, entitled to blame the Commune for not having made sufficient use of this authority? And so: either—or: either the anti-authoritarians do not know what they are talking about, in which case they merely sow confusion; or they do know, in which case they are betraying the cause of the proletariat. In either case they serve only the interests of reaction.[7]

Social-Democrats, desiring to be disciples of Engels, have discussed this question with the Anarchists millions of times since 1873, but they have *not* discussed it as Marxists can and should. The Anarchist idea of the abolition of the state is muddled and *non-revolutionary*,—that is how Engels put it. It is precisely the revolution, in its rise and development, with its specific tasks in relation to violence, authority, power, the state, that the Anarchists do not wish to see.

[*1.*] In his work on the housing question (1872) Engels took into account the experience of the Commune, dwelling repeatedly on the tasks of the revolution in relation to the state.

[7] *Neue Zeit*, XXXII-1, 1913–1914, p. 39.

> How then is the housing question to be solved? This much at least is certain, that in the large towns there are already enough dwelling houses, if these were made rational use of, to immediately relieve any real "housing shortage." This, of course, can only be done by the expropriation of the present owners and by quartering in their houses workers who are homeless or are excessively overcrowded in their present quarters; and as soon as the proletariat has conquered political power, such a measure, demanded in the interests of public welfare, would be as easy to carry through as other expropriations and quarterings by the state of today.[8]

Here the change in the form of state power is not considered, but only the content of its activity. Expropriations and the occupation of houses take place by order even of the present state. The proletarian state, from the formal point of view, will also "order" the occupation of houses and expropriation of buildings.

> It must, however, be stated that the "actual seizure of possession" of all instruments of labour, the taking possession of the whole of industry by the working people, is the direct opposite of the Proudhonist "solution." In the latter, the *individual worker* becomes the owner of a house, a farm, and the instruments of labour; in the former, the "working people" remains the collective owner of the houses, factories, and instruments of labour, and will hardly, at any rate during a transition period, hand over the usufruct of these to individuals or companies unless the costs are met by them. It is just the same as with the abolition of property in land, which is not the abolition of ground rent, but only its transfer, even though in modified form, to society. The actual taking possession of all instruments of labour by the working people therefore by no means excludes the retention of rent relations.[9]

Engels expresses himself most cautiously, saying that the proletarian state will "hardly" allot houses without pay, "at any rate, during a transition period." The renting out to separate families of houses belonging to the whole people presupposes the collection of rent, a certain amount of control, and some rules underlying the allotment of houses. All this demands a certain form of state, but it does not at all demand a special military and bureaucratic apparatus, with officials occupying especially privileged positions. Transition to a state of affairs when it will be possible to let houses without rent is bound up with the complete "withering away" of the state.

[4.] In analysing the doctrines of Marxism on the state, the

[8] Friedrich Engels, *The Housing Question*, London and New York, 1933.—*Ed*
[9] *Ibid.*—*Ed.*

criticism of the draft of the Erfurt Programme sent by Engels to Kautsky on June 29, 1891 cannot be overlooked.

In the field of economics Engels makes an exceedingly valuable observation, which shows how attentively and thoughtfully he followed the changes in modern capitalism, and how he was able, in a measure, to foresee the problems of our own, the imperialist, epoch.

> When we pass from joint-stock companies to trusts which control and monopolise whole branches of industry, not only private production comes to an end at that point, but also planlessness.[10]

Here we have what is most essential in the theoretical appreciation of the latest phase of capitalism, *i.e.*, imperialism, *viz.*, that capitalism becomes monopoly *capitalism*. This fact must be emphasised because the bourgeois reformist view that monopoly capitalism or state-monopoly capitalism is *no longer* capitalism, but can already be termed "state Socialism," or something of that sort, is a very widespread error. The trusts, of course, have not created, do not create now, and cannot create full and complete planning. But, however much of a plan they may create, however closely capitalist magnates may estimate in advance the extent of production on a national and even international scale, and however systematically they may regulate it, we still remain *under capitalism*—capitalism, it is true, in its new stage, but still, unquestionably, capitalism. The "proximity" of *such* capitalism to Socialism should serve for the real representatives of the proletariat as an argument proving the nearness, ease, feasibility and urgency of the Socialist revolution, and not at all as an argument for tolerating a repudiation of such a revolution or for making capitalism more attractive, in which work all the reformists are engaged.

But to return to the question of the state. Engels makes here three kinds of valuable suggestions: first, as regards a republic; second, as to the connection between the national question and the form of state; and third, as to local self-government.

> If anything is certain, it is that our party and the working class can only come to power under the form of the democratic republic. This is, indeed, the specific form for the dictatorship of the proletariat, as has already been shown by the great French Revolution.[11]

[10] *Neue Zeit*, XX-1, 1901–1902, p. 8. [Karl Marx and Friedrich Engels, *Critique of the Social-Democratic Programmes*, London and New York, 1933.—*Ed.*]

[11] *Ibid.*—*Ed.*

Engels repeats here in a particularly emphatic form the fundamental idea which runs like a red thread throughout all Marx's work, namely, that the democratic republic is the nearest approach to the dictatorship of the proletariat. For such a republic—without in the least setting aside the domination of capital, and, therefore, the oppression of the masses and the class struggle—inevitably leads to such an extension, development, unfolding and sharpening of that struggle that, as soon as the possibility arises for satisfying the fundamental interests of the oppressed masses, this possibility is realised inevitably and solely in the dictatorship of the proletariat, in the guidance of these masses by the proletariat.

On the question of a federal republic, in connection with the national composition of the population, Engels wrote:

> What should take the place of present-day Germany (with its reactionary monarchical constitution and its equally reactionary division into petty states, which perpetuates all that is specifically Prussian instead of merging it in Germany as a whole)? In my view, the proletariat can use only the form of the one and indivisible republic. In the gigantic territory of the United States a federal republic is still, on the whole, a necessity, although in the Eastern States it is already becoming a hindrance. It would be a step forward in England, where the two islands are peopled by four nations and in spite of a single Parliament three different systems of legislation exist side by side even to-day. In little Switzerland, it has long been a hindrance, tolerable only because Switzerland is content to be purely a passive member of the European state system. For Germany, federation of the Swiss type would be an enormous step backward.[12]

But Engels by no means understands democratic centralism in the bureaucratic sense in which this term is used by bourgeois and petty-bourgeois ideologists, including Anarchists. Centralism does not, with Engels, in the least exclude wide local self-government which combines a voluntary defence of the unity of the state by the "communes" and districts with the complete abolition of all bureaucracy and all "commanding" from above.

In accordance with this, Engels suggests the following wording for the clause in the programme regarding self-government:

> Complete self-government for the provinces, districts, and local areas through officials elected by universal suffrage. The abolition of all local and provincial authorities appointed by the state.[13]

[12] *Ibid.—Ed.*
[13] *Ibid.—Ed.*

It is highly important to note that Engels, armed with facts, disproves by a telling example the superstition, very widespread especially among the petty-bourgeois democracy, that a federal republic necessarily means a greater amount of freedom than a centralised republic. This is not true. It is disproved by the facts cited by Engels regarding the centralised French Republic of 1792–1798 and the federal Swiss Republic. The really democratic centralised republic gave *more* freedom than the federal republic. In other words, the *greatest* amount of local, provincial and other freedom known in history was granted by a *centralised*, and not by a federal republic.

Insufficient attention has been and is being paid to this fact in our party propaganda and agitation, as, indeed, to the whole question of federal and centralised republics and local self-government.

[*5.*] In his preface to the third edition of *The Civil War in France*, Engels, with many other interesting remarks, made in passing, on questions of the attitude towards the state, gives a remarkably striking résumé of the lessons of the Commune. This résumé, confirmed by all the experience of the period of twenty years separating the author from the Commune, and directed particularly against the "superstitious faith in the state" so widely diffused in Germany, can justly be called the *last word* of Marxism on the question dealt with here.

In France, Engels observes the workers were armed after every revolution,

> and therefore the disarming of the workers was the first commandment for whatever bourgeois was at the helm of the state. Hence, after each revolution won by the workers, a new struggle, ending with the defeat of the workers.[14]

This summing up of the experience of bourgeois revolution is as concise as it is expressive.

Another incidental remark of Engels', also connected with the question of the state, deals with religion.

> As almost without exception workers or recognised representatives of the workers sat in the Commune, its decisions bore a decidedly proletarian character. Either they decreed reforms which the republican bourgeoisie had failed to pass only out of cowardice, but which provided a necessary basis for the free activity of the working class—such as the

[14] *The Civil War in France.—Ed.*

> adoption of the principle that *in relation to the state*, religion is a purely private affair—or they promulgated decrees directly in the interests of the working class and to some extent cutting deeply into the old order of society.[15]

Engels deliberately emphasised the words "in relation to the state," as a straight thrust at the heart of German opportunism, which had declared religion to be a private matter *in relation to the party*, thus lowering the party of the revolutionary proletariat to the most vulgar "free-thinking" philistine level, ready to allow a non-denominational status, but renouncing all *party* struggle against the religious opium which stupefies the people.

Engels continues:

> People think they are taking quite an extraordinarily bold step forward when they rid themselves of faith in a hereditary monarchy and become partisans of a democratic republic. In reality, however, the state is nothing more than a machine for the oppression of one class by another, and indeed in the democratic republic no less than in the monarchy; and at best an evil, inherited by the proletariat after its victorious struggle for class supremacy, whose worst sides the proletariat, just like the Commune, will have at the earliest possible moment to lop off, until such time as a new generation, reared under new and free social conditions, will be able to throw on the scrap-heap all this state rubbish.[16]

When Engels says that in a democratic republic, "no less" than in a monarchy, the state remains a "machine for the oppression of one class by another," this by no means signifies that the *form* of oppression is a matter of indifference to the proletariat, as some Anarchists "teach." A wider, freer and more open *form* of the class struggle and of class oppression enormously assists the proletariat in its struggle for the abolition of all classes.

[*6.*] In the current arguments about the state, the mistake is constantly made against which Engels cautions here, and which we have indicated above, namely, it is constantly forgotten that the destruction of the state means also the destruction of democracy; that the withering away of the state also means the withering away of democracy.

At first sight such a statement seems exceedingly strange and incomprehensible; indeed, some one may even begin to fear lest we be expecting the advent of an order of society in which the

[15] *Ibid.—Ed.*
[16] *Ibid.—Ed.*

principle of the subordination of the minority to the majority will not be respected—for is not a democracy just the recognition of this principle?

No, democracy is *not* identical with the subordination of the minority to the majority. Democracy is a *state* recognising the subordination of the minority to the majority, *i.e.*, an organisation for the systematic use of *violence* by one class against the other, by one part of the population against another.

We set ourselves the ultimate aim of destroying the state, *i.e.*, every organised and systematic violence, every use of violence against man in general. We do not expect the advent of an order of society in which the principle of subordination of minority to majority will not be observed. But, striving for Socialism, we are convinced that it will develop into Communism; that, side by side with this, there will vanish all need for force, for the *subjection* of one man to another, and of one part of the population to another, since people will *grow accustomed* to observing the elementary conditions of social existence *without force and without subjection.*

In order to emphasise this element of habit, Engels speaks of a *new generation*, "reared under new and free social conditions," which "will be able to throw on the scrap-heap all this state rubbish"—every kind of state, including even the democratic-republican state.

For the elucidation of this, the question of the economic basis of the withering away of the state must be analysed.

IV. The Transition from Capitalism to Communism

[*Ch. V, 1.*] The whole theory of Marx is an application of the theory of evolution—in its most consistent, complete, well considered and fruitful form—to modern capitalism. It was natural for Marx to raise the question of applying this theory both to the *coming* collapse of capitalism and to the *future* evolution of *future* Communism.

[*2.*] Between capitalist and Communist society lies the period of the revolutionary transformation of the former into the latter. To this also corresponds a political transition period, in which the state can be no other than *the revolutionary dictatorship of the proletariat.*[17]

What, then, is the relation of this dictatorship to democracy?

[17] *Critique of the Social-Democratic Programmes.—Ed.*

In capitalist society, under the conditions most favourable to its development, we have more or less complete democracy in the democratic republic. But this democracy is always bound by the narrow framework of capitalist exploitation, and consequently always remains, in reality, a democracy for the minority, only for the possessing classes, only for the rich. Freedom in capitalist society always remains just about the same as it was in the ancient Greek republics: freedom for the slave-owners. The modern wage-slaves, owing to the conditions of capitalist exploitation, are so much crushed by want and poverty that "democracy is nothing to them," "politics is nothing to them"; that, in the ordinary peaceful course of events, the majority of the population is debarred from participating in social and political life.

Democracy for an insignificant minority, democracy for the rich—that is the democracy of capitalist society. If we look more closely into the mechanism of capitalist democracy, everywhere, both in the "petty"—so-called petty—details of the suffrage (residential qualification, exclusion of women, etc.), and in the technique of the representative institutions, in the actual obstacles to the right of assembly (public buildings are not for "beggars"!), in the purely capitalist organisation of the daily press, etc., etc.—on all sides we see restriction after restriction upon democracy. These restrictions, exceptions, exclusions, obstacles for the poor, seem slight, especially in the eyes of one who has himself never known want and has never been in close contact with the oppressed classes in their mass life (and nine-tenths, if not ninety-nine hundredths, of the bourgeois publicists and politicians are of this class), but in their sum total these restrictions exclude and squeeze out the poor from politics and from an active share in democracy.

Marx splendidly grasped this *essence* of capitalist democracy, when, in analysing the experience of the Commune, he said that the oppressed were allowed, once every few years, to decide which particular representatives of the oppressing classes should be in parliament to represent and repress them!

But from this capitalist democracy—inevitably narrow, subtly rejecting the poor, and therefore hypocritical and false to the core—progress does not march onward, simply, smoothly and directly, to "greater and greater democracy," as the liberal professors and petty-bourgeois opportunists would have us believe No, progress marches onward, *i.e.*, towards Communism, through

the dictatorship of the proletariat; it cannot do otherwise, for there is no one else and no other way to *break the resistance* of the capitalist exploiters.

But the dictatorship of the proletariat—*i.e.*, the organisation of the vanguard of the oppressed as the ruling class for the purpose of crushing the oppressors—cannot produce merely an expansion of democracy. *Together* with an immense expansion of democracy which *for the first time* becomes democracy for the poor, democracy for the people, and not democracy for the rich folk, the dictatorship of the proletariat produces a series of restrictions of liberty in the case of the oppressors, the exploiters, the capitalists. We must crush them in order to free humanity from wage-slavery; their resistance must be broken by force: it is clear that where there is suppression there is also violence, there is no liberty, no democracy.

Engels expressed this splendidly in his letter to Bebel when he said that "as long as the proletariat still *needs* the state, it needs it not in the interests of freedom, but for the purpose of crushing its antagonists; and as soon as it becomes possible to speak of freedom, then the state, as such, ceases to exist." [18]

During the *transition* from capitalism to Communism, suppression is *still* necessary; but it is the suppression of the minority of exploiters by the majority of exploited. This is compatible with the diffusion of democracy among such an overwhelming majority of the population, that the need for *special machinery* of suppression will begin to disappear. The exploiters are, naturally, unable to suppress the people without a most complex machinery for performing this task; but *the people* can suppress the exploiters even with very simple "machinery," almost without any "machinery," without any special apparatus, by the simple *organisation of the armed masses.*

Finally, only Communism renders the state absolutely unnecessary, for there is *no one* to be suppressed—"no one" in the sense of a *class*, in the sense of a systematic struggle with a definite section of the population. We are not Utopians, and we do not in the least deny the possibility and inevitability of excesses on the part of *individual persons*, nor the need to suppress *such* excesses. But, in the first place, no special machinery, no special apparatus of repression is needed for this; this will be done by the armed

[18] *Aus meinen Leben*, pp. 321–322.

people itself, as simply and as readily as any crowd of civilised people, even in modern society, parts a pair of combatants or does not allow a woman to be outraged. And, secondly, we know that the fundamental social cause of excesses which consist in violating the rules of social life is the exploitation of the masses, their want and their poverty. With the removal of this chief cause, excesses will inevitably begin to "*wither away.*" We do not know how quickly and in what succession, but we know that they will wither away. With their withering away, the state will also *wither away.*

[*3.*] Marx undertakes a *concrete* analysis of the conditions of life of a society in which there is no capitalism, and says:

> What we are dealing with here [analysing the programme of the party] is not a Communist society which has *developed* on its own foundations, but, on the contrary, one which is just *emerging* from capitalist society, and which therefore in all respects—economic, moral and intellectual—still bears the birthmarks of the old society from whose womb it sprung.[19]

And it is this Communist society—a society which has just come into the world from the womb of capitalism, and which, in all respects, bears the stamp of the old society—that Marx terms the "first," or lower, phase of Communist society.

The means of production are no longer the private property of individuals. The means of production belong to the whole society. Every member of society, performing a certain part of socially necessary work, receives a certificate from society to the effect that he has done such and such a quantity of work. According to this certificate, he receives from the public warehouses, where articles of consumption are stored, a corresponding quantity of products. Deducting that proportion of labour which goes to the public fund, every worker, therefore, receives from society as much as he has given it.

"Equality" seems to reign supreme.

But different people are not alike: one is strong, another is weak; one is married, the other is not; one has more children, another has less, and so on.

> . . . With equal labour—Marx concludes—and therefore an equal share in the social consumption fund, one man in fact receives more than the other, one is richer than the other, and so forth. In order to avoid all these defects, rights, instead of being equal, must be unequal.[20]

[19] *Critique of the Social-Democratic Programmes.—Ed.*
[20] *Ibid.—Ed.*

The first phase of Communism, therefore, still cannot produce justice and equality; differences, and unjust differences, in wealth will still exist.

And so, in the first phase of Communist society (generally called Socialism) "bourgeois right" is *not* abolished in its entirety, but only in part, only in proportion to the economic transformation so far attained, *i.e.*, only in respect of the means of production. "Bourgeois right" recognises them as the private property of separate individuals. Socialism converts them into common property. *To that extent*, and to that extent alone, does "bourgeois right" disappear.

This is a "defect," says Marx, but it is unavoidable during the first phase of Communism; for, if we are not to fall into Utopianism, we cannot imagine that, having overthrown capitalism, people will at once learn to work for society *without any standards of right.*

And there is no other standard yet than that of "bourgeois right."

[*4.*] Marx continues:

> In a higher phase of Communist society, when the enslaving subordination of individuals in the division of labour has disappeared, and with it also the antagonism between mental and physical labour; when labour has become not only a means of living, but itself the first necessity of life; when, along with the all-round development of individuals, the productive forces too have grown, and all the springs of social wealth are flowing more freely—it is only at that stage that it will be possible to pass completely beyond the narrow horizon of bourgeois rights, and for society to inscribe on its banners: from each according to his ability; to each according to his needs![21]

The economic basis for the complete withering away of the state is that high stage of development of Communism when the antagonism between mental and physical labour disappears, that is to say, when one of the principal sources of modern *social* inequality disappears—a source, moreover, which it is impossible to remove immediately by the mere conversion of the means of production into public property, by the mere expropriation of the capitalists.

This expropriation will make a gigantic development of the productive forces *possible*. But how rapidly this development will go forward, how soon it will reach the point of breaking away from the division of labour, of removing the antagonism between mental

[21] *Ibid.—Ed.*

and physical labour, of transforming work into the "first necessity of life"—this we do not and *cannot* know.

The state will be able to wither away completely when society has realised the rule: "From each according to his ability; to each according to his needs," *i.e.*, when people have become accustomed to observe the fundamental rules of social life, and their labour is so productive, that they voluntarily work *according to their ability.*

The scientific difference between Socialism and Communism is clear. What is generally called Socialism was termed by Marx the "first" or lower phase of Communist society. In so far as the means of production become *public* property, the word "Communism" is also applicable here, providing that we do not forget that it is *not* full Communism. The great significance of Marx's elucidations consists in this: that here, too, he consistently applies materialist dialectics, the doctrine of evolution, looking upon Communism as something which evolves *out of* capitalism. Instead of artificial, "elaborate," scholastic definitions and profitless disquisitions on the meaning of words (what Socialism is, what Communism is), Marx gives an analysis of what may be called stages in the economic ripeness of Communism.

If *every one* really takes part in the administration of the state, capitalism cannot retain its hold. In its turn, capitalism, as it develops, itself creates *prerequisites* for "every one" *to be able* really to take part in the administration of the state. Among such prerequisites are: universal literacy, already realised in most of the advanced capitalist countries, then the "training and disciplining" of millions of workers by the huge, complex, and socialised apparatus of the post-office, the railways, the big factories, large-scale commerce, banking, etc., etc.

With such *economic* prerequisites it is perfectly possible, immediately, within twenty-four hours after the overthrow of the capitalists and bureaucrats, to replace them, in the control of production and distribution, in the business of *control* of labour and products, by the armed workers, by the whole people in arms. (The question of control and accounting must not be confused with the question of the scientifically educated staff of engineers, agronomists, and so on. These gentlemen work today, obeying the capitalists; they will work even better tomorrow, obeying the armed workers.)

Accounting and control—these are the *chief* things necessary for

the organising and correct functioning of the *first phase* of Communist society. *All* citizens are here transformed into hired employees of the state, which is made up of armed workers.

The whole of society will have become one office and one factory, with equal work and equal pay.

But this "factory" discipline, which the proletariat will extend to the whole of society after the defeat of the capitalists and the overthrow of the exploiters, is by no means our ideal, or our final aim. It is but a *foothold* necessary for the radical cleansing of society of all the hideousness and foulness of capitalist exploitation, *in order to advance further.*

From the moment when all members of society, or even only the overwhelming majority, have learned how to govern the state *themselves*, have taken this business into their own hands, have "established" control over the insignificant minority of capitalists, over the gentry with capitalist leanings, and the workers thoroughly demoralised by capitalism—from this moment the need for any government begins to disappear. The more complete the democracy, the nearer the moment when it begins to be unnecessary.

For when *all* have learned how to manage, and independently are actually managing by themselves the social production, very soon the *necessity* of observing the simple, fundamental rules of everyday social life in common will have become a *habit.*

The door will then be wide open for the transition from the first phase of Communist society to its higher phase, and along with it to the complete withering away of the state.

CHAPTER XI. EVOLUTIONARY SOCIALISM

I. FABIAN SOCIALISM

Transition in *Fabian Essays in Socialism* (*1889*)

George Bernard Shaw (1856–)

Whereas revolutionary proletarianism is of continental origin, England has given birth to significant schools of evolutionary socialism. Free alike from the espionage and censorship of the continent and from the constitutional obstacles that confront American reformers, English radicals very naturally regard political agitation and parliamentary action as the easiest road to the reform and reorganization of society. Democratization of the suffrage has been secured in four great steps from 1832 to 1918, and there have been corresponding advances in many other fields, including social insurance. It seems, then, no idle dream to look forward to gradual but complete socialization by constitutional means.

The leaders of English evolutionary socialism have not sprung from the working class in whose behalf they speak. The Fabian Society, formed in 1884, has often coöperated with labor leaders but has been led by such middle class intellectuals as George Bernard Shaw and Sidney Webb. The Fabian leaders know their Marx, but they are not Marxists. They owe much to classical political economy and to the teaching of Henry George, and they favor tactics like those of the Roman Fabius, who exhausted Hannibal by postponing the final conflict. The society has put out a tremendous amount of literature, especially *The Fabian Society Tracts* (1884–1924) and *Fabian Essays in Socialism* (1889). To this last Shaw contributed the opening essay and also an article entitled *Transition*, which was an address that he had delivered in 1888 to the Economic Section of the British Association at Bath. *Fabian Essays in Socialism* quickly became a landmark in socialist literature and the historical sense of its authors has left its text unchanged in its subsequent editions. It is still actively in the market in its fifty-sixth thousand in a fifth edition of 1931.

Born in Dublin, Shaw had an eminently respectable and conventional Scotch-Irish background, but detested school and received little academic education. At fifteen he became a clerk in a land office, but at twenty he broke away from his hated middle class associations and faced poverty in London. Here he came in contact with an intellectual life that was fermenting with new ideas. He soon became interested in socialism, joined the Fabian Society in its first year, and for ten years was exceedingly active as a socialist lecturer and writer. In the midst of his later fame as a playwright Shaw has never lost his radical leanings. His fully formulated socialist philosophy is expounded in his *Intelligent Woman's Guide to*

Capitalism and Socialism (1928), and he is the author of the preface to the 1931 edition of *Fabian Essays in Socialism*.

The readings here given are based upon the first edition of *Fabian Essays in Socialism* (The Fabian Society, London, 1889), and are reprinted by permission of the author and of the Fabian Society.

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TRANSITION

I. Social Justice and Economic Rent

Let us commence by glancing at the Middle Ages. There you find, theoretically, a much more orderly England than the England of to-day. Agriculture is organised on an intelligible and consistent system in the feudal manor or commune; handicraft is ordered by the gilds of the towns. Every man has his class, and every class its duties. Payments and privileges are fixed by law and custom, sanctioned by the moral sense of the community, and revised by the light of that moral sense whenever the operation of supply and demand disturbs their adjustment. Liberty and Equality are unheard of; but so is Free Competition. The law does not suffer a laborer's wife to wear a silver girdle: neither does it force her to work sixteen hours a day for the value of a modern shilling. Nobody entertains the idea that the individual has any right to trade as he pleases without reference to the rest. When the townsfolk, for instance, form a market, they quite understand that they have not taken that trouble in order to enable speculators to make money. If they catch a man buying goods solely in order to sell them a few hours later at a higher price, they treat that man as a rascal; and he never, as far as I have been able to ascertain, ventures to plead that it is socially beneficent, and indeed a pious duty, to buy in the cheapest market and sell in the dearest. If he did,

they would probably burn him alive, not altogether inexcusably. As to Protection, it comes naturally to them.

This Social Order, relics of which are still to be found in all directions, did not collapse because it was unjust or absurd. It was burst by the growth of the social organism. Its machinery was too primitive, and its administration too naïve, too personal, too meddlesome, to cope with anything more complex than a group of industrially independent communes, centralized very loosely, if at all, for purely political purposes. Industrial relations with other countries were beyond its comprehension. Its grasp of the obligations of interparochial morality was none of the surest; of international morality it had no notion.

With the rise of foreign trade and Capitalism, industry so far outgrew the control, not merely of the individual, but of the village, the gild, the municipality, and even the central government, that it seemed as if all attempt at regulation must be abandoned. Every law made for the better ordering of business either did not work at all, or worked only as a monopoly enforced by exasperating official meddling, directly injuring the general interest, and reacting disastrously on the particular interest it was intended to protect. The laws, too, had ceased to be even honestly intended, owing to the seizure of political power by the capitalist classes, which had been prodigiously enriched by the operation of economic laws which were not then understood. Matters reached a position in which legislation and regulation were so mischievous and corrupt, that anarchy became the ideal of all progressive thinkers and practical men. The intellectual revolt formally inaugurated by the Reformation was reinforced in the eighteenth century by the great industrial revolution which began with the utilization of steam and the invention of the spinning jenny. Then came chaos. The feudal system became an absurdity when its basis of communism with inequality of condition had changed into private property with free contract and competition rents. The gild system had no machinery for dealing with division of labor, the factory system, or international trade: it recognized in competitive individualism only something to be repressed as diabolical. But competitive individualism simply took possession of the gilds, and turned them into refectories for aldermen, and notable additions to the grievances and laughing stocks of posterity.

The desperate effort of the human intellect to unravel this

tangle of industrial anarchy brought modern political economy into existence. It took shape in France, where the confusion was thrice confounded; and proved itself a more practical department of philosophy than the metaphysics of the schoolmen, the Utopian socialism of More, or the sociology of Hobbes. It could trace its ancestry to Aristotle; but just then the human intellect was rather tired of Aristotle, whose economics, besides, were those of slave holding republics. Political economy soon declared for industrial anarchy; for private property; for individual recklessness of everything except individual accumulation of riches; and for the abolition of all the functions of the State except those of putting down violent conduct and invasions of private property.

Although this was what political economy decreed, it must not be inferred that the greater economists were any more advocates of mere licence than Prince Kropotkin, or Mr. Herbert Spencer, or Mr. Benjamin Tucker of Boston, or any other modern Anarchist. They did not admit that the alternative to State regulation was anarchy: they held that Nature had provided an all-powerful automatic regulator in Competition; and that by its operation self-interest would evolve order out of chaos if only it were allowed its own way. And whilst they were dazzled by the prodigious impulse given to production by the industrial revolution under competitive private enterprise, they were at the same time, for want of statistics, so optimistically ignorant of the condition of the masses, that we find David Hume, in 1766, writing to Turgot that "no man is so industrious but he may add some hours more in the week to his labor; and scarce anyone is so poor but he can retrench something of his expense." No student ever gathers from a study of the individualist economists that the English proletariat was seething in horror and degradation whilst the riches of the proprietors were increasing by leaps and bounds.

The historical ignorance of the economists did not, however, disable them for the abstract work of scientific political economy. All their most cherished institutions and doctrines succumbed one by one to their analysis of the laws of production and exchange. With one law alone—the law of rent—they destroyed the whole series of assumptions upon which private property is based. The apriorist notion that among free competitors wealth must go to the industrious, and poverty be the just and natural punishment of the lazy and improvident, proved as illusory as the apparent flat-

ness of the earth. Here was a vast mass of wealth called economic rent, increasing with the population, and consisting of the difference between the product of the national industry as it actually was and as it would have been if every acre of land in the country had been no more fertile or favorably situated than the very worst acre from which a bare living could be extracted: all quite incapable of being assigned to this or that individual or class as the return to his or its separate exertions: all purely social or common wealth, for the private appropriation of which no permanently valid and intellectually honest excuse could be made.

What the achievement of Socialism involves economically, is the transfer of rent from the class which now appropriates it to the whole people. Rent being that part of the produce which is individually unearned, this is the only equitable method of disposing of it. There is no means of getting rid of economic rent. So long as the fertility of land varies from acre to acre, and the number of persons passing by a shop window per hour varies from street to street, with the result that two farmers or two shopkeepers of exactly equal intelligence and industry will reap unequal returns from their year's work, so long will it be equitable to take from the richer farmer or shopkeeper the excess over his fellow's gain which he owes to the bounty of Nature or the advantage of situation, and divide that excess or rent equally between the two. If the pair of farms or shops be left in the hands of a private landlord, he will take the excess, and, instead of dividing it between his two tenants, live on it himself idly at their expense. The economic object of Socialism is not, of course, to equalize farmers and shopkeepers in couples, but to carry out the principle over the whole community by collecting all rents and throwing them into the national treasury. As the private proprietor has no reason for clinging to his property except the legal power to take the rent and spend it on himself—this legal power being in fact what really constitutes him a proprietor—its abrogation would mean his expropriation. The socialization of rent would mean the socialization of the sources of production by the expropriation of the present private proprietors, and the transfer of their property to the entire nation.

II. Practical Difficulties and Past Progress

It will be at once seen that the valid objections to Socialism consist wholly of practical difficulties. On the ground of abstract

justice, Socialism is not only unobjectionable, but sacredly imperative. The first practical difficulty is raised by the idea of the entire people collectively owning land, capital, or anything else. Here is the rent arising out of the people's industry: here are the pockets of the private proprietors. The problem is to drop that rent, not into those private pockets, but into the people's pocket. Yes; but where is the people's pocket? Who is the people? what is the people? The Socialist is stopped dead at the threshold of practical action by this difficulty until he bethinks himself of the State as the representative and trustee of the people. Now if you will just form a hasty picture of the governments which called themselves States in Ricardo's day, consisting of rich proprietors legislating either by divine right or by the exclusive suffrage of the poorer proprietors, and filling the executives with the creatures of their patronage and favoritism; if you look beneath their oratorical parliamentary discussions, conducted with all the splendor and decorum of an expensive sham fight; if you consider their class interests, their shameless corruption, and the waste and mismanagement which disgraced all their bungling attempts at practical business of any kind, you will understand why Ricardo, clearly as he saw the economic consequences of private appropriation of rent, never dreamt of State appropriation as a possible alternative. The Socialist of that time did not greatly care: he was only a benevolent Utopian who planned model communities, and occasionally carried them out, with negatively instructive and positively disastrous results. When his successors learned economics from Ricardo, they saw the difficulty quite as plainly as Ricardo's vulgarizers, the Whig doctrinaires who accepted the incompetence and corruption of States as permanent inherent State qualities, like the acidity of lemons. Not that the Socialists were not doctrinaires too; but outside economics they were pupils of Hegel, whilst the Whigs were pupils of Bentham and Austin. Bentham's was not the school in which men learned to solve problems to which history alone could give the key, or to form conceptions which belonged to the evolutional order. Hegel, on the other hand, expressly taught the conception of the perfect State; and his pupils saw that nothing in the nature of things made it impossible, or even specially difficult, to make the existing State, if not absolutely perfect, at least practically trustworthy. Every successfully conducted private business establishment in the kingdom was an example of the ease with

which public ones could be reformed as soon as there was the effective will to find out the way. Make the passing of a sufficient examination an indispensable preliminary to entering the executive; make the executive responsible to the government and the government responsible to the people; and State departments will be provided with all the guarantees for integrity and efficiency that private money-hunting pretends to. Thus the old bugbear of State imbecility did not terrify the Socialist; it only made him a Democrat. But to call himself so simply, would have had the effect of classing him with the ordinary destructive politician who is a Democrat without ulterior views for the sake of formal Democracy. Consequently, we have the distinctive term Social Democrat, indicating the man or woman who desires through Democracy to gather the whole people into the State, so that the State may be trusted with the rent of the country, and finally with the land, the capital, and the organization of the national industry—with all the sources of production, in short, which are now abandoned to the cupidity of irresponsible private individuals.

The benefits of such a change as this are so obvious to all except the existing private proprietors and their parasites, that it is very necessary to insist on the impossibility of effecting it suddenly. The young Socialist is apt to be catastrophic in his views—to plan the revolutionary programme as an affair of twenty-four lively hours, with Individualism in full swing on Monday morning, a tidal wave of the insurgent proletariat on Monday afternoon, and Socialism in complete working order on Tuesday. A man who believes that such a happy dispatch is possible, will naturally think it absurd and even inhuman to stick at bloodshed in bringing it about. He can prove that the continuance of the present system for a year costs more suffering than could be crammed into any Monday afternoon, however sanguinary. The experienced Social Democrat converts his too ardent follower by first admitting that if the change could be made catastrophically it would be well worth making, and then proceeding to point out that as it would involve a readjustment of productive industry to meet the demand created by an entirely new distribution of purchasing power, it would also involve, in the application of labor and industrial machinery, alterations which no afternoon's work could effect. You cannot convince any man that it is impossible to tear down a government in a day; but everybody is convinced already that you

cannot convert first and third class carriages into second class; rookeries and palaces into comfortable dwellings; and jewellers and dressmakers into bakers and builders, by merely singing the "Marseillaise."

What then does a gradual transition to Social Democracy mean specifically? It means the gradual extension of the franchise; and the transfer of rent and interest to the State, not in one lump sum, but by instalments. Looked at in this way, it will at once be seen that we are already far on the road, and are being urged further by many politicians who do not dream that they are touched with Socialism—nay, who would earnestly repudiate the touch as a taint. Let us see how far we have gone. In 1832 the political power passed into the hands of the middle class; and in 1838 Lord John Russell announced finality. Meanwhile, in 1834, the middle class had swept away the last economic refuge of the workers, the old Poor Law, and delivered them naked to the furies of competition. Ten years turmoil and active emigration followed; and then the thin end of the wedge went in. The Income Tax was established; and the Factory Acts were made effective. The Income Tax (1842), which is on individualist principles an intolerable spoliative anomaly, is simply a forcible transfer of rent, interest, and even rent of ability, from private holders to the State without compensation. It excused itself to the Whigs on the ground that those who had most property for the State to protect should pay *ad valorem* for its protection. The Factory Acts swept the anarchic theory of the irresponsibility of private enterprise out of practical politics; made employers accountable to the State for the well-being of their employees; and transferred a further instalment of profits directly to the worker by raising wages. An extension of the Franchise, which was really an instalment of Democracy, and not, like the 1832 Reform Bill, only an advance towards it, was gained in 1867; and immediately afterwards came another instalment of Socialism in the shape of a further transfer of rent and interest from private holders to the State for the purpose of educating the people. In the meantime, the extraordinary success of the post office, which, according to the teaching of the Manchester school, should have been a nest of incompetence and jobbery, had not only shewn the perfect efficiency of State enterprise when the officials are made responsible to the class interested in its success, but had also proved the enormous convenience and cheapness

of socialistic or collectivist charges over those of private enterprise.

After 1875, leaping and bounding prosperity, after a final spurt during which the Income Tax fell to twopence, got out of breath, and has not yet recovered it. Russia and America, among other competitors, began to raise the margin of cultivation at a surprising rate. Education began to intensify the sense of suffering, and to throw light upon its causes in dark places. The capital needed to keep English industry abreast of the growing population began to be attracted by the leaping and bounding of foreign loans and investments, and to bring to England, in payment of interest, imports that were not paid for by exports—a phenomenon inexpressibly disconcerting to the Cobden Club. The old pressure of the eighteen-thirties came back again. Numbers of young men, pupils of Mill, Spencer, Comte, and Darwin, roused by Mr. Henry George's "Progress and Poverty," left aside evolution and free-thought; took to insurrectionary economics; studied Karl Marx; and were so convinced that Socialism had only to be put clearly before the working-classes to concentrate the power of their immense numbers in one irresistible organization, that the Revolution was fixed for 1889—the anniversary of the French Revolution—at latest. However, the ensuing years sifted and sobered us. "The Socialists," as they were called, have fallen into line as a Social Democratic party, no more insurrectionary in its policy than any other party. But I shall not present the remainder of the transition to Social Democracy as the work of fully conscious Social Democrats.

III. Next Steps toward Social Democracy

First, then, as to the consummation of Democracy. Since 1885 every man who pays four shillings a week rent can only be hindered from voting by anomalous conditions of registration which are likely to be swept away very shortly. This is all but manhood suffrage; and it will soon complete itself as adult suffrage. However, I may leave adult suffrage out of the question, because the outlawry of women, monstrous as it is, is not a question of class privilege, but of sex privilege. To complete the foundation of the democratic State, then, we need manhood suffrage, abolition of all poverty disqualifications, abolition of the House of Lords, public payment of candidature expenses, public payment of repre-

sentatives, and annual elections. These changes are now inevitable, however unacceptable they may appear to those of us who are Conservatives. They have been for half a century the commonplaces of Radicalism. We have next to consider that the State is not merely an abstraction: it is a machine to do certain work; and if that work be increased and altered in its character, the machinery must be multiplied and altered too. Now, the extension of the franchise does increase and alter the work very considerably; but it has no direct effect on the machinery. At present the State machine has practically broken down under the strain of spreading democracy, the work being mainly local, and the machinery mainly central. Without efficient local machinery the replacing of private enterprise by State enterprise is out of the question; and we shall presently see that such replacement is one of the inevitable consequences of Democracy. A democratic State cannot become a *Social*-Democratic State unless it has in every centre of population a local governing body as thoroughly democratic in its constitution as the central Parliament. This matter is also well in train. In 1888 a Government avowedly reactionary passed a Local Government Bill which effected a distinct advance towards the democratic municipality. It was furthermore a Bill with no single aspect of finality anywhere about it. Local Self-Government remains prominent within the sphere of practical politics. When it is achieved, the democratic State will have the machinery for Socialism.

And now, how is the raw material of Socialism—otherwise the Proletarian man—to be brought to the Democratic State machinery? Here again the path is easily found. Politicians who have no suspicion that they are Socialists, are advocating further instalments of Socialism with a recklessness of indirect results which scandalizes the conscious Social Democrat. The phenomenon of economic rent has assumed prodigious proportions in our great cities. Lord Hobhouse and his unimpeachably respectable committee for the taxation of ground values are already in the field claiming the value of the site of London for London collectively; and their agitation receives additional momentum from every lease that falls in. Their case is unassailable; and the evil they attack is one that presses on the ratepaying and leaseholding classes as well as upon humbler sufferers. This economic pressure is reinforced formidably by political opinion in the workmen's associa-

tions. Here the moderate members are content to demand a progressive Income Tax, which is virtually Lord Hobhouse's proposal; and the extremists are all for Land Nationalization, which is again Lord Hobhouse's principle. The cry for such taxation cannot permanently be resisted. And it is very worthy of remark that there is a new note in the cry. Formerly taxes were proposed with a specific object—as to pay for a war, for education, or the like. Now the proposal is to tax the landlords in order to get some of *our* money back from them—take it from them first and find a use for it afterwards. Ever since Mr. Henry George's book reached the English Radicals, there has been a growing disposition to impose a tax of twenty shillings in the pound on obviously unearned incomes: that is, to dump four hundred and fifty millions a year down on the Exchequer counter; and then retire with three cheers for the restoration of the land to the people.

The results of such a proceeding, if it actually came off, would considerably take its advocates aback. The streets would presently be filled with starving workers of all grades, domestic servants, coach builders, decorators, jewellers, lacemakers, fashionable professional men, and numberless others whose livelihood is at present gained by ministering to the wants of these and of the proprietary class. And here we have checkmate to mere Henry Georgism, or State appropriation of rent without Socialism. The consequences of withdrawing capital from private hands merely to lock it up unproductively in the treasury would be so swift and ruinous, that no statesman, however fortified with the destructive resources of abstract economics, could persist in it. It will be found in the future as in the past, that governments will raise money only because they want it for specific purposes, and not on *a priori* demonstrations that they have a right to it. But it must be added that when they *do* want it for a specific purpose, then, also in the future as in the past, they will raise it without the slightest regard to *a priori* demonstrations that they have no right to it.

Here then we have got to a dead lock. In spite of democrats and land nationalizers, rent cannot be touched unless some pressure from quite another quarter forces productive enterprise on the State. Such pressure is already forthcoming. The quick starvation of the unemployed, the slow starvation of the employed who have no relatively scarce special skill, the unbearable anxiety or dangerous recklessness of those who are employed to-day and

unemployed to-morrow, the rise in urban rents, the screwing down of wages by pauper immigration and home multiplication, the hand-in-hand advance of education and discontent, are all working up to explosion point. In the winter, the unemployed collect round red flags, and listen to speeches for want of anything else to do. They welcome Socialism, insurrectionism, currency craze—anything that passes the time and seems to express the fact that they are hungry. The local authorities, equally innocent of studied economic views, deny that there is any misery; send leaders of deputations to the Local Government Board, who promptly send them back to the guardians; try bullying; try stoneyards; try bludgeoning; and finally sit down helplessly and wish it were summer again or the unemployed at the bottom of the sea. So unstable a state of things cannot last. Municipal employment must be offered at last. This cannot be done in one place alone; the rush from other parts of the country would swamp an isolated experiment. Wherever the pressure is, the relief must be given on the spot. And since public decency, as well as consideration for its higher officials, will prevent the County Council from instituting a working day of sixteen hours at a wage of a penny an hour or less, it will soon have on its hands not only the unemployed, but also the white slaves of the sweater, who will escape from their dens and appeal to the municipality for work the moment they become aware that municipal employment is better than private sweating. Nay, the sweater himself, a mere slave driver paid "by the piece," will in many instances be as anxious as his victims to escape from his hideous trade. But the municipal organization of the industry of these people will require capital. Where is the municipality to get it? Raising the rates is out of the question: the ordinary tradesmen and householders are already rated and rented to the limit of endurance: further burdens would almost bring them into the street with a red flag. Dreadful dilemma! in which the County Council, between the devil and the deep sea, will hear Lord Hobhouse singing a song of deliverance, telling a golden tale of ground values to be municipalized by taxation. The land nationalizers will swell the chorus: the Radical progressive income taxers singing together, and the ratepaying tenants shouting for joy. The capital difficulty thus solved—for we need not seriously anticipate that the landlords will actually fight—the question of acquiring land will arise. The nationalizers will

declare for its annexation by the municipality without compensation; but that will be rejected as spoliation, worthy only of revolutionary Socialists. The no-compensation cry is indeed a piece of unpractical catastrophic insurrectionism; for whilst compensation would be unnecessary and absurd if every proprietor were expropriated simultaneously, and the proprietary system at once replaced by full blown Socialism, yet when it is necessary to proceed by degrees, the denial of compensation would have the effect of singling out individual proprietors for expropriation whilst the others remained unmolested, and depriving them of their private means long before there was suitable municipal employment ready for them. The land, as it is required, will therefore be honestly purchased; and the purchase money, or the interest thereon, will be procured, like the capital, by taxing rent. Of course this will be at bottom an act of expropriation just as much as the collection of Income Tax to-day is an act of expropriation. As such, it will be denounced by the landlords as merely a committing of the newest sin the oldest kind of way. In effect, they will be compelled at each purchase to buy out one of their body and present his land to the municipality, thereby distributing the loss fairly over their whole class, instead of placing it on one man who is no more responsible than the rest. But they will be compelled to do this in a manner that will satisfy the moral sense of the ordinary citizen as effectively as that of the skilled economist.

We now foresee our municipality equipped with land and capital for industrial purposes. At first they will naturally extend the industries they already carry on, road making, gas works, tramways, building, and the like. It is probable that they will for the most part regard their action as a mere device to meet a passing emergency. For a while the proprietary party will succeed in hampering and restricting municipal enterprise; in attaching the stigma of pauperism to its service; in keeping the lot of its laborers as nearly as possible down to private competition level in point of hard work and low wages. But its power will be broken by the disappearance of that general necessity for keeping down the rates which now hardens local authority to humane appeals. The luxury of being generous at someone else's expense will be irresistible. The ground landlord will be the municipal milch cow; and the ordinary ratepayers will feel the advantage of sleeping in peace, relieved at once from the fear of increased burdens and

of having their windows broken and their premises looted by hungry mobs. They will have just as much remorse in making the landlord pay as the landlord has had in making them pay—just as much and no more. And as the municipality becomes more democratic, it will find landlordism losing power, not only relatively to democracy, but absolutely.

IV. The Extinction of Private Property

The ordinary ratepayer, however, will not remain unaffected for long. At the very outset of the new extension of municipal industries, the question of wage will arise. A minimum wage must be fixed; and though at first, to avoid an overwhelming rush of applicants for employment, it must be made too small to tempt any decently employed laborer to forsake his place and run to the municipality, still, it will not be the frankly infernal competition wage. It will be, like medieval wages, fixed with at least some reference to public opinion as to a becoming standard of comfort. The worst sort of sweaters will find that if they are to keep their "hands," they must treat them at least as well as the municipality. The consequent advance in wage will swallow up the sweater's narrow margin of profit. Hence the sweater must raise the price per piece against the shops and wholesale houses for which he sweats. This again will diminish the profits of the wholesale dealers and shopkeepers, who will not be able to recover this loss by raising the price of their wares against the public, since, had any such step been possible, they would have taken it before. But fortunately for them, the market value of their ability as men of business is fixed by the same laws that govern the prices of commodities. Just as the sweater is worth his profit, so they are worth their profit; and just as the sweater will be able to exact from them his old remuneration in spite of the advance in wages, so they will be able to exact their old remuneration in spite of the advance in sweaters' terms. But from whom, it will be asked, if not from the public by raising the price of the wares? Evidently from the landlord upon whose land they are organizing production. In other words, they will demand and obtain a reduction of rent. Thus the organizer of industry, the employer pure and simple, the *entrepreneur*, as he is often called in economic treatises nowadays, will not suffer. In the division of the product his share will remain constant; whilst the industrious wage worker's share will be in-

creased, and the idle proprietor's share diminished. This will not adjust itself without friction and clamor; but such friction is constantly going on under the present system in the opposite direction, *i.e.*, by the raising of the proprietor's share at the expense of the worker's.

The contraction of landlords' incomes will necessarily diminish the revenue from taxation on such incomes. Let us suppose that the municipality, to maintain its revenue, puts on an additional penny in the pound. The effect will be to burn the landlord's candle at both ends—obviously not a process that can be continued to infinity. But long before taxation fails as a source of municipal capital, the municipalities will have begun to save capital out of the product of their own industries. In the market the competition of those industries with the private concerns will be irresistible. Unsaddled with a single idle person, and having, therefore, nothing to provide for after paying their employees except extension of capital, they will be able to offer wages that no business burdened with the unproductive consumption of an idle landlord or shareholder could afford, unless it yielded a heavy rent in consequence of some marked advantage of site. But even rents, when they are town rents, are at the mercy of a municipality in the long run. The masters of the streets and the traffic can nurse one site and neglect another. The rent of a shop depends on the number of persons passing its windows per hour. A skilfully timed series of experiments in paving, a new bridge, a tramway service, a barracks, or a small-pox hospital are only a few of the circumstances of which city rents are the creatures. The power of the municipality to control these circumstances is as obvious as the impotence of competing private individuals. Again, competing private individuals are compelled to sell their produce at a price equivalent to the full cost of production at the margin of cultivation. The municipality could compete against them by reducing prices to the average cost of production over the whole area of municipal cultivation. The more favorably situated private concerns could only meet this by ceasing to pay rent: the less favorably situated would succumb without remedy. It would be either stalemate or checkmate. Private property would either become barren, or it would yield to the actual cultivator of average ability no better an income than could be obtained more securely in municipal employment. To the mere proprietor it would yield nothing.

Eventually the land and industry of the whole town would pass by the spontaneous action of economic forces into the hands of the municipality; and, so far, the problem of socializing industry would be solved.

The market price of ability depends upon the relation of the supply to the demand: the more there is of it the cheaper it is: the less, the dearer. Any cause that increases the supply lowers the price. Now it is evident that since a manager must be a man of education and address, it is useless to look ordinarily to the laboring class for a supply of managerial skill. But if the education and culture which are a practically indispensable part of the equipment of competitors for such posts were enjoyed by millions instead of thousands, that rent would fall considerably. Now the tendency of private property is to keep the masses mere beasts of burden. The tendency of Social Democracy is to educate them—to make men of them. Social Democracy would not long be saddled with the rents of ability which have during the last century made our born captains of industry our masters and tyrants instead of our servants and leaders. Finally, when rents of ability had reached their irreducible natural level, they could be dealt with by a progressive Income Tax in the very improbable case of their proving a serious social inconvenience.

It is not necessary to go further into the economic detail of the process of the extinction of private property. Much of that process as sketched here may be anticipated by sections of the proprietary class successively capitulating, as the net closes about their special interests, on such terms as they may be able to stand out for before their power is entirely broken.

We may also safely neglect for the moment the question of the development of the House of Commons into the central government which will be the organ for federating the municipalities, and nationalizing inter-municipal rents by an adjustment of the municipal contributions to imperial taxation: in short, for discharging national as distinct from local business. One can see that the Local Government Board of the future will be a tremendous affair; that foreign States will be deeply affected by the reaction of English progress; that international trade, always the really dominant factor in foreign policy, will have to be reconsidered from a new point of view when profit comes to be calculated in terms of net social welfare instead of individual pecuniary gain; that our present

system of imperial aggression, in which, under pretext of exploration and colonization, the flag follows the filibuster and trade follows the flag, with the missionary bringing up the rear, must collapse when the control of our military forces passes from the capitalist class to the people; that the disappearance of a variety of classes with a variety of what are now ridiculously called "public opinions" will be accompanied by the welding of society into one class with a public opinion of inconceivable weight; that this public opinion will make it for the first time possible effectively to control the population; that the economic independence of women, and the supplanting of the head of the household by the individual as the recognized unit of the State, will materially alter the status of children and the utility of the institution of the family; and that the inevitable reconstitution of the State Church on a democratic basis may, for example, open up the possibility of the election of an avowed Freethinker like Mr. John Morley or Mr. Bradlaugh to the deanery of Westminster. All these things are mentioned only for the sake of a glimpse of the fertile fields of thought and action which await us when the settlement of our bread and butter question leaves us free to use and develop our higher faculties.

This, then, is the humdrum programme of the practical Social Democrat to-day. There is not one new item in it. All are applications of principles already admitted, and extensions of practices already in full activity. All have on them that stamp of the vestry which is so congenial to the British mind. None of them compel the use of the words Socialism or Revolution: at no point do they involve guillotining, declaring the Rights of Man, swearing on the altar of the country, or anything else that is supposed to be essentially un-English. And they are all sure to come—landmarks on our course already visible to far-sighted politicians even of the party which dreads them.

Let me, in conclusion, disavow all admiration for this inevitable, but sordid, slow, reluctant, cowardly path to justice. I venture to claim your respect for those enthusiasts who still refuse to believe that millions of their fellow-creatures must be left to sweat and suffer in hopeless toil and degradation, whilst parliaments and vestries grudgingly muddle and grope towards paltry instalments of betterment. The right is so clear, the wrong so intolerable, the gospel so convincing, that it seems to them that it *must* be possible to enlist the whole body of workers—soldiers,

policemen, and all—under the banner of brotherhood and equality; and at one great stroke to set Justice on her rightful throne. Unfortunately, such an army of light is no more to be gathered from the human product of nineteenth century civilization than grapes are to be gathered from thistles. But if we feel glad of that impossibility; if we feel relieved that the change is to be slow enough to avert personal risk to ourselves; if we feel anything less than acute disappointment and bitter humiliation at the discovery that there is yet between us and the promised land a wilderness in which many must perish miserably of want and despair: then I submit to you that our institutions have corrupted us to the most dastardly degree of selfishness. The Socialists need not be ashamed of beginning as they did by proposing militant organization of the working classes and general insurrection. The proposal proved impracticable; and it has now been abandoned—not without some outspoken regrets—by English Socialists. But it still remains as the only finally possible alternative to the Social Democratic programme which I have sketched to-day.

II. GUILD SOCIALISM

Social Theory (1920)

George D. H. Cole (1889–)

Guild socialism is to Fabianism almost exactly as syndicalism to Marxism. Like the Fabians, the guild socialists are English intellectuals—most of whom, indeed, have at some time been members of the Fabian Society—and seek to attain socialization by gradual and constitutional steps. Like the Fabians, again, they are writers whose literary output and influence have been out of all proportion to the number of their adherents. But, like the syndicalists, the guild socialists magnify the functions of economic associations and reject the omnicompetence of the state.

Guild socialism is built upon the economics and sociology of the twentieth century. Although A. J. Penty dreamed of workers' guilds that should restore the medieval artistry of creative craftsmanship, the most influential guild socialists, A. R. Orage, S. G. Hobson, and G. D. H. Cole, have accepted industrialization as a necessary foundation for widespread material welfare. Immediately after the war, a builders' guild successfully undertook certain municipal housing projects, but the withdrawal of central government grants dispelled the dream of guild socialism as a practical experiment and tended to cool the enthusiasm of the theorists as well. The once active National Guilds League was dissolved in 1925, and the *New Age* is no longer a guild socialist journal.

George D. H. Cole, the "infant prodigy" of guild socialism, was educated

at St. Paul's and at Balliol College, and at twenty-two was made a fellow of Magdalen College. He joined the Fabian Society while an undergraduate and in 1912 was active in organizing the Fabian Research Department, an agency for studying labor problems. In 1913 he became a guild socialist and was soon the most prolific propagandist of the movement. His most effective presentation of the philosophy of guild socialism is in *Social Theory* (1920), which shows the influence of de Maeztu's theory of function, and of the concepts of community and association in MacIver's *Community* (1917). Among Cole's other works are *The World of Labour* (1913), *British Trade and Industry* (1931), *Economic Tracts for the Times* (1932), and *The Intelligent Man's Guide through World Chaos* (1932). At present Cole is university reader in economics at Oxford, fellow of University College, and vice-president of the Workers' Educational Association.

The readings here given are based on the text of the second edition of *Social Theory* (Methuen, London, 1921), and are reprinted by permission of the author and the publishers.

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SOCIAL THEORY

I. Society in Terms of Will and Function

[*Ch. I.*] Social Theory, especially under its name of "Political Theory," has often been regarded as having to do mainly with one particular association, the State, and with its relation to the individual. Recent theory, however, has been moving more and more to the conclusion that this definition of the scope of the subject is wrong, because it is fundamentally untrue to the facts of social experience.

Society is a very complex thing. Apart from personal and family relations, almost every individual in it has, from childhood onwards, close contacts with many diverse forms of social institution and association. Not only is he a citizen or subject of his State, and of various local governing authorities within it: he is also related to the social order through many other voluntary or involuntary associations and institutions. None can escape from constant contact with various social relations, and almost every one is conscious of a widely diversified and ceaselessly varying social environment of which he forms, for his fellows, a part.

This being the character of the social complex, the question at once arises of the right way of surveying it from the theoretic standpoint. The tendency of political theorists has been to survey it under the guidance of the principle of Power or Force, which is also the principle of the Austinian theory of law. Only the State, and, under the State, in a small degree the local authority, obviously possesses in our day coercive power. The State, therefore, as the "determinate superior," having in its hands not only the majesty of law, but the ultimate weapon of physical compulsion, has been singled out and set on a pedestal apart from all other forms of association.

Following out this line of thought to its logical conclusion, classical Political Theory has treated the State as the embodiment and representative of the social consciousness, the State's actions as the actions of men in Society, the relations of the State and the individual as the chief, and almost the only, subject-matter of Social Theory.

I believe that this false conception of the subject arises mainly from the conception of human society in terms of Force and Law. It begins at the wrong end, with the coercion which is applied to men in Society, and not with the motives which hold men together in association. The other way of conceiving human Society, first fully developed in Rousseau's *Social Contract*, is in terms not of Force or Law, but of Will.

As soon as we view the social scene in this light, the whole outlook is at once different. Not only the State, but all the other forms of association in which men join or are joined together for the execution of any social purpose, are seen as expressing and embodying in various manners and degrees the wills of the individuals who compose them.

Our study of Social Theory will begin, then, not with the State, or with any other particular form of association, but with association as a whole, and the way in which men act through associations in supplement and complement to their actions as isolated or private individuals.

[*Ch. II.*] Men living together are conscious of numerous wants, both material and spiritual. In order to satisfy these wants, they must take action, and accordingly they translate their consciousness of wants into will. These wants are of the most diverse character, and require the most diverse means for their satisfaction. In two respects above all, they differ fundamentally one from another, and their differences in these respects present the best starting-point for our examination.

Some wants are of a simple character and only require a simple translation into will and action for their fulfilment, or for the demonstration that they cannot be fulfilled. Such wants, being essentially simple and single, do not give rise to any form of organisation. But very many wants are complex, and require for their fulfilment not a single act of will or action, but a whole course of action sustained by a continuing purpose. It is in such cases, where the will must be maintained over a whole course of action, that the need for organisation may arise.

The presence of deliberate purpose, however, does not necessarily lead to social organisation. The individual has often to present to himself a course of action, and to sustain by a continuing act of will a whole course of action. In such a case he may be said to "organise" his own mind, but organisation remains purely personal and within his mind. The position is different when he finds that the purpose before him can only, or can better, be furthered by his acting in common with other individuals and undertaking in common with them a course of action which, he hopes, will lead to the satisfaction of the want of which he is conscious in himself. The mere realisation of the need for coöperative action does not, of course, call the coöperation into being, but it is the basis on which coöperation can be built. This consciousness of a want requiring coöperative action for its satisfaction is the basis of *association.*

By an "association" I mean any group of persons pursuing a common purpose or system or aggregation of purposes by a course of coöperative action extending beyond a single act, and, for this

purpose, agreeing together upon certain methods of procedure, and laying down, in however rudimentary a form, rules for common action.

Our definition of the word "association" is clearly very wide indeed. It excludes momentary groups formed, without definite organisation, to carry out some single immediate object; but it includes all organised groups possessed of a purpose entailing a course of action. It draws no distinction between groups whose purpose is in some sense political or social or communal, and groups whose purpose is purely sociable or recreational. It covers a football club or a dining club fully as much as a Church, a Trade Union or a political party.

Of course, it makes a great difference to the importance of an association, not only how far it is representative of those concerned in its purpose, but also how important its purpose is. But it is impossible to draw a theoretical line of distinction between associations which are "social" and associations which are only sociable. For some practical purposes, as for representation upon public bodies, it is no doubt essential to draw such a distinction; but it is necessary to recognise that, however drawn, it cannot be more than empirical. *All* associations are, in their various manners and degrees, parts of Society.

[*Ch. III.*] Men make, and enter into, associations for the purpose of satisfying common wants, that is, in terms of action, for the execution of common purposes. Every such purpose or group of purposes is the basis of the *function* of the association which has been called into being for its fulfilment.

But function is not so much the final cause of each separate association, as the principle underlying the unity and coherence of associations. The value and full development of Society depends not only on the wide prevalence and diffusion of association in the Commonwealth, but also on the successful coöperation and coherence of the various associations. The possibility of this coherence depends upon the fulfilment by each association of its social function. In so far as the associations work irrespective of their function in a social whole, or set before themselves purposes which are mutually contradictory and irreconcilable with the good of the whole, the development out of the welter of associations of a coherent Society is thwarted and retarded.

If our first question in relation to any association must be,

"What are the purposes which this association was created and is maintained by its members to subserve?" we ask that question only in order to be able the better to proceed at once to a second question, "What is the function which this association can serve in Society?"

Function emerges clearly when, and only when, an association is regarded, not in isolation, but in relation to other associations and to individuals, that is, to some extent in relation to a system of associations and individuals, a community. Such a system evidently implies a more or less clear demarcation of spheres as between the various functional associations, in order that each may make its proper contribution to the whole without interfering with the others.

We must indeed bear in mind always that associations are not mere machines, but are capable of growth and development. We must not, therefore, even in the case of the most vital associations, so exactly define their function and sphere of operation for to-day as to prevent them from developing the power to exercise their function of to-morrow.

II. The Activities of the Modern State

[*Ch. V.*] What is the State? And what is its function in the community? These questions appear to us already in a different light from that in which they appear in most books on Social Theory. They are still vital problems; but they are no longer the centre of the whole problem of community. The State, however important, is and can be for us no more than the greatest and most permanent association or institution in Society, and its claim even to any such position will have to be carefully considered.

Let us begin with a brief summary and analysis of the principal activities of the modern State, that is, of the States which exist in civilised communities in the world of to-day. It is far from being the case that every actual activity of the State forms a part of its social function; but it is the case that the function of the State can only be sought among activities which the State does, in some degree, already exercise.

To-day almost every developed State is ceaselessly active in economic affairs. It passes Factory Acts, and other legislation designed to ensure a minimum of protection to the workers engaged in production: it regulates wages and hours: it attempts

to provide for and against unemployment: it intervenes, successfully or unsuccessfully, in industrial disputes: it compels employers to provide compensation for accidents, and both employers and workers to contribute to social insurance funds which it administers. Moreover, more and more it embarks itself upon economic enterprises, conducts a Post Office or a railway service, and becomes the direct employer of vast numbers of its own citizens, incidentally often imposing political and other disqualifications upon them on the ground that they are State employees.

There is a further economic activity of the State which is more and more becoming manifest. Taxation is, in its origin, merely a method of collecting from individuals that proportion of their incomes which must be diverted from their personal use to meet the necessary expenses of State administration. But, as the activities of the State expand, taxation shows a marked tendency to become also a method of redistributing incomes within the community. This new tendency emerges already in systems of graduated taxation; but it becomes the leading principle in those proposals, nowhere yet carried far into effect, which aim at its definite and deliberate use as a means to at least comparative equality of income.

Extensive as the economic activities of the State are, it will be agreed that they have not yet, in any actual State, reached an essentially central position. This might occur, and would probably occur if the pure Collectivists had their way; but, for the present, the central position is still occupied by political and coördinating rather than by economic activities, although the latter constantly threaten the position of the two former. Our next inquiry must be into the nature of the *political* activities of the State.

The word "political" is one round which a high degree of ambiguity has gathered. Here I am using the word in a definite and specific sense. I mean by *political* activities those activities which are concerned with the social regulation of those personal relationships which arise directly out of the fact that men live together in communities, and which are susceptible to direct social organisation.

In this, as in many other cases, it is easier and perhaps more illuminating to illustrate than to define. What, we must ask, are the main types of actual political activity exercised by the State?

The State regulates the relations between individuals by enacting laws dealing with marriage and its dissolution, the care of children, the conduct arising out of sexual relationships in all their forms. It makes laws for the prevention and punishment of crime, for the care and treatment of lunatics, the feeble-minded and others who are not in a position to look after themselves. It constantly lays down rules of convenience and convention for the guidance of men in their mutual relationships. If it covers any considerable area or includes any large number of inhabitants, it must recognise or establish local authorities similar to itself but with more limited powers, and make general rules for the guidance of these bodies in their various activities. In fact, it is concerned mainly with personal rights and the means of reconciling them, and with those limitations of personal conduct which are essential to the existence of a coördinated system of personal rights.

Thirdly, the State of to-day possesses increasingly important activities of *coördination*. It enacts laws regulating the form and scope of associative activity, friendly society law, law affecting banks, companies, partnerships, Trade Unions, clubs, associations of any and every sort. In some degree, it regulates all religious associations, and, in some countries, the existence of an Established Church considerably increases the extent of its religious intervention. There is one theory of the State which regards it as primarily a coördinating body, devoted not to any specific functions of its own, but to the coördinating of the various functional associations within Society.

I do not claim that this summary of the activities of States is exhaustive or inclusive, nor do I desire to make it so. It can, with one further development, be made sufficient for our purpose. I have so far dealt almost entirely with the internal activities of "the State," and ignored its external relations, whether with other States, or with anything wholly or partly outside its geographical boundaries. I have done this because "international" or external activity cannot be regarded as a particular province of State activity, in the same sense as economic, political and coördinating activities. International action arises in relation to each of these provinces of State activity, and has, besides, special problems of its own. Thus the State takes external economic action in the development of foreign trade, external political

action in connexion, say, with international provisions regarding crime, marriage, naturalisation, and other questions of personal status and convenience which involve a measure of activity transcending State boundaries. In its activity of coördination, it is confronted with the problem of international association, from the Roman Catholic Church to the Socialist International.

A full discussion of the external aspects of State action, however, would be foreign to our present purpose, which is in the main that of disentangling the true functions of the State from the network of its present activities. By what test can we so test these activities as to make the real nature and function of the State stand out from among them clear and well-defined? The first step in applying our test must be to investigate the State from a different point of view, to regard it in the light, not of its activities, but of its structure and composition. We may then hope, by bringing its activities into relation to its structure, to discover its function in the complex of organised Society.

III. The Structure and Primary Function of the State

[*Ch. V, cont.*] How, then, is the State composed? And what is its structural principle? What is there in common between the structure of a pure despotism, in which a monarch is supposed to possess absolute and unlimited power, and a State in which all power rests, at any rate in theory, upon the consent and active coöperation of the whole body of the people.

It must be noted that the activities of a "despotic" and of a "democratic" State may be identical, while their structural principles seem to be vitally different. But are their structural principles as fundamentally different as they seem? Every despotism which seeks at all to justify its existence seeks to do so on one or another of three principles. Either it claims to be based upon "divine right and appointment" of the ruler, or it claims to be acting in the interests of the ruled, and therefore in conformity with their real will, or it claims to be based upon the actual consent of the ruled, tacit or expressed.

We are left, then, with three possible justifications of despotism, and it must be admitted that all three finally reduce themselves to a common form—the consent, in one form or another, of the ruled. The first theory, that of divine right, seems at first sight to have nothing to do with human consent; but if God has willed

that a man shall be king, it is clear that the "better selves" of all men have willed this too, and that, if divine right is established, universal consent ought to follow as a matter of course.

Any attempt to justify a despotic State therefore brings us back to the same principle as that on which "democratic" States are usually justified—the consent of the ruled. It is true that in a despotism this consent cannot, unless the despot is elected, pass beyond acquiescence, whereas in democracy consent may become, and in real democracy must become, active coöperation. Still, a common ground of principle has been established, and the State, whatever its form of power, is seen to rest on the consent of those who are its citizens, subjects, members or human constituents.

But here we encounter our first real difficulty. Who are the *members* of the State, and, indeed, can the State be said to have any members? I am using the word "members" because it is the most neutral word I can find. We usually speak of "citizens" or "subjects"; but one of these words has about it the implication of despotism and the other that of the actual exercise of political rights. I therefore avoid them for the present, because I want to avoid equally for the present both these implications.

The State, as an association, has members, and its members are all the persons ordinarily resident within the area within which the State ordinarily exercises authority. Such persons are members of the State, whether or not they have votes or other political privileges, by virtue merely of their ordinary residence within the State area. For the State is, for the dwellers within its area, a compulsory association, and its compulsory character is revealed in two ways—in its power to compel all persons in its area, and in the right of all such persons to membership of it. When we say that the State rests upon consent, we mean that it rests upon the consent of an effective proportion of *all* the dwellers within its area.

Membership of the State is, however, an almost barren theory without recognised political rights—for without such rights a member can only make his voice heard in time of revolution, when the ordinary procedure of the State is in abeyance. The members of the State have the right to translate a passive consent into an active coöperation by the assumption of political rights.

I shall take, then, as the basis of examination of the structure of the State, a State possessing the institution of universal suffrage.

What is the structural principle of such a State? Regarded as a whole, it is a compulsory association including all the dwellers within a particular area. Its basis is therefore territorial and inclusive, whereas the basis of a Trade Union is vocational and selective. The essence of the State is to include all sorts of people, without reference to the sort of people they are, the sort of beliefs they hold, or the sort of work they do.

Why does the State ignore the differences between men and include all sorts and conditions, and what is the sphere of action, or social function, marked out for it by the adoption of this structure? It ignores the differences between men because it is concerned not with their differences, but with their identity, and its function and interest are concerned with men's identity and not with their differences. Objectively stated, this principle takes the following form. The concern of the State, as an association including all sorts and conditions of men, must be with things which concern all sorts and conditions of men, and concern them, broadly speaking, in the same way, that is, in relation to their identity and not to their points of difference.

The State must exist primarily to deal with things which affect all its members more or less equally and in the same way. Let us try to see clearly what are the effects of this principle. It excludes from the primary functions of the State—from its social function *par excellence*—those spheres of social action which affect different members of it in different degrees and in various ways. This does not mean that the State must not concern itself with any such spheres of action, but only that they do not form part of its primary function. We are not concerned as yet so much with limiting the province of the State as with discovering what is its undisputed and peculiar sphere.

Let us look back now to the point from which we set out—to our brief account of the existing activities of the State. Which of these activities clearly fall within the definition we have just given, and may therefore be functions of the State or some structurally similar association? We divided the actual activities of the State into three main divisions—economic, political, and coördinative.

Economic activities for the most part clearly affect the various members of the community in different degrees and in various ways. For it is here that one of the most easily recognisable and organisable differences between man and man comes into play.

Coal mining affects the coal miner in quite a different way from that in which it affects the rest of the people, and so through the whole list of trades and vocations. Of course, coal mining does affect not only the miner, but also everybody else; but the point is that it affects the miner in a different manner and degree.

Here, however, a difficulty at once arises. Each trade or vocation affects those who follow it in a different way and degree from the way and degree in which it affects others; but many vital industries and services do also, from another point of view, affect almost everybody in very much the same way. We must all eat and drink, be clothed, housed and warmed, be tended in sickness and educated in childhood and youth, and our common needs in these and other respects give rise to a common relation, that of consumers or users of the products and services rendered by those who follow the various trades and vocations concerned.

It is upon this fact that the Collectivist theory of the State is based. The Collectivists, or State Socialists, regard the State as an association of consumers, and claim for it supremacy in the economic sphere on the ground that consumption, at least in relation to the vital industries and services, is a matter that concerns everybody equally and in the same way. This, however, is to ignore a difference as vital as the identity on which stress is laid. The most that could be claimed for the State in the economic sphere on account of the identical interest of all the members of the community in consumption is State control of consumption, and not State control of production, in which the interests of different members of the community are vitally different.

The economic sphere thus falls at once into two separable parts—production and consumption, in one of which all interests tend to be identical, while in the other, production, they tend to be different. Consumption is thus marked off as falling, *prima facie*, within the sphere of some inclusive body, whether it be the State or some other body or bodies possessing a similar structure, while production is less clearly outside it.

We saw in our summary of State activities that taxation tends to become, and to be regarded as, not merely a means of raising revenue for public purposes, but a means of redistributing the national income. May not this tendency provide the key to the economic function of an inclusive body? If there is one thing in the economic sphere which affects everybody equally and in the

same way it is the question of income, on which the nominal amount of consumption depends. Closely bound up with this is the question of price, which, in its relation to income, determines the real amount of consumption. Income and prices, then, seem to fall clearly within the province of some inclusive body.

Consumption, then, is socially regulated primarily through income and prices, either by the State or some other inclusive body, which by this means acts upon the general level and distribution of consumption, and not directly upon the consumption of any particular commodity. It is, however, clear that, in the case of many staple commodities and vital services, not only the general level of consuming power, but also the consumption and supply of a particular commodity or service, affects everybody more or less equally and in the same way.

In the case of the vital commodities and services which, broadly speaking, affect everybody equally and in the same way, there is a *prima facie* argument for action by an inclusive body, and it is clear that regulation must be done by such a body acting either alone or in conjunction with the vocational bodies which are specially concerned with supplying these commodities and services. The question whether the State or some other body or bodies so constituted should assume these functions depends upon the degree in which the combined performance of political functions and of these specialised economic functions can be undertaken with satisfactory results by the same group of elected persons, or whether it is necessary that the same body of electors should choose different persons and representative bodies for the performance of functions so essentially different and calling for such different capacities and acquirements.

The *political* activities of the State give rise to no such complex problems as its economic activities. Here the only question that arises in most cases is whether a particular sphere of personal relationship ought to be regulated or left unregulated. If it is to be regulated at all, it falls clearly according to our principle within the sphere of an inclusive body. For in personal relationship, whether regulation is based on moral principles or on principles of convenience, the regulation clearly affects, or should affect, and would but for class and economic distinctions affect, every one equally and in the same way.

What, then, of activities of *coördination*? Here a far greater

difficulty arises. To entrust the State with the function of coördination would be to entrust it, in many cases, with the task of arbitrating between itself and some other functional association, say, a Church or a Trade Union. But just as no man ought to be the judge of his own case, so ought no association. Therefore, coordination cannot belong to the function of the State; but neither can it belong to that of any other functional association.

We should reach the same conclusion if we ignored the argument against making the State judge in its own cause, and attended only to the nature of coördinating activities. For such activities clearly bring in many questions which do not affect everybody equally and in the same way, but affect various groups in essentially different ways. Therefore, once more, we must conclude that the function of coördination does not belong to the State.

This is a conclusion of far-reaching and fundamental importance; for if the State is not the coördinating authority within the community, neither is it, in the sense usually attached to the term, "sovereign." But the claim to "Sovereignty" is that on which the most exalted pretensions of the State are based.

Some form of inclusive association of which every member of the community is a member, is indeed clearly necessary; but it may well be that there will be more than one such inclusive association in the community, and that the functions which we have reserved as possible functions of inclusive associations will have to be divided among several such bodies.

IV. Representation in a Functional Democracy

[*Ch. VI.*] Every association which sets before itself any object that is of more than the most rudimentary simplicity finds itself compelled to assign tasks and duties, and with these, powers and a share of authority, to some of its members in order that the common object may be effectively pursued. In the largest and most complex forms of association, such as the State, the ordinary member is reduced to a mere voter, and all the direction of actual affairs is done by representatives—or misrepresentatives.

In the majority of associations, the nature of the relation is clear enough. The elected person—official, committee man, or delegate—makes no pretension of substituting his personality for those of his constituents, or of representing them except in relation

to a quite narrow and clearly defined purpose or group of purposes which the association exists to fulfil. There is, then, in these cases, no question of one man taking the place of many; for what the representative professes to represent is not the whole will and personalities of his constituents, but merely so much of them as they have put into the association, and as is concerned with the purposes which the association exists to fulfil.

This is the character of all true representation. It is impossible to represent human beings as selves or centres of consciousness; it is quite possible to represent, though with an inevitable element of distortion which must always be recognised, so much of human beings as they themselves put into associated effort for a specific purpose.

True representation, therefore, like true association, is always specific and functional, and never general and inclusive. What is represented is never man, the individual, but always certain purposes common to groups of individuals. That theory of representative government which is based upon the idea that individuals can be represented as wholes is a false theory, and destructive of personal rights and social well-being.

Functional representation is open to no such objection. It does not lay claim to any miraculous quality; it does not profess to be able to substitute the will of one man for the wills of many. It merely provides a basis whereby, when the individual has made up his mind that a certain object is desirable, he can coöperate with his fellows in taking the course of action necessary for its attainment.

Having made plain our conception of the true nature of representation, we can now look more closely at its consequences. In proportion as the purposes for which the representative is chosen lose clarity and definiteness, representation passes into misrepresentation, and the representative character of the acts resulting from association disappears. Thus, misrepresentation is seen at its worst to-day in that professedly omnicompetent "representative" body—Parliament—and in the Cabinet which is supposed to depend upon it. Parliament professes to represent all the citizens in all things, and therefore as a rule represents none of them in anything.

There can be only one escape from the futility of our present methods of parliamentary government; and that is to find an

association and method of representation for each function, and a function for each association and body of representatives. In other words, real democracy is to be found, not in a single omnicompetent representative assembly, but in a system of coördinated functional representative bodies.

But, as soon as we introduce the word "democracy," we raise a further question, that of the relation between me and my functional representative after I have chosen him. In fact, we find ourselves in the thick of the old controversy of "representative versus delegate."

The chief difficulty of democratic control over the representative in the political sphere to-day is that, as soon as the voters have exercised their votes, their existence as a group lapses until the time when a new election is required. No body or group remains in being to direct upon the elected person a constant stream of counsel and criticism. Consequently, the elected person must either receive full instructions at the time of election, which produces an intolerable situation as soon as there is any change in the circumstances, or else he must become a pure representative, acting on his own responsibility and consequently expressing only his own will and not those of his constituents. This dilemma exists wherever the body of electors does not remain in being and activity as a body throughout the tenure of office of the elected person.

Functional democracy, in which representatives emanate from functional associations which have a permanent being, meets this difficulty. It is no longer necessary for the group to instruct its representative, because it can continue throughout his time of office to criticise and advise him, and because it can at any time recall him if it is not satisfied with the way in which he is doing his job.

Functional democracy will give the good leader his first real chance of leading by his merits, with an instructed and active body of constituents behind him. For it must be remembered that not only will the representative be chosen to do a job about which he knows something, but he will be chosen by persons who know something of it too. Truly a revolutionary proposal for a democrat to make!

But some one will object, if I have this respect for leaders why do I insist on the right of recall? I do so, because I have even more respect for human wills and personalities, and because I feel that

democracy implies far more than the passive consent of the mass of the people in government. Democracy implies active, and not merely passive, citizenship, and implies for everybody at least the opportunity to be an active citizen, not only of the State, but of every association with which his personality or circumstances cause him to be concerned.

This does not mean that, in a functional democracy, each person will count for one and no person for more than one. That is the cant of false democracy. The essence of functional democracy is that a man should count as many times over as there are functions in which he is interested. To count once is to count about nothing in particular: what men want is to count on the particular issues in which they are interested. Instead of "One man, one vote," we must say "One man as many votes as interests, but only one vote in relation to each interest."

Functional representation, we are told, is impossible because, in order to make it work, everybody will have to vote so many times over. I fail to see where the objection arises. If a man is not interested enough to vote, and cannot be roused to interest enough to make him vote, on, say, a dozen distinct subjects, he waives his right to vote, and the result is no less democratic than if he voted blindly and without interest. It is true that the result is not so democratic as it would be if everybody voted with interest and knowledge, but it is far more democratic than it would be if everybody voted without interest or knowledge, as they tend to do in parliamentary elections. Many and keen voters are best of all; but few and keen voters are next best. A vast and uninstructed electorate voting on a general and undefined issue is the worst of all. Yet this is what we call democracy to-day.

V. Legislation, Coercion, and Coördination

[*Ch. VII.*] Great stress used to be laid on the balance of powers between legislature and executive as a safeguard against tyranny and perversion. Whatever value this principle may have had in the past, it has little or none to-day, except as a minor safeguard within each particular association. Those who seek a balance of power in social organisation are therefore compelled to seek for a new principle of division.

I have tried to establish the preëminence of function as the primary principle of social organisation. We have now to see what

are the consequences of the acceptance of this principle in the sphere of government. Instead of a division based on the stage which an associative act has reached (the stage of law-making or the stage of administration), it gives us a new principle of division according, not to the stage, but to the *content* and purpose of the act. In other words, the principle of function implies that each functional form of association has and is its own legislature and its own executive.

It follows as a necessary consequence from the denial of State Sovereignty and omnicompetence, and the affirmation of the functional character proper to all the various forms of association, that the State's exclusive claim to the right of legislation goes by the board. It retains, if it continues to exist, its right to legislate within its function; but this right belongs also to other associations in relation to their members and within their respective functions.

This does not mean that all forms of functional legislation are equally important, any more than all forms of association are equally important. But it does mean that, in the measure of their importance, all forms of association acquire for their legislative acts a comparable social status.

I must, however, at once try to meet, at least, provisionally, an objection which is almost certainly present already in the reader's mind. If the power of legislation is divided, he will ask, does not this also imply the division of coercive power? Or, in other words, if one body's exclusive right to legislate is challenged, must not one body's exclusive right to use coercion be challenged also?

I answer unhesitatingly that it must, and that the State's monopoly of coercive power disappears with its loss of Sovereignty and of the monopoly of legislation.

[*Ch. VIII.*] This, however, only drives us back upon a further question. What body in a functionally organised Society will define the limits within which coercion may be employed by the various associations, and itself exercise directly the major forms of coercion, if and when they are required?

It is not difficult to recognise that this question brings us back to the very point at which we broke off in our discussion of the State. We were there confronted with the question of the body which would, in a functional Society, exercise the powers of co-

ordination at present claimed by the "Sovereign State." But clearly coördination and coercion go hand in hand.

We are now in a position to restate more clearly and fully the reasons which make it impossible to recognise the task of co-ordination as falling within the true function of the State. The claim on the State's behalf is usually based on the assumption that the State, because it represents and includes everybody within its area, is necessarily superior to other associations which only include some of the persons within its area. But in what sense does the State represent and include everybody? If our functional theory of representation is right, it may include everybody, but it does not include the whole of everybody; it may represent some purposes common to everybody, but it does not represent all the purposes common to everybody.

This it is impossible for any single association to do, and indeed impossible for any complex of associations to do completely. For there are vast tracts of life which are simply not susceptible to social organisation, and the purposes which they include are therefore not capable of being represented at all.

The principle of coördination which we are seeking cannot therefore be a principle coördinating all life within a given area, but only that part of life which is social and susceptible to social organisation. But it must coördinate the whole of that organisable social life. It cannot therefore be found in any one of the various forms of association which we have described; for to each of these forms all the others are external, and no one of them could act as a co-ordinating agency either between the others or between itself and the rest. We are therefore reduced to the conclusion that no one among the many forms of functional association can be the co-ordinating body of which we are in search.

The coördinating agency can only be a combination, not of all associations, but of all essential associations, a Joint Council or Congress of the supreme bodies representing each of the main functions in Society. Each functional association will see to the execution of its own function, and for the coördination of the activities of the various associations there must be a joint body representative of them.

The coördinating or "joint" body which I have in mind is less an administrative or legislative body, though it cannot help partaking in some degree of both these characters, than a court of

appeal. It does not in the normal case initiate; it decides. It is not so much a legislature as a constitutional judiciary, or democratic Supreme Court of Functional Equity.

If this is clear, we can return to the question from which we were led into this discussion. Coercion and coördination, we said, go hand in hand. If the supreme power of coördination rests in the hands of this "joint" body compounded from the essential functional associations, it seems clear that the supreme power of coercion must rest in the same hands. This involves that the judiciary and the whole paraphernalia of law and police must be under the control of the coördinating body.

We saw that the functional organisation of Society necessarily involves the division of power of legislation, as well as of administration, along functional lines. It does not, however, involve a similar division of the judiciary.

The sole possession of a high degree of coercive power, and especially of coercive power which directly affects a man's body, by any single form of functional association, would clearly upset the social balance at which we are aiming, and place the ultimate social power in the hands of that form of association. It must, however, be in the hands of a single body, if only for reasons of convenience; and this body can therefore only be the coördinating body which is a synthesis of the various essential forms of association.

In dealing with the nature of the State, we discussed briefly the international aspects of social organisation. International actions, or the external actions of a particular Society, have their various functional aspects, in which they fall within the sphere of the various forms of functional association. There remain those parts of international or external action which involve more than one function or call for action by Society as a whole. Foremost among these there will no doubt leap to the mind of the reader the control of armed forces—the Army, Navy and Air Force. Where, in a functional Society, would the control of these reside? Who would declare war or make peace or treaties and covenants affecting Society as a whole? Who would represent a functional Society in a League of Nations?

The answers to all these questions follow logically from what has already been established. The external use of force and coercion raises similar problems to its internal use, and it is even more

manifest in external relations that the right to use it must be concentrated in the hands of a single body. We must, therefore, once more conclude that the external, like the internal, means of coercion, must be in the hands of the body which represents the various social functions, and is entrusted with the task of coordination.

Here, then, is the answer to our last question—Who would represent a functional Society on a League of Nations? The answer is that an international Society, which in embryo a League of Nations is, if it is anything more than a sham, would reproduce in itself the functional structure of the smaller Societies composing it. International functional associations would undertake, in the wider sphere, the work undertaken in the narrower sphere by national functional organisation, and the central coördinating body would reproduce internationally the federal structure of the national coördinating bodies. This, no doubt, assumes a certain homogeneity of structure among the Societies composing the League; but it is at least doubtful whether, without a considerable element of homogeneity, a League of Nations could possibly work. A perception of this perhaps accounts for the desire of the "Sovereign States," which have just formed a League, to impress upon all candidates for entry the particular structure, economic and political, which they themselves possess.

VI. The Function of Economic Associations

[*Ch. IX.*] There will be a certain type of reader who will regard the greater part of this book as beside the point, or at best as a harmless form of theoretical diversion. Political organisation, and indeed every essential form of associative life, is, in his view, the result of economic conditions and of the distribution of economic power in the community.

In fact, we are here faced by a theory which is the complete inversion of the theory of State Sovereignty which we have already rejected. Having pulled down the State from its pedestal, we are asked to install the economic structure of Society in its place. There is, however, a profound difference in the argument advanced.

It is not as a rule suggested that economic conditions *ought* to be the supreme determinant in Society, but only that they are and must be, owing to the operation of forces beyond our control. The advocates of this theory—the "materialist" or "economic" conception of history—are indeed apt to be impatient of "oughts"

and rights. They claim that their conception is "scientific," and base it upon the stern laws of necessity and material evolution.

Whatever the process of argument, the result arrived at is in one respect the same as that arrived at by the advocates of State Sovereignty. Functional organisation in either case disappears, or appears only as a subordinate form determined by and existing on the sufferance of a single form of organisation, which, even if it has a functional basis, is not in its operation confined to any particular function.

While I cannot accept the neo-Marxian criticism of the State as universally true, or as necessarily involving the State's disappearance, I am accepting its general truth as it applies to the State of to-day. It is the case that the functioning, not only of the State, but also of most other forms of association, including the economic forms themselves perhaps more than any, is perverted by the influence exercised upon them by economic factors.

Nor is the reason for this widespread perversion far to seek. It is embedded in the present economic structure of Society. For, instead of being organised as a coherent whole for the complementary performance of social functions, men are to-day organised in the economic sphere in conflicting groups, each of which is at least as much concerned with getting the better of the others and diverting to its own use as much as possible of the product of labour as with serving the community by the performance of a useful function. Thus the economic sphere of social action has become a battle-ground of contending sections, and these combatants are also irresistibly impelled to widen their battle-front so as to lay waste the tracts of social organisation which lie outside the economic sphere. Thus, trade rivalries lead to wars between nations; internal industrial dissension leads employers' associations and Trade Unions to seek direct representation in Parliament, and to extend into the political sphere their economic disputes; and finally, the whole people tends to rally to the one standard or the other, and to make Society as a whole a "devastated area" of economic conflict and class-war.

It is therefore useless to expect that the various forms of association will perform their functions properly as long as the conditions which make for such conflicts continue in existence. The only remedy lies in some form of approximate, or comparative economic equality.

If economic classes and class-conflicts are done away with, the Marxian thesis will no longer hold good, and economic power will no longer be the dominant factor in Society. Economic considerations will lose their unreal and distorted magnitude in men's eyes, and will retain their place as one group among others round which the necessary social functions are centred. For the artificial material valuation of social things, which is forced upon us by the actual structure of present-day Society, it will become possible to substitute a spiritual valuation. When once we have got the economic sphere of social action reasonably organised on functional lines, we shall be free to forget about it most of the time, and to interest ourselves in other matters. Our preoccupation with economics occurs only because the economic system is diseased.

The economic structure of Society can only be properly adjusted to the due performance of its function when the elements of conflict, and with them the conflicting forms of economic association, are resolved into a functional unity. This would involve the disappearance of some, and the radical reorganisation and re-orientation of others, of the existing types of economic association. The employers' association and the Trade Union would alike be out of place as primarily offensive and defensive forms of organisation, and the main types of association would find their motive not in defence or offence, but in social service. The personnel of industry would no longer be divided into opposing camps, but united in its common pursuit of its function of the social organisation of production.

[*Ch. XIV.*] Anyone with the smallest degree of social vision can see that the existing structure of Society is doomed either to ignominious collapse or to radical transformation. Anyone ought to be able to see that the social theories based upon this structure are bound to share its fate. Theory which is content merely to interpret the established order will inevitably misinterpret; for the truth about the established order is only visible when that order is confronted with its successor growing up within itself. Theory ought to get ahead of actual development; for the chief value of theory lies in helping men to act more intelligently in the present by giving them a power to grasp the principles which must go to make the future.

Orthodox social theory is bankrupt: it neither corresponds to

the facts of to-day, nor affords any help in interpreting the tendencies which are shaping a new social order within the old. The time for a new and definitive social theory is not yet; but it is high time for our generation to set about laying the foundations of a theory more responsive to modern development than that which at present holds sway.[1]

[1] These last two sentences have been transposed by the present editor.

CHAPTER XII. THE LIBERAL ATTACK UPON THE SOVEREIGNTY OF THE STATE

I. THE THEORY OF OBJECTIVE LAW

The Transformation of the Theory of the State (1913)

Léon Duguit (1859–1928)

Throughout the nineteenth century the sovereignty of the state was a recognized tenet of all schools of liberal thought. The opposition came either from the right or from the left. Conservatives of the historical school disparaged the creative function of the sovereign legislature, and radical proletarians denounced the state as the instrument for the exploitation of the working class. Meanwhile natural rights democrats, utilitarians and idealists, despite their fundamental differences on numerous issues, remained in surprisingly close agreement in support of the doctrine of sovereignty.

The twentieth century has witnessed an interesting change in this respect. The steadily increasing predominance of economic considerations has made the analytical jurisprudence of Austin look empty and artificial; modern psychology has dissipated the metaphysical idea of the personality of the state; and the advance of sociology has introduced a concept of law as the objective result of social conditions. This sociological approach bears a superficial resemblance to the position of those nineteenth century conservatives who derived law from the course of history, but there is nothing conservative in Léon Duguit's theory of objective law. The sovereignty of the state is decried in the interest of the adaptation of government to the needs of a dynamic society.

Duguit enjoyed a predominantly academic life. He was educated at the University of Bordeaux, where he received the degree of doctor of law in 1882. He taught law at Caen for a few years and then returned to Bordeaux where he became professor of constitutional law in 1892 and dean of the faculty of law in 1919. Duguit's chief work was his *Treatise on Constitutional Law* published in 1911. In 1913 he made his important contribution to political philosophy in *The Transformation of the Theory of the State*, usually known in English as *Law in the Modern State* from the title given to their translation by Harold and Frida Laski.

The readings here given have been translated by Ruth E. Schechter and Margaret Spahr from the third French edition of *Les Transformations du droit public* (Librairie Armand Colin, Paris, 1925), and are included by permission of the publishers of the English translation entitled *Law in the Modern State* (Viking Press, Inc., New York, 1919). All the footnotes are Duguit's own.

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THE TRANSFORMATION OF THE THEORY OF THE STATE

I. The Collapse of the Theory of Sovereignty

[*Int.*] The theory of the state under which the civilized world has lived for a century is based on principles recently revered as articles of faith and regarded as the foundation of a true science of law. It is a theory which achieved its complete expression in the declarations, constitutions and statutes of the revolutionary period, and derived prestige and authority from the worldwide renown of these revolutionary texts. The texts clearly formulated the principles of the theory. It was founded on two essential ideas, the statehood and sovereignty of the personified nation, and the natural, inalienable and imprescriptible rights of the individual.

In formulating this theory of the state, the men of the Revolution believed that they were pronouncing eternal truths and that legislatures and jurists the world over need thereafter only deduce consequences and determine applications. But scarcely a century has elapsed before the theory is shattered. Its two fundamental ideas, the sovereignty of the state and the natural rights of the individual, have gone into the discard. Both are clearly mere

metaphysical concepts that cannot satisfy a society imbued with positivism. It was long since realized that public authority cannot be justified on the basis of divine right. It is now understood that the theory of delegation by the nation is no more satisfactory. The general will of the nation is a fiction; there is in reality only the will of particular individuals. Even if there were a unanimous will it would still be the will of an aggregate of individuals,—that is an individual will which would have no right to impose itself upon any dissenter. Rousseau's *Social Contract* undoubtedly kindled the enthusiasm of several generations and served as the watchword of the Revolution, but today it stands exposed, behind the splendor of its style, as nothing but a tissue of sophistries. We see that man cannot have individual rights. He is by nature a social being. Man as an individual is a pure figment of the imagination. The idea of rights implies a life among others; if man has rights he can only derive them from, and not impose them upon, society.

[*Ch. I, vii.*] There are innumerable social and political facts that directly contradict the doctrines accepted by the men of the Revolution. We shall here consider only the two most striking. In the first place, national sovereignty implies an exact correspondence between the state and the nation, but this correspondence is frequently non-existent in fact. Secondly, national sovereignty is by definition one and indivisible, excluding the possibility of any subdivisions invested with independent authority, but such subdivisions exist wherever government is decentralized or federal.

It is evident that there is very often no correspondence between the state and the nation. Sometimes the same government exercises authority over several distinct parts, each of which indisputably possesses the character of a nation. Such nations are often rivals and remain united only because of their common subjection to a superior power. The Austrian Empire offers a striking example of this situation. It is an agglomeration of nations, each having its own distinct and marked individuality. No one can speak of the Austrian national will, one and indivisible, nor can one say that the Austrian state is the Austrian nation politically organized. No one doubts that there is an English nation, but it is equally clear that the Irish have not been merged in it. The United Kingdom is indeed a state, but it is not a single nation organized as a state.

Moreover governments exert their authority over great numbers of individuals who do not belong to the nations of which the states in question are principally composed. Thus every government exercises power over those aliens who happen to be in its territory. Again, the inhabitants of colonies are subjects of the mother-country without being members of the sovereign nation. All the inhabitants of our French colonies are French subjects but not French citizens. Such facts mean the collapse of the entire theory of sovereignty. That theory permits sovereignty to be exercised only over those who are members of the sovereign nation.

[*viii.*] Sovereignty being one and indivisible, like the personified nation that enjoys it, the same persons and the same territory can be subject to only a single public authority. There are numerous texts of the revolutionary period which consecrate this principle. It suffices to mention Article I of the preamble of Title III of the Constitution of 1791:—"Sovereignty is one, indivisible, inalienable and imprescriptible. It belongs to the nation; no section of the people nor any individual can attribute to himself the exercise thereof." But this principle is incompatible with two facts of growing importance in the modern world, decentralization and federalism.

Today in many unitary countries, and especially in France, there is a trend toward greater decentralization. The French commune is an excellent example of a decentralized local political unit. It possesses unquestionable governmental powers—police power, tax power, power of eminent domain—which are exercised by organs and agencies representing the commune. This is in flat contradiction of the concept of a unified and indivisible national personality exercising sovereignty indissolubly pertaining to itself.

As for federalism, even more than regional decentralization it is the very denial of the doctrine of the sovereignty of the state. Its essential characteristic is that within a particular territory there is only one nation but several sovereign states,—a central or federal state, which is the nation itself, and the member states, which are local political units.

In vain have Gierke in Germany and Le Fur in France expended a wealth of subtlety in demonstrating the unity and indivisibility of sovereignty in a federal state. According to these authors there is here only one sovereignty, the nation organized as a federal

state. But the federal state is composed of member states which come together to create the collective personality of the federal state. They are what the citizens are in a democratic unitary state. They participate in forming the will of the state and consequently in the very essence of sovereignty.

This is truly nothing but an exercise of ingenuity entirely removed from reality. We challenge any one to explain the essence of sovereignty. To compare the position of the member states to that of citizens in a democratic unitary state explains nothing whatsoever. Furthermore, this theory does not explain how, if sovereignty is the indivisible will of the nation, local political units can enjoy some of its prerogatives.

In spite of the prodigious efforts that have been made to solve this persistent problem of the theory of the state, there remains an ineradicable contradiction between political fact and the concept of sovereignty.

[*ix.*] However it is not this stubborn contradiction that has caused the collapse of the theory of sovereignty. Perhaps the idea would have persisted despite everything if only it had displayed practical efficacy and pragmatic value. But exactly the opposite has been true. The modern world makes demands that cannot find their basis and sanction in any theory depending upon the doctrine of sovereignty.

A legal theory has reality only in so far as it can establish and sanction rules that assure the satisfaction of human needs in a given society at a definite moment of time. Moreover it is itself the outgrowth of these needs. If it does not spring out of needs, or if it does not guarantee their satisfaction, it is the artificial product of a legislature or a jurist and is without force or value. A theory of public law can be vital only if it establishes and sanctions two rules—the rule that there are certain things that those who exercise power may not do, and the rule that there are certain other things that they are obliged to do.

We insist today not only that the government shall refrain from certain activities but also that it shall engage in others. In consequence we need a theory of the state which will furnish a foundation and sanction for this affirmative obligation. In this respect the theory based on the concept of sovereignty is obviously unpardonably defective. This was not realized as long as the government was expected to perform only military, police and

judicial functions. Those who exercise authority are naturally disposed to take measures to defend the territory and to preserve law and order. In doing so they act in their own interest, since external defense and internal order are the very condition of their continued power. When, therefore, only these functions were required, there was no apparent need of a theory of law to establish and sanction any obligation upon government.

Furthermore, when governmental activity had only this triple objective, it expressed itself in unilateral acts that displayed the characteristics of commands. In the activity of the Roman magistrates, and later the emperor, what was especially apparent was the *imperium*, the *jurisdictio*, that is, the power to command. The kings of France, heirs of the Roman tradition, also possessed under different names the *imperium* and the *jurisdictio*. When in 1789 and 1791 governmental activity was subjected to analysis, this brought to light only the power to command; and on this was built the theory of the three powers of war, police and justice.

Today because of numerous and complex causes, especially as a result of progress in education and changes in economic and industrial life, we are no longer satisfied with the performance by the government of military, police and judicial functions. We ask for numerous and varied services, many of them of an industrial nature. The government must carry on all the activities necessary to the physical, mental and moral development of the individual and the material prosperity of the nation. It follows that we need a theory of the state that establishes and sanctions this obligation. Thus the worthlessness of the theory of sovereignty becomes apparent.

It is true that in this theory the sovereignty of the state is limited by the liberty of the individual. But liberty is the right to develop oneself physically, mentally and morally without external hindrance. It is not the right to exact the active coöperation of others or of the state in furthering this development.

Moreover when the government performs these additional functions we see no command, no prerogatives of a sovereign will, no manifestations of the traditional *imperium*. When the state furnishes education, poor relief, and transportation, it does nothing that can be remotely connected with the power to command. But if the state is by definition that which commands, it must

be at all times that which commands. If it lacks sovereignty in a single one of its manifestations, it is never sovereign.

II. The Public Services

[*Ch. II, iii.*] What is the government? That it is not in reality the agent of a sovereign person called the nation is incontestable. We no longer believe in the doctrine of national sovereignty any more than in that of divine right. The government consists of those persons who actually exercise the power of coercion. How and why do they happen to exercise it? These questions are evidently incapable of a general answer. The possession of coercive power is the product of history and of economic and social forces that differ in each country. The organization of government also varies with time and place. But these factors are only of secondary importance. It is always true that in every country there is some individual or group of individuals that can impose physical compulsion upon the rest. Therefore power is not a right but an ability to act.

But if we no longer believe in the right of government, we do believe in the existence of governmental obligations. It has always been felt that those who exercise authority cannot legitimately exact obedience save in proportion to the services they render. History shows us many examples of social classes that lost their power because they ceased to render the services which were the very condition of that power. This sense of relationship between power and service is no longer obscure. We are not even content to affirm it in unqualified terms. What we seek today is to discover the theoretical basis of governmental obligation.

If the government consists of those who exercise supreme power, can there be laws imposing obligations upon the government? If its activity is limited by such obligations, does it still exercise supreme power? Perhaps the German theorists are right, when, like Seydel, they say: "It is an indefeasible truth that there can be no law without the sovereign, above the sovereign, or beside the sovereign; there is only the law issued by the sovereign." [1]

No, this is not so. The modern world utters a vigorous protest against any such conclusion. Law is at bottom a product of the mind of man, and legal obligations are imposed upon governments because the contrary is repugnant to the mind of modern man.

[1] Seydel, *Grundzüge einer allgemeine Staatslehre*, 1873, p. 14.

Moreover a whole series of institutions has been spontaneously organized to supply a sanction for the obligations of government. Sociological jurists may be left to determine what social facts furnish the foundation of these social obligations. For myself, I have made the attempt and have thought the answer found in the great fact of interdependence.[2] This view has encountered very acute and serious objections but I continue to believe that the fact of social interdependence is of great interest in the solution of our problem. But in truth this is of no importance. The idea of legal obligation incumbent upon governments permeates the thought of today. But the very basis of law is the profound belief of mankind at any particular time and place that a rule is imperative, that a duty must be performed. Law, in short, is primarily the product of social psychology, depending upon the physical, mental and moral needs of society. By this I have no intention of implying the existence of a social mind distinct from the minds of individuals. That would be a metaphysical assertion that I shall most carefully avoid.

This theory of law and the state has nothing in common with the doctrine of the social contract. According to the latter men who are naturally isolated join in a contract that gives birth to a general will, and this will is the sovereign and establishes the government. On the contrary, the social group is actually the first factor in the process, the differentiation between the government and the people develops spontaneously, and governmental power is the more lasting if the people believe that the government supplies their needs.

[*iv.*] The object of the public services is the carrying on of those activities that are regarded as obligatory upon the government. What are these activities? How inclusive is their scope? These are questions to which it is impossible to make any general answer.

If a formal criterion is needed for recognizing what activities should be organized as public services, I should suggest that it is found wherever social disorganization is caused by the suspension of any activity for even a very brief period. For example, in October 1910, the French railroad strike, although incomplete and temporary, proved conclusively that railroad transportation is a fundamental public service. Similarly the general strike of English

[2] *L'État, le droit objectif*, 1901, pp. 23 ff.; *Traité de droit constitutionnel*, 1911, I, pp. 14 ff.

miners in 1912, by the disaster that it almost entailed, showed that the time is approaching when the production of coal must be organized as a public service. The law imposing a minimum wage in the coal fields is the first step toward this goal.

[*v.*] Modern public law consists of rules establishing the organization of public services and insuring their regular and uninterrupted operation.

Contrary to common opinion, the power of the government is not necessarily enlarged by the increase and extension of the public services. The government's duties have become more numerous, its functions have been enlarged, but its right of dominion has vanished because nobody believes in it. It is true that the organization and operation of the public services involve the expenditure of considerable sums of money and that wealth is the chief factor in power. Therefore the extension of governmental activity increases both the demands upon the taxpayers and the power of the government. It is also true that in a democracy political considerations make their pernicious influence more and more felt as the number of public officials increases. If the extension of governmental activity is always regrettable, it is abominable in a democracy.

All this does not alter the facts. The number of public services increases from day to day, keeping step with the progress of civilization. Theoretically this does not enlarge the government's right to power for there is no such right. That it actually increases governmental power it is difficult to deny. But it must not be forgotten that this increase in power is counterbalanced, if not obliterated, by the extremely important modern trend toward decentralization.

To say that an activity has become a public service is not necessarily to say that the agents in charge and the property involved are in direct and immediate subordination to the principal officers of the government. On the contrary, the control of many governmental activities, old and new, tends to become decentralized. It is enough to mention regional decentralization, decentralization where independent funds are set aside for a particular service, functional decentralization, and finally decentralization through the grant of concessions to be operated under the control of the government.

Accompanying this decentralization is another tendency of a similar nature that may be termed the industrialization of the public services. The services operated directly by the state tend to

receive an exclusively industrial or business organization. They must of necessity be removed from the pernicious influence of politics or there will be disorganization, disorder and graft. A great network of railroads must operate regularly, and the only method is to confer administrative and financial autonomy under the control of the government.

[*vi.*] If this is true, if the evolution just described is actually taking place, legislation and jurisprudence ought to be engaged in devising means of indirectly compelling the government to take over as public services all activities displaying certain designated characteristics; they should also be furnishing the private citizen with sanctions to insure the enforcement of the law regulating public services. Our own legislation and jurisprudence are very definitely developing in exactly this manner. It is worth while to insist upon this. It is the best possible proof that what has been said is not pure theory but a simple statement of fact.

Let us suppose that it is the opinion of the jurists of a certain country that a particular activity ought to be organized as a public service. Suppose that in spite of this the government takes no step to effect that organization. Is there any method whereby it can be legally compelled to act?

Undoubtedly the idea still prevails that the remedy of the private citizen in this matter is found in the system of representative government that operates today in varying degrees in all civilized countries. There are still strange illusions as to the happy effects of representative government. Nevertheless, the widespread belief that it benefits the people and the pressure exerted upon parliament by public opinion through the press do lead to results. On the one hand the legislature may easily be led to refrain from some contemplated step; and on the other hand, when public opinion imperatively demands governmental intervention, the government rarely remains inactive.

But suppose that the government for some reason fails to act when its intervention is needed to prevent the confusion that would follow from even a partial and temporary breakdown of an essential activity. The private citizen would not be left without a remedy. There emerges a new legal principle, that, in conformity with current usage, will be termed the liability of the state. This is the great principle in the modern theory of the state, a principle totally unknown in the theory of sovereignty. The state is liable

to private individuals who suffer from its inactivity, even when it is the legislature itself that fails to act.

III. Normative and Constructive Laws

[*Ch. III.*] In the theory of the state based upon the doctrine of sovereignty, law is recognized as the direct manifestation of the sovereign will. Rousseau mentions this repeatedly. Law is by definition the expression of the general will on a subject of a general nature, and it is because it unites "the universality of the will with that of the subject" that it has an unlimited power to command, can never be unjust, and is owed unconditional and unqualified obedience.

[*i.*] A law is a provision of a general nature, a rule of conduct. But if metaphysics is excluded from political theory, a law cannot be a command formulated by a sovereign will. A law is simply the expression of the individual wills of those who enact it, whether chief executives or members of parliament. Whatever is said further than this is nothing but fiction.

A realistic conception of the state leads necessarily to a realistic conception of law. Nevertheless it cannot be denied that law is uniformly recognized as possessing an obligatory, perhaps even an imperative, character. Law is no longer regarded as the command of a superior to an inferior, but officials and private citizens nevertheless abide by it. The government's power of coercion must necessarily, and may legitimately, be applied to insure obedience to the law.

These ideas are not inconsistent. In the first place, it seems clear that there exists an objective law superior to the government. Today we reject all metaphysical assumptions but are nevertheless keenly aware of rules of social conduct resulting from the very fact of social life. We are bound by these rules not because they create a duty to a superior but because we live in society, can live nowhere else, and are therefore necessarily subject to social discipline. It is evident, for example, that the laws prohibiting murder, robbery, arson and all crimes of violence exist as rules of law before they are formulated into positive law. It is easy to understand the obligatory character of such rules. They are not transcendental obligations corresponding to metaphysical duties, but a social necessity imposed upon men living in society precisely because they do live in society.

Such laws I have elsewhere termed normative laws.[3] The clearest example is a penal statute, or at least a penal statute defining and prohibiting an offense. Penal statutes that merely fix the penalty belong rather in the class of constructive laws which will be considered shortly. In the civil law also there are certain provisions that are normative laws enacting general principles. Furthermore many provisions in our declarations of rights are rules regarded as superior and anterior to the legislature.

Normative law so understood must not be confused with custom. Law is not custom; but like custom it expresses rules that arise in the minds of individuals under the pressure of social needs. The same rule sometimes finds its first and necessarily imperfect expression in a customary practice, and a later more exact and complete expression in law. Undoubtedly the obligatory character of law and custom has the same foundation. But they are different degrees of the expression of objective law. Often the degree represented by custom is lacking and objective law finds its first and direct expression in positive law.

It can be argued that, even admitting the reality of rules of conduct based on social interdependence, nevertheless they are rules of morality and not of law. They are not imperative in themselves and become so only when formulated into positive law. In proof of this it can be urged that before the rule is formulated into positive law acts contrary to the rule are not prohibited and acts conforming to it have no legal effect and no social sanction. Positive law is therefore not simply the expression of a social rule; it adds something; it alone bestows the character of law.

Assuredly so long as there is no written law, or at least no established custom, a rule has no regular and legally organized sanction. But that does not prove that the rule is not obligatory in itself; especially if we remember that a rule of law is not a command but a discipline imposed on all members of a group by the fact of social interdependence. Moreover we must not confuse the obligatory character of a rule with its socially organized sanction. The social organization of sanctions is the object of another class of laws that, for lack of a better term, will be termed constructive laws.

[*ii.*] Constructive laws are those which organize the public services. They constitute the greater part of modern legislation.

[3] *L'État, le droit objectif et la loi positive*, 1901, pp. 551 ff.

If the existence of normative laws is denied, no serious inconvenience results. Whether normative laws exist or not, every general governmental regulation designed to organize a public service is legitimately enforced under the sanction of physical coercion. Indeed, in issuing such regulations the government is only performing the social function incumbent upon it.

As a matter of fact, no laws exist that do not organize public services and the obligatory character of which cannot be explained upon this basis; and there are many laws the obligatory character of which can be explained in no other manner. This is the case with all organic laws, that is, laws which provide for the internal organization of the state. If the personality of the state is admitted and law is defined as the command of the state's sovereign will, it is absolutely impossible to understand how organic laws can really be laws. The state cannot address a command to itself. On the contrary, the obligatory character of organic laws is manifest if they are considered in connection with the obligation resting upon the government to organize public services. The laws organizing special public services are obligatory because they have this special purpose. Constitutional law and administrative law are obligatory because they organize the state as a whole so as best to insure the establishment of the several services.

Even the general principles contained in the declarations and in certain constitutions can be connected with the idea of public service. Firm in their belief in individualism, the authors of the Declarations of 1789, 1793 and the Year III, and of the Constitution of 1848, formulated principles of liberty and property. Was this not simply an affirmation of the government's obligation to create public services for the protection of liberty and property?

The same can be said of penal laws. They certainly seem to be imperative, or rather prohibitive, statutes addressed to the private citizen. If we examine them more closely we realize that perhaps the injunction is not in reality addressed to private citizens. The legislature does not prohibit murder, robbery, etc.; it has no power to do so. It simply organizes security as a public service, and provides that, if an act defined as an offense is committed, the courts shall pronounce a designated penalty against the individual who is proved to have committed the offense. There is thus no question of the basis of the right to punish, if by this is meant the question whence society derives the right to declare what is permitted and

what is prohibited. The government must certainly guarantee the internal security of the state. This function has always been recognized. The government performs this duty by enacting penal laws, and these are consequently obligatory and legitimate.

Even the civil law is in reality only the organic law of the public services of police and justice. Of this law it has been asked how it can be termed imperative when all civil statutes, and especially Article 6 of the Code Napoléon, declare that in general the civil law can be modified by private contract. This question has necessitated the answer that the civil law is addressed to the court officials charged with deciding disputes between private citizens. The parties may enter into contracts contrary to all civil laws that are not concerned with public order or morals, but the law defines in a precise manner the duty of the judge. He must in general decide civil cases in accordance with the contracts entered into by the parties. If contracts are lacking or ambiguous, he must decide in accordance with the provisions of the civil law. Thus the civil law organizes a public service, the service of justice. Similarly, with regard to laws concerning public order and morals, such as domestic relations laws and laws on competence and capacity, which the parties cannot modify by contract. These laws also lay down the rôle and duty of the judge, who must declare all contracts contravening them null and void. Thus they also are organic laws of the public service of justice.

Finally even with regard to administrative officials the law is not really a command. It has no other validity than is derived from its relation to some public service.

I recognize without hesitation that up to now I have relied chiefly upon logical analysis and that my conclusions would be decidedly vulnerable if I stopped at this point. What is really essential remains to be shown,—that the nature of law as determined by this analysis is in accord with the facts, which are in flagrant contradiction of the theory based on sovereignty.

IV. Judicial Review of Statutes

[*Ch. III, iv.*] When legal theory is based upon the doctrine of sovereignty, it is logical that statutes should not be subjected to judicial review. A statute is a command issued by the sovereign will and is consequently presumed to express a rule of law. Statutes cannot be attacked in any court, for it is the duty of the

courts to apply the law, and statutes are by very definition law.

In England this point of view has remained unchanged to the present day. Everyone knows the famous saying that the English Parliament can do everything save make a man a woman. The meaning and significance of this principle have been remarkably brought out by Dicey in his *Law of the Constitution.*

In the United States and France, on the contrary, there has been a very important development, which in our country has not yet reached its conclusion. The point of departure is the recognition in both France and the United States of a distinction between ordinary statutes and what Dicey, to avoid confusion, terms rigid constitutions.

At the end of the eighteenth century this distinction became in both countries a fundamental principle of public law. But we must not exaggerate its significance. It does not imply the recognition of two legislatures, a constituent legislature and an ordinary legislature, each equally sovereign in its own sphere. It implies still less the recognition of a constituent legislature with a sovereignty superior to that of the ordinary legislature. The theory founded on the idea of sovereignty recognizes only one sovereign and no degrees of sovereignty. Every law, whether a constitutional provision or an ordinary statute, is and remains a command of the single sovereign will of the state; but this command may be expressed either in the form of a constitutional provision or in that of an ordinary statute. That is all. But it is a very great deal. For it follows that since a constitutional provision differs in form from an ordinary statute it can be amended or repealed only by a constitutional provision, or at least only in the manner laid down in the constitution.

When this is understood we see at once the question that has been asked, that could not help being asked, in both France and the United States. If the ordinary legislature enacts a statute that violates a constitutional provision, can steps be taken to secure its annulment? Is there any court competent to pronounce such annulment? This question has been and still is answered in the negative in both the United States and France.

There is another question closely related to the first but nevertheless quite different. May a defendant against whom a statute is invoked in a civil or criminal case object to the statute on the

ground of its unconstitutionality? May the court, without annulling the statute, refuse, on account of its unconstitutionality, to apply it to the case under consideration? In the United States this question has been answered in the affirmative. It is today a well-established legal principle that any court may consider the issue of constitutionality and decline to apply an unconstitutional statute. However no court, not even the United States Supreme Court, has the power to pronounce a statute annulled.

In France, unlike the United States, it has been held as dogma that no court whatsoever may consider the issue of constitutionality and decline to apply an unconstitutional statute. The dominant idea that has dictated this result is unmistakable. Judges are only the agents of the state and cannot oppose their will to that of the state in its sovereign legislative capacity. Judges cannot decide that anything the state has willed is beyond its power to will.

This is not the usual explanation of the refusal of the court to exercise judicial review. It is generally based on the principle of the separation of powers; it is said that the courts, the organs of the judicial power, can in no case encroach upon the legislative or the executive power. Article 3 of Chapter V of Title III of the Constitution of 1791 is invoked: "The tribunals cannot interfere in the exercise of the legislative power;" also Article 10 of Title II of the Law of August 16, 1790: "The courts may not directly or indirectly take any part in the exercise of the legislative power, nor may they, on pain of forfeiture, hinder or suspend the application of the edicts issued by the legislature with the approval of the king."

But in reality these texts are irrelevant, and the principle of the separation of powers leads to a very different result. The court that refuses to apply a statute on account of its unconstitutionality does not in the least interfere with the exercise of the legislative power. It does not even suspend the application of the statute, which remains intact and in full force. It merely declines to apply the statute to the case submitted to it for decision. To require the judicial power to apply a statute that it considers unconstitutional is to declare the judiciary inferior to and dependent upon the legislature; and this is to violate the principle of the separation of powers. French judges have been denied the power to examine the constitutionality of statutes, but it can be only for

the reason already indicated: namely, that statutes must be enforced without restriction or qualification because they are the expression of the sovereign will of the state.

[*v.*] If, as I maintain, this theory of law is disappearing, there ought to be a decided tendency to recognize the right of the courts to pass on the constitutionality of statutes. And exactly this tendency is appearing both in the writings of jurists and in the decisions of the courts. It is true that the regular judicial courts have always refused to consider the issue of constitutionality; and if the question were squarely presented to a French court today it would probably receive the same answer. The court would as usual cite the precedent of 1833 when the Court of Cassation dismissed the defense of unconstitutionality offered by a journalist against the statute of October 8, 1830 "inasmuch as the statute of October 8, 1830 was considered and promulgated in the manner described by the constitution and is therefore the rule for the courts and may not be attacked before them on the ground of unconstitutionality."

On the contrary, the opinions of French jurists and the decisions of the Council of State and of certain foreign courts which formerly followed the French theory of law tend very clearly to recognize the power of the courts to examine into the constitutionality of statutes. In 1895 Jèze argued without hesitation that when a statute openly violates the constitution it should not be applied.[4] Today many able scholars believe that the courts should be expressly granted the power to pass upon the constitutionality of statutes.[5]

This position has been defended by Hauriou in connection with the decision of the Council of State of August 7, 1909. The Council of State refused to annul the order dismissing a number of postal employees for taking part in a strike, although this order was in direct violation of article 65 of the finance act of April 22, 1905, which provides that a civil servant may not be dismissed unless previously notified of the grounds of his dismissal. Hauriou very justly observes that the reasons given by the Council of State are quite inadequate to justify its decision. The decision can be explained only on the theory that if article 65 of the statute of 1905 applied in these circumstances it was unconstitutional be-

[4] *Revue générale d'administration*, 1895, II, p. 411.

[5] Saleilles, Thaller, *Bulletin de la Société de la législation comparée*, 1902, pp. 240 ff.

cause incompatible with the conditions essential to the existence of the state and its primary purpose of operating the public services without interruption. Therefore the Council of State in sustaining the order of dismissal simply refused to apply an unconstitutional statute.[6]

Hauriou is perfectly right and his thesis agrees admirably with the theory of the modern state advanced in this book: namely, that the state is an association of public services insured and controlled by the government.

Furthermore, at the present day many countries on the continent of Europe clearly incline toward judicial review. In Germany, Laband writes, "This question, so often discussed by German jurists, is decided by the great majority of authors in favor of judicial review." [7] In Norway, the power of the courts to decline to apply unconstitutional statutes has been deduced from the recognized nature of the judicial function, without the need of any particular text sanctioning the principle. It was recognized in 1890 by the Supreme Court of Norway and in 1893 by the City Court of Christiania.

These references indicate that although European judicial decisions do not yet recognize the right of an interested party to secure from the supreme court the annulment of a statute that violates a superior law, they clearly tend to support the refusal of the courts to apply unconstitutional statutes. The courts of France will certainly be compelled by the logic of events to reach the same conclusion in the near future. It is probable that the Council of State will lead the way. For a long time the Council of State has refused to apply illegal ordinances of public administration, although it considers that ordinances of public administration are made by virtue of a delegated legislative power. Since 1907 the Council of State has been willing even to annul illegal ordinances of public administration, although it still maintains the idea of delegated legislative power.[8] But if there is delegated power, ordinances of public administration ought logically to be considered the work of parliament; for either the term *delegation* is meaningless or else it implies that one agency confers upon another its own power.

[6] Hauriou, *Note* sous conseil d'État, 7 août 1909 (*Winkel*), *Sirey*, 1909, III, p. 147.
[7] Laband, *Droit public*, édit. française, 1900, II, p. 322.
[8] Conseil d'État, 6 décembre 1907 (*Grandes Compagnies*), *Recueil*, p. 913; *Sirey*, 1908, III, p. 1; 26 décembre 1908, *Recueil*, p. 1094; 7 juillet 1911, *Recueil*, p. 197.

From annulling ordinances of public administration issued under delegated legislative power the Council of State will be naturally led to take similar action against regular statutes. The distance is short and easily traversed. It is probable that in a future that is perhaps not distant the courts will enjoy a recognized right to consider the issue of constitutionality and also to annul unconstitutional statutes.

V. The Liability of the State

[*Ch. VII.*] Is the state liable for acts performed in its name? That the question is even asked indicates a great transformation in the theory of the state. Nowhere in declarations of rights, constitutions or statutes of the revolutionary period is there a single text making any allusion whatsoever to the liability of the state.

[*i.*] This was logical. Sovereignty and liability are two mutually exclusive ideas. In the traditional theory liability implies a violation of law, and the state that creates law by an act of sovereign will cannot possibly violate it. Just as in absolute monarchies "the king can do no wrong" and is consequently free from liability, so the democratic state, which is the organized sovereign nation, can do no wrong and has no liability.

The sovereign state cannot be liable on account of statutes, for they are the very expression of sovereignty. Nor can it be liable for executive, judicial or administrative acts. If these acts are in conformity with the law, there is no question of liability either on the part of the state or on that of any official. If the acts are contrary to the law, there is no question of state liability, for the state has enacted the law and has willed its enforcement. If it is not enforced, or if it is violated, it is because some official has substituted his own will for that of the sovereign state. It is, therefore, only the official who is liable.

The two ideas of sovereignty and non-liability are interdependent. This is clearly brought out in the theory that recognizes the liability of the state in certain cases and hastens to add that the state is liable only when it does not act in its sovereign capacity. Thus a breach is made in the principle of non-liability. But where will it end? How can we distinguish the cases where there is a manifestation of sovereignty and consequently no liability from those where there is liability because there is no manifestation of sovereignty? If the state is by definition a sovereign person,

it is always a sovereign person; if sovereignty implies freedom from liability, it can never be liable.

[*ii.*] The traditional theory of liability always involves the idea of fault, that is, the idea of violation of a rule. The ideas of liability and fault of course imply the existence of a person endowed with a will that is conscious or free. The conscious violation of a rule of law by a free will leads to the liability of the person endowed with this will.

If the liability of the state is expressed in this terminology, the state is a person endowed with a free and conscious will, can commit a fault by violating a rule of law, and is liable when such violation can be imputed to it.

But the facts and innumerable decisions of the courts show that today the liability of the state is in no way dependent upon the notion of fault. It is true that custom and the persistent influence of the students of Roman law perpetuate talk about the fault of the state and the fault of the public services. But in reality it is not this so-called fault of the state that is at the basis of its liability. The only question is as to what funds are to bear the risk of damages occasioned by the operation of a public service.

This is not to maintain that liability for fault has disappeared or ought soon to disappear from modern law. Where an act results from an individual will directed toward an individual end there can be an individual fault, and it is usually if not always this fault which is the basis of liability. But the conduct of an association is different. Undoubtedly it results from individual wills, but its object is the good of the association. If a fault is committed by the agent of this association it is not to be imputed to the agent, for it was committed for the sake of the association; it is not to be imputed to the association, for an association, outside the imagination of jurists, has no reality as a person. The ideas of fault and imputation of fault are therefore eliminated.

Here appears a new idea with which the entire modern law of state liability is connected. When an act of an association, that is, an act performed for the sake of an association, occasions injury, it is the funds devoted to the work of the association that ought to bear the cost of the injury.

The conduct of the state results from individual wills, but it is essentially the conduct of an association since its object is the organization and operation of the public services. From this it

follows that if the organization or operation of a public service occasions exceptional expense or particular injury to an individual or a group of individuals, the funds devoted to this public service ought to bear the cost of the loss. If the service is decentralized, the coffers of the locality or the administrative unit concerned will bear the cost. If the public service is centralized, the cost of compensation will be placed on the funds of the state devoted to the whole body of public services.

[*vii.*] The wide range that modern public law gives to the liability of the state has recently received a curious illustration in a decision of the Tribunal of the Seine, which is something like an epilogue to the long and regrettable affair of Turpin, the inventor of melinite. After numerous incidents, Turpin brought an action for damages against the state, Schneider and Company, the Association of Ironworks and Stoneworks of the Mediterranean, and M. Canet. The Tribunal of the Seine eliminated all the defendants except the state and ordered the state to pay Turpin 100,000 francs in damages "inasmuch as the conduct of the Minister of War has evidently caused Turpin injury for which the state is responsible. . . . This injury results because Turpin has been prevented from making a contract with Armstrong, either because the War Ministry led him on to a vain belief in the possibility of a new contract with France, or because the War Ministry insisted, under false promises of indemnity, upon certain terms in his contract with Armstrong. . . . There is evidently due to Turpin compensation for this injury."

No judicial decision could show more clearly how far we have traveled from the theory of sovereignty. Here is a regular judicial court that does not hesitate to examine and condemn the conduct of a public service which, if sovereignty is not a meaningless term, is primarily a function of sovereignty. Here is a judgment recognizing the liability of the state, not for what it has done but for what it has failed to do. The state is liable because it did not buy Turpin's invention and because, in consequence of the evasions of the Minister of War, Turpin was unable to sell his invention to a foreign country. A better illustration could not be found of the theory that the public coffers are responsible for all injuries occasioned by the operation of a public service.

This is why it is probable that we shall soon see the disappearance of the two restrictions that still limit the liability of the state

for administrative acts. The state is still declared non-liable for acts of war or of diplomacy. This non-liability cannot be explained on the score of sovereignty. If sovereignty existed, the state would exercise sovereignty in insuring internal as well as external security, and would not be liable for acts of the police or of the army in time of peace. Nevertheless the courts firmly insist upon the non-liability of the state on account of war operations or acts of diplomacy.

Thus in 1905 and 1907 the Council of State dismissed damage actions brought by private citizens for injuries caused them by acts of war in Dahomey and Madagascar "inasmuch as injury suffered in the course of military operations conducted on foreign territory cannot give rise to a legal claim." Similarly in 1904 the Council of State dismissed an action for loss caused by a diplomatic affair "inasmuch as matters connected with the exercise of the sovereign power in the relations of the French government with foreign governments cannot be brought before the Council of State in a lawsuit."

Thus although the idea of sovereignty is dead in internal public law it still persists in the reasoning of the courts of France where external relations are concerned. But in this sphere also it is destined to perish.

[*Concl.*] Modern public law, like modern private law, rests wholly on a realistic and social theory. It is realistic because it denies the existence of a personality behind political phenomena, because it denies the existence of a sovereign will self-determined and imposed on all, because legal theory rests entirely on the fact of the social functions necessarily required of the government. It is social and therefore objective because modern public law is no longer concerned with deciding conflicts between the subjective rights of individuals and the subjective rights of a personified state, but simply with regulating the performance of the social functions of the government.

Has the evolution of public law come to an end? Decidedly not. In reality it will never be completed. Social evolution is infinitely complex and of indefinite duration, and law is only a garment that clothes this evolution. Our fathers believed that their legal theory, metaphysical, individualistic and subjective, was final and unchangeable. Let us beware of a like error. Our legal theory, realistic, social and objective, is the work of but a

day. Even before its structure is completed the close observer will note the first signs of decay and the first seeds of a new theory. Happy our sons if they know better than we how to free themselves from dogma and prejudice!

II. THE BASIS OF THE SOVEREIGNTY OF LAW

The Modern Idea of the State (1915)

Hugo Krabbe (1857–)

The liberal attack on the sovereignty of the state is by no means an assault upon the authority of law. On the contrary, it may be regarded as the delivery of law from subjection to the autocracy of the state. But, if law is not based upon sovereignty, the question at once arises on what it does depend. Duguit answers by pointing out a sociological basis, but the Dutch writer, Hugo Krabbe, digs deeper to discover an ethical foundation. His inquiry into the basis of the sovereignty of law becomes an examination into the operation and organization of the sense of right.

On the destructive side, Krabbe's *Modern Idea of the State* (1915) adds little to Duguit's demolition of the fiction of sovereignty. It does, however, give a greater degree of attention to the theory of the sovereign function of the individual monarch. This had become a fundamental of the traditional German theory of sovereignty, and was not without weight in the Netherlands, although the monarch of that country enjoyed no such power as the German Kaiser. Holland has long been a constitutional monarchy of the English type, but under a rigid written constitution.

Krabbe's life presents a very close parallel to that of the almost exactly contemporary Duguit. The Hollander was educated at the Leyden gymnasium and at the University of Leyden, where he wrote his doctor's dissertation on the civil service in the Netherlands. After ten years in various administrative posts he was appointed professor of constitutional law at the University of Groningen, and from 1908 he was professor of constitutional law at the University of Leyden for almost twenty years. He retired from his position in 1927 at the age of seventy. *The Modern Idea of the State*, which is a sequel to an earlier book, *The Theory of the Sovereignty of Law* (1906), was first published in Dutch in 1915 and then reissued in an enlarged German version in 1919.

The readings here given are based upon the authorized translation of *The Modern Idea of the State* from the German, by George H. Sabine and Walter J. Shepard (Appleton, New York, 1922), and are reprinted by permission of D. Appleton-Century Company.

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THE MODERN IDEA OF THE STATE

I. The Basis of the Authority of Law

[*Ch. I, i.*] For centuries our life has been dominated by the idea of a *sovereign*, having a subjective right to rule, and of a *people*, standing in a relation of political subordination. This sovereign was conceived as embodied either in a prince or in an assembly, and consequently its right to rule was viewed as a personal and subjective right. Since the Middle Ages political theory has continually discussed the question of the origin of this personal right of sovereignty and the purposes to which it must be applied, and the limitations which must in consequence be placed upon the sovereign's right to rule. We may pass over the theories relating to these questions, since practically the will of the sovereign, just because it was the will of the *sovereign*, was recognized as binding upon all subjects.

Alongside the authority of the sovereign, however, there was from the beginning, indeed before the development, of the idea of sovereignty, another authority: that of law. This law governed the mutual relationships between the individual members of society and was for a long time looked upon as a source of authority quite as independent as that embodied in the sovereign. In many ways the fact has been established that the authority of the sovereign was limited by the so-called rights of the people. The sovereign could change this law of the people only in coöperation with those members of society whose social standing was recognized by the law. The consent of the classes affected was necessary in order to abridge any of their rights in the interest of the sovereign, as in the expropriation of property or the levying of taxes. In other respects, the people's law grew and changed without assistance from the sovereign, who limited himself to maintaining and enforcing the legal order.

The eighteenth century brought a change in the relationship between the sovereign and the people's law in favor of the authority of the sovereign. When the sovereign began more and more to concern himself with the most diverse public interests, and the

number of his decrees in this field multiplied, a so-called public law began to encroach upon the old common law as the ruling power in social life. It was not to be doubted that the validity of this public law was derived exclusively from the will of the sovereign; and it became a question whether the binding force of the other element in the social order, which was embodied in the people's law, was not also to be traced back to the authority of the sovereign. To be sure, this law had not been created or promulgated by the sovereign, but the care for its maintenance and enforcement had, nevertheless, been assumed by him. It was, indeed, precisely this care for the administration of the people's law that formed the connecting link which made it possible to root the binding force of all law in the will of the sovereign. Thus the dualism of two independent authorities, that of law and that of the sovereign, was eliminated. The conception of law as a product of reason, which gained favor in the eighteenth century, gave support to this theory, since reason was much more likely to be found in the sovereign than in the people. And when, moreover, the sovereign authority was transferred from the old historical persons and groups, in whom it had been vested, to the people themselves, the tendency to look upon all law as emanating from the sovereign was still further strengthened by the theory of popular sovereignty, in which the people's law and the law of the sovereign are identified.

This change established both theoretically and practically the idea of the sole rulership of positive law as the expression of the sovereign will and consequently as the expression of law in general. This idea of sovereignty still holds political theory under its spell. It has sought to free itself merely from the idea that the sovereign possesses a personal right to rule. Not the king but the state is now recognized as the possessor of the sovereign authority.

[*ii.*] The will of the old historical possessor of sovereign authority is no longer binding in and of itself; the coöperation of parliament is required. In parliament, however, it is a changing majority, composed now of certain persons and now of others, whose coöperation suffices. Consequently, the exercise of the sovereign authority, so far as it concerns parliament at least, no longer rests in the hands of specific persons. In proportion, therefore, as the decisive power in the state devolves upon parliament, it becomes evident that the positive law owes its validity to an authority which in

the concrete is constantly changing, but which in the abstract is personified as the "legislative power." Consequently it is also evident that the authority of positive law requires another support than that which is found in the will of particular members of parliament.

This circumstance involves the necessity of recognizing in positive law something other than the will of the traditional sovereign. The fact that parliament is elected by and from the people, favors the view that it is an organ of the people's sense of law and right. Accordingly it would be precisely this sense of right which is expressed in the positive law. Thus a completely new basis for the authority of positive law comes into view. Not the will of a sovereign who exists only in the imagination, but the legal conviction of the people lends binding force to positive law; *positive law* is valid, therefore, only by virtue of the fact that it incorporates principles of right (*Recht*).

[*Ch. III, iv.*] So far as the law is thought of as a rule it must necessarily satisfy two conditions. In the first place, it must depend for its validity upon a power standing outside human will and thus possess objectivity with reference to this will. In the second place, since law has for its purpose the determination of conduct, the content of its rules must accord with the spiritual nature of the men to whom it is to be applied.

[*v.*] These two fundamental conditions, which hold for every rule, are entirely satisfied by the theory of legal obligation defended in this work. It takes the spiritual nature of man as its point of departure. And of the many human feelings, some of which are more developed and some less, it emphasizes one, viz., the feeling for right (*Rechtsgefühl*). This feeling,—including as its less developed form the instinct for right (*Rechtsinstinkt*) and as its more developed form the sense of right (*Rechtsbewusstsein*),—is as effective among men as the moral, the aesthetic, and the religious sense, to say nothing of other feelings such as love and friendship. This feeling for right, like the other feelings, in no sense owes its existence to the human will and in its operations it is independent of the will. It is more in evidence in some individuals than in others, but it may safely be considered a natural and universal human impulse which calls forth a specific reaction with respect to our own behavior and that of other men. The rules which originate from *this* reaction are rules of right or law.

There are no sources of law, as the textbooks teach; there is only *one* source of law, viz., the feeling or sense of right. Upon this all law is based, whether it be positive law, customary law, or the unwritten law in general. A statute which does not rest upon this foundation is not law; it lacks validity even though it be obeyed voluntarily or by compulsion. It must be recognized, therefore, that there may be provisions of positive law which lack real legal quality. The legislative organ runs the risk of enacting rules which lack the quality of law either because the organization of the legislature is defective or because it mistakes what the people's sense of right demands. On the other hand, it may happen even more easily that what is embodied in a statute ceases to be law and so is no longer valid because it has lost the basis of its binding force. In such a case compulsion,—the punishment or legal judgment which disobedience to the statute entails,—is irrelevant. Constraint is justified by the necessity of maintaining the law but it can never bestow legal quality upon a rule which lacks it. Mere force, whether organized as in the state or unorganized as in an insurrection or revolution, can never give to a rule that *ethical* element which belongs essentially to a rule of law. On the contrary, constraint can gain an ethical quality only when used in the service of law. Thus the rule must have the definite character of law and it can derive this only from the feeling or sense of right which is rooted by nature in the human mind.

This conclusion regarding the binding force of law is not drawn from a general view of life or from a system of philosophy but is forced upon us by actual experience. In the first place, as time goes on the communal life of nations is more and more controlled by their sense of right. The spiritual life daily gains greater strength as the obstructions fall away which impeded the development of associations based upon it. And as these associations gain strength and broaden into relationships between the peoples of different states, there grows up a world consciousness which guides the fate of mankind.

In the second place, and very closely connected with this momentous fact, the communal life cannot exist without a sense of duty among the citizens. In order to uphold the duty of obedience to a sovereign one must take refuge in dogmas or empty fictions. These maintain a precarious existence and have never shown themselves capable of permanent influence. The sense of duty on the con-

trary, is an original force in human life whose reality we experience daily.

We are therefore convinced that in basing the validity of law upon the sense of right we stand upon the firm foundation of fact. Only by establishing the authority of law in this manner, moreover, can full account be taken of the *ethical* character of law. The keynote of the legal order has an entirely different tone when it is understood as essentially a moral force rather than as a rulership imposed upon us and having nothing to do with our own inner life. If the validity of this positive law is derived from the human sense of right, this means the sense which lies at the basis of the communal life as this life is actually lived. It is of course possible that this sense of right may be different now from what it formerly was, just as it may vary in different individuals under the pressure of divergent experiences and interests. We have to deal with this more or less imperfect sense of right. Its activity produces rules and imparts to them the character of positive rules of law.

If a higher justice is to be evolved, the legal instruction of the people must be undertaken. But one cannot exclude the sense of right of any individual who is in a position to share in the spiritual life of his time.

II. The Unity of the Legal Rule of the Community

[*Ch. III, vii.*] The law regulates men's conduct in order to attain social ends and therefore appears as the organization of a community. It makes no difference whether these communities are of a transitory nature or whether they have been formed for a permanent end. A community exists when two persons make a contract of purchase. Rules of law determine the conduct of the two parties with reference to the obligations arising from such a contract and after their performance the community comes to an end. Of a more enduring kind are the communities which come into existence with the formation of societies, business partnerships or companies, and corporate foundations. Still more permanent are those communities which have the purpose of caring for public interests, such as dike commissions, communes, provinces, states, confederations, and federal states.

If every community has as its basis a social end, the rules which serve to attain this end must be equally binding upon every member of the community. The unity of purpose postulates *unity of the*

legal rule. It follows that a common conviction of what is right must lie at the basis of the legal rules which are valid for these communities. A rule which arises solely from an individual's feeling for right controls only the will of that individual and hence cannot be a rule for the community. It is possible, of course, and not infrequently it happens, that an individual member of a community lives according to a higher standard of right than is expressed by the rule of the community, but this means merely that the individual feels himself obliged to do more than the "ethical minimum" which is valid for all.

The legal rule, considered as the rule of a community, requires a common conviction as to what is right. Experience shows that this is attainable up to a certain point. In the first place, it should be carefully borne in mind that there is not a special sense of right for every individual. There is a standard of truth which is based upon universally valid criteria, contrary to the view of the Sophists that truth possesses merely an individual significance. Similarly in the law also there is a universally valid standard which appears in judgments of right and wrong. Hence diversity enters into our opinions as to what is right not on account of the standard which ought to be applied but because the subject matter of legal evaluation is reflected differently in our consciousness. This subject matter is the communal life of men and therefore the modes of conduct and the interests connected with it. If we could adequately conceive these objects, there would be no variety in our convictions as to what is right. But in the first place the reality penetrates our consciousness only partially, and in the second place, in so far as it does get into our minds, it affects us differently because of our innate or acquired tendencies. Hence it follows that the object of legal evaluation is differently conceived by different men and this difference of conception gives rise to different convictions as to what is right. This variety of attitude, however, is for the most part removed by the action and reaction of men's minds upon one another, by similarity of education, and by the influence of environment. In proportion as this interchange becomes more vital and more manifold, the possibility increases of bringing about a certain similarity of ideas and a common sense of values and thus of attaining unity in the convictions as to what is right on the part of an increasing number of men. On the other hand, great variety in the sense of right will hinder the attainment of a single legal

rule. The effect of this will be that the community may fall apart. Thus its purpose either cannot be attained or can be attained only in fractional communities which enjoy the conditions for developing a unified legal rule.

But even if these conditions exist, unanimity of conviction as to what is right will seldom occur. Hence it becomes a question how a communal rule, that is, a single legal rule, can be secured in spite of differences of opinion about its content.

[*viii.*] The answer to this question is most difficult in the case of customary law. In this case the validity of the law must be based directly upon a common sense of right, though it is regarded as binding even upon those who lack this sense or for whom the sense of right has a different content.

If customary law owes its binding force to the dictates of the concrete sense of right, only those men are subject to it by whom these dictates are felt. Still it is invariably true that where customary law exists it is applied also to those whose sense of right is opposed to it. Does this not imply that they *ought* to act according to the law which is imposed upon them? If so, then for them the validity of this law rests upon something other than the dictates of their own sense of right. Thus the explanation which we gave of the binding force of these rules would have to be given up. But it cannot be given up, for there is no real ground for the binding force of law except the agreement of its rules with men's sense of right.

The solution of this difficulty, then, must be sought elsewhere, and it is really to be found by bearing in mind the fact emphasized above, that the law is the rule of a community. It follows from this that the law cannot include rules which are mutually contradictory. The purpose of a community can be realized only if there is a single rule. The value of having a single rule is therefore fundamental. This is the *highest legal value*, a higher value than that belonging to the *content* of the rule, since having a single legal rule is an indispensable condition for attaining the end of the community. This end can be attained more or less completely in a variety of ways, but it cannot be attained at all without having a single rule. Hence our sense of right attaches the highest value to having a single rule and sacrifices, if necessary, a particular content which might otherwise be preferred.

If this analysis of our sense of right be correct, the question arises what content must be sacrificed in order to attain a single

legal rule. If the sense of right among the members of a community differs regarding the rules to be obeyed (assuming the sense of right to be equal in quality), those rules possess a higher value which a *majority* of the members are willing to accept as rules of law. Those who would prefer to be governed by a different rule cannot act according to their preference. Even according to their own sense of right, it is more important to have a single rule in the community to which they belong than to have the rule which they prefer. Consequently, for those whose convictions accord with the rule, the obligation to obey the customary law rests upon the value of the *content* of the rule; for all others it is based upon the value of having a *single rule*. This means that that rule must be accepted as binding which is proved to have *quantitatively* the highest legal value.

The same thing naturally holds good for statutory law also. Where there is a representative assembly, the sense of right of each of its members has an equal value in law-making. Here also the rule approved by the majority, as that which possesses quantitatively the highest legal value, becomes the rule of the community.

This natural justification of the legal force of a rule approved by a majority is opposed by those provisions which require more than a majority to change certain rules of positive law. Many constitutions require for their amendment the assent of more than a majority of the members of parliament, sometimes two-thirds or three-fourths. Such provisions have no legal value; they are not rules of law and so are not binding. If a simple majority has expressed itself in favor of a certain change in the law, the law as it stands is thereby condemned. Since the new law can be made effective only by more than a majority, the law of a minority will be kept in force. That is, the higher legal value will be sacrificed to the lower, which, if the equal importance of all members of parliament be admitted, not only clearly contradicts this principle of equality but also weakens the law as a rule of the community. The strongest law is undoubtedly that rule whose content is approved by the entire membership of the legislative organ. In proportion as one approaches the simple majority, the legal value of the rule will be determined more and more by the value of having a *single* rule, until the simple majority is passed. Beyond that point the whole legal value of having a *single* legal rule is lost, and therefore the rule has necessarily lost the character of a rule of law.

But this will invariably happen in the case of constitutional amendments for which more than a majority is required, if the existing law remains in force for lack of the larger majority, though a simple majority is opposed to the existing law. The maintenance of the existing rules means only that they will continue to be obeyed, not that they are really rules of law and therefore *ought* to be obeyed.

III. The Organization of the Sense of Right

[*Ch. III, xi.*] But must not the quality of the sense of right be taken into account? There can be no doubt that this question is to be answered affirmatively. And in fact quality is taken into account, though in a wholly insufficient degree, as we shall see. But we must first consider what is meant by the quality of the sense of right. If it means that in every man there exists a particular mental reaction and that, according as this reaction follows one course or another, the quality of his sense of right is to be rated as higher or lower, this view is to be rejected at the outset most positively. Kranenburg has tried repeatedly to impress upon jurists a fact which he has illustrated from experience, namely, that the individual sense of right operates according to common fixed laws, though its operation may be disturbed or modified by many influences. If this disturbance could be prevented, the operation of the sense of right would lead to the same results in every one.

By the higher or lower quality of the sense of right we can mean, therefore, only the greater or less possibility of disturbing its operation. It is from this point of view primarily that we have to determine and criticize the exclusion of certain persons from a share in law-making. It follows that exclusion by means of suffrage qualifications must be based only upon *natural* qualities which interfere with the operation of the sense of right, such as youth or insanity. Exclusion must not be based upon defects which, like poverty, are a result of the existing *legal system.* For this would give effect to those derangements of the sense of right produced by the interests of the propertied class, but not to those produced by the interests of persons who have no property. Legislation ought, however, to give equal weight to the interests of both classes.

Far greater importance attaches to differences in the sense of right resulting from a greater or less *knowledge of the interests* to be provided for by legislation. This is the field in which the quality

of the sense of right makes a real difference, or at least ought to do so. For the proposition that the sense of right of every normal person ought to have a share in law-making does not mean that every one ought to pass judgment on the legal value of *all* the interests of the community. A *knowledge* of the interests involved is also needed. When legislation is concentrated in a few organs, the legislator is forced to pass judgment upon the legal requirements of many interests which he does not understand or understands only slightly. A much more complete decentralization than we now have is a direct implication of the modern idea of the state, in so far as this theory derives all authority from the operation of the sense of right. A limitation of its sphere of activity is absolutely necessary to enable the sense of right to reach the limits of its real power. If, then, for different groups in the community we can approximately ascertain the interests in an understanding of which the strength of the group consists, and if we can then organize these groups as law-making associations, the popular sense of right will for the first time have attained a qualitative organization.

The qualitative sense of right which the representative system seeks to establish and whose operation is seen in the making of statutory law is of quite a different sort.

[*xii.*] The making of statutory law in most civilized states originates in the operation of the sense of right of that part of the population which is permitted to exercise the electoral franchise. In what does this operation consist?

Legislation produced by the exercise of the franchise may be of two sorts: The electors may express their judgment with regard to the *content* of rules of law or they may decide only upon the *standard* by which the legal value of rules is to be determined. In granting the suffrage it is the latter which is chiefly aimed at, that is, the establishment of a standard. This takes place by designating certain persons by whose sense of right rules are to be tested, other persons being excluded. The exercise of the suffrage effects a *selection* among the citizenship and the elector's sense of right has no effect upon the legislation beyond making this selection. A capacity to do this is the determining consideration in granting the franchise. Every one can be included in this organization whose sense of right is competent to perform this process of selection. Any one who possesses such a sense of right *ought* to be given a share in this process.

But no one in the world can control the working of the sense of right. Its operation may be organized, as is done in settling the franchise. But to what extent the elector's sense of right may express itself the legislator cannot determine. Thus it happens that the electors, in choosing members of parliament, express their views about the main points of public administration and choose candidates because they agree with these policies. The prohibitions in most constitutions against mandates and instructions are futile and ineffective. The electors can thus use the franchise to express their views concerning the *content* of rules of law. And in so far as they do so their representatives are no longer free with reference to the bills in which such principles have been embodied. The authority of the representative lies in the value which his sense of right possesses in the making of rules and this value is borrowed from the legal convictions of a majority of the electors. These legal convictions ought to be taken into account so far as they have made themselves manifest. For it should not be forgotten that according to the modern idea of the state the electors' sense of right furnishes the ground of their right to the franchise and this sense of right is the basis of the binding force of the statute. This sense of right should therefore continue to act in the person whom they elect, in so far as he has been chosen on account of his political opinions about specific parts of the law.

But excepting the few main points of legislation upon which the electors have expressed themselves in exercising their franchise, there is no direct connection between the elector and the authority of the statute passed by the vote of the deputy. Hundreds of times the deputy votes upon rules which the electors did not and could not have had in mind. In such cases the exercise of the franchise does not settle anything objectively concerning the rules; it determines something merely subjectively. That is, it indicates what sense of right is to pass upon the legal value of the rules. If this is the case, the deputy cannot accept any sense of right as a standard except his own, not even that of his constituents. A deputy who keeps himself tied to his constituents' leading-strings mistakes the meaning of the votes that placed him in office, for the group of electors to whom he owes his place has approved his and no other sense of right as the standard for further legislation. Consequently the independence of deputies from their electors must not be undermined. For if this independence be destroyed either wholly

or in part, the decision is left to the sense of right of persons other than those whose legal convictions have normative force. Thus the meaning of election is falsified, since the purpose of the election was to select a sense of right.

IV. The Function of Unwritten Law

[*Ch. III, xiv, A.*] The term "unwritten law" indicates a rule derived from the operation of the sense of right in a people, when there are no definite organs for expressing it. All unwritten law, both customary law and that which is not based upon custom, must be kept in mind. Under various names, such as expediency, equity, reasonableness, morals and social behavior, but without the medium of either statute or custom, the sense of right directly determines the decision which the judge or the administration renders in settling a conflict of interests. In order to find the law they must get into touch with the legal notions of the social circle to which the interests concerned belong and must adjust their judgment or conduct to the views which govern that circle. The unwritten law, therefore, even when it does not express itself in custom, has an objective character in so far as the rule to be applied invariably owes its content to the life of the community.

[*B.*] However well organized a people's sense of right may be, the organization will never be able to satisfy the need for law. This is due to several reasons. In the first place, all the relations of life, present and future, cannot be exhaustively organized, partly because the imagination of the legislator does not extend so far and also because it is often impossible to find out what is really just except by reference to the concrete circumstances. In the second place, the making of the law by the legislative organs cannot keep pace with the shifting value of social interests. A statute may represent the legal value of these interests at a particular moment, if it does justice to the importance which these interests have in their present relations. But with a change in these relations a different legal valuation arises which does not always find expression in new legislation. Then, independently of the functioning of legislative organs, an unwritten law comes into existence which has the same basis for its binding force as the statutory law.

[*C.*] The field in which unwritten law is mostly found is that which the statutory law has not occupied. Unwritten law has primarily a *supplementary* function. It fills the gaps in the statutes.

Freedom from statutory limitation does not at all mean freedom from legal limitation.

[*D.*] The unwritten law can abrogate and modify statutory law as well as supplement it. Such a possibility can scarcely be denied if all law, including statutory law, owes its authority to one and the same source, viz., the sense of right, as is maintained in this work.

Because a large part of our constitutional law is fixed in a written constitution which can be revised only in a troublesome and abnormal manner, normal legislation is blocked in many fields. Consequently written law cannot keep pace with the changing legal convictions regarding certain constitutional interests. These convictions accordingly find expression in an unwritten law at variance with the written constitution. The best known example of this is the parliamentary form of government which has been adopted in this country in spite of the Constitution and which functions as a legal institution. As a result of unwritten law in this case the king's right to veto legislation and also his right to choose his ministers have been abrogated, though both rights are expressly granted him by the Constitution. Moreover, the exercise of the right to dissolve the Chambers and the influence of the electors in determining the policy of the government after the periodic elections rest upon unwritten legal conventions quite outside the Constitution. Many other examples might be mentioned which attest the existence of a living constitutional law standing outside the written Constitution and contrary to it, resulting from the abnormal method of legislation which the Constitution provides for its own revision.

But there is still another way in which statutory law loses its force through the operation of unwritten law: statutory law is simply no longer observed and enforced or only partly so. This is the case, for example, with many French statutes which have never actually been repealed but which are no longer observed.

[*E.*] It lies in no man's power to decide what shall have the force of law. For nothing is really *law* except what proceeds from the single source which alone can give a rule the quality of law, the ultimate sense of right. What does not come from this source may be enforced by the power of the state or it may be applied in the decisions of the bench,—it may be what Ehrlich calls the "rule for decisions,"—but it is not and never can be law. The modern idea of the state seeks to eliminate from society all exer-

cise of power, all force, all authority which serves any other purpose than the enforcement of law. Its essential content, therefore, lies in the exclusive authority which it seeks to secure to the law.

Even the organs of judicial authority are beginning to perceive that the governmental organization is naturally subordinate to the law (*Recht*) and not merely to the statute (*Gesetz*). It was like a sudden revelation to discover how far jurisprudence had gone in subordinating statute to law. By an artificial process of interpretation the rule accepted as law by the prevailing sense of right was injected into the text of the statute. Thanks to an enlightenment which has come to them from every quarter, the judges now know exactly what they are doing and feel themselves called to a new service. If then the judge is to decide according to the statutes because these are a part of the law, his obligation is exactly the same toward all other law as well. In connection with this theory of the relation of the judge to statutory law, it should still be borne in mind that in applying unwritten law the judge in no way puts himself in the place of the legislator. He upholds a legal relation on the basis of a rule which is already valid. He creates no new law. The difference between the present and the past does not lie in the judicial function but in the nature of the law itself upon which the judge is permitted to base his decisions. According to the modern idea of the state, the judge must take all law into account, however it may have originated, and including therefore the unwritten law.

V. The State as the Independent Source of Legal Value

[*Ch. IX, ii.*] Every holder of a public office,—from the elector, the representative, and the king, to the clerk, the minister, and the general,—occupies his office by virtue of a legal title which not only regulates his duties and powers but also installs him personally as a "ruler." The relations between Duguit's "rulers" and "ruled" are not therefore factual relations but legal relations. And since the quality of being a ruler is bestowed by law, there is no authority which is not rooted in law. The rulership inherent in the state can therefore be traced back to a single authority, that of the law.

[*iii.*] As a result of this conclusion, which we reach again and again from various points of view, it follows that the idea of the state must be derived from the law. When the state is defined in

this way, we can insist that its essence is manifested in the operation of a peculiar and independent sense of right among a portion of mankind. A people is a state because of the body of legal relations (*Rechtsleben*) existing within it. And one state differs from another state because of the particular standard of legal value applied in the valuation of interests. With every new source of legal value we are dealing with a different body of legal relations, and hence with a different state. If only a single nationality is contained in a state, its peculiar body of legal relations is richer and more original, and all the members of the nation contribute to defining the spiritual value to be found in the feeling or sense of right. The civilized states of our own time differ chiefly in respect to the specific body of legal relations which each possesses, based on its distinct nationality. Consequently their inner force and significance as means of raising mankind to a higher spiritual existence is infinitely greater than in earlier times, when the life of the state was discernible only by the subjection of a portion of mankind to a sovereign standing apart from the people. The collective life in the field of law developed late,—far later than in the fields of religion, art, and literature. But since the people have recovered their share in law-making, national bodies of legal relations have manifestly begun to grow up, as well as a body of legal relations for the whole of humanity. The modern idea of the state has its foundation specifically in these bodies of legal relations.

In proportion as the spiritual bonds between the members of a community are lessened, the collective body of legal relations diminishes. Unity of standard is lacking for the valuation of many interests. A state which includes many races or nationalities can be held together only by reducing centralized law-making to a minimum. This was the case particularly in Austria. On the other hand, the spiritual bonds between peoples of different states may so increase as to develop a collective body of legal relations on a more inclusive scale and thus lead to a higher organization of the sense of right. Germany may stand as an example of this process.

In all civilized states, however, we find more or less developed organs to express the sense of right residing in the state. This is the reason why the functioning of a legislative organ is the superficial mark of statehood among a portion of mankind. What this organ is, is determined by the constitution of the country in ques-

tion. Nevertheless, the law contained in the constitution is, in the last analysis, as subject to change as law existing anywhere else. History is full of examples in which unorganized law has worked changes in constitutional law in order to make room for a different legislative organ or for one differently constituted.

In every organ devoted to law-making, the idea of the state may be perceived, even in the functioning of communal councils and provincial legislatures when they possess the power of issuing ordinances. These organs, however, are products of a legal system which proceeds from the operation of another and higher source of law and by which their composition and competence are determined. This other and higher source of law, in the case of the unitary state, lies in that sense of right which has been organized and centralized for a community including the communes and provinces. For the part of mankind which occupies a given territory, this sense of right creates all legal value, including that which determines the composition of the "legislative authority" itself. Independently of the organized method of law-making, however, the unorganized sense of right may always make itself felt. The portion of mankind included within a community which is based upon such an independently operating sense of right is a state. This, to be sure, does not mean that all law-making depends upon the state; the sense of right, whatever it may be, cannot be made to cease working. It does mean that the finding of organs for the sense of right lies within the authority of the state. Consequently if this organization is ineffectual, and if it therefore grants no autonomy to the local communities, the citizens' sense of right is seriously limited as far as the consideration of local interests is concerned. It is almost equivalent to suppressing their legal activity altogether.

If there comes into existence a legislative organ superior to a number of existing states, this may develop into the organ of a larger legal community. This larger community attains the rank of a state when the sense of right contained in it comes to act *independently* and when it attains an organization not rooted in the legal systems of the member states. However, the question whether a composite political community, or federal state, ought to be termed a state, and whether this name should be applied also to its component parts, is not of much practical importance, for the competence of the legislative organs can be determined

for the most part from the written constitutional law. In any case we are not concerned with the name but with the nature and idea of the state. The essence of the state is revealed in the working of a common law which forms for a portion of mankind an independent source of legal value.

[*iv.*] It is essential to the modern idea of the state that a people's character as a state should be regarded as consisting exclusively in the operation of an independent source of legal value. It does not consist in the care for any particular interest whatever. There are many public interests, such as peace, order, security, trade, coinage, the administration of justice, legislation, and national defence, which have a legal value; that is, obligations to preserve them are created by law. But they are no more interests of the *state* than all the private interests to which legal value is imputed and for the preservation of which legal obligations exist. The state is exclusively a regulatory power. The debtor who repays borrowed money, the civil official who carries on the work of a bureau, the person who employs his labor in the interests of industry, the judge who prepares and manages a case or draws up and pronounces decisions, the member of parliament who attends a session of the legislature and votes on bills,—all these show by their action the power of law. Hence we have to do in these cases with conduct called forth by the state. All of it is business of the state or none of it is. There is no reason for distinguishing work done in behalf of certain interests (like the administration of justice, the postal and banking systems) as functions of the state, while work done in behalf of other interests (like education, manufacturing, and domestic service) is not regarded as an activity of the state. All these services have one thing in common: They are carried on in pursuance of obligations which are imposed by law and which arise from the legal value imputed to the various interests. The reality of the state is rooted in its control over legal value. This value, so far as its origin is concerned, is the same for all interests; in the absence of such value there exists no obligation to serve any interests. In this control the state lives and manifests its power.

[*vii.*] It would be desirable for both political practice and political theory to make a distinction in terminology between the state as a legal community and the state as a complex of interests. In our constitutional law this distinction is made, for the state

as a complex of interests is known by the name of Kingdom (*Reich*). But as a rule no distinction is made and the different branches of the administration are regarded as parts of the *state*. Thus the belief is fostered that the essence of the state is shown in the care for specific interests. The backwardness of terminology in this respect is due to the idea that these parts of the administration have their point of unity in the government (*Regierung*) and that the government is to be regarded as the central organ of the state. But as time goes on, this idea accords less and less with reality.

In the first place, it is becoming more and more clear that the state as a complex of interests is not a unity. It is not a unity in the material sense that any particular group of interests is to be regarded as specifically interests of the state, nor in the formal sense that all public interests ought to be subject to the care of one and the same organ, the government. That the state is not a unity in the material sense has been shown repeatedly. It is possible, of course, to point out interests which *must* be cared for, but this would hold equally of both public and private interests.

In a formal sense also the complex of interests which falls within the limits of the state does not form a unity. For the time has long gone by when the care for these interests was entrusted to a single organ, the king, who performed his task through the agency of a staff of subordinates. A decentralization has taken place as a result of which various branches of the service have been assigned to more or less independent authorities. The French publicist, Duguit, who has shown himself unusually sensitive to the real organization of the state as a community of interests, imagines a future in which all branches of public service, including the army and the police, shall be organized as independent corporations. Even so, there would always be left over a certain number of transitory and unforeseen interests for which the government would necessarily serve as an organ. But in proportion as the decentralization of administration proceeds, the government's circle of activity as an organ of interests grows narrower.

Whatever the future may bring forth, however, it is already clear that the administration of public interests is no longer united in the organ of government as it formerly was when the whole business of administration was a function of government to be performed by officials subordinate to it. The unity of public interests must be sought rather in an association of administra-

tive departments arising from law, the organization of these departments being itself regulated by law.

VI. The International Legal Community

[*Ch. X, i, A.*] As is now generally recognized both in theory and practice, international law has as good a claim to the name of law as that which springs from the national legal community. But the explanation of the supremacy of law in the international field is subject to the influence of the idea of sovereignty, just as the idea of the state and the binding force of national law have been.

The earlier view based the supremacy of law upon a power outside the law, and this power was found in the state. The state is the personification of sovereignty or of the original right to rule. So long as this view prevails, the supremacy of international law also must be based upon the authority of the state. An independent rulership of international law can never be achieved by this means. And without *independent* supremacy one cannot speak of law.

[*B.*] In the preceding sections of this work it has been shown repeatedly that a self-supporting sovereign authority is a fiction, and that in consequence even national law cannot derive its binding force from such a source. National and international law from this point of view stand in exactly the same position. If this is so, the binding force of international law also is based upon its spiritual nature and therefore upon the fact that it is a product of men's sense of right. It rules by virtue of this nature, compels men to act according to its rules, and itself stands above the will. International law is distinguished from national law not in respect to its origin and foundation, but in respect to the extent of the community to which its commands apply. And the incomplete and less perfect character of international law does not lie in the fact that it rules over "sovereign" states and is therefore rooted in the will of these states. It lies rather in the defective organization of the sense of right which tends to regulate the community of civilized nations. Both the making of international law and its administration and enforcement by means of an adequate judiciary remain still in the most elementary stages of organization while all this has already been developed to systematic completeness for national law. The satisfaction of this need for an organization of international law is a problem which is now attracting the

widest attention. So far as the organization of the international community is concerned, we are still living in the Middle Ages, when the political relation between citizens was as fragmentary and incomplete as that between nations at the present time. Legislation, judicature, and the administration of law were then as defectively organized throughout as is now the case in the international community. But we have reason to expect that the international organization will be established somewhat more quickly and with less human sacrifice than was needed to bring the political order of the civilized world to its present level. As a result of the increasing contact between members of all nations, the operation of the sense of right which must produce this supernational organization has become far more powerful and more inclusive than in earlier times. The results of this fact appear very clearly in the numerous international legal arrangements which have been established in the last half-century. Consequently, even though one cannot as yet speak of a legal community including all states, still the existing legal communities, or states, no longer have the self-sufficiency which current political science represents them as having in theory. The idea of the state is beginning to overstep the limits of the national state and to realize itself fragmentarily in larger legal communities, which offer a new and higher legal value to human interests than could grow out of the smaller legal communities. We have entered, therefore, upon the way which leads to the formation of greater states. In so far as law-making by these greater communities actually takes place, the legal activity of the existing states must contract. The ultimate source of legal values is transferred to these greater communities, and the present national communities lose their character as states to continue their existence with a more or less derivative autonomy.

[*iii, G.*] The progress of the political organization which leads to the establishment of confederations and federal states must eventually issue in an organ founded upon popular representation which will be able to enforce a world-wide sense of right in every field. As interests of an international nature increase, the center of law-making is shifted from the states to an ever-broadening legal community. But at present there still remain organs of the states which in their national capacity share in the establishment of international law by means of treaties. The One State will

never appear until an organ has developed specially designed to make international law and proceeding from the people themselves. The present states will be related to this One State as its provinces, i.e., as communities equipped, to be sure, with a special law-making organ, but subject to the limitation that this organ has merely to provide for groups of interests whose legal value is fixed elsewhere.

Nations have become states through the organization and centralization of an apparatus of soldiers, police, and officials which served as an instrument in the hands of individuals to bring about an equal and identical subjection of all. In this way the idea of sovereignty gained a firm footing in the consciousness of men, and contemporary states are the outgrowth of the working of this idea. That the modern idea of the state no longer finds the basis of subjection in the authority of the sovereign, but in the law which is valid by its own force, in no wise alters the significance and the value which the idea of sovereignty has had for the life of the community.

The political evolution of the international community *must pass through the phase of the idea of sovereignty*, just as that of the national community did. This means that the formation of an international state also requires a center of power through which the subjection of mankind, divided among the states, can alone be brought about. The production of an international law and the organization of a world court cannot alone break the national consciousness of power which continually finds new nourishment in the increasing preparations for war. To accomplish this it is necessary to establish a sovereign which, as of old, will enforce the law by means of an instrument of power subject to its orders, and which from the outside will imbue the consciousness of peoples and their leaders with the domination of an ethical power. From this point of view, however, the political evolution of the international community has to contend with many more serious difficulties than had to be overcome in the formation of the existing states. Both the establishment of a sovereignty in and for itself, and its equipment with the means of compulsion, must be achieved consciously. This requires a degree of self-restraint on the part of governments which is difficult to obtain in proportion to the magnitude of the compulsory power which they are now able to exercise. But however the concentration may be accomplished,

it is necessary in any event that the international sovereign should possess *independence.* Only thus can the binding force of law be made independent of the states which must be brought and kept under subjection to the law.

We should, therefore, welcome the idea which is gaining ground in the field of international law that the development of the political organization of an international legal community must be sought in the construction of an international sovereign much more than in law-making and the expansion of judicial action. Such a community will come into being, however, only when a legal standard, independent of the different states, can be applied in law-making. And this in turn will occur when a world-wide sense of right has been organized in a manner similar to that which now exists in civilized states. Thus the modern idea of the state will be realized for the entire community of civilized humanity. As a transition stage to this, however, it is necessary that there be a precedent condition, similar to that which developed at the beginning of modern history, when a self-constituted sovereign, standing above the patch-work of legal communities and superior to an unorganized judiciary, was able by means of an instrument of power dependent upon itself alone to imbue the entire people with the idea of authority. In this way alone it was possible for this idea to gain a firm basis in the ethical and impersonal power of the law. In this way alone it is possible at the present time for the same idea to gain a similar basis for the international community.

CHAPTER XIII. RIGHTS IN AN OBJECTIVE SOCIETY

I. THE FUNCTIONAL BASIS OF RIGHTS

Authority, Liberty and Function in the Light of the War (1916)

Ramiro de Maeztu (1875-)

In the objective view of society, the concept of function is fundamental. Duguit finds the sole justification of the government, as of any other institution, in the functions that it performs; he also favors the functional decentralization of existing governmental activities. Although Krabbe assigns the legislature a unique position, this is because of the uniqueness of the legislative function. The guild socialist Cole goes so far as to advocate a functional basis of representation upon the supreme coördinating body of the state. But the idea of function is seldom subjected to the same searching analysis that is directed at the concept of sovereignty.

The significance of the contribution of the Spanish journalist, Ramiro de Maeztu, is that he does undertake a penetrating examination of the concept of function. Unfortunately his *Authority, Liberty and Function in the Light of the War* (1916) was written, as the title indicates, at a time when philosophical thought was subject to deflection by the World War. Nevertheless his analysis of the functional basis of rights contains much of permanent value, and its influence may be detected in subsequent works,—notably in Cole's *Social Theory* (1920).

De Maeztu was born in Vitoria and educated at the Institute of that city. He began to write for the Spanish press in his late teens and soon established himself in his profession. In the pre-war period he was living in London as correspondent for a number of Spanish periodicals, and after a year of war correspondence in Italy, from 1914 to 1915, he returned to London. The articles later published as *Authority, Liberty and Function* appeared in English in the columns of the guild socialist publication, *The New Age*, in 1915 and 1916. A Spanish version, revised and enlarged, appeared in 1919. In 1928, de Maeztu, who had contributed many articles to the *Press* of Buenos Aires, was appointed Spanish Ambassador to the Argentine Republic, but the fall of the de Rivera dictatorship in 1930 brought his diplomatic career to an end. In recent years he has adopted a most conservative point of view that contrasts oddly with his former liberalism.

The readings here given are based on the American edition of the English version of *Authority, Liberty and Function in the Light of the War* (Macmillan, New York, 1916), and are reprinted by permission of the Macmillan Company and of George Allen and Unwin, Ltd., the English publishers.

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AUTHORITY, LIBERTY AND FUNCTION IN THE LIGHT OF THE WAR

I. Power and Function

[*Pt. I, Ch. II.*] Some day there will have to be written a "Cratology," or doctrine of human power, as distinguished from "Energetics," or the doctrine of power in general; for if such a work is left unwritten we shall find this question of power encroaching upon problems of morals, of law, and of politics, throwing both them and us into confusion. The pure theories of morals, of law, and of politics, can and must turn our eyes away from power; for they do not need it to tell us what things are good, what other things are laws, and what other things it is desirable to secure for ourselves by means of the law. But we cannot theorize on morals, law, and politics without having our thoughts fixed on the application of our theories to the practical affairs of life; and such application is impossible, without power.

A "Cratology" would first divide human energy into personal and social power. Personal power might also be called natural power, for we receive it from Nature and not from society. Society may give us money, position, means of education, and other advantages which may all be formulated in terms of power. But there are powers of activity, of talent, of will, and of health which we receive from Nature in varying quantities. Some men more than others. That is inevitable.

But the most interesting side of a "Cratology" would not be that of personal power, but that of social power—that is to say, the power that society puts into our hands, be it money or university degree or hereditary position or the command of a regiment or the leadership of a political party or anything else. Almost every man occupies a position of social power besides his personal power. And it is not difficult to distinguish between them. A

sculptor, for example, cannot possess the marble necessary for his monument except when society has given it to him; his personal power consists in that energy which he utilizes in carving his figures, or which he wastes on his own caprices, in accordance with the character of the man. And here arises the problem of whether it is better to grant social power to men with full liberty for them to employ it as they like, or whether it is better to make this concession of power conditional on the execution of a specific social function. The world still remembers with horror the Kaiser's speech at the swearing-in of the new recruits at Potsdam on November 23, 1891:—

"Recruits: Before the altar and before the ministers of God you have sworn the oath of fealty to me. You are too young fully to understand the significance of what has been said. Your first duty is blindly to obey every order and every command. You have sworn fealty to me. You are the men of my Guard and my soldiers. You have committed yourselves to me body and soul. There can be but one enemy for you, and that is whoever shall be my enemy. Owing to the present machinations of the Socialists it may happen that I shall order you to fire on your own relatives, on your brothers and on your fathers—God grant it may not be—and in that case you are bound to obey my orders blindly."

What is it that revolts us in this document? Is it only the fact that a man may exercise such enormous power over other men? No; it is not that. Any one who remembers the proclamations issued by General Joffre on the eve of the battles of the Marne and of Champagne will realize that the powers of the French generalissimo are not less, for certain determined ends, than those of the German Emperor. It could not be otherwise; for in war unity in the command is essential. What does revolt us in the Kaiser's speech and in the constitution of the German Empire is the fact that the powers of the Emperor are not bound down to a specified function or moment, while the powers of General Joffre are restricted to the operations of a war the cause of which his men believe to be a just one. No man can carry out a social work if society does not confer upon him the powers necessary for doing so. But it is one thing to give an explorer the resources he requires for reaching the Pole, and quite another thing to give him a cheque to spend as he may wish. In the first case we are creating an objective right, bound to a function; in the second, a subjective right,

free and arbitrary. In the first case it is always possible to revoke the rights or powers conceded, as certainly those of General Joffre would be revoked if he employed them in sacrificing the lives of his soldiers uselessly. But subjective rights are, by definition, irrevocable. They can be withdrawn only by force—revolutions or *coups d'état.*

It is obvious that society ought never to grant powers to anybody except when they are attached to a defined function. Nevertheless, it is an old habit of all countries to pay with quantities of free energy for the services of men who have enchained their energies to social ends.

It is not difficult to understand the reason why. As we all like the free possession of social energy, we suppose that it will also please those men who have rendered outstanding services to us: and thus is produced the paradox that countries pay men for the services they have rendered by enabling them and their descendants to leave off serving us if it suits them to do so. The spirit of solidarity creates, by gratitude, subjective rights, and afterwards these are turned against the solidarity in which they were born, until a type of man is produced, like the Kaiser, the Pope, or the perfect Liberal, who believes himself to be responsible only to God and to his own conscience for the use he makes of the social rights which he enjoys—and in this way peoples enslave themselves to the same men, or to the descendants of the same men, who in former times served them well, until new liberators arise, whom the liberated peoples will afterwards transform into tyrants.

This vicious circle will not be broken as long as peoples do not prefer government by things to government by men; or, what amounts to the same thing, to bind social energy to social functions. This phrase as to being governed by things may be interpreted by a reader in bad faith in the sense of our being governed by the chairs we are sitting on. But these "things" of which we are speaking are not chairs, but justice, and kindness, and truth, and beauty; and, if abstractions be found unpleasing, then those concrete things which are just or kind or true or beautiful. Either we submit to them, or we shall have to submit to the tyrant. And what is the tyrant? We have seen already: power set free. The conceptions of freedom and tyranny lose their antagonism in the analysis; and the outcome is that they define the same thing. Freedom is our own tyranny; tyranny is the freedom of others.

II. Morality and Politics

[*Pt. II, Ch. IV.*] The Liberal conception of society is purely or principally negative, since it seeks to raise barriers which hinder the intervention of society in the sphere of individuals. But as negative as the Liberal conception is the authoritarian conception, which sanctifies the ruler and raises him above the wills of the citizens. In speaking thus we have shown the existence of a logical identity between the Liberal and the authoritarian conceptions. Both are conceptions of sovereignty.

Why this identity in the Liberal and authoritarian conceptions? Because both political ideas are founded upon the same type of morality; a subjective and androlactic morality. A subjective morality is that which affirms that things are good or bad simply because there is somebody who thinks them or feels them to be good or bad.

From this subjective morality there must likewise be derived a subjective politics which tends to maintain intact the sovereignty of the moral person; for the moral person is all the morality which it is necessary to ensure in the life of the community. Stuart Mill and the Liberals will say that this moral person, the fount of all morality, is the individual, and they devise a system of barricades to render him inviolate. Hegel and the Germans, generally speaking, will say that this person is the State itself, and they, too, will declare the State to be inviolable, infallible, and Divine.

It cannot be said that these schools have a positive conception of society. All that interests the authoritarians and the Liberals is that nothing shall be allowed to touch the inviolability of their favourite subject.

If the evil has not been greater than it is, this is simply due to the fact that the subjective morality from which both the authoritarian and the Liberal principles are derived has never succeeded in exercising its authority over the entire human mind. Men never believed that things were either good or bad simply because some person believed or felt them to be so. When we look critically at the houses in a street and say that some are good and others bad, we do not merely think that we believe so, but that the houses themselves are good or bad. This point has been convincingly demonstrated by the Cambridge thinker, Mr. G. E. Moore, in his books on "Ethics." But from this ethics—which is, at bottom,

only a scientific formulation of current morality—there arise, in my judgment, consequences of political application which will lead us definitely beyond all the existing subjective conceptions, both Liberal and authoritarian. I mean this: when we judge things we judge them in relation to man, or by a human value. Some houses are good because they satisfy our economic needs or our aesthetic taste; others are bad because they do not satisfy these exigencies. But, in turn, our judgments with respect to men are not referred to themselves, but to the things which they have produced or may produce. Thus, if we say, as a regiment of soldiers passes, that the physique of some men is better than the physique of others, we are not referring to the value which the body of each one may have for its possessor, but to something which appears to us to be good—as, for example, the hardships which a strong man can bear in war better than a man of inferior strength.

We do not deny, of course, that there is a relation between goods or moral things and men. We simply assert that this relation is reciprocal. We judge men in their relation with the goods; and we judge the goods for their value to men. Of a thing whose intrinsic value or usefulness cannot be discovered by men we say that it is valueless. If a man does not increase the existing goods nor even maintain them, we say the same. In this morality men and goods are alternately means and ends. And this morality is the real foundation of every kind of society. For what is the common characteristic of all societies, be they States, limited companies, or football clubs? That men are associated for a common object, and that the fulfilment of this common object is considered superior to the individual aims of its members. So we can say that every society is a society in a common object. Its centre of gravity lies in the object; its members are purely the organs of the object. It is only because there is a thing which several men find good that associations between men are possible.

In the same way as subjective politics are only the consequence of subjective ethics, on objective ethics it is possible to found a system of objective politics. Since men are associated in things, and since they only fulfil their duty when they occupy themselves in the conservation and increase of cultural and vital values, the art of politics ought to devote itself to finding the means to make legally enforceable the maintenance and the promotion of cultural and vital goods. With subjective morality disappear, too, subjec-

tive rights. The legality or legal enforcement of the commands of a man with power should depend no longer upon any kind of personal right, but on the social function legally exercised by him. Where there is no function there would be no rights. The function would consist, of course, in the maintenance and promotion of the goods. And in this society we should not discuss any longer the rights of the individual or the rights of the Sovereign, for in this society nobody would have any right other than that of doing his duty.

III. The Primacy of Things

[*Pt. III, Ch. VI.*] The problem of the primacy of things *versus* the primacy of men is one of the oldest in human culture. It might even be said that the whole of Western civilization is simply the rotation of the mind round this theme. More than that. What is characteristic of Western civilization is that there have always been in it some who stood up for the primacy of things. Not that they denied humanity. Only the pessimistic philosophies of the East have tried to deny men, and also things, and to wish for a Nirvana where pain ceases with existence. The partisans of the primacy of things acknowledge the need of men to realize things in this world of ours. The primacy of things means only the doctrine that they form the best criterion for judging men. Protagoras said: "Man is the measure of all things, of those which are as they are, and of those which are not as they are not." The contrary doctrine might be expressed in this other formula: "The things which are, and those which are not but which we wish to be, give us the measure of all men."

The doctrine of the primacy of things is easy to understand in theory, though difficult to realize in practice. But, difficult as it is, it is the only one that offers a solution of the conflicts in which we are daily engaged. For example, ought the individual to be sacrificed to the State? Socialism says yes; but that is tyranny. Ought the State to be sacrificed to the individual? Individualism says yes; but that is anarchy. To conciliate this old antagonism between the State and the individual the correlative theory has been invented—the individual is for the State and the State for the individual. But this solution is purely verbal. For the problem arises only when there is a conflict. If there is a conflict, to which does the primacy belong? To say that the individual and the

State are correlative is to deny the existence of the conflict, and to seek to cure a cancer by saying that there are no cancers.

Between the defenders of the primacy of the State and the upholders of the primacy of the individual there have recently arisen the upholders of Syndicalism who defend the primacy of societies constituted by the professions. But this does not enable us to find a way out of the conflict; for who shall prevail in case of a conflict between the individual and the syndicate, or between the syndicate and the State or society in general? Here, Syndicalism leaves us in the same perplexity as Socialism. For the question cannot be solved by saying that the Syndicate must have the primacy—which would amount to saying that the Syndicate is always right—the question begins when the Syndicate is wrong, or when the State is wrong, or when the individual is wrong.

And this question is insoluble, absolutely insoluble, so long as we do not clearly realize that every association is an association in one thing, and that this thing must have the primacy in all disputes arising out of the working of the association. There is nothing complicated in this thought. It is so simple that, once understood, it imposes itself on the mind with the force of a category. But it is new. It is strangely new. Even Duguit, in spite of his calling his doctrine "The theory of objective right," does not look beyond human solidarity in his search for the basis of associations.

Rights do not arise from personality. This idea is mystic and unnecessary. Rights arise primarily from the relation of the associated with the thing that associates them, as circumference arises from the relation of its points with the centre. It is clear that, apart from the relation of the associated with the thing that associates them, there are all kinds of relations among the associated. The reason is that all men belong at the same time to a plurality of associations. We are all partners, whether we like it or not, in our planet earth, and we are all residents in some borough and citizens of some State—from which it is to be deduced that no association can claim absolute jurisdiction over us. Hence, jurisdictional conflicts are inevitable. What I say is that the reason why many of these conflicts are unnecessarily multiplied and aggravated is that law has been sought to be founded directly on the associated themselves, independently of the thing associating them. Thus one speaks of the rights of the sovereign, or of the

rights of man, as if they were inherent to the condition of sovereign or man. Against this tradition I deny that rights are inherent, and I affirm that all rights are adherent. They arise, mathematically speaking, purely in function of the thing. No function, no rights.

What is essential in an association is the end it proposes to itself. The association and the associated are nothing but the instruments for this end. How, then, solve jurisdictional conflicts according to right? By seeing that social power is conferred according to the functions of the associated, and the functions according to capacities. The standard which ought to serve us to settle questions of authority and power is the end of the association. The triumph of this standard is what I call the primacy of things.

Men have quarrelled, and are quarrelling, and will quarrel over power. The reason is that the essence of man is power also, and one of the sides of power is the tendency to grow at the expense of others. But man considered purely as power has no rights; for into the concept of right there enters a positive ethical factor. Rights only arise when man enters into relation with the good, either to preserve the existing goods or to create new ones. In function of the good, in the relation between man and good, rights arise. Every right is functional. Every right which is not functional, all subjective rights, all the so-called rights of man, all the rights of sovereigns, are not rights in reality; they are simply powers.

The German theory proclaims the primacy of the State over the nation, that is to say, of the ruler over the ruled. The liberal democratic theory proclaims the primacy of the nation over the State, that is to say, of the ruled over the ruler. Both theories are based on a distinction between the individual and the super-individual values. The theory of the primacy of things does not deny this distinction. The association is one thing and the associated another. But what it does deny is that the super-individual values—it would be better to call them trans-individual values—are intrinsically of a superior category to the individual values. Both values are purely instrumental. The association—and with it all the institutions (family, property, State, Church, Guild, etc.)—is purely an instrument, like man. If in the association there are final values, they are its ends. And these ends are divided into good and evil; because men associate for evil also.

When values are divided, not into positive and negative—good

and evil—but into superior and inferior, the classification has to be made according to their final or instrumental character. Final and superior values are the goods in themselves—such as moral satisfaction, scientific discovery, or artistic creation. Instrumental and inferior values are those which have no intrinsic value, but are only tools for the production of final values. To this class of values belong man and all his institutions and associations. Within the instrumental values one has to distinguish a category inferior even to man himself. To this inferior category belong all economic values. Economics and all its values are as instrumental to man as man and all his institutions and associations ought to be to the good, the true, and the beautiful.

IV. Objective Rights in the International Sphere

[*Pt. III, Ch. IV.*] Before peace is broken again the countries will realize that the *status quo* cannot be maintained indefinitely. The reason? Very simple. The *status quo* is static by definition, and life is dynamic. Ten years after the treaty of peace has been signed some nations will be observed to ascend, to regenerate; others to fall, to degenerate. In the former ambition will rise again; in the latter, fear. This is inevitable, even if the treaty of peace limits armaments. The military strength of a country does not consist only in its army and navy, but in its population, its metallurgical industries, in the totality of its resources, in the spirit of its sons.

There are simple-minded pacifists who still hope to find the solution in universal and compulsory arbitration. And to a certain extent they are right. If nations agree to submit all their disputes to arbitration, there is no doubt that wars will be avoided.

The real objection to this is that States will not blindly transfer their sovereignty to the arbitral court, just as we individuals have not blindly transferred our sovereignty to the ordinary courts. The judges are not arbiters who decide our disputes according to their own lights. They are simply functionaries entrusted with the duty of applying the laws, and of solving our disputes according to the laws. Without the law to which it is subjected the authority of the judge is tyranny, and perhaps the worst of tyrannies. Before we can hope that an arbitral court will solve international questions by means of law, we must create international law.

You may tell me that this law has already been created. But that is questionable. Nowadays there are treaties and conventions signed by different States at The Hague and elsewhere. But these treaties are not laws any more than contracts drawn up between private individuals are laws; since such contracts are valid only when they are legal—that is, when there is a law above them which decides as to their validity.

If an arbitral court judged international conflicts in accordance with treaties, humanity would be condemned to an eternal *status quo*. Poland, for instance, would always be enslaved since the existing treaties enslave her. An international law based exclusively on treaties would make present frontiers eternal. The dominating Powers would be eternally dominating, the dominated countries eternally dominated. War itself is more violent but less unjust than such an abominable aspiration.

This idea is not only evil; it constitutes logically a vicious circle. For international conflicts arise chiefly because the course of history, with the growth of some countries and the decay of others, alters the *status quo*. Life breaks the *status quo*—and you are trying to mend the breakage with the very *status quo* broken by life! That is not to attempt to solve international problems by means of law; it is to ignore them. Thus we explain the failure of the first two Hague Conferences.

Does not this imply the failure of every attempt to make law prevail in international relations? Let the reader note that law has not failed. What has failed is one conception of law. Treaties are acts of individual will concerted by sovereign States. What has failed in their case is law founded on sovereignty, and consequently on the subjective conception of law. There still remains to be tried the application of the objective conception of law to international disputes.

In the same way as no man has a subjective right to anything, so also has a State no subjective right to govern a territory. The sovereignty and powers of the State are juridical only when they fulfil necessary functions for the conservation and increase of human solidarity in the planet earth and in cultural values. This is the central principle of the objective conception of law. From it are derived the norms which, in general terms, have to condition or legalize the sovereignty and powers of States.

According to the first norm the territory of each State is a road

for the men of other States. By virtue of this norm the States would be obliged to keep their roads open. This would mean, not merely the duty of looking after the railways, the highroads, the rivers, harbours, canals, and lighthouses, but also the duty of maintaining public order, attending to sanitation, and permitting foreigners equality of conditions in trade. In the last result this might lead to the establishment of a system of free trade, or at least of fair trade, all over the world. Let it be observed that the principle is not new. The principle by virtue of which the French justified their conquest of Morocco and the Italians their conquest of Tripoli was that the Moors and the Arabs would not keep their roads open.

According to the second norm every nation ought to exploit "economically" the territory assigned to it. As the surface of the earth is limited, it is not just that one nation should monopolize a considerable part of it without drawing from it all the foodstuffs and raw materials needed by humanity. I do not mean by that expression that the rulers of the vaster territories, such as Russia, Brazil, or Australia, should be ordered, at twenty-four hours' notice, to exploit their lands with the same intensity as Belgium and Lombardy are cultivated. But they should be compelled to show a certain annual average rate of progress in production and population as the price of their sovereignty. The norm of international law would be the same as that which Stuart Mill wished to apply to private property in land: "Whenever, in any country, the proprietor, generally speaking, ceases to be the improver, political economy has nothing to say in defence of landed property, as there established."

And, according to the third norm, every government would be obliged to treat men as the possible bearers of cultural values. This presupposes the obligation of giving each of them a minimum of education; of preventing their exploitation by other men; of not setting obstacles in the way of the performance of their legitimate functions; and of organizing each society in such a way that it would contribute positively to the conservation and increase of the cultural goods of the world.

The difficulty of applying these norms is immense. I have only outlined them with the full consciousness that it would be absurd to pretend to solve the problems of the world in a few paragraphs. The important thing is to fix the details, and this will require the

collaboration of many investigators in every country. But what I do assert is that if international law were constituted on the functional or objective principle, the authority or arbitral tribunal entrusted with the duty of applying it would have at its command an instrument which would permit it to solve international conflicts by juridical means, thus overcoming the present contradiction between the statism of treaties and the dynamism of life.

II. THE PLURALIST CONCEPT OF RIGHTS

The Sovereignty of the State (1916)—A Grammar of Politics (1925)

Harold J. Laski (1893–)

During the World War, which necessarily magnified the question of the state's essential rightness, the attack upon sovereignty reached its climax in the pluralist concept of society. Building upon the doctrines of objectivity and function, pluralism obliterated the uniqueness of the state in a theory of conflicting rights. Its historical ideals were drawn from the middle ages, when associations enjoyed legal personality independent of sovereign fiat and the state was only one of several competitors for the right to command.

Although it is highly questionable whether he is not today an apostate to his earlier views, Harold J. Laski is probably the ablest of the pluralist writers, and his *Sovereignty of the State*—the leading article in *Studies in the Problem of Sovereignty* (1916)—the most effective presentation of the case for pluralism in its stark simplicity. A decade later, when he first turned from destructive criticism to construct an affirmative philosophy in *A Grammar of Politics* (1925), his pluralism had undergone a subtle change. In this later book, Laski's analysis of the pluralist concept of rights brings him surprisingly near the idealism of Thomas Hill Green.

A brilliant Jewish youth, Laski was educated at the Manchester Grammar School and at New College, Oxford, where he won many undergraduate honors. He has taught at McGill University and at Harvard, and has since 1920 been connected with the London School of Economics, where he is now professor of political science. He has served on important government committees, and since 1922 h[illegible] has been a member of the executive of the Fabian Society. Among his numerous writings, in addition to those already mentioned, are *Authority in the Modern State* (1919), *Foundations of Sovereignty* (1921), *Liberty in the Modern State* (1930), *Democracy in Crisis* (1933), and *The State in Theory and Practice* (1935). In this last-named work Laski apparently abandons pluralism for an almost undiluted Marxism.

The readings here given are based on the text of *The Sovereignty of the State* in *Studies in the Problem of Sovereignty* (Yale U. Press, New Haven, 1916), and on the text of the original edition of *A Grammar of Politics* (Yale U. Press, New Haven, 1925). They are reprinted by permission of the publishers.

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THE SOVEREIGNTY OF THE STATE

I. Monism and Pluralism

It would be no inapt definition of politics in our time to term it the search for social unity. How far, and in what way, is our society one? How far is there an interest of the Whole, a monistic interest, which transcends the interests of the Many who compose that whole? It is a fundamental question; therefore it is amazingly subtle and difficult. We shall find, I think, that there is one best method of considering our problem. Suppose that on the one hand we adopt the monist solution, what concrete difference will that make to our political life? If we are pluralists, how does that affect our activities? What, in short, are the consequences of our attitude? It is from them we may deduce its truth.

And at the outset, let us note that we tend, in our political thinking, to adopt a sort of mystic monism as the true path of thought. We represent a State as a vast series of concentric circles, each one enveloping the other, as we move from individual to family, from family to village, from village to city, to county, thence to the all-embracing State. We talk of England, Greece, Rome, as single personal forces, transcending the men and women who compose them. We personalise, that is to say, the collective body.

Clearly the reality of the State's personality is a compulsion we may not resist. But the habit is common to other things also. To the American, New York has a personality no less real than that of the Republic. To the shipowner, Lloyds is not the mere

sum of its individual underwriters. When we take any group of people leading a common life, to whom some kindred purpose may be ascribed, we seem to evolve from it a thing, a personality, that is beyond the personalities of its constituent parts. For us that personality is real. If this be true, there are within the State enough of these monistic entities, club, trade-union, church, society, town, county, university, each with a group-life, a group-will, to enrich the imagination. Their significance assuredly we may not deny.

Yet, so we are told, the State itself, the society of which they form part, is mysteriously One above them.

We have to admit, so your monist philosopher tells us, that all parts of the State are woven together to make one harmonious whole. What the Absolute is to metaphysics, that is the State to political theory.

Because a group or an individual is related to some other group or individual it is not thereby forced to enter into relations with every other part of the body politic. When a trade-union ejects one of its members for refusing to pay a political levy it is not thereby bringing itself into relations with the Mormon Church. A trade-union as such has no connection with the Mormon Church; it stands self-sufficient on its own legs. It may work with the State, but it need not do so of necessity. It may be in relations with the State, but it is one with it and not of it. The State, to use James' terms, is "distributive" and not "collective." There are no essential connections.

We are not taking up the position that the State has no relations with these groups. We are simply denying that the parts must be judged by the State,—the individual German, let us say, by the conduct of Germany. We judge his conduct in life in reference to himself and not in reference to the State of which he is part. In the monistic theory of the State he derives his meaning from his relations; in the pluralistic theory, while his relations may be of the deepest significance, it is denied that they are the sole criterion by which a man ought to be judged. So in the pluralistic view of the State, there are, as James said of the pluralist world, "real losses and real losers," in the clashing of its parts; nor do these add mysteriously to the splendour of the whole.

How, then, it will be asked, is the will of the State to be made manifest? If the State is but one of the groups to which the indi-

vidual belongs, there is no thought of unity in his allegiance. The answer to that is the sufficiently simple answer that our allegiance is not as a fact unified. In the event of a great war, for example, as a member of the State you may be called upon to fight; as a member of another group, the Quakers, you may be called upon to resist that demand. It seems clear that little is gained by talk of "over-riding demands," of saying, for instance, that the demands of the State are all-important. They are all-important only to the State. The history of societies fatally contradicts the view that in a crisis only the State will have power of compulsion. What of certain miners in South Wales? What of certain Unionists in Ulster? Of militant suffragists? Did not to them the wills of certain groups other than the State conflict with it and prove more intense in their demand? Such marginal cases will in all probability be rare, but there is no sort of guarantee that they will not occur.

Then, it will be protested, you will abolish what lawyers mean by sovereignty. You justify resistance to the State. You deny that each state must possess a legally determinate superior whose will is certain of acceptance. But it is surely evident that no such instrument does exist. We have nowhere the assurance that any rule of conduct can be enforced. For that rule will depend for its validity upon the opinion of the members of the State, and they belong to other groups to which such rule may be obnoxious. If, for example, Parliament chose to enact that no Englishman should be a Roman Catholic, it would certainly fail to carry the statute into effect. We have, therefore, to find the true meaning of sovereignty not in the coercive power possessed by its instrument, but in the fused good-will for which it stands. Men accept its dictates either because their own will finds part expression there or because, assuming the goodness of intention which lies behind it, they are content, usually, not to resist its imposition. But then law clearly is not a command. It is simply a rule of convenience. Its goodness consists in its consequences. It has to prove itself. It does not, therefore, seem wise to argue that Parliament, for example, is omnipotent in a special sense. The power Parliament exerts is situate in it not by law, but by consent, and that consent is, as certain famous instances have shown, liable to suspension.

What guarantee have we, then, in the pluralist view that the will of the State will prevail? It may seem that this view gives a handle to anarchy. It does not, I believe, give any more handle

to anarchy than it at present possesses. If we become inductive-minded and make our principles grow out of the facts of social life we shall admit that the sanction for the will of the State is going to depend largely on the persons who interpret it. The monarchs of the *ancien régime* were legally the sovereign power in France, but their will was not the will of the State. It did not prevail because of the supreme unwisdom of the manner in which they chose to assume that their good was also the popular good. They confused what Rousseau would have called their "private good" with the "common good" and Louis XVI paid the penalty on the scaffold. The will of the State obtains pre-eminence over the wills of other groups exactly to the point where it is interpreted with sufficient wisdom to obtain general acceptance, and no further. It is a will to some extent competing with other wills, and, Darwin-wise, surviving only by its ability to cope with its environment. Should it venture into dangerous places it pays the penalty of its audacity. It finds its sovereignty by consent transformed into impotence by disagreement.

But, it may be objected, in such a view sovereignty means no more than the ability to secure assent. I can only reply to the objection by admitting it. There is no sanction for law other than the consent of the human mind. It is sheer illusion to imagine that the authority of the State has any other safeguard than the wills of its members. For the State is simply what Mr. Graham Wallas calls a will-organisation, and the essential feature of such a thing is its ultimate dependence upon the constituent wills from which the group will is made. To argue that the State is degraded by such reduction in nowise alters, so far as I can see, the fact that this is its essential nature. We have only to look at the realities of social existence to see quite clearly that the State does not enjoy any necessary pre-eminence for its demands. That must depend entirely upon the nature of the demand it makes. I shall find again and again that my allegiance is divided between the different groups to which I belong. It is the nature of the particular difficulty which decides my action.

Nor is this view invalidated by the consideration that the purpose of the State is larger than that of any other conceivable group, does, in fact, comprehend it. I am not at all certain that this is the case. A State may in theory exist to secure the highest life for its members. But when we come to the analysis of hard

facts it becomes painfully apparent that the good actually maintained is that of a certain section, not the community as a whole. I should be prepared to argue, for instance, that in England before the war the ideal of the trade-unions was a wider ideal than that which the State had attained, one is tempted to say, desired to attain. It is possible, again, to say of the Roman Catholic Church that its purpose is wider than that even of a conceivable world-state in the future; for the State concerns itself with the lives of men on earth, while the Roman Catholic Church concerns itself also with their future existence. And, moreover, it is not so much greatness of purpose that seems important as the capacity to secure intensity of affection. This is surely the explanation of the attitude of those who resist the State. The purpose of their organisation is not more vast, but it comes nearer home to what the individual immediately desires; so it has for him a greater momentary validity. He subordinates the will of the State to the will of his group because the latter accords with his desire or his conscience. I think that any one who reflects on the history of opposition to the State will find that this is, psychologically, the most fruitful source of its understanding.

II. The Pragmatic Test of Rights

Now I admit quite freely that I have been discussing a sovereignty far wider than that which lawyers are accustomed to recognise. When a distinguished jurist thinks that "sovereign power is that which within its own sphere is absolute and uncontrolled," and, when another equally distinguished legal thinker argues that law rests on sovereignty, I can only throw up my hands. For while, for example, in England, the sovereign power is Parliament, and, broadly speaking, only the rules laid down by it will be enforced by the courts, yet Parliamentary opinion, Parliamentary statute, are the result of a vast complex of forces towards which men and groups, within and without the State, make often enough valuable contributions. It seems to me that you can never find in a community any one will which is certain of obedience. I can not too greatly emphasise the importance of a phrase used by John Chipman Gray. "The real rulers of a society," he says in a striking sentence, "are undiscoverable." But with the real rulers must go sovereignty; and if you can not find them it too must be beyond the reach of human insight. When you come to think of

it, the sovereignty of legal theory is far too simple to admit of acceptance. The sovereign is the person in the State who can get his will accepted, who so dominates over his fellows as to blend their wills with his. Clearly there is nothing absolute and unqualified about it. It is a matter of degree and not of kind that the State should find for its decrees more usual acceptance than those of any other association. It is not because of the force that lies behind its will, but because men know that the group could not endure if every disagreement meant a secession, that they agree to accept its will as made manifest for the most part in its law. Here, at any rate, we clear the air of fictions. We do not bestow upon our State attributes it does not possess. We hold it entitled to ask from its members that which conduces to the achievement of its purpose not because it has the force to exact their consent, but because what it asks will in the event prove conducive to that end.

There are, in this view, things the State can not demand from its members. It could not, for instance, demand from one of them that he assassinate a perfectly blameless man; for so to demand is to violate for both men the whole purpose for which the State exists. It would have, on the other hand, a clear right to ask from each member such contribution as he can afford to a system of national education, because the modern State has decided that the more educated are its members the more are they likely to fulfil its end. What I mean by "right" is something the pragmatist will understand. It is something the individual ought to concede because experience has proved it to be good. So when the State demands from one of its members toleration for the religious belief of another as a right each should enjoy, it means that the consequences of toleration are more coincident with the end of the State than the consequences of religious persecution. Our rights are teleological. They have to prove themselves.

So I would urge that you must place your individual at the centre of things. You must regard him as linked to a variety of associations to which his personality attracts him. You must on this view admit that the State is only one of the associations to which he happens to belong, and give it exactly that pre-eminence—and no more—to which on the particular occasion of conflict, its possibly superior moral claim will entitle it. In my view it does not attempt to take that pre-eminence by force; it wins it by consent.

It proves to its members by what it performs that it possesses a claim inherently greater than, say, their Church or trade-union. It is no dry *a priori* justification which compels their allegiance, but the solidity of its moral achievement. So, I shall fight for England because I can genuinely accept the rightness of its cause; not because when the call comes I must unheedingly and, therefore, unintelligently obey it.

Surely, too, that State will be the stronger which thus binds to itself its members by the strength of a moral purpose validated. When, for example, your miners in South Wales go on strike, rather than attempt their compulsion by Munitions Acts to obey that for which they feel no sympathy, and thus produce that feeling of balked disposition of which Mr. Graham Wallas has written so wisely, you seek means of finding common ground between their group and yours, you will have done better. Is there not a tremendous danger in modern times that people will believe the legal sovereignty of a State to be identical with its moral sovereignty? Right is a dangerous word—for it is political no less than ethical, and in the hands of a skilful statesman the meaning may be insensibly fused. So it will be preached eventually that where a State, from this theoretic conception of Oneness, has a legal right, it has also a moral right which passes so easily into a moral obligation. Government, then, stands above the moral code applied to humbler individuals. It is almost unconsciously exalted into tyranny. It gains the power to crush out all that conflicts with its own will, no matter what the ethical implication of that will. I can then well understand why to an historian like Treitschke power can be the end of all things. For then power is moral and becomes more profoundly moral as it grows in extent.

Such difficulties as this the pluralistic theory of the State seems to me to remove. As a theory it is what Professor Dewey calls "consistently experimentalist" in form and content. It denies the rightness of force. It dissolves—what the facts themselves dissolve—the inherent claim of the State to obedience. It insists that the State, like every other association, shall prove itself by what it achieves. It sets group competing against group in a ceaseless striving of progressive expansion. What it is and what it becomes it then is and becomes by virtue only of its moral programme. It denies that the pursuit of evil can be made good by the character of the performer. It makes claim of the member

of the State that he undertake ceaseless examination of its moral foundations. It does not try to work out with tedious elaboration the respective spheres of State or group or individual. It leaves that to the test of the event. It predicates no certainty because history, I think fortunately, does not repeat itself. It recognises the validity of all wills to exist, and argues no more than that in their conflict men should give their allegiance to that which is possessed of superior moral purpose. It is in fact an individualistic theory of the State—no pluralistic attitude can avoid that. But it is individualistic only in so far as it asks of man that he should be a social being. In the monist theory of the State there seems no guarantee that man will have any being at all. His personality, for him the most real of all things, is sacrificed to an idol which the merest knowledge of history would prove to have feet of clay.

I am well aware that in any such voluntarism as this room is left for a hint of anarchy. To discredit the state seems like enough to dethroning it. And when the voice of the State is viewed as the deliberate expression of public opinion it seems like the destruction of the one uniquely democratic basis we have thus far attained. But the objection, like the play-queen in *Hamlet*, protests too much. It assumes the homogeneity of public opinion, and of that homogeneity not even the most stout-hearted of us could adduce the proof. Nor is its absence defect. On the contrary, it seems to me that it is essentially a sign that real thought is present. A community that can not agree is already a community capable of advance.

I imagine the absolute Hobbes, who has seen internal dissension tear a great kingdom in pieces, hold up hands of horror at such division of power. Maybe I who write in a time when the State enjoys its beatification can sympathise but too little with that prince of monistic thinkers. And the reason is simple enough. It is from the selection of variations, not from the preservation of uniformities, that progress is born. We do not want to make our State a cattle-yard in which only the shepherd shall know one beast from another. Rather we may hope to bring from the souls of men and women their richest fruition. If they have intelligence we shall ask its application to our problems. If they have courage we shall ask the aid of its compelling will. We shall make the basis of our State consent to disagreement. Therein we shall ensure its deepest harmony.

A GRAMMAR OF POLITICS

I. The Purpose of the State

[*Ch. I, ii.*] Man finds himself, in the modern world, living under the authority of governments; and the obligation to obey their orders arises from the facts of his nature. For he is a community-building animal, driven by inherited instinct to live with his fellows. Crusoe on his desert island, or St. Simon Stylites upon his pillar, may defy the normal impulses which make them men; but, for the vast majority, to live with others is the condition of rational existence.

Therein, at the outset, is implied the necessity of government. If the habits of peaceful fellowship are to be maintained, there are certain uniformities of conduct which must be observed. The activities of a civilised community are too complex and too manifold to be left to the blind regulation of impulse; and even if each man could be relied upon to act consistently in terms of intelligence there would be need for a customary standard by which the society in its organised form agreed to differentiate right from wrong. The theory of philosophic anarchy is impossible, in fact, so long as men move differently to the attainment of opposed desires. The effort involved in the peaceful maintenance of a common life does not permit the making of private decisions upon what the society deems essential to its existence. At some point, that is, spontaneity ceases to be practical, and the enforced acceptance of a common way of action becomes the necessary condition of a corporate civilisation.

Nor is the absence of such spontaneity a limitation upon freedom; it is rather its primary safeguard. For once it is admitted that no man is sufficient unto himself, there must be rules to govern the habits of his intercourse. His freedom is largely born from the maintenance of those rules. They define the conditions of his personal security. They maintain his health and the standards, spiritual, not less than material, of his life. Without them he is the prey of uncertainties far more terrible than the uniformities by which the sea of his experience is charted.

[*iii.*] From such an outlook we may derive a sense of the purpose embodied in the State. In this aspect it becomes an organisation for enabling the mass of men to realise social good on the largest

possible scale. Necessarily, it is clear, its functions are confined to promoting certain uniformities of conduct; and the area it seeks to control will shrink or enlarge as experiment seems to warrant. There are obvious regions of life into which it has no thought of entry.

The State, therefore, does not set out to compass the whole range of human activity. There is a difference between the State and society. The State may set the keynote of the social order, but it is not identical with it. And it is fundamental to the understanding of the State that we should realise the existence of this distinction. That is apparent from an analysis of the way in which the State acts; as a source of reference the will of the State is the will of government. Granted that, in any ultimate analysis, the real rulers of a State are undiscoverable, the legal source of daily power is resident in those who legislate.

A theory of State, that is to say, is essentially a theory of the governmental act. To understand the latter we must doubtless consider all the influences which play upon it. The will it expresses may be the largest will we normally encounter. But it is not the will of society as a whole. The interests, social, artistic, religious, personal, political, which make up the substance of civilisation cannot be reduced to a single category. The will of the State is a particular aspect of the whole. It is an urgent aspect, in the same sense that the skeleton is a vital aspect of the body. But it is not one with the will of society any more than the life of the body is in its supporting skeleton.

[*v.*] The State is thus a fellowship of men aiming at the enrichment of the common life. It is an association like others: churches, trade unions, and the rest. It differs from them in that membership is compulsory upon all that live within its territorial ambit, and that it can, in the last resort, enforce its obligations upon its subjects. But its moral character is no different from that of any other association. It exacts loyalty upon the same grim condition that a man exacts loyalty from his friends. It is judged by what it offers to its members in terms of the things they deem to be good. Its roots are laid in their minds and hearts. In the long run, it will win support, not by the theoretic programme it announces, but by the perception of ordinary citizens that allegiance to its will is a necessary condition of their own well-being. It must offer them assurances that it seeks to protect that well-being. It

has no moral claim upon their loyalty save in so far as they are offered proof of its realisation.

I have, as a citizen, a claim upon society to realise my best self in common with others. That claim involves that I be secured those things without which I cannot, in Green's phrase, realise myself as a moral being. I have, that is, rights which are inherent in me as a member of society; and I judge the State, as the fundamental instrument of society, by the manner in which it seeks to secure for me the substance of those rights. They are, of course, counterbalanced by the duties I owe in return. I am given rights that I may enrich the common life. But if those rights fail of realisation, I am entitled to examine the State upon the hypothesis that its will is directed to ends other than the common good. I am entitled at any given moment to the fullest potentialities it can offer my moral self, the most satisfactory harmony of impulses I can attain.

Rights, in this sense, are the groundwork of the State. They are the quality which gives to the exercise of its power a moral penumbra. And they are natural rights in the sense that they are essential to the good life. As they remain unfulfilled, so am I, socially not less than personally, deprived of the chance to serve the fellowship of men. A State which neglects them fails to build its foundations in the hearts of its citizens. It becomes known to them by the rights it maintains; and, over any long period, it wins their allegiance by the effort it makes to give those rights increasing substance.

[*Ch. II, iii.*] Every government is thus built upon a contingent moral obligation. Its actions are right to the degree that they maintain rights. When it is either indifferent about them, or wedded to their limitation, it forfeits its claim to the allegiance of its members.

A given right may be refused recognition. A government may, either honestly or dishonestly, doubt its wisdom and refuse to it statutory form; and since any normal government is likely to dispose of the greatest amount of available force, it will probably be able, except in the event of successful revolution, to maintain its refusal. That does not give its action validity. It means only that the preponderating material force of the community refuses to exercise its proper functions. The reasons for that refusal are usually of the most complex nature; but, almost always, they are

derived from a view of right which denies to all save a section of the State the opportunity of equal participation in its benefits. If the refusal is persisted in over any length of time, it results in the organisation of an opposition which may grow until it is itself powerful enough to become the government.

If the State is to be a moral entity, it must be built upon the organised acquiescence of its members. But this demands from them the scrutiny of government orders; and that, in its turn, implies a right to disobedience.

II. The Function of the State in Relation to Other Associations

[*Ch. II, iv.*] The notion of an independent sovereign State is, on the international side, fatal to the well-being of humanity. The way in which a State should live its life in relation to other States is clearly not a matter in which that State is entitled to be the sole judge. That way lies the long avenue of disastrous warfare of which the rape of Belgium is the supreme moral result in modern times. The common life of States is a matter for common agreement between States. International government implies the organised subordination of States to an authority in which each may have a voice, but in which that voice is never the self-determined source of decision.

[*v.*] When we turn from the external to the internal sovereignty of States, we meet a more complex situation. The problem of the power of a State over its own members is, very largely, a problem of representing wills. If social institutions permit me so to express myself that my life acquires a satisfactory balance of impulses, I am, in a creative sense, free. But it is obvious that, taken merely as an individual, my will is lost amid the myriad competing wills which strive with my own for expression. That is why men build associations that, from the collective strength of the wills fused there, they may secure the chance of self-determination. Associations exist to fulfil purposes which a group of men have in common.

Here it is important to realise two things. To exhaust the associations to which a man belongs is not to exhaust the man himself. You do not state the total nature of Jones by saying that he is a Wesleyan barrister who belongs to the Reform Club and the Ancient Order of Oddfellows. You have to take account, also,

of the Jones who builds from out those varying aspects of his life a self which effects, or seeks to effect a harmony between them.

Nor, in the second place, can the will of any single association be made a final will. To leave to the Bar, for instance, the ultimate control of itself is to leave a single aspect of man the power to mould his total aspect. Man is not merely a barrister. A given function is always a narrow purpose, alongside the full end of realisation as a complete human being.

Social organisation, therefore, does not present a single problem in relation to its government. On the one hand, it is fairly simple to construct a government for each function in society in terms of the particular purpose each embodies. But no man's activities are confined to a single function. It is necessary to safeguard his interests as a user of services he has no part in producing. It is essential, in other words, to protect him as a consumer. The co-ordination of functions is the sphere in which, to that end, the State must operate. It has so to organise the conditions of their lives that the individual members of the State are assured of reasonable access to those goods without which they cannot fulfil their vocations as men. Where their needs are identical as undifferentiated persons, at least at some minimum level, it is essential to have a single centre of control to achieve them.

In an aspect of this kind, the State is obviously a public service corporation. It differs from every other association in that it is, in the first place, an association in which membership is compulsory. It is, in the second place, essentially territorial in nature. The interests of men as consumers are largely neighbourhood interests; they require satisfaction, for the most part in a given place. And, at a given level, the interests of its members are identical interests. They all need food and clothing, education and shelter. The State is the body which seeks so to organise the interests of consumers that they obtain the commodities of which they have need. Within the State, they meet as persons. Their claims are equal claims. They are not barristers or miners, Catholics or Protestants, employers or workers. They are, as a matter of social theory, simply persons who need certain services they cannot themselves produce if they are to realise themselves. Clearly, a function of this kind, however it is organised, involves a pre-eminence over other functions. The State controls the level at which men are to live as men. It is, in administrative terms, a

government whose activities are shaped by the common needs of its members. To satisfy those common needs, it must control other associations to the degree that secures from them the service such needs require. The more closely a given function—education, for example, or the provision of coal—lies to the heart of the society, the more closely it will require to be controlled. Each function, that is to say, must be so organised in the interest of the consumer that it permits him access to a full civic life. There is a limit to the number of hours of labour a man can work and yet remain a human being. There is an income below which no man can be allowed to fall if he is to maintain himself as a decent citizen. The State is regulating, directly and indirectly, to secure common needs at the level which the society as a whole deems essential to the fulfilment of its general end.

That is the function of the State in society. It is the association to protect the interests of men as citizens, not in the detail of their productive effort, but in the large outline within which that productive effort is made. But we must differentiate sharply between State and government. To define the function of the State is not to define the powers of government; it is to define only the purpose it is the end of government to secure. Here we meet the problem of internal sovereignty in its sharpest form. If the nature of the State makes it akin to other associations, even if different and greater in the range it covers, to leave to its agents the final discretion in what action they may choose to take is as impossible as to leave to the legal profession the complete control over its destinies. The danger of leaving to the State a sovereign position among other associations lies in the fact that it must always act through agents and that those agents are drawn from a body of experience which is not necessarily coincident with the general interest of the community. They will even tend, as a rule, to identify their own experience of good with the common needs of mankind; for it is, as Rousseau said, the natural tendency of all governments to deteriorate. Power has the habit of corrupting even the noblest of those who exercise it; and it follows that to leave to the State the final control of all other wills in the community is, in fact, to leave to a small number of men an authority it is difficult not to abuse.

Any State must therefore be, internally, a responsible State. We may seek so to organise the various functions other than the

State that they may join with it in a coördinate body for the making of final decisions. This, broadly speaking, is the view that has been urged by guild socialist theory. Its difficulties, however, are insurmountable. It is possible to construct a representative body which will fairly contain the needs of any given class of producers; but the problem here is the very different one of weighting functions one against the other in order to secure a just numerical relationship. It seems very doubtful whether this can be done. Anyone who has followed, for example, the difficulties which attended the composition of the German Economic Council will be driven to the belief that the rough adjustment reached prevents it from functioning as anything more than an advisory body.

The value, in other words, of vocational organisation lies in the contribution it can make to the particular problems of the craft, not in the help it has to offer upon general social questions. Immediately these are in issue, the members of some particular vocation either approach them in the spirit of their craft, in which case no special validity attaches to their judgment, or they approach them from a larger standpoint, in which case they are no longer speaking as members of their craft. Vocational bodies, therefore, have value for the resolution of functional problems; but they are not, by their very nature, built to deal with the general issues which must be faced by society as a whole.

[*vi.*] The will of the State cannot be made legally coördinate with wills that in fact cover a lesser area than its own. Moral coördination may be achieved; legal coördination is impossible because the State, through its agents, defines the manner of vocational life. And however much we may reduce the direct administrative capacity of the political State, the fact remains that once it is charged with the provision of services of which men stand in common need, it has their interests in trust to a degree with which no other body can, at least in a temporal sense, compete.

Production and consumption cannot be placed upon an equal footing so long as the division of labour makes no man sufficient unto himself. Put in a broad way, the protection of the interests of the consumer as citizen are paramount. However far decentralisation may go in leaving producing functions to govern themselves, at some point their will becomes subject to the will of those who, in the leisure-period, are seeking to make of life an art and not the fulfilment of a special task.

III. The Organization of Industry into Institutions of Consultation

[*Ch. II, vi.*] The State serves its members by organising the avenues of consumption on their behalf. It effects that end in part by direct expenditure of the proceeds of taxation, in part by regulating the conditions under which commodities are produced. It is made responsible to its members in a variety of ways. Its government, is, firstly, subject to dismissal by its constituents. That dismissal may be secured by different methods. The period of office may be limited; and the legislature itself may, through the pressure of public opinion, compel the resignation of the executive by which it is itself directed. The limitation of the period of office means that at a fixed term all who are legally to direct the affairs of State are subject to the choice of an electorate which has now come, generally speaking, to include the adult population of most communities which live under the aegis of modern civilisation; and in States where orderly government is a general habit, that test can hardly be evaded save under penalty of revolution. Governments are therefore driven, within limits of real importance, to defer to popular desires if they wish to remain in power.

But, clearly enough, if I am to pass judgment I must be so instructed that my judgment may be adequate and articulate. The education of the citizen, in other words, is the heart of the modern State.

But even an educated electorate will not secure the essential conditions of responsibility. The individual in the modern State is, after all, a voice crying in the wilderness unless he acts with those whose interests are kindred to his own. The individual worker, for example, cannot, as a normal rule, bargain with the individual employer for reasonable terms; equality of bargaining power is the necessary prelude to freedom of contract. And equality of bargaining power can only be secured by means of association. The individual who seeks an economic master and yet strives to stand alone destroys the standard of satisfaction that his fellows can hope to secure. He acts as a reservoir from which power may be drawn to compete against some standard urged as a necessary minimum; and that is still more true in a system which, like that of private enterprise, compels the maintenance of a reserve of unemployed. The compulsory recognition of trade unionism is

essential if decent working conditions are to be maintained; and this, in its turn, means the disappearance of that unassociated worker who has been supposed, by an unamiable fiction, free to sell his labour in the dearest market. The worker who does not stand by his fellows is in fact destroying their access to proper standards of life.

On the other side, the anarchy of modern trades is fatal to any attempt properly to cope with their conditions. The variations in the sanitary quality of factories, of book-keeping, of estimation of cost, of methods of sale, of research into the technique of production, of engagement and promotion, of access by the workers to some share in the direction of the enterprise, are all of them fatal to the proper conduct of the industry. We have combinations to diminish the share the worker may hope to obtain from his part in production. We have combinations to wring the highest possible price from the consumer. We have not yet had a combination to build some given industry into what can be recognised as a public service. It seems clear that if the relations between the State and industry are to be upon an equitable footing, each trade must have its associations for organised and coherent consultation with the government. Anything less than a body to which, on either side, each worker and each employer must belong, leaves the opinion inadequately explored through the expression of which a government finds its policy. It leaves, also, influential men with access to the sources of power that is consistently liable to abuse.

We can imagine such an organisation of industry in modern society as gives to its working the character and responsibility of constitutional government. It will have standards, statutory and traditional, to maintain; it will have channels through which those standards may be enforced. It cannot be too emphatically insisted that the maintenance of those standards is, as to their ultimate definition, always a matter for the State. For whatever may be the vehicles of their administration, those standards are maintained to protect the interest of the consumer. They mean, of course, that no man, to use the current phrase, can be left to conduct his own business in his own way; the context of citizenship always determines the methods by which it is administered. And that context is defined by the State. The problem, therefore, is to find channels through which the relationship of the State to

industrial functions may make consistently explicit the civic interests of men.

[*vii.*] The first great need of the modern State is adequately to organise 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 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 effective access to the government by the interests involved. Their wills, that is to say, 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. If the minister acts upon their opinion, he is at least building upon a foundation of experience; if he rejects them, the creation of an opposition and, as a consequence, of the discussion that is the life-blood of democratic governance, is adequately assured.

A government which must summon advisory committees, which must place before those committees the policy it proposes to enforce, which listens to the criticism of men who are entitled to speak on behalf of organised associations, is in a very different position from a government which, as in the United States, remains in power for a fixed term, or, as in England, can threaten its supporters into acquiescence by the fear of a general election. It is not necessary to divide power in order to make it responsible; what is essential is to make coherent the organs of reference to which that power must defer.

For no government can have contact with bodies of men entitled to speak with authority and remain uninfluenced by their views. No member of a legislative assembly could learn that a government decision had awakened widespread expert dissent without feeling that an unconsidered vote was out of place. If informed public opinion is to surround the activities of the State, that opinion must be given channels through which it flows to the seat of power.

The territorial assembly built upon universal suffrage seems the best method of making final decisions in the conflict of wills within the community. That assembly, it should be noted, could not, at least in theory, act in an irresponsible fashion. It would, in the first place, be the creature of an electoral will; and the more fully that electorate was informed, the more fully the legislature would respond to its desires. It would, in the second, be subject to the need to consult the organised wills of the community before it acted upon them. Its executive would be responsible before the courts in exactly the same manner as any other citizens. If there is added to these controls decentralisation both of area and of function there is secured as much as may legally be secured, of limitation upon political power.

IV. The Rights and Duties of the Individual

[*Ch. II, viii.*] Underlying this argument is the assumption that no body which represents the community as a whole whether, as in guild socialism, it represents the producers or, as in a territorial assembly, it seeks to represent the consumers, will ever, by itself, adequately safeguard the right of the individual to realise himself. That can only be done by organising those who seek to secure some special interest into an association which is prepared, in the last instance, to resist the will of government. In any State where there is an absence of the critical spirit in the attitude of the citizens to their rulers, the preservation of rights is a difficult matter. An attitude of contingent attack involves, it may be, the possibility of disorder, but it makes government itself vigilant to the opinion about it; and men who prefer, in the internal life of a State, the path of perpetual peace to that of organised protest will, sooner or later, lose the habit of freedom.

That the State is, in some form or another, an inevitable organisation will be apparent to anyone who examines the human nature

that we encounter in daily life. But to admit that it is inevitable is not to admit that it is entitled to moral pre-eminence of any kind. For, after all, the State is not itself an end, but merely the means to an end, which is realised only in the enrichment of human lives. Its power and the allegiance it can win depend always upon what it achieves for that enrichment. We are, that is to say, subjects of the State, not for its purpose, but for our own.

[*Ch. III, i.*] It is clear, in such a view, that the citizen has claims upon the State. It must observe his rights. It must give him 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.

But the possession of rights, in the sense here used, does not mean the possession of claims that are empty of all duties. We have rights to protect and to express our personality. We have rights to safeguard our uniqueness in the vast pressure of social forces. But our rights are not independent of society. We have them because we are members of the State. We have them by reason of an organisation through which, in the world as it is, the contribution of that uniqueness can alone be made. Our rights are not independent of society, but inherent in it. We have them, that is to say, for its protection as well as for our own. To provide for me the conditions which enable me to be my best self is to oblige me, at the same time, to seek to be my best self. To protect me against attack from others is to imply that I myself will desist from attacking others. To give me the benefit of education is to imply that I will so use the advantages education confers as to add to the common stock. I do not exist solely for the State; but neither does the State exist solely for me. My claim comes from the fact that I share with others in the pursuit of a common end. My rights are powers conferred that I may, with others, strive for the attainment of that common end. My personality, so to speak, bounds and limits the law of the State. But that boundary and that limitation are imposed upon the condition that in seeking to be the best self of which I am capable I seek, in virtue of the common end I share with others, their well-being in my own.

I have, therefore, no right to do as I like. My rights are built always upon the relation my function has to the well-being of society; and the claims I make must, clearly enough, be claims that

are necessary to the proper performance of my function. My demands upon society, in this view, are demands which ought to receive recognition because a recognisable public interest is involved in their recognition.

I cannot have rights against the public welfare, for that, ultimately, is to give me rights against a welfare which is intimately and inseparably associated with my own. But that is not to say that I cannot have rights against the State. For the State, at any given moment, means a body of men and women in possession of actual power; and their judgment of the rights that ought to be recognised may be mistaken. The situation is, of course, reciprocal. The State has rights against me. It has the right to exact from me that conduct which secures to others the enjoyment of the rights it secures to myself. The mutual claims of the State and of its citizens must be claims clearly justifiable by reference to a common good which includes the goods of all.

In a sense, indeed, it does not matter whether that common good is recognised by an existing State. My duty is to act as though it ought to be recognised. My citizenship implies conduct on my part which attempts the enforcement of that recognition where it is denied. I may, of course, in such action encounter the hostile forces of the State. I may—I probably shall—provoke hopeless defeat, or a victory which is purchased only at a terrible price. I must yet make the choice, in and of myself, of the conduct that citizenship implies. To act otherwise is to subordinate truth to authority; and it is historically evident that this habit of subordination ultimately makes men indifferently accept the orders of authority without regard to their substance.

My duty, therefore, to the State, is, above all, my duty to the ideal the actual State must seek to serve. There are, then, circumstances in which resistance to the State becomes an obligation if claims to right are to be given validity. We can lay down no general rules, either of time or situation. Anyone who studies at all carefully the history of revolution will be convinced that the element of chance is too large to admit the entrance of prediction. We can only say that a general order becomes moral only in the degree to which it is built in the conscience of its citizens. Antagonism to the demands of authority will always be the exception in history; but those demands will win their way from inert acceptance rather than active consent unless, over a period of time, they

offer service to the theoretic purpose of the State. For any social order which fails consistently to recognise the claims of personality is built upon a foundation of sand. Sooner or later it will provoke the dissent of those whose nature is frustrated by its policy. Its disasters will become their opportunity. For to deny the claims of right is to sacrifice the claim to allegiance. The State can exercise moral authority upon no other basis.

CHAPTER XIV. THE DEFENSE OF THE DOCTRINE OF SOVEREIGNTY

I. THE DISTINCTION BETWEEN LEGAL AND POLITICAL SOVEREIGNTY

Introduction to the Study of the Law of the Constitution (1885)

Albert V. Dicey (1835–1922)

Despite its acceptance into nineteenth century orthodoxy, the Austinian theory of sovereignty has never been free from attack. The objective approach to law is a twentieth century development, but sovereignty was much earlier subjected to the test of political realities. Austin himself regarded the lawyers' concept of parliamentary sovereignty as too simple to accord with the facts, and later political developments served to intensify the difficulty. The great Reform Bills undoubtedly shifted the political center of gravity in England; also it became customary for a defeated ministry to appeal from Parliament to the country.

The doctrine of parliamentary sovereignty might easily have been doomed. That it has survived must be largely attributed to the skill of such scholars as Albert V. Dicey, James Bryce, and W. Jethro Brown. Austinianism has been not only defended; it has been purged and clarified in the process. In particular, it has been reconstructed in the light of the distinction between legal and political sovereignty formulated by Dicey in his *Introduction to the Study of the Law of the Constitution* (1885).

Dicey was one of the most original and distinguished jurists of the nineteenth century. He took first class honors at Balliol, read for the Bar in London, served as "devil" to Coleridge (later Chief Justice), and became junior counsel to the Inland Revenue. His tastes inclined to the academic side of his profession, and when the Vinerian chair of English law at Oxford fell vacant, he became a candidate and was elected in 1882. He was one of the Oxford lawyers who established the *Law Quarterly Review* in 1884, and it was due largely to his efforts that the Oxford school of law grew from a small body to one of the most flourishing schools in the University. Dicey's contributions to legal literature were numerous and important. In addition to *The Law of the Constitution*, his principal works were *The Conflict of Laws* (1896) and *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (1905).

The readings here given are based on the eighth edition of *Introduction to the Study of the Law of the Constitution* (Macmillan, New York, 1915), and are reprinted by permission of The Macmillan Company and Macmillan and Company, Ltd. All the footnotes are Dicey's own, but the position of one of them has been slightly shifted by the present editor.

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INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION

I. The Nature of Parliamentary Sovereignty

[*Ch. I, A.*] Parliament means, in the mouth of a lawyer (though the word has often a different sense in ordinary conversation), the King, the House of Lords, and the House of Commons; these three bodies acting together may be aptly described as the "King in Parliament," and constitute Parliament.

The principle of Parliamentary sovereignty means neither more nor less than this, namely, that Parliament thus defined has, under the English constitution, the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament.

A law may, for our present purpose, be defined as "any rule which will be enforced by the Courts." The principle then of Parliamentary sovereignty may, looked at from its positive side, be thus described: Any Act of Parliament, or any part of an Act of Parliament, which makes a new law, or repeals or modifies an existing law, will be obeyed by the Courts. The same principle, looked at from its negative side, may be thus stated: There is no person or body of persons who can, under the English constitution, make rules which override or derogate from an Act of Parliament, or which (to express the same thing in other words) will be enforced by the Courts in contravention of an Act of Parliament.

The Acts of Union (to one of which Blackstone calls attention) afford a remarkable example of the exertion of Parliamentary authority. But there is no single statute which is more significant either as to the theory or as to the practical working of the con-

stitution than the Septennial Act. The circumstances of its enactment and the nature of the Act itself merit therefore special attention.

In 1716 the duration of Parliament was under an Act of 1694 limited to three years, and a general election could not be deferred beyond 1717. The King and the Ministry were convinced (and with reason) that an appeal to the electors, many of whom were Jacobites, might be perilous not only to the Ministry but to the tranquillity of the state. The Parliament then sitting, therefore, was induced by the Ministry to pass the Septennial Act by which the legal duration of Parliament was extended from three to seven years, and the powers of the then existing House of Commons were in effect prolonged for four years beyond the time for which the House was elected. The statute was justified by considerations of statesmanship and expediency. This justification of the Septennial Act must seem to every sensible man so ample that it is with some surprise that one reads in writers so fair and judicious as Hallam or Lord Stanhope attempts to minimise the importance of this supreme display of legislative authority. "Nothing," writes Hallam, "can be more extravagant than what is sometimes confidently pretended by the ignorant, that the legislature exceeded its rights by this enactment; or, if that cannot legally be advanced, that it at least violated the trust of the people, and broke in upon the ancient constitution;" and this remark he bases on the ground that "the law for triennial Parliaments was of little more than twenty years' continuance. It was an experiment, which, as was argued, had proved unsuccessful; it was subject, like every other law, to be repealed entirely, or to be modified at discretion." [1]

"We may," says Lord Stanhope, ". . . cast aside the foolish idea that the Parliament overstepped its legitimate authority in prolonging its existence; an idea which was indeed urged by party-spirit at the time, and which may still sometimes pass current in harangues to heated multitudes, but which has been treated with utter contempt by the best constitutional writers." [2]

These remarks miss the real point of the attack on the Septennial Act, and also conceal the constitutional importance of the statute. The thirty-one peers who protested against the Bill be-

[1] Hallam, *Constitutional History of England*, iii. (1872 ed.), p. 236.
[2] Lord Mahon, *History of England*, i. p. 302.

cause (among other grounds) "it is agreed, that the House of Commons must be chosen by the people, and when so chosen, they are truly the representatives of the people, which they cannot be so properly said to be, when continued for a longer time than that for which they were chosen; for after that time they are chosen by the Parliament, and not the people, who are thereby deprived of the only remedy which they have against those, who either do not understand, or through corruption, do wilfully betray the trust reposed in them; which remedy is, to choose better men in their places," [3] hit exactly the theoretical objection to it. The peculiarity of the Act was not that it changed the legal duration of Parliament or repealed the Triennial Act. What was startling was that an existing Parliament of its own authority prolonged its own legal existence. Nor can the argument used by Priestley,[4] and in effect by the protesting Peers, "that Septennial Parliaments were at first a direct usurpation of the rights of the people; for by the same authority that one Parliament prolonged their own power to seven years, they might have continued it to twice seven, or like the Parliament of 1641 have made it perpetual," be treated as a blunder grounded simply on the "ignorant assumption" that the Septennial Act prolonged the original duration of Parliament.[5] The contention of Priestley and others was in substance that members elected to serve for three years were constitutionally so far at least the delegates or agents of their constituents that they could not, without an inroad on the constitution, extend their own authority beyond the period for which it was conferred upon them by their principals, *i.e.* the electors. There are countries, and notably the United States, where an Act like the Septennial Act would be held legally invalid; no modern English Parliament would for the sake of keeping a government or party in office venture to pass say a Decennial Act and thus prolong its own duration; the contention therefore that Walpole and his followers in passing the Septennial Act violated the understandings of the constitution has on the face of it nothing absurd. Parliament made a legal though unprecedented use of its powers. To underrate this exertion of authority is to deprive the Septennial Act of its true constitutional importance. That Act proves to

[3] Thorold Rogers, *Protests of the Lords*, i. p. 218.
[4] See *Priestley on Government* (1771), p. 20.
[5] Hallam, *Constitutional History*, iii. (1872 ed.), p. 236 (n.).

demonstration that in a legal point of view Parliament is neither the agent of the electors nor in any sense a trustee for its constituents. It is legally the sovereign legislative power in the state, and the Septennial Act is at once the result and the standing proof of such Parliamentary sovereignty.

[*B.*] All that can be urged as to the speculative difficulties of placing any limits whatever on sovereignty has been admirably stated by Austin and by Professor Holland. With these difficulties we have, at this moment, no concern. Nor is it necessary to examine whether it be or be not true, that there must necessarily be found in every state some person, or combination of persons, which, according to the constitution, whatever be its form, can legally change every law, and therefore constitutes the legally supreme power in the state. Our whole business is now to carry a step further the proof that, under the English constitution, Parliament does constitute such a supreme legislative authority or sovereign power as, according to Austin and other jurists, must exist in every civilised state, and for that purpose to examine into the validity of the various suggestions, which have from time to time been made, as to the possible limitations on Parliamentary authority, and to show that none of them are countenanced by English law.

The suggested limitations are three in number.

First, Acts of Parliament, it has been asserted, are invalid if they are opposed to the principles of morality or to the doctrines of international law. Parliament, it is in effect asserted, cannot make a law opposed to the dictates of private or public morality. Thus Blackstone lays down in so many words that the "law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times: no human laws are of any validity if contrary to this; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original";[6] and expressions are sometimes used by modern judges which imply that the Courts might refuse to enforce statutes going beyond the proper limits (internationally speaking) of Parliamentary authority. But to words such as those of Blackstone, and to the *obiter dicta* of the Bench, we must give a very qualified interpretation. There is no legal basis for the theory

[6] Blackstone, *Commentaries*, i. p. 40.

that judges, as exponents of morality, may overrule Acts of Parliament. Language which might seem to imply this amounts in reality to nothing more than the assertion that the judges, when attempting to ascertain what is the meaning to be affixed to an Act of Parliament, will presume that Parliament did not intend to violate the ordinary rules of morality, or the principles of international law, and will therefore, whenever possible, give such an interpretation to a statutory enactment as may be consistent with the doctrines both of private and of international morality.

Secondly, Doctrines have at times been maintained which went very near to denying the right of Parliament to touch the Prerogative.

We need not, however, now enter into the political controversies of another age.

Thirdly, Language has occasionally been used in Acts of Parliament which implies that one Parliament can make laws which cannot be touched by any subsequent Parliament, and that therefore the legislative authority of an existing Parliament may be limited by the enactments of its predecessors.

That Parliaments have more than once intended and endeavoured to pass Acts which should tie the hands of their successors is certain, but the endeavour has always ended in failure. Of statutes intended to arrest the possible course of future legislation, the most noteworthy are the Acts which embody the treaties of Union with Scotland and Ireland. The legislators who passed these Acts assuredly intended to give to certain portions of them more than the ordinary effect of statutes. Yet the history of legislation in respect of these very Acts affords the strongest proof of the futility inherent in every attempt of one sovereign legislature to restrain the action of another equally sovereign body. Thus the Act of Union with Scotland enacts in effect that every professor of a Scotch University shall acknowledge and profess and subscribe the Confession of Faith as his profession of faith, and in substance enacts that this provision shall be a fundamental and essential condition of the treaty of union in all time coming. But this very provision has been in its main part repealed by the Universities (Scotland) Act, 1853, which relieves most professors in the Scotch universities from the necessity of subscribing the Confession of Faith. Nor is this by any means the only inroad made upon the terms of the Act of Union; from one point of view at any rate the

Act 10 Anne, c. 12, restoring the exercise of lay patronage, was a direct infringement upon the Treaty of Union. The intended unchangeableness, and the real liability of these Acts or treaties to be changed by Parliament, comes out even more strikingly in the history of the Act of Union with Ireland. The fifth Article of that Act runs as follows:—"That it be the fifth article of Union, that the Churches of England and Ireland as now by law established, be united into one Protestant episcopal Church, to be called the United Church of England and Ireland; and that the doctrine, worship, discipline, and government of the said United Church shall be and shall remain in full force for ever, as the same are now by law established for the Church of England; and that the continuance and preservation of the said United Church, as the established Church of England and Ireland, shall be deemed and be taken to be an essential and fundamental part of the Union."

That the statesmen who drew and passed this Article meant to bind the action of future Parliaments is apparent from its language. That the attempt has failed of success is apparent to every one who knows the contents of the Irish Church Act, 1869.[7]

[7] Let the reader, however, note that the impossibility of placing a limit on the exercise of sovereignty does not in any way prohibit either logically, or in matter of fact, the abdication of sovereignty. This is worth observation, because a strange dogma is sometimes put forward that a sovereign power, such as the Parliament of the United Kingdom, can never by its own act divest itself of sovereignty. This position is, however, clearly untenable. An autocrat, such as the Russian Czar, can undoubtedly abdicate; but sovereignty or the possession of supreme power in a state, whether it be in the hands of a Czar or of a Parliament, is always one and the same quality. If the Czar can abdicate, so can a Parliament. To argue or imply that because sovereignty is not limitable (which is true) it cannot be surrendered (which is palpably untrue) involves the confusion of two distinct ideas. It is like arguing that because no man can, while he lives, give up, do what he will, his freedom of volition, so no man can commit suicide. A sovereign power can divest itself of authority in two ways, and (it is submitted) in two ways only. It may simply put an end to its own existence. Parliament could extinguish itself by legally dissolving itself and leaving no means whereby a subsequent Parliament could be legally summoned. A step nearly approaching to this was taken by the Barebones Parliament when, in 1653, it resigned its power into the hands of Cromwell. A sovereign again may transfer sovereign authority to another person or body of persons. The Parliament of England went very near doing this when, in 1539, the Crown was empowered to legislate by proclamation; and though the fact is often overlooked, the Parliaments both of England and of Scotland did, at the time of the Union, each transfer sovereign power to a new sovereign body, namely, the Parliament of Great Britain. This Parliament, however, just because it acquired the full authority of the two legislatures by which it was constituted, became in its turn a legally supreme or sovereign legislature, authorised therefore, though contrary perhaps to the intention of its creators, to modify or abrogate the Act of Union by which it was constituted. If indeed the Act of Union had left alive the Parliaments of England and of Scotland, though for one purpose only, namely, to modify when necessary the Act of Union, and had conferred upon the Parliament of Great Britain authority to pass any law whatever which did not infringe upon or repeal

II. Actual Limitations on Sovereign Power

[*Ch. I, C.*] The reasons why many persons find it hard to accept the doctrine of Parliamentary sovereignty are twofold.

The dogma sounds like a mere application to the British constitution of Austin's theory of sovereignty, and yet intelligent students of Austin must have noticed that Austin's own conclusion as to the persons invested with sovereign power under the British constitution does not agree with the view put forward, on the authority of English lawyers, in these lectures. For while lawyers maintain that sovereignty resides in "Parliament," *i.e.* in the body constituted by the King, the House of Lords, and the House of Commons, Austin holds that the sovereign power is vested in the King, the House of Lords, and the Commons or the electors.

Every one, again, knows as a matter of common sense that, whatever lawyers may say, the sovereign power of Parliament is not unlimited, and that King, Lords, and Commons united do not possess anything like that "restricted omnipotence"—if the term may be used—which is the utmost authority ascribable to any human institution. There are many enactments, and these laws not in themselves obviously unwise or tyrannical, which Parliament never would and (to speak plainly) never could pass. If the doctrine of Parliamentary sovereignty involves the attribution of unrestricted power to Parliament, the dogma is no better than a legal fiction, and certainly is not worth the stress here laid upon it.

Both these difficulties are real and reasonable difficulties. They are, it will be found, to a certain extent connected together, and will repay careful consideration.

As to Austin's theory of sovereignty in relation to the British constitution.—Sovereignty, like many of Austin's conceptions, is a generalisation drawn in the main from English law. In England we are accustomed to the existence of a supreme legislative body, *i.e.* a body which can make or unmake every law; and which,

the Act of Union, then the Act of Union would have been a fundamental law unchangeable legally by the British Parliament: but in this case the Parliament of Great Britain would have been, not a sovereign, but a subordinate legislature, and the ultimate sovereign body, in the technical sense of that term, would have been the two Parliaments of England and of Scotland respectively. The statesmen of these two countries saw fit to constitute a new sovereign Parliament, and every attempt to tie the hands of such a body necessarily breaks down, on the logical and practical impossibility of combining absolute legislative authority with restrictions on that authority which, if valid, would make it cease to be absolute.

therefore, cannot be bound by any law. This is, from a legal point of view, the true conception of a sovereign, and the ease with which the theory of absolute sovereignty has been accepted by English jurists is due to the peculiar history of English constitutional law.

It should, however, be carefully noted that the term "sovereignty," as long as it is accurately employed in the sense in which Austin sometimes uses it, is a merely legal conception, and means simply the power of law-making unrestricted by any legal limit. If the term "sovereignty" be thus used, the sovereign power under the English constitution is clearly "Parliament." But the word "sovereignty" is sometimes employed in a political rather than in a strictly legal sense. That body is "politically" sovereign or supreme in a state the will of which is ultimately obeyed by the citizens of the state. In this sense of the word the electors of Great Britain may be said to be, together with the Crown and the Lords, or perhaps, in strict accuracy, independently of the King and the Peers, the body in which sovereign power is vested. For, as things now stand, the will of the electorate, and certainly of the electorate in combination with the Lords and the Crown, is sure ultimately to prevail on all subjects to be determined by the British government. The matter indeed may be carried a little further, and we may assert that the arrangements of the constitution are now such as to ensure that the will of the electors shall by regular and constitutional means always in the end assert itself as the predominant influence in the country. But this is a political, not a legal fact. The electors can in the long run always enforce their will. But the Courts will take no notice of the will of the electors. The judges know nothing about any will of the people except in so far as that will is expressed by an Act of Parliament, and would never suffer the validity of a statute to be questioned on the ground of its having been passed or being kept alive in opposition to the wishes of the electors. The political sense of the word "sovereignty" is, it is true, fully as important as the legal sense or more so. But the two significations, though intimately connected together, are essentially different, and in some part of his work Austin has apparently confused the one sense with the other.

It may be conjectured that the error of which (from a lawyer's point of view) Austin has been guilty arises from his feeling, as

every person must feel who is not the slave to mere words, that Parliament is (as already pointed out) nothing like an omnipotent body, but that its powers are practically limited in more ways than one. And this limitation Austin expresses, not very happily, by saying that the members of the House of Commons are subject to a trust imposed upon them by the electors. This, however, leads us to our second difficulty, namely, the coexistence of parliamentary sovereignty with the fact of actual limitations on the power of Parliament.

As to the actual limitations on the sovereign power of Parliament.—The actual exercise of authority by any sovereign whatever, and notably by Parliament, is bounded or controlled by two limitations. Of these the one is an external, the other is an internal limitation.

The external limit to the real power of a sovereign consists in the possibility or certainty that his subjects, or a large number of them, will disobey or resist his laws.

This limitation exists even under the most despotic monarchies. A Roman Emperor, or a French King during the middle of the eighteenth century, was (as is the Russian Czar at the present day) in strictness a "sovereign" in the legal sense of that term. He had absolute legislative authority. Any law made by him was binding, and there was no power in the empire or kingdom which could annul such law. But it would be an error to suppose that the most absolute ruler who ever existed could in reality make or change every law at his pleasure. That this must be so results from considerations which were long ago pointed out by Hume. Force, he teaches, is in one sense always on the side of the governed, and government therefore in a sense always depends upon opinion. "Nothing," he writes, "appears more surprising to those, who consider human affairs with a philosophical eye, than the easiness with which the many are governed by the few; and the implicit submission, with which men resign their own sentiments and passions to those of their rulers. When we inquire by what means this wonder is effected, we shall find, that, as force is always on the side of the governed, the governors have nothing to support them but opinion. It is, therefore, on opinion only that government is founded; and this maxim extends to the most despotic and most military governments, as well as to the most free and most popular. The Soldan of Egypt, or the Emperor of Rome, might

drive his harmless subjects, like brute beasts, against their sentiments and inclination: But he must, at least, have led his *mamalukes* or *praetorian bands*, like men, by their opinion." [8]

The authority, that is to say, even of a despot, depends upon the readiness of his subjects or of some portion of his subjects to obey his behests; and this readiness to obey must always be in reality limited. This is shown by the most notorious facts of history. The Sultan could not abolish Mahommedanism. Louis the Fourteenth at the height of his power could revoke the Edict of Nantes, but he would have found it impossible to establish the supremacy of Protestantism, and for the same reason which prevented James the Second from establishing the supremacy of Roman Catholicism. The one king was in the strict sense despotic; the other was as powerful as any English monarch. But the might of each was limited by the certainty of popular disobedience or opposition. The unwillingness of subjects to obey may have reference not only to great changes, but even to small matters. The French National Assembly of 1871 was emphatically the sovereign power in France. The majority of its members were (it is said) prepared for a monarchical restoration, but they were not prepared to restore the white flag: the army which would have acquiesced in the return of the Bourbons, would not (it was anticipated) tolerate the sight of an anti-revolutionary symbol: "the *chassepots* would go off of themselves." Here we see the precise limit to the exercise of legal sovereignty; and what is true of the power of a despot or of the authority of a constituent assembly is specially true of the sovereignty of Parliament; it is limited on every side by the possibility of popular resistance. Parliament might legally establish an Episcopal Church in Scotland; Parliament might legally tax the Colonies; Parliament might without any breach of law change the succession to the throne or abolish the monarchy; but every one knows that in the present state of the world the British Parliament will do none of these things. In each case widespread resistance would result from legislation which, though legally valid, is in fact beyond the stretch of Parliamentary power. Nay, more than this, there are things which Parliament has done in other times, and done successfully, which a modern Parliament would not venture to repeat. Parliament would not at the present day prolong by law the duration of an existing House of Commons.

[8] Hume, *Essays*, i. (1875 ed.), pp. 109, 110.

Parliament would not without great hesitation deprive of their votes large classes of Parliamentary electors; and, speaking generally, Parliament would not embark on a course of reactionary legislation; persons who honestly blame Catholic Emancipation and lament the disestablishment of the Irish Church do not dream that Parliament could repeal the statutes of 1829 or of 1869. These examples from among a score are enough to show the extent to which the theoretically boundless sovereignty of Parliament is curtailed by the external limit to its exercise.

The internal limit to the exercise of sovereignty arises from the nature of the sovereign power itself. Even a despot exercises his powers in accordance with his character, which is itself moulded by the circumstances under which he lives, including under that head the moral feelings of the time and the society to which he belongs. The Sultan could not if he would change the religion of the Mahommedan world, but if he could do so it is in the very highest degree improbable that the head of Mahommedanism should wish to overthrow the religion of Mahomet; the internal check on the exercise of the Sultan's power is at least as strong as the external limitation. People sometimes ask the idle question why the Pope does not introduce this or that reform. The true answer is that a revolutionist is not the kind of man who becomes a Pope, and that the man who becomes a Pope has no wish to be a revolutionist. Louis the Fourteenth could not in all probability have established Protestantism as the national religion of France; but to imagine Louis the Fourteenth as wishing to carry out a Protestant reformation is nothing short of imagining him to have been a being quite unlike the *Grand Monarque*. Here again the internal check works together with the external check, and the influence of the internal limitation is as great in the case of a Parliamentary sovereign as of any other; perhaps it is greater. Parliament could not prudently tax the Colonies; but it is hardly conceivable that a modern Parliament, with the history of the eighteenth century before its eyes, should wish to tax the Colonies. The combined influence both of the external and of the internal limitation on legislative sovereignty is admirably stated in Leslie Stephen's *Science of Ethics*, whose chapter on "Law and Custom" contains one of the best statements to be met with of the limits placed by the nature of things on the theoretical omnipotence of sovereign legislatures.

> Lawyers are apt to speak as though the legislature were omnipotent, as they do not require to go beyond its decisions. It is, of 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. 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 the 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.[9]

Though sovereign power is bounded by an external and an internal limit, neither boundary is very definitely marked, nor need the two precisely coincide. A sovereign may wish to do many things which he either cannot do at all or can do only at great risk of serious resistance, and it is on many accounts worth observation that the exact point at which the external limitation begins to operate, that is, the point at which subjects will offer serious or insuperable resistance to the commands of a ruler whom they generally obey, is never fixed with precision. It would be rash of the Imperial Parliament to abolish the Scotch law Courts, and assimilate the law of Scotland to that of England. But no one can feel sure at what point Scotch resistance to such a change would become serious. Before the War of Secession the sovereign power of the United States could not have abolished slavery without provoking a civil war; after the War of Secession the sovereign power abolished slavery and conferred the electoral franchise upon the Blacks without exciting actual resistance.

In reference to the relation between the external and the internal limit to sovereignty, representative government presents a noteworthy peculiarity. It is this. The aim and effect of such government is to produce a coincidence, or at any rate to diminish the divergence, between the external and the internal limitations on the exercise of sovereign power. Frederick the Great may have wished to introduce, and may in fact have introduced, changes or reforms opposed to the wishes of his subjects. Louis Napoleon certainly began a policy of free trade which would not be tolerated by an assembly which truly represented French opinion. In these

[9] Leslie Stephens, *Science of Ethics*, p. 143.

instances neither monarch reached the external limit to his sovereign power, but it might very well have happened that he might have reached it, and have thereby provoked serious resistance on the part of his subjects. There might, in short, have arisen a divergence between the internal and the external check. The existence of such a divergence, or (in other words) of a difference between the permanent wishes of the sovereign, or rather of the King who then constituted a predominant part of the sovereign power, and the permanent wishes of the nation, is traceable in England throughout the whole period beginning with the accession of James the First and ending with the Revolution of 1688. The remedy for this divergence was found in a transference of power from the Crown to the Houses of Parliament; and in placing on the throne rulers who from their position were induced to make their wishes coincide with the will of the nation expressed through the House of Commons; the difference between the will of the sovereign and the will of the nation was terminated by the foundation of a system of real representative government. Where a Parliament truly represents the people, the divergence between the external and the internal limit to the exercise of sovereign power can hardly arise, or if it arises, must soon disappear. Speaking roughly, the permanent wishes of the representative portion of Parliament can hardly in the long run differ from the wishes of the English people, or at any rate of the electors; that which the majority of the House of Commons command, the majority of the English people usually desire. To prevent the divergence between the wishes of the sovereign and the wishes of subjects is in short the effect, and the only certain effect, of bonâ fide representative government. For our present purpose there is no need to determine whether this result be good or bad. An enlightened sovereign has more than once carried out reforms in advance of the wishes of his subjects. This is true both of sovereign kings and, though more rarely, of sovereign Parliaments. But the sovereign who has done this, whether King or Parliament, does not in reality represent his subjects. All that it is here necessary to insist upon is that the essential property of representative government is to produce coincidence between the wishes of the sovereign and the wishes of the subjects; to make, in short, the two limitations on the exercise of sovereignty absolutely coincident.

III. The Nature of the Conventions of the Constitution

[*Ch. XIV.*] Parliament is, from a merely legal point of view, the absolute sovereign of the British Empire, since every Act of Parliament is binding on every Court throughout the British dominions, and no rule, whether of morality or of law, which contravenes an Act of Parliament, binds any Court throughout the realm. But if Parliament be in the eye of the law a supreme legislature, the essence of representative government is, that the legislature should represent or give effect to the will of the political sovereign, *i.e.* of the electoral body, or of the nation. That the conduct of the different parts of the legislature should be determined by rules meant to secure harmony between the action of the legislative sovereign and the wishes of the political sovereign, must appear probable from general considerations. If the true ruler or political sovereign of England were, as was once the case, the King, legislation might be carried out in accordance with the King's will by one of two methods. The Crown might itself legislate, by royal proclamations, or decrees; or some other body, such as a Council of State or Parliament itself, might be allowed to legislate as long as this body conformed to the will of the Crown. If the first plan were adopted, there would be no room or need for constitutional conventions. If the second plan were adopted, the proceedings of the legislative body must inevitably be governed by some rules meant to make certain that the Acts of the legislature should not contravene the will of the Crown. The electorate is in fact the sovereign of England. It is a body which does not, and from its nature hardly can, itself legislate, and which, owing chiefly to historical causes, has left in existence a theoretically supreme legislature. The result of this state of things would naturally be that the conduct of the legislature, which (*ex hypothesi*) cannot be governed by laws, should be regulated by understandings of which the object is to secure the conformity of Parliament to the will of the nation. And this is what has actually occurred. The conventions of the constitution now consist of customs which (whatever their historical origin) are at the present day maintained for the sake of ensuring the supremacy of the House of Commons, and ultimately, through the elective House of Commons, of the nation. Our modern code of constitutional morality

secures, though in a roundabout way, what is called abroad the "sovereignty of the people."

That this is so becomes apparent if we examine into the effect of one or two among the leading articles of this code. The rule that the powers of the Crown must be exercised through Ministers who are members of one or other House of Parliament and who "command the confidence of the House of Commons," really means, that the elective portion of the legislature in effect, though by an indirect process, appoints the executive government; and, further, that the Crown, or the Ministry, must ultimately carry out, or at any rate not contravene, the wishes of the House of Commons. But as the process of representation is nothing else than a mode by which the will of the representative body or House of Commons is made to coincide with the will of the nation, it follows that a rule which gives the appointment and control of the government mainly to the House of Commons is at bottom a rule which gives the election and ultimate control of the executive to the nation. The same thing holds good of the understanding, or habit, in accordance with which the House of Lords are expected in every serious political controversy to give way at some point or other to the will of the House of Commons as expressing the deliberate resolve of the nation, or of that further custom which, though of comparatively recent growth, forms an essential article of modern constitutional ethics, by which, in case the Peers should finally refuse to acquiesce in the decision of the Lower House, the Crown is expected to nullify the resistance of the Lords by the creation of new Peerages. How, it may be said, is the "point" to be fixed at which, in case of a conflict between the two Houses, the Lords must give way, or the Crown ought to use its prerogative in the creation of new Peers? The question is worth raising, because the answer throws great light upon the nature and aim of the articles which make up our conventional code. This reply is, that the point at which the Lords must yield or the Crown intervene is properly determined by anything which conclusively shows that the House of Commons represents on the matter in dispute the deliberate decision of the nation. The truth of this reply will hardly be questioned, but to admit that the deliberate decision of the electorate is decisive, is in fact to concede that the understandings as to the action of the House of Lords and of the Crown are, what we have found them to be, rules meant to ensure the

ultimate supremacy of the true political sovereign, or, in other words, of the electoral body.

By far the most striking example of the real sense attaching to a whole mass of constitutional conventions is found in a particular instance, which appears at first sight to present a marked exception to the general principles of constitutional morality. A Ministry placed in a minority by a vote of the Commons have, in accordance with received doctrines, a right to demand a dissolution of Parliament. On the other hand, there are certainly combinations of circumstances under which the Crown has a right to dismiss a Ministry who command a Parliamentary majority, and to dissolve the Parliament by which the Ministry are supported. The prerogative, in short, of dissolution may constitutionally be so employed as to override the will of the representative body or, as it is popularly called, "The People's House of Parliament." This looks at first sight like saying that in certain cases the prerogative can be so used as to set at nought the will of the nation. But in reality it is far otherwise. The discretionary power of the Crown occasionally may be, and according to constitutional precedents sometimes ought to be, used to strip the existing House of Commons of its authority. But the reason why the House can in accordance with the constitution be deprived of power and of existence is that an occasion has arisen on which there is fair reason to suppose that the opinion of the House is not the opinion of the electors. A dissolution is in its essence an appeal from the legal to the political sovereign. A dissolution is allowable, or necessary, whenever the wishes of the legislature are, or may fairly be presumed to be, different from the wishes of the nation.

The necessity for dissolutions stands in close connection with the existence of Parliamentary sovereignty. Where, as in the United States, no legislative assembly is a sovereign power, the right of dissolution may be dispensed with; the constitution provides security that no change of vital importance can be effected without an appeal to the people; and the change in the character of a legislative body by the re-election of the whole or of part thereof at stated periods makes it certain that in the long run the sentiment of the legislature will harmonise with the feeling of the public. Where Parliament is supreme, some further security for such harmony is necessary, and this security is given by the right of dissolution, which enables the Crown or the Ministry to appeal

from the legislature to the nation. The security indeed is not absolutely complete. Crown, Cabinet, and Parliament may conceivably favour constitutional innovations which do not approve themselves to the electors. The Septennial Act could hardly have been passed in England, the Act of Union with Ireland would not, it is often asserted, have been passed by the Irish Parliament, if, in either instance, a legal revolution had been necessarily preceded by an appeal to the electorate. Here, as elsewhere, the constitutionalism of America proves of a more rigid type than the constitutionalism of England. Still, under the conditions of modern political life, the understandings which exist with us as to the right of dissolution afford nearly, if not quite, as much security for sympathy between the action of the legislature and the will of the people, as do the limitations placed on legislative power by the constitutions of American States. In this instance, as in others, the principles explicitly stated in the various constitutions of the States, and in the Federal Constitution itself, are impliedly involved in the working of English political institutions. The right of dissolution is the right of appeal to the people, and thus underlies all those constitutional conventions which, in one way or another, are intended to produce harmony between the legal and the political sovereign power.

II. THE REPLY TO TWENTIETH CENTURY CRITICS

A Working Theory of Sovereignty (1927)

John Dickinson (1894–)

Despite Dicey's masterly buttressing of the Austinian theory, the twentieth century, as we have already seen, has redoubled the attack upon sovereignty. Present-day critics care little about the problem of political sovereignty. They direct their shafts at the fundamental concept of the preëminence of the state, call economics, sociology, and psychology to their assistance, and press on toward the objectivity of law, pluralism, or guild socialism. But there are believers in sovereignty as a logical necessity who are ready and able to show that economic, sociological, and psychological considerations are beside the mark.

Among the most convincing champions of sovereignty is the young American scholar, John Dickinson. Little can be added to his presentation of his case in two articles entitled *A Working Theory of Sovereignty* and published in the *Political Science Quarterly* in 1927–28. Unembarrassed by the absence of anything in the United States resembling the supremacy of Parliament, Dickinson finds his clue to sovereignty in the very com-

plexity of the American constitutional system. In this respect his work is characteristic of an interesting new trend in American political thought. The American Constitution is no longer a bar to independent thinking along legal and governmental lines. On the contrary, problems encountered in the critical study of the Constitution have stimulated a number of brilliant contributions to theory, especially in the field of jurisprudence.

Dickinson was born in Maryland and received his bachelor's degree from Johns Hopkins, his doctor's degree from Princeton, and his law degree from Harvard. He tutored at Harvard while studying law and returned to teaching after a few years of legal practice in association with William G. McAdoo. In 1929 he became professor of law at the University of Pennsylvania. In 1925 he was an economist on the New York Governor's Advisory Commission on the cloak and suit industry, and in 1933 he was appointed to the position of Assistant Secretary of Commerce. Dickinson's chief work is his *Administrative Justice and the Supremacy of Law* (1927), and he has contributed numerous articles to various periodicals. Besides *A Working Theory of Sovereignty*, the most significant of these articles are probably *The Law Behind Law* (1929), *Social Order and Political Authority* (1929), and *Democratic Realities and Democratic Dogma* (1930).

The readings here given are based on the text of the first part of *A Working Theory of Sovereignty*, published in the December 1927 number of the *Political Science Quarterly* of the Academy of Political Science, New York (*Political Science Quarterly*, XLII, 524–548). The readings are reprinted by permission of the Academy of Political Science.

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A WORKING THEORY OF SOVEREIGNTY

I. The Evolution of the Concept of Sovereignty

[*1.*] Sovereignty, like most high-tension political concepts—like "liberty" and "property," for example—has owed much of its potency to the fact that it has lumped together for common effectiveness a number of relatively independent ideas, thereby enlisting for each a considerable measure of support which is meant primarily for one of the others. The natural penalty for this advantage has been that since the concept has come under

attack in recent years, it has drawn the fire of every group which has found reason to be dissatisfied with any of its diverse ingredients. If the energy expended in the controversy is to result in light and not merely heat, it is time to set about unraveling the different ideas which people may or may not have in their minds when they use the word sovereignty.

Sovereignty in the legal sense is after all nothing more nor less than a logical postulate or presupposition of any system of order according to law. A system of law purports to be a body of general rules which produce like decisions in like cases, and are capable of being known with some degree of accuracy in advance. But if there is to be this uniformity in the rules applied throughout a whole community, then there must be a single final source of law which all inferior tribunals and officials within that community are content to recognize as speaking with ultimate authority, and to whose pronouncements they will therefore voluntarily conform, so far as they know how, their own separate acts and decrees.

In the absence of such a center of ultimate legal reference, each tribunal can only be a law unto itself. This must lead inevitably to conflicting rules and conflicting decisions which, *ex hypothesi*, there is no authoritative higher power to resolve. Sooner or later these conflicting rules or decisions are bound to clash when they happen to impinge on the same *res* or the same parties. In such a conflict, each tribunal faces the alternative of either attempting to make its own decision prevail by force or by the threat of force, or else of abandoning the effort to enforce it. Neither horn of this dilemma is compatible with a régime of law and order; whichever is chosen in a particular case, the outcome of that case will be dictated by accident rather than by predictable rule. A reign of anarchy and not of law is thus the necessary consequence of the coexistence side by side of a number of competing authorities subject to no common superior with legal power to define their respective jurisdictions.

The *legal* doctrine of sovereignty can therefore be summed up as fundamentally nothing but a demand for the unified organization of authority within the community in order to provide the necessary basis for a system of legal order.

It was this *legal* form of the doctrine of sovereignty which earliest emerged, and which made sovereignty a fundamental concept in political thought. It was the answer of an advancing civilization

to the unbearable legal confusion of the Middle Ages. That confusion was due to the continued coexistence, everywhere in the European community, of several rival overlapping claimants for the right to declare and enforce the law with finality. Sometimes there may have been as many as five such claimants functioning at one time and place, but almost everywhere there were at least three—the feudal baron, the king and the church. Each had its own system of law which it was striving to make independent of, and if possible supreme over, the law of the others. From the middle of the twelfth century onward it was quite clear to lawyers that there could be no legal order in Europe until for a given area there was somewhere one and only one ultimate authoritative source of law and center of legal reference; and a sense of this need lay behind the papal claims of Innocent III precisely as it lay behind the imperialist polemic of Dante. But at the end of the story it was neither emperor nor pope nor the barons who won, it was the kings; and with the triumph of the kings came the word sovereignty to crystallize what had been achieved.

It should now be clear why "sovereignty," and all the problems which the word connotes for us, were so conspicuously absent from the political speculations of classical antiquity; it was the answer to medieval conditions and medieval difficulties. The classical world took the unified organization of political authority for granted. When the medieval overlapping of authorities smoothed itself out at the end of the fifteenth century into a pattern of territorial nation-states, the result may fairly be described as the emergence of sovereignty in the sense of a single definite organ or organization within each territorial community having final authority to define and pronounce the law therein, and having likewise final authority to adjust rivalries and allot jurisdictions among all minor law-enforcement agencies. This is certainly the core of Bodin's conception of sovereignty, and is the archetype and parent cell of all subsequent developments of the idea. I shall refer to it hereafter as the *juristic conception of sovereignty.*

The earliest extension of the juristic conception of sovereignty, and the one which shows the least essential departure from the parent idea, is the conception of *sovereignty in international law.* Within each community where there is sovereignty in the juristic sense, there is a self-contained system of positive municipal law. Within each of these juristic systems there is no room for the

independent operation of the other kind of law which we call international. Its function is to operate from the outside, upon and between these otherwise separate and complete systems. Now a system of positive municipal law is coextensive with the area of authority of a sovereign law-declaring organ, and therefore no subdivision of such an area can form a separate member of the family of nations under international law. This is what is basically meant by the doctrine that the legal persons of international law are sovereign states.

At this point must be noticed, however, the introduction into the concept of sovereignty of an element of far-reaching confusion through the formula often used to describe it. The sovereign, it is said, being the ultimate law-giving authority, must be an absolutely independent and supreme "power"; and then resort is had to the language of a crude psychology, and it is said that the sovereign must "possess a will" which is "not subject in any respect to the will of another." This is a very old form of expression. What it means in international law is obviously no more than that if the governing organ of one community recognizes a legal duty of obedience to the governing organ of another community, the law which connects those two communities is then properly positive municipal law, and, for international law purposes, both can constitute only a single unit, since both in reality form but one legal system. The possibility of much more far-reaching deductions lurks, however, in the words used. Starting from these, which assert that the sovereign organ, to be such, must be absolutely independent, and possess a will not subject in any respect to the will of another, suppose now that the ultimate law-declaring agency, or sovereign organ, of a community, is, like the lower house of the British Parliament, recruited by popular election, and can accordingly be held responsible at the polls to the body of the people—can an organ subject to any such responsibility be said to possess a will not subject to the will of another? If not, can it then be said to be a sovereign organ? Or must we not rather say that in such a case it is not the ultimate law-declaring organ, but its master "the people," that is truly sovereign?

Thus emerges the concept of so-called *popular sovereignty*, a concept no doubt in great measure induced by psychological imagery and language about "supreme power" and dependent and independent "wills." The argument that an ultimate law-

pronouncing organ is not sovereign if elected by the people, because therefore dependent upon their wills, goes back to Bodin.

It is undeniable that from the standpoint of a loose and unanalyzed conception of general "power" an organ which is removable by the people is not "ultimate," in the sense of "absolute," as it would be if it were irremovable. But does the absence of ultimate or absolute "power" in this loose and unanalyzed sense necessarily prevent such an organ from being the *ultimate law-declaring agency* in the community? Suppose that in a given instance such an elective legislative organ enacts a statute declaring the law to be X. The electorate disapproves, refuses to re-elect the members at the next election, and returns an entirely new membership. The legislative organ, functioning through this new membership, reflects the desire of the electorate, and repeals the offensive statute. It will be noted at once that the repeal takes place, and can only take place, *through the action of the legislative organ itself*, no matter how much it may have been in fact "caused" or "motivated" by the wishes and "power" of the "people." Until the legislative organ, in other words, passes the repealing act, the offensive statute remains law just as much as ever, irrespective of the wishes of the people; for the only lawful way in which the people can exert their power and give effect to their dislike of the statute is through the orderly action of the legislative organ. Under such circumstances, it seems clear that we must say that it is the action of the legislative organ and not of the people which makes or changes the law,—which draws the line between what is law and what is not. The people have a way, to be sure, of making their wishes important to the legislative organ; but whether or not that organ will attach importance to them, rests within its own choice; and if it does not choose, the will of the people remains unfulfilled in the law.

Much confusion has been created by using the word sovereignty to designate the practical leverage which the electorate, in the manner just described, has over any legislative organ. Yet in spite of the confusion, the use of the word in this sense is historically not difficult to explain. It is the product of the political struggles of the seventeenth and eighteenth centuries, precisely as the juristic conception of sovereignty was the product of the struggles of the fifteenth and sixteenth centuries. These earlier struggles had achieved juristic sovereignty only because they had made the

king politically absolute; and therefore no distinction was drawn by writers like Bodin between juristic sovereignty and royal absolutism. Sovereignty was identified with the extremely broad and loose concept of "supreme power"; and this was exactly what the "people" during the next two centuries thought that they were striving to take away from the king and vest in their own hands. Accordingly the conflict came to be described as a struggle for "popular sovereignty"; and when it was successful, and the responsibility of governments to the "people" had been established, "popular sovereignty" became the conventional word to express the result.

It was "sovereignty" in this sense which Bryce and Dicey sought to distinguish from juristic sovereignty by calling the one "practical" or "political," and the other "legal." Professor McIlwain performs a welcome service in insisting that the two ideas are quite distinct, and directed to altogether different problems.[1] Juristic sovereignty denotes only the existence of a definite organ for drawing the line between what is and what is not law. Political sovereignty has reference to the forces, or rather to some of the forces, which operate on the juristic sovereign to determine it where to draw this line. For after all, the political motive, i.e., the fear of not being re-elected, is but one of a number of factors which may and probably will influence the minds which compose the sovereign organ when they set about to define the law. It is conceivable that they may also be influenced by friendship, bribery, or a heroic desire to become political martyrs for a sacred cause. Surely no one would say that the presence of some or all of these motives, however decisive, would serve to deprive of sovereignty a body by whose act that which was not law became law, and that which was law ceased to be so.

II. The Organ of Authoritative Definition and Coördination

[*I, cont.*] It would be absurd to call a psychological motive sovereign; yet we should have to commit that or other equal absurdities, if we were to use the word sovereign to designate a first cause in a chain of factual causation, rather than the articulate mouthpiece of the rules which we call laws. The legal sovereign is the ultimate source of law, not in the sense of being an

[1] *Economica* (November, 1926), p. 256.

uncaused cause, or an unmotivated author, but in the sense that only that which passes through it has the force of law, and only after having passed through it and received its stamp of validity. This being understood, it becomes clear that the sovereign may be influenced, as it certainly will be, by political or moral or physical motives and forces of any or every kind without in the least degree losing its claim to be called sovereign. A judge may create a precedent because he has eaten too heavy a meal, or because he was once attorney for a railroad company, or because he is anxious to be re-elected, without its ceasing for any of these reasons to be a precedent; it is a precedent because it has emanated from a judge acting in his judicial capacity. The same thing is true of the act of a sovereign organ.

The importance of thus ear-marking the ultimate law-giving organ by attaching to it the word "sovereign" springs from the importance of keeping the idea of "law" distinct from the other kinds of rules and imperatives which have an influence upon human conduct and relations. The need for such a distinction arises from the fact that men recognize and obey in greater or less degree a large number of different kinds of rules of conduct emanating from different sources. Thus most men regard as imperative the social conventions which are in vogue among their class and generation, as for example dueling was in vogue among the gentlemen of Europe in the eighteenth century. Again, many men regard as imperative the rules of behavior prescribed by the religious organization to which they belong. Once more, men ordinarily accept as imperative the ethics of the business or industrial group of which they are members. There is no inherent reason why the term "law" should not be applied to any of these three sets of rules. It is clear, however, that if all three sets emanate, as they actually do, from wholly independent sources, there will inevitably be contradictions and conflicts between their precepts, as for example between the social convention and the religious precept on the subject of dueling. In case of such a conflict, both inconsistent rules cannot be called "law" without doing violence to the word and restoring the medieval régime of competing laws, for both cannot be equally obligatory, and no unified system comprising both can be worked out as a guide for future conduct. Either one set of rules must be accepted as of supreme validity in cases of conflict, in which event this particular set will alone

be entitled to the name of "law," or else there must be some fourth set, emanating from an independent and still higher source, which will override all three and resolve their contradictions. In actual fact such a higher source of precepts is at the present time the political organization, or "state," which comprehends all narrower and more specialized groups and centers of authority in the community, and which exists primarily for the purpose of reconciling their competing claims and interests for the common advantage. If the state, rather than the church, is recognized as the ultimate group in this sense, then it is the rules promulgated by the state organization which must take precedence over the conflicting rules of any other group, and which, being thus authoritative, are alone entitled to be called laws in the strict sense. If, on the other hand, the church is recognized as the ultimate group, then the rules prescribed by the secular authority must yield in case of conflict to the rules promulgated by the church organization, and these will be properly held to possess legally binding authority. The point is, that *juristically* it makes no difference what particular organization is recognized as having ultimate law-making authority, so long as one and only one such organization is recognized within the community, in order that all rules entitled to be called "laws" may form a harmonious and unified system. We can then tell whether or not a rule is "law" by discovering whether or not it emanates from this single supreme system of organization; and the term "sovereign" is useful to designate this authoritative source of law in distinction from the sources of non-legal rules. It would be a pity to waste the term upon the actual forces or motives which induce the sovereign, whoever he or it may be, to adopt one rule rather than another. The study of these forces is, to be sure, a most important and vital part of politics; but there is no reason to confuse it with the special problem to which the term sovereignty is conveniently adapted.

If, then, the term sovereign is appropriated for the use of the political or supreme coördinating organization within the community (in distinction from the other organizations which create the need or furnish an occasion for the exercise of its coördinating activities), a long step is taken toward defining one of the prerequisites of a régime of law and order. But a further problem of much difficulty is presented by the complex nature of the organization of most modern states. Laborious searches by jurists for

the "location of sovereignty" in such states have led to results so unrealistic and weird as to bring discredit on the whole theory of sovereignty. Therefore some writers have abandoned the attempt altogether, and have contented themselves with vesting sovereignty not in any particular governing organ or organs, but in an abstract entity called the state. There thus comes into existence what is known as the theory of *state sovereignty.*

The theory of *state sovereignty* seems to have been in part engendered by special political conditions existing in Germany in the nineteenth century, and to have also resulted in part from a logical extension of international law concepts. There is no harm in conceiving sovereignty as thus attached to the "state" provided we know what we are about when we do so. Properly understood, the statement is little more than a tautology.

In taking refuge in the abstract statement that sovereignty "belongs to" the state, we are not, however, relieved from the necessity of saying that it must be "exercised through" an organ or organs of government. The problem of the "location" of sovereignty therefore still remains; and meanwhile the theory of state sovereignty through its abstractness is subject to the very real danger of being made the premise of false deductions.

The danger in the formula that sovereignty belongs to the state arises from the temptation to adopt the loose definition of sovereignty as "supreme power" or "supreme will," and then to hypostasize the state into an independent entity endowed with this will and separate from the community, instead of regarding it as only a particular form of organization, albeit the "supreme" organization, of the community. This is a very natural development from international law concepts. Just as the state is personified by international law in its relations with other states, so internally it is conceived as standing personified in distinction from all natural individuals and groups within its own borders. These include, however, the officials and instrumentalities of government; and therefore the state may, nay indeed must, be an empty entity separate from and independent of its government on the one hand as well as of the body of its people on the other.

These mischievous logologies have nothing whatever to do with the essential doctrine of sovereignty. They result from assuming that what is a legal postulate for some purposes,—e.g., the possession by the state of legal capacity, or "will"—must be a physical

fact for all purposes. They involve a complete neglect of the concrete realities which make it plain that the state is not a self-existent entity, but only an organization or system of organs enabling the community to perform certain functions, and that sovereignty is only the function of making a division between two different kinds of rules, those which are to operate in such a way that we call them laws, and those which do not. This function cannot be performed by an abstract "state," but only by a concrete organ or organs of government.

In looking about for these organs under a complicated form of government, the problem loses much of its difficulty if we recognize that sovereignty can be exercised by a system of organs properly geared together no less than by a single organ. In an absolute personal despotism there is no doubt as to the location of sovereignty. But the problem begins to be complicated when the absolute sovereign is not an individual but a collegiate or corporate body. Suppose it is an assembly having a quorum of eleven members and acting by majority rule. The exercise of sovereignty in this case requires the coöperative action of a number of individuals according to a particular pattern—requires the action of eleven members in such a manner that six or more declare themselves in agreement. A still more difficult case is one in which sovereignty is exercised, as in the British Parliament, by a body consisting of two corporate bodies. Here an exercise of sovereignty requires the action of each of these two bodies in a special way. These simpler cases should remove much of the difficulty involved in understanding the operation of more complicated governments, as for example, that of the United States. Here the sovereign consists not of two organs but of a whole system of organs, geared together into a complicated working pattern. It includes first of all the national and state legislative bodies, including the President and state governors because of their veto and discriminating power. These are elements in the system of sovereignty because their enactments unless brought into question in the manner hereinafter described are recognized as laws,—i.e., as vested with proper legal authority. But means are provided for raising the question of whether or not these enactments are validly legal. This question is left to a system of courts, heading up ultimately into the United States Supreme Court, which tests the validity of legislative enactments by interpreting them and then comparing

them as so interpreted with the interpretation which the court places upon a supreme law or constitution. For the creation or change of this supreme law there exists another system of organs vested with the power of constitutional amendment. Should the Supreme Court declare a law unconstitutional, it remains open to the amending power to reverse this result by so changing the Constitution as to bring the law into conformity therewith. But even in case this is done, the last word remains with the Court through its power to establish authoritatively the validity and meaning of the amendment.

Such a complicated system of sovereign organs seems far removed from the neatness and simplicity of Bodin's idea,—so far removed that it may at first sight be thought to be in absolute contradiction to it; for does it not amount to "dividing" sovereignty and thereby creating the possibility of a conflict between the parts, and so of two or more competing sets of contradictory legal precepts? This result does not follow because all the organs of the sovereign power function as parts of a single system with an ultimate organ, the Supreme Court, to define authoritatively the sphere of each and to restrain each within its sphere. It is the presence of such an organ with ultimate power to pass authoritatively upon questions of disputed competence which binds the multiplicity of law-pronouncing organs into a single unified system and preserves sovereignty by making it possible to secure a final authoritative determination of what is and what is not law.

A last source of confusion in the concept of sovereignty arises from a failure to recognize the essential difference in nature between international and positive municipal law. So far, in using the term "law," we have been referring solely to the latter. It is of the essence of positive law to impose upon human individuals and other legal persons binding legal obligations irrespective of whether or not these obligations are accepted by the persons upon whom they are so imposed.

Is there a sense in which sovereign states are subject to international law rules which they repudiate? If this is not the case, how may we say that there can be a violation of international law? Only if we realize that we mean something different from what we mean when we speak of a violation of positive municipal law. We cannot mean a violation of a rule emanating from an

external source which the culprit state is authoritatively bound to obey. We can only mean a violation of a rule which we have good grounds for thinking that common sense, traditional practice and good faith require should be observed. But who is to judge whether there is such a rule, and if so, how it is to be interpreted, and what conduct it prescribes? In the absence of a definite treaty stipulation on the one hand and of an agreement for arbitration on the other, these questions can only be for the decision of different private individuals or "experts," well- or ill-informed as the case may be, who are interested enough to discuss them. Is such a rule anything more than a mere "moral rule," deriving its authority only from individual opinions as to its good sense and the good sense of those who advocate it?

I think we must answer to this question both yes and no. A rule of international law is certainly not law in the sense of a rule of positive municipal law; in comparison with a so-called "moral rule" it displays certain similarities and certain important differences. Like a moral rule, it is not the pronouncement of any definite law-giving organ whose stamp is essential to guarantee its validity. Unlike a moral rule it rests its claim to authority not upon private experience and value-judgments, but mainly upon its conformity with a mass of precedents, adjudications and other rules resting upon a similar basis. It is thus likely to be far more precise, certain and juridical in its content than a mere "moral" rule. It is precisely the kind of rule which, if once selected from its possible variants and adopted by a sovereign, becomes a rule of positive law. But in the absence of such validation, it remains permanently within the sphere of differences of opinion.

It is quite true that systems of positive law have often originated from a body of rules of essentially the same character as current international law. Before juristic sovereignty was definitely organized, there was custom, precedent, informal and occasional adjudication. It is therefore just to recognize a close kinship between international law and the early stages of positive law; the international law of today may well be the "positive" international law of some future day in the making. But before this can happen there must occur the unification of the present independent law-making organizations of the world into the same kind of unified system, headed up into an organ of ultimate authoritative formulation, which today exists within the separate sovereignties.

CHAPTER XV. THE NEW JURISPRUDENCE

I. NEO-KANTIANISM

The Theory of Justice (1902)

Rudolf Stammler (1856–)

In the twentieth century, jurisprudence can no longer maintain an aristocratic seclusion from the other social sciences. Even jurists to whom the sanction of the state is the criterion of law are not satisfied merely to differentiate law from moral precepts and social conventions. It remains to examine the *content* of law—as it is, or as it ought to be, or both—and this requires the consideration of economic, sociological, and psychological factors.

The chief interest of contemporary German jurists is in law as it ought to be, and the neo-Kantians and neo-Hegelians are almost as metaphysical as the philosophers from whom they derive their names. But the neo-Hegelian Kohler showed interest in sociological considerations: and the neo-Kantian Stammler prepared himself to discuss jurisprudence by the systematic study of economics and sociology as well as law and philosophy. Stammler criticizes the materialism of Marx but himself holds that just law must necessarily have a variable content adapted to varying human wants. The elaborate reasoning in his *Theory of Justice* (1902) attempts merely a universally valid formal method of judging empirically conditioned legal rules with reference to the conditions under which they exist.

Rudolf Stammler, the son of a noted judge, has won distinction as an eloquent champion of the German Civil Code of 1896 against the opposition of jurists of the historical school, and as a most remarkable teacher and educational reformer. At the University of Halle, where he became dean of the law faculty at the age of twenty-six and subsequently rector, he changed the entire system, dropping the emphasis on Roman law and introducing the study of cases to supplement purely theoretical instruction. This reform was so successful that in 1897 the Prussian government introduced the same method into all Prussian universities. In his later years Stammler was professor of law at the University of Berlin where he taught till he was past seventy. In addition to *The Theory of Justice* his principal works are *Economics and Law in the Materialistic Conception of History* (1895) and *The Theory of Jurisprudence* (1911).

The readings here given are based on Isaac Husik's translation of *The Theory of Justice* (Macmillan, New York, 1925), and are reprinted by permission of the Macmillan Company.

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THE THEORY OF JUSTICE

I. The Problem of the Just Law

[*Int., 1.*] The study of legal science may be undertaken with a twofold purpose. We may aim to master a body of law historically given, regarding its knowledge as a sort of end in itself. Or we may bear in mind that legal rule is only a means in the service of human purposes, a conditioned means by which a certain result is to be attained. In the one case we are satisfied if we make clear the meaning and real content of definite rules and regulations, apprehend them as a unit, and present them in systematic order. In the second case we raise the question whether the law thus given is a right means for a right purpose. Let us call the former *technical*, the latter *theoretical* legal science.

[*2.*] Theoretical legal science is a study of method. Although, like the technical branch, it takes for its material the law as developed in experience, it nevertheless investigates it in a manner of its own, and requires for the building up of its system of ideas a fixed method. And not merely such a method as will enable us in general critically to approve or reject, but also such as will guide us systematically in determining in positive fashion the right decision for a given case.

Now, by what line of thought can this method be discovered? The answer is, *in avoiding internal contradiction.* No conduct must

be approved as right which, if it became universal, would destroy the fundamental idea of legal society; we must rather so order our life in common that in every action it will be in harmony with the final purpose of the law.

Accordingly, our investigation must aim to discover the fundamental principle of law, and we must work out a theory which will enable us, by an unbroken chain of reasoning, to pass from the principle of law, as such, to specific questions. We thus arrive at the definition that *a just rule of law is that rule which, in a given case, agrees with the fundamental idea of law in general.*

It is a complete mistake to test it by its practical usefulness, as has been often done. For theory and practice are distinct only as *principle* and *application.* There is no falser saying than that a thing may be good enough in theory, but will not work in practice. For if a thing does not work, this signifies that it is not the proper means for the proper end. And this must in turn be shown by theoretical considerations. To be sure, it may be that the attempt to apply it has been the occasion for discovering the theoretical doctrine to be incorrect. But it can never be that practice alone can offer a *second and independent* standard for the objective value of an activity.

[*Pt. I, Ch. I, 5.*] To what court shall we appeal in order to render a methodical and well-founded judgment concerning the presence or absence of the quality of justice in a legal content?

It seems, at first sight, as if we should look for help from without; and seek information concerning the objective justice of the law from other recognized disciplines. But everything that has been attempted with this object in view has shown itself unsuitable and incompetent.

Primitive religions like to base the justification of political acts as well of legal rules upon an immediate authorization or command of the gods. This is common also in Oriental monotheism. Leviticus and Deuteronomy offer specially striking examples. And the Suras of the Koran present their detailed legal ordinances as divine laws, of which Allah himself, as the lawgiver, is the author. This will scarcely find complete acceptance today in our sphere.

It has been thought that this problem could be solved by setting up as a standard of what is just, *respectable and right-thinking persons.* This is, however, a poor solution. For the question arises, again, what persons have this quality, and how can we tell

whether such persons, assuming that we have found them, actually are "right-thinking" in the case under dispute? And to this question there is no satisfactory answer. We cannot see, in fact, why the middle term "thinking persons" is used at all. It is all the same whether we wish to find out *what right-thinking persons would say*, or *what is right*. We must not, therefore, suppose that we can in the least solve the last question by giving it another form.

On the other hand, we must not assume that we can improve matters by referring to *good morals*, an expression which the laws sometimes use to find what is just in a given case. This would be a clumsy conception, to think of positive law as referring to a fixed conventional custom as the highest court of appeal; so that a bad law, which cannot yet be annulled by a better custom of long standing, would have to be quietly allowed to remain.

The finding and establishment of just law in a doubtful case must take place in accordance with the fundamental unity of legal order in general. "Good morals" or "good faith," or other such expressions do not designate a rule which maintains an existence of some sort *outside* of law.

But must we not make some exceptions? Must we not accept as immediately authoritative what has often been spoken of as "the ethical views of the time"? We deny this absolutely.

[*Ch. II, 1.*] Law presents itself as an external regulation of human conduct. By this we understand the laying down of norms which are quite independent of the person's inclination to follow them. It is immaterial whether a person obeys them because he regards them as right, submitting out of respect for the law; or whether his obedience is due to a selfish motive of some sort, fear of punishment, or hope of reward; or, finally, whether he thinks about it at all, or acts from mere habit.

[*2.*] Ethical theory is concerned with the purity of thought, with the perfection of the inner life; just law denotes a content of will which determines in well-founded fashion external behavior. The former seeks to realize the good intention of the individual man; the latter aims to effect justice in the external life of society. The acts, therefore, to which ethics and just law refer are the same. The difference is in the purpose at which we aim in regulating the identical material.

[*3.*] In establishing our rules for external coöperation we must always consider the *mutuality* of rights and duties. The ethical

law knows no such reciprocity. It lays down a standard and an obligation without concerning itself about the guarantee of reciprocity. The ethical command thus isolates the individual to whom it addresses itself. And it is for the very reason that the ethical law unconditionally obligates the individual and speaks to every one separately, that ethics can have nothing to say concerning the peculiar problem of a law which measures its rules to satisfy mutual relations and upon this basis lays down the right rule of external conduct. The attainment of just law thus remains an independent problem requiring a method of its own.

In our days the question has emerged with special frequency concerning the relation of *Politics* to *Ethics*. On the basis of our previous discussion we can decide this question with certainty as follows. *Political questions as such belong to the domain of just law and have no direct relation to ethical doctrine.* In politics we are always concerned with the conduct of persons or communities toward each other, whether we are dealing with the creation of external rules or with their application. If our choice of standards lay exclusively between that of ethical doctrine and brute force, we should have to come to the sad conclusion that the decisive factor for political questions is rude force and selfish desire, and nothing else. But the above alternative is not true. Ethical teaching is only one part of that just volition which stands opposed to brute force. Just law forms its supplement; and the political problem belongs to the latter.

II. Attempts to Solve the Problem of the Just Law

[*Pt. I, Ch. III, 4.*] There are three problems in legal science, all of which have the quality in common that they can not be solved by the consideration merely of definite historical law. They are the following.

1. *What is law?* What universal concept must necessarily be at the basis of an investigation in order that the latter may properly be called legal?
2. *The rationale of the binding force of law.* How is it that every legal command, no matter what its content, has the right, merely because it is "legal," to demand obedience?
3. *When is the content of a rule of law objectively justified?* What highest principle must the legal legislator obey in order that his laws may be just?

The peculiarity of all previous legal philosophy has been that it attempted to solve all the three problems above mentioned by means of one formula. This characteristic applies to the theories of the advocates of the Law of Nature. This can be seen most clearly in the system of the great Rousseau. As is well known, his idea of law is comprehended in the "contrat social." His formula reads that every member of a community must submit to the whole, under the superior guidance of the "volonté générale"; the latter signifying the advancement of human welfare. This formula is not an account of the origin of law in the history of man, but a simultaneous answer to all our three systematic questions. A community which answers to the "contrat social" is a "legal" community; it is justified in employing "force"; and the "content" of its laws is just.

The same criticism applies to those recent attempts of legal theory which regard law as the unanimous "recognition" of norms existing in a social group; or as the "universal will"; or the "general conviction," and so on. Everywhere we see the same endeavor to express the concept, the compulsory character, and the content of law in one and the same general formula. This will not do. Every one of the three problems must be solved by a distinct method of its own. To be sure, we must also seek to find unity among them; but this can not be done by mixing them in an external formula.

We have now brought out the first fundamental difference between the theory of just law and the doctrines of the law of nature. But there is another difference between the two theories, more profound and more radical in its significance.

[*5.*] The various theories of the law of nature all undertake by their own method of argument to outline an ideal legal code whose content shall be unchangeable and absolutely valid. Our purpose, on the other hand, is to find merely a universally valid formal method, by means of which the necessarily changing material of empirically conditioned legal rules may be so worked out, judged, and determined that it shall have the quality of objective justice.

The attempt of the law of nature was foredoomed to failure. For the content of law has to do with the regulation of human social life, which aims to satisfy human wants. But everything that has reference to human wants and to the manner of satisfying them

is merely empirical and subject to constant change. There is not a single rule of law whose positive content can be fixed a priori.

[*Ch. V, 1.*] *The natural feeling of Right.*—"It is inconsistent with the natural feeling of right that a person should be allowed without protest to retain what he has obtained by an illegal act, having taken it away from another who was by right entitled to it." This is the opinion handed down by the Supreme Court of the Empire in a difficult case where an appeal was made to destroy the illegally obtained photograph of Prince Bismarck's corpse. What is it to which the court appeals? One may answer perhaps that it is the strong personal feeling entertained by every man of what constitutes right; a subjective opinion concerning a requisite legal norm. But it appears in the judgment of the court above mentioned as a ground for a decision.

The remarkable phrase "natural feeling of right" merely gives expression to the idea that the justice of the legal content is guaranteed by the "natural" feeling of any one who thinks about it.

This is an idea that has been advocated from ancient times. Aristotle in particular argues in detail that we can find out the content of the feeling of right implanted in man by nature by observing what all men think about it. Of greater interest, however, is the original turn given to this idea in modern philosophy and legal science.

[*2.*] *The feeling of Right in the national soul.*—"It is," in the words of Savigny in his System of Modern Roman Law, "the national spirit present in all individuals, that is the creator of positive law."

In the application of this peculiar metaphysics to the domain of law, the advocates of this theory divide themselves into two schools. The older school was of the opinion that when this conviction, produced by the popular mind, concerns itself with things of the "law," *it, the conviction itself, is law.* The legislator does not create law; he only fixes, compiles, and edits what is already present, namely the common conviction. A later school admits, on the other hand, that the legal rule does not exist *until it is actually passed;* whether this be done by the State legislator or by the customary practice of the courts or the persons subject to the law. But the members of this school insist that all these factors merely obey the command of the popular mind as represented in the common conviction.

According to this claim there would—"strictly speaking," as Savigny said—be no such thing possible as a doubt or an objective criticism of the content of any law at all, past, present, or future. This would be unthinkable, since law is the immediate production of the national mind, whose sway is not subject to critical judgment. Just law and the "feeling of right" of the national soul are one and the same thing. A law objectively unjust in content would be a contradiction in terms.

In reality the opposite is true, namely that no proof has ever been, or can ever be, given for the existence of a national mind, as a peculiar immaterial being. This mind whose animation constitutes the natural unity of a people is said to be a spiritual subject which lives outside of all human experience, and yet inspires the latter with the production of common conscious contents. But as it is supposed to be the psychic essence of a natural object, namely of a definite individual nation, and hence must itself be a limited and finite thing, it is hard to understand how it can escape being subject to the laws which are valid for all conditioned experience. But as this claim has been put up regarding it—and for good or ill it had to be put up—it vanishes on closer inspection into the realm of social mythology.

[*3.*] *Ideas prevalent in a legal community.*—Wherever one of those critical passages occurs in which the legislator directs the reader to find out for himself what in that particular case is objectively justified, we are sure to find a "reference to the ideas prevalent among the people."

This suggestion is bad in form as well as in substance. The form is bad, for it is better to use legal community instead of "people." Few words have so many different meanings as the word "people." The difficulty is increased if we examine the word "prevalent." Shall the majority decide? And the majority of whom? And finally what "ideas" are meant?

But be this as it may, the substance of the formula is quite unacceptable. For assuming that there really are such "ideas" as are intended, on what grounds can it be maintained that they really correspond to the just content of law? No one would recognize the "ideas prevalent among the people" as absolutely decisive, and submit to them unconditionally if it was a question of the nature of a disease and whether it is contagious or not, or if we were discussing the nature of comets. Neither will any lawyer

do the same thing if he wishes to have a correct definition of the concept of property, of juristic person, of a criminal attempt, of imperial sovereignty. How then are we to swear allegiance to a resolution which is the result of a count of the accidental votes of individual members of the people, and regard it as a last resort, in the far more important question, whether a will content is objectively right or not. It would be the same fundamental error that Socrates pointed out to Crito in a decisive manner: "Then, my friend, we must not regard what the many say of us: but what he, the one man who has understanding of just and unjust, will say, and what the truth will say."

We do not mean to say by this that the results of theoretical legal science must not be "popular." But this is a quality which they must *attain*. Though it is impossible to communicate the knowledge of justice and the manner of proving it to all the members of a community as completely as one would desire; and although we must confess to a certain inevitable resignation in this matter, as is the case in matters of natural science and creative art, still we are justified in our aim to make as many persons as possible share in a proper understanding of just law. But this is all we can rightly maintain in our desire to have a "popular" law so far as its content is concerned. We must determine in scientific fashion what just content is, and then do our best to spread it and maintain firmly, so far as possible, the universality of method. But the decision itself as to whether a will content is just or not, must not be derived from "opinions" gathered at haphazard, even though these be "prevalent." It must be derived from a firm method of just law.

[*4.*] *Morality of the classes.*—A fundamental thought in the theory of social materialism is that the ideas of goodness and justice rest upon economic bases, and hence vary with the classes of the population which represent economic phenomena.

The observation that the conceptions of just volition vary widely with the classes of the population concerns only the empirical material of actual endeavor. It is a general judgment that is relatively true, though we must always make many reservations and exceptions when it comes to matters of detail. But our object now is not to give a general description of the actual opinions and volitions of certain persons, but to find an answer to the question, How can we tell whether those opinions and volitions are in their

objective content just? In that very thing which is regarded as just by a certain class of the population there is necessarily contained, besides the concrete element, the concept of justice. How, then, can we determine what this major premise is by referring to that which the given "class" subsumes under it?

[5.] *Judicial discretion.*—We have now come to the last kind of judgment concerning just legal content, which is set up without critical proof and without methodically creative self-activity. All these modes of judgment have this in common that they seek gropingly for some foreign essence from which they expect to get the required result—the natural feeling of men in general, the popular soul, the prevalent notions of the parties, or the firm dictates of the social-economic classes. Some are not satisfied with any of these, and try "the judge" himself. The decision of what is just, they say, depends upon the "free" or even "most personal" notion of the judge. His "sense of justice" is decisive. As a method and a principle this is surely the weakest that has yet been suggested.

Law is primarily concerned with those who are subject to it. Its aim is to effect a certain mode of conduct and of social life on the part of these persons. Its propositions are evidently intended in the first place as a guidance for the members of the community, and the law's important concern is the right doing and forbearing of the members of the social group, and nothing else. How then can we identify the content of this command to be just in one's act and service, with the future decision of a third person according to his own free and subjective opinion! It would be an unconscious verification of the Arabic saying, "The Christian learns the Mohammedan law when he leaves the court." When our law says, "Avoid contracts and deliberate injury 'in violation of good morals'; assert your rights and carry out your obligations 'in good faith'; keep far from 'abuse' in your family rights,"—it is absurd to read into it the principle, "*So conduct yourself in the present moment as the judge will subsequently indicate according to his free judgment.*"

But apart from this it can not be maintained that the judge can make prevail a "free" opinion or a "purely personal" decision. The contrary is true. Even when the court interprets a contract according to "good faith," or declares the determination of a lease for a "valid" reason, or recognizes a "moral obligation" to

make a gift, or decides that a given service was undertaken "in violation of good morals," or expresses the opinion that a husband can not be "presumed" to continue a given marriage, and so on in similar questions—in all these cases the court must justify its opinion in as convincing a manner as possible. The judgment must be objectively right, and not "subjective and free." It must be a *verdict*, and not a "personal" decision. It would be a very unbecoming state of affairs if we could apply to the opinion of the judge the statement in the "Two Gentlemen of Verona,"

"I have no other but a woman's reason;
I think him so, because I think him so."

III. The Purpose of Legal Regulation

[*Pt. II, Ch. I, 2.*] Legal regulation, as the concept denotes, aims to effect a definite mode of conduct on the part of those subject to it. And hence we are dealing with a subject that belongs to the realm of purposes. For a purpose is an object to be effected. Accordingly the principle at the basis of law must be in harmony with the function of purpose.

[*3.*] *Freedom and equality.*—Now what is the fundamental law of the purposes of external rules? What is the highest aim which represents the final purpose of the regulation of human coöperation?

Freedom of the citizen, as the highest object of the law, has exerted the greatest influence in this connection. Many a time State constitutions as a whole, as well as particular legal rules and regulations, have been condemned because they restricted this external freedom. Accordingly individual freedom has been raised to a standard and principle of just law.

This conception of a free State is theoretically untenable. It leads its advocate into logical contradictions from which there is no escape. It has found a celebrated expression in the work composed by William Humboldt entitled, "An Attempt to Determine the Limits of the Activity of the State." His opinion is, "That true reason can wish no other condition for man than that every individual should enjoy the utmost unrestricted freedom to develop himself in his own peculiar way out of himself; and not only the individual man, but physical nature also should receive no other form at the hands of man than that given to it of his own free will by the individual according to the measure of his need and in-

clination, restrained only by the limits of his power and right." But what are the "limits of his right"? The rights which a man calls his own, he has because he has received them from the law. They are the regulated relations among those who are subject to the law according to which a certain mode of conduct is to be effected by way of compulsion.

This fundamental error can not be corrected if we maintain the idea of freedom as a principle of law. Even if we omit the words "and right" in Humboldt's formula, the thought remains that the final purpose of law is the freedom of the citizens. But this is in every respect contradictory. This idea is opposed to the concept of law in general. The latter possesses the essential quality of sovereignty. It is a compulsory regulation, the validity of whose commands is entirely independent of the free consent of those subject to it. To retain this compulsory regulation in principle, and at the same time to hold its aim to be the unrestrained freedom of those subject to the law, is to be guilty of an insoluble contradiction.

The case is somewhat different with the second concept in the title of this paragraph. As every one knows, the demand of external freedom has for a long time been associated with that of *equality;* the latter sometimes appearing as opposed to the former, as for example in anarchistic individualism. We need only emphasize here that the formula of equality—"equality before the law," as the constitutions say—is no more adequate as a solution of our problem than the other.

Our question here is whether the principle of legal equality is calculated to give us the correct expression for the idea of just law. This we must answer in the negative. For the juridical principle of equality of rights is expressed simply in the following rule, that all those who come under the law must be treated according to one and the same method. But what this fundamental method is, as objectively considered, still remains to be thought out in detail.

[4.] *Welfare and happiness.*—This principle is best expressed, no doubt, by referring to the benefit of the individual. The supposition is that the highest aim of the law consists in securing the welfare of those subject to it, and furthering their happiness. But this social eudaemonism has no foundation.

To set up the securing of personal pleasure as an ideal aim for the legislator would be justified only if the highest law of right

volition in the individual were the promotion of his personal well-being. But as this is not the case; as, on the contrary, the characteristic of right human volition is the fulfilment of duty, without regard to the subjective comfort of the agent,—the highest aim of human society can not be the happiness of its individual members.

The vicious circle in this reasoning consists in the fact that the principle thus set up professes in turn to be objectively right. Its earnest desire is to indicate under what conditions a content of human volition may be called objectively just. And the answer it gives to this question is, when it is subjectively valid. This answer presupposes that there is a distinction in human consciousness between the objective and the subjective; but, without being aware of it, it defines the former by means of the characteristics which belong to the latter, though the two are admitted to be contradictory.

The inevitable need that has been felt for an objectively independent standard has led after serious reflection to the idea of the *common weal*, the "salus publica." The attempt is an old one. The will and desire for a uniform principle in the creation and exercise of law; the hope of a clearly defined goal in our regulating activities; in short, the hope and desire, the will and the wish for *objective justice*—all this is expressed in the idea of the "common weal." But nothing more.

[*5.*] *The social ideal.*—If we try to find out what is contained in the concept of a legal association of persons, so far as its objective and universal content is concerned, we come to the conclusion that the members of the association can further their objects better by standing together. Every system of law necessarily has this one thing in mind, that those subject to it can carry on the struggle for existence with greater success in common, so that in joining the community each one is at the same time serving himself best. The theoretical elements we are here investigating, which are found in every legal rule, are, accordingly, the adjustment of the purposes of the community and of the individual members thereof. When we strive to carry out any specific law, we necessarily express our will of harmonizing these purposes in the law in question. And in so far as we succeed in bringing about an agreement between the universal and particular elements, and in avoiding a contradiction between these two constituent parts, in so far is the content of our rule accordant with law, and just.

A universal element of legal propositions is therefore the idea of adjusting the individual desire to the purpose of the community. But here again we must not think of the community as a concrete association having certain conditioned aims. Nor do we mean a definite "economic development," which is merely a phrase descriptive of certain empirically conditioned social phenomena abstracted from the whole of social life. What we have in mind is the community as the formal unity of all conceivable individual purposes. But a harmony of individual purposes can not be made certain so long as the determining principle in them is the subjectively conditioned and specific object of desire. The particular subjective aims followed by the members may sometimes harmonize as a matter of accident; but there is naturally no assurance that they will harmonize as a permanent principle.

It follows therefore that the aim of a legal community can only be the union of the individual members so far as their volitions are *ends in themselves.* The abstract idea of an absolute unity of social existence demands a fusion of these elements in the efforts of the members which may be regarded as universal. When we speak of the abstract concept of a community, we have in mind the union of all volition whose aim is *free.* In this way we obtain the formula of a *community of men willing freely,* as the final expression which comprehends in unitary fashion all possible purposes of persons united under the law. I call this *the social ideal.*

We must observe besides that the validity of the social ideal depends upon the insight that it is the only general expression in which is contained the idea of the objective unity of the purposes of men united under the law. It is the only thing which belongs to all legal purposes in common. And the only question that may be raised is, How can we make conscious use of our fundamental idea in dealing with specific legal questions, and how can we carry it out methodically?

IV. The Principles Derived from the Idea of the Social Ideal

[*Pt. II, Ch. II, 1.*] The idea of the social ideal can not be applied directly to the concrete problems of legal judgments endeavoring to find the right adjustment. The natural scientist who desires to know a particular phenomenon in its relation to the general law, does not simply bring it at once under the idea of the

absolute unity of all phenomena. In order to understand it properly, he first goes back to derivative principles, until he has given his specific problem its systematic place in the whole. In the same way we also, in our problems of just law, shall have to have a system of principles, and then again subordinate doctrines and ideas, by the help of which we shall be able with assurance so to work out the particular case that it will correspond to our idea of the unity of law. The practical significance of the idea of just law in general is this, that with its help alone is it possible to work out a *universal method* for just law in a specific case. We must now proceed to develop our *principles.*

[*2.*] Every legal investigation may be carried on from two points of view. We may regard the standpoint of the individual *qua* individual as the center of our investigation, or we may emphasize the community of individuals and their common aims. It is self-evident that in a complete union under the law both of these aspects are necessarily contained.

In our investigation here we are interested in trying to see in what way the twofold aspect above mentioned may be made significant for the general application of the concept of a just legal content. Now it appears on closer observation that the twofold manner of thinking from which we started is already contained in the formula of the social ideal. This idea conceives of the persons united under the law as men who follow their particular aims in so far as they accord with justice. It follows therefore that every individual absolutely respects the other and is respected by him. For the social ideal demands that the individual should not be forced in his legal relations to renounce his justified interests. The principle here used as a standard requires that there shall be mutual respect of each other on the part of those united in the law.

As on the other hand the principle of social investigation aims at the idea of living and working together as a unit, and finds its conclusion in the absolute solidarity of interests, we must also emphasize the social members in their unity. Here we think of the individual as a member of the whole, in which all must, for better or for worse, have their necessary share. The first lays stress upon the *respect* due to the individual in his specific right volition, whereas the second insists on the idea of social community and mutual *participation.*

The rights and duties of the individual are derived from their legal relations. Accordingly, whenever we wish to consider in fundamental fashion whether a given legal content is just, we shall have to think of specific *legal relations.* And in that case there will be, generally speaking, two possibilities: First, the question whether this unitary relation should be *maintained,* or whether, as a matter of right, the law should not rather deny it. Second, the question how a legal relation that has been acknowledged as right is to be *carried out.* These two questions appear in the demand for the right *respect* of others, as well as in that of just *participation.* Each of these ideas, when applied to the principles in which they are to be carried out, divides itself into two aspects requiring distinct treatment. We have accordingly *four principles of just law* which may be treated in two corresponding pairs.

[*3.*] *The Principles of Respect.—1. The content of a person's volition must not be made subject to the arbitrary desire of another. 2. Every legal demand must be maintained in such a manner that the person obligated may be his own neighbor.*

Both of these principles aim at enabling the individual member of a legal community to determine his own volition in freedom that accords with justice. The first principle starts from the idea of an existing duty and limits the extent to which the members of a legal community are bound one by the other. The second is concerned with the measure in which a legal demand is to be imposed, and restricts in systematic fashion the manner and the scope of the service demanded. The first refers to the *maintenance* of legal relations, the second to their *execution.* They are derived directly from the highest aim of the law, whose formula is the social ideal. As the concept of a just legal content is based upon the idea of a community of free men, it follows necessarily that in every external regulation the person subject to it always has the possibility of choosing the right. A legal command must not be understood to mean that the individual shall give up everything for the conditioned subjective purposes of another.

To curb one's own desires through respect of another, and to do so with absolute reciprocity, must be taken as a principle in the realization of the social ideal. Just law—on this line of reasoning—exists when the sense of the law's demand upon a person is such that in thinking of his legal duty he can still regard himself as his own neighbor. On the other hand a legal command is unjust when

it puts the social volition of a person wholly at the disposal of another.

[4.] *The Principles of Participation.—1. A person under a legal obligation must not be arbitrarily excluded from a legal community. 2. Every ability of disposing that is granted by law may be exclusive only in the sense that the person excluded may be his own neighbor.*

These propositions aim to carry out the idea of *community.* They express the thought that the legal command which unites the individuals to carry on the struggle for existence in common, must not become untrue to itself. But it would be guilty of a contradiction if it subjected the individual by compulsion to the social union, and at the same time treated him in a given case as a person who had nothing but legal duties. This would be a caricature of the idea of *coöperation.* The desire to avoid the logical contradiction which would result between the fundamental idea of just law and the particular illustration thereof, leads to the principles of *participation.*

This does not of course mean that we are thinking of a definite political law governing the conditions of membership in a given community. The meaning is that a person who is thought of as standing under the law in common with others, must not be treated at will as an isolated individual and be left to himself. The principle refers therefore to just conduct toward all men without exception. We must come to the assistance of the other man and not exclude him, just as we should expect him to do to us in a similar situation. Accordingly as we should like to bind him and make demands upon his conduct, everyone should behave in the same way toward him and allow him to share with us. Our formula, therefore, gives us the idea of a just community in the matter of participation; and makes it possible to create just norms governing our external conduct in questions of legal exclusion—a thing which can not be adequately and certainly done without taking account of mutual obligation.

II. THE SOCIOLOGICAL APPROACH TO LAW

An Introduction to the Philosophy of Law (1922)

Roscoe Pound (1870–)

Whereas the metaphysical element predominates in the German jurisprudence even of the twentieth century, it is sociology that has set the mold for the new American legal philosophy. And with the sociological approach to law American jurisprudence has at last come into its own. Both the analytical and the historical school of nineteenth century legal philosophy were of European origin, but American scholars have taken the lead in the twentieth century movement to reëxamine law with reference to the social sciences and the social life of man.

The American sociological jurists studiously avoid both the rationalism of the Austinians and the fatalism of the nineteenth century historical school. There is, however, an interesting point of contact between the utilitarian greatest happiness principle and Pound's concept of law as social engineering, while Pound adopts much of Maine's historical method and accepts many of his conclusions as to the development of law. Resemblances as well as contrasts to the older jurisprudence are to be detected in *An Introduction to the Philosophy of Law*, a series of lectures delivered by Pound at Yale in 1922.

Roscoe Pound, the pioneer in sociological jurisprudence, was born in Lincoln, Nebraska, graduated from the University of Nebraska, and studied law at Harvard and in his father's office. After a period of successful practice with his father, Pound was appointed to the law faculty of the University of Nebraska, served as commissioner (temporary judge) of the Supreme Court of Nebraska from 1901 to 1903, and at thirty-three became dean of the law school of the University of Nebraska. At the same time he published the first of his contributions to the science of jurisprudence. In 1910 he was appointed Story Professor of Law at Harvard and in 1916 he became Dean of Harvard Law School. Of Pound's numerous writings, mention should be made of *Readings on the History and System of the Common Law* (1904), *Readings on Roman Law* (1906), *The Spirit of the Common Law* (1921), and *Interpretations of Legal History* (1923).

The readings here given are based on the text of the original edition of *An Introduction to the Philosophy of Law* (Yale U. Press, New Haven, 1922), and are reprinted by permission of the publishers.

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AN INTRODUCTION TO THE PHILOSOPHY OF LAW

I. The Function of Legal Philosophy

[*Ch. I.*] For twenty-four hundred years—from the Greek thinkers of the fifth century B.C., who asked whether right was right by nature or only by enactment and convention, to the social philosophers of today, who seek the ends, the ethical basis and the enduring principles of social control—the philosophy of law has taken a leading rôle in all study of human institutions. The perennial struggle of American administrative law with nineteenth-century constitutional formulations of Aristotle's threefold classification of governmental power, the stone wall of natural rights against which attempts to put an end to private war in industrial disputes thus far have dashed in vain, and the notion of a logically derivable super-constitution, of which actual written constitutions are faint and imperfect reflections, which has been a clog upon social legislation for a generation, bear daily witness how thoroughly the philosophical legal thinking of the past is a force in the administration of justice of the present. Indeed, the everyday work of the courts was never more completely shaped by abstract philosophical ideas than in the nineteenth century when lawyers affected to despise philosophy and jurists believed they had set up a self-sufficient science of law which stood in no need of any philosophical apparatus.

In all stages of what may be described fairly as legal development, philosophy has been a useful servant. But in some it has been a tyrannous servant, and in all but form a master. It has been used to break down the authority of outworn tradition, to bend authoritatively imposed rules that admitted of no change to new uses which changed profoundly their practical effect, to bring new elements into the law from without and make new bodies of law from these new materials, to organize and systematize existing legal materials and to fortify established rules and institutions when periods of growth were succeeded by periods of stability and of merely formal reconstruction. Such have been its actual achievements. Yet all the while its professed aim has been much more ambitious. It has sought to give us a complete and final picture of social control. It has sought to lay down a moral and legal and political chart for all time. It has had faith that it could

find the everlasting, unchangeable legal reality in which we might rest, and could enable us to establish a perfect law by which human relations might be ordered forever without uncertainty and freed from need of change. Nor may we scoff at this ambitious aim and this lofty faith. They have been not the least factors in the power of legal philosophy to do the less ambitious things which in their aggregate are the bone and sinew of legal achievement. For the attempt at the larger program has led philosophy of law incidentally to do the things that were immediately and practically serviceable, and the doing of these latter, as it were *sub specie aeternitatis*, has given enduring worth to what seemed but by-products of philosophical inquiry.

Two needs have determined philosophical thinking about law. On the one hand, the paramount social interest in the general security, which as an interest in peace and order dictated the very beginnings of law, has led men to seek some fixed basis of a certain ordering of human action which should restrain magisterial as well as individual wilfulness and assure a firm and stable social order. On the other hand, the pressure of less immediate social interests, and the need of reconciling them with the exigencies of the general security, and of making continual new compromises because of continual changes in society, has called ever for readjustment at least of the details of the social order. It has called continually for overhauling of legal precepts and for refitting of them to unexpected situations. And this has led men to seek principles of legal development by which to escape from authoritative rules which they feared or did not know how to reject, but could no longer apply to advantage. These principles of change and growth, however, might easily prove inimical to the general security, and it was important to reconcile or unify them with the idea of a fixed basis of the legal order. Thus the philosopher has sought to construct theories of law and theories of lawmaking and has sought to unify them by some ultimate solving idea equal to the task of yielding a perfect law which should stand fast forever.

II. The End of Law in Terms of Security and Self-Assertion

[*Ch. II.*] If we turn to the ideas which have obtained in conscious thinking about the end of law, we may recognize three

which have held the ground successively in legal history and a fourth which is beginning to assert itself. The first and simplest idea is that law exists in order to keep the peace in a given society; to keep the peace at all events and at any price. This is the conception of what may be called the stage of primitive law. It puts satisfaction of the social want of general security, stated in its lowest terms, as the purpose of the legal order. So far as the law goes, other individual or social wants are ignored or are sacrificed to this one. Accordingly the law is made up of tariffs of exact compositions for every detailed injury instead of principles of exact reparation, of devices to induce or coerce submission of controversies to adjudication instead of sanctions, of regulation of self-help and self-redress instead of a general prohibition thereof, and of mechanical modes of trial which at any rate do not admit of argument instead of rational modes of trial involving debate and hence dispute and so tending to defeat the purpose of the legal order. In a society organized on the basis of kinship, in which the greater number of social wants were taken care of by the kin-organizations, there are two sources of friction: the clash of kin-interests, leading to controversies of one kindred with another, and the kinless man, for whom no kin-organization is responsible, who also has no kin-organization to stand behind him in asserting his claims. Peace between kindreds and peace between clansmen and the growing mass of non-gentile population is the unsatisfied social want to which politically organized society must address itself. The system of organized kindreds gradually breaks down. Groups of kinsmen cease to be the fundamental social units. Kin-organization is replaced by political organization as the primary agency of social control. The legal unit comes to be the free citizen or the free man. In this transition regulation of self-redress and prevention of private war among those who have no strong clan-organizations to control them or respond for them are demanded by the general security. The means of satisfying these social wants are found in a legal order conceived solely in terms of keeping the peace.

Greek philosophers came to conceive of the general security in broader terms and to think of the end of the legal order as preservation of the social *status quo*. They came to think of maintaining the general security mediately through the security of social institutions. They thought of law as a device to keep each man in

his appointed groove in society and thus prevent friction with his fellows. This mode of thinking follows the substitution of the city-state political organization of society for the kin-organization. The organized kindreds were still powerful. An aristocracy of the kin-organized and kin-conscious, on the one hand, and a mass of those who had lost or severed their ties of kinship, or had come from without, on the other hand, were in continual struggle for social and political mastery. Also the politically ambitious individual and the masterful aristocrat were continually threatening the none too stable political organization through which the general security got a precarious protection. The chief social want, which no other social institution could satisfy, was the security of social institutions generally. In the form of maintenance of the social *status quo* this became the Greek and thence the Roman and medieval conception of the end of law.

In the Middle Ages the primitive idea of law as designed only to keep the peace came back with Germanic law. But the study of Roman law presently taught the Roman version of the Greek conception and the legal order was thought of once more as an orderly maintenance of the social *status quo*. This conception answered to the needs of medieval society, in which men had found relief from anarchy and violence in relations of service and protection and a social organization which classified men in terms of such relations and required them to be held to their functions as so determined. Where the Greeks had thought of a stationary society corrected from time to time with reference to its nature or ideal, the Middle Ages thought of a stationary society resting upon authority and determined by custom or tradition. To each, law was a system of precepts existing to maintain this stationary society as it was.

In the feudal social order reciprocal duties involved in relations established by tradition and taken to rest on authority were the significant legal institutions. With the gradual disintegration of this order and the growing importance of the individual in a society engaged in discovery, colonization and trade, to secure the claims of individuals to assert themselves freely in the new fields of human activity which were opening on every side became a more pressing social want than to maintain the social institutions by which the system of reciprocal duties was enforced and the relations involving those duties were preserved. Men did not so much

desire that others perform for them the duties owing in some relation, as that others keep hands off while they achieved what they might for themselves in a world that continually afforded new opportunities to the active and the daring. Accordingly the end of law comes to be conceived as a making possible of the maximum of individual free self-assertion.

Transition to the newer way of thinking may be seen in the Spanish jurist-theologians of the sixteenth century. Their juristic theory was one of natural limits of activity in the relations of individuals with each other, that is, of limits to human action which expressed the rational ideal of man as a moral creature and were imposed upon men by reason. Where Aristotle thought of inequalities arising from the different worth of individual men and their different capacities for the things the social order called for, these jurists thought of a natural (i.e., ideal) equality, involved in the like freedom of will and the like power of conscious employment of one's faculties inherent in all men. Hence law did not exist to maintain the social *status quo* with all its arbitrary restraints on the will and on employment of individual powers; it existed rather to maintain the natural equality which often was threatened or impaired by the traditional restrictions on individual activity. Since this natural equality was conceived positively as an ideal equality in opportunity to do things, it could easily pass into a conception of free individual self-assertion as the thing sought, and of the legal order as existing to make possible the maximum thereof in a world abounding in undiscovered resources, undeveloped lands and unharnessed natural forces. The latter idea took form in the seventeenth century and prevailed for two centuries thereafter, culminating in the juristic thought of the last generation.

Law as a securing of natural equality became law as a securing of natural rights. The nature of man was expressed by certain qualities possessed by him as a moral, rational creature. The limitations on human activity, of which the Spanish jurist-theologians had written, got their warrant from the inherent moral qualities of men which made it right for them to have certain things and do certain things. These were their natural rights and the law existed simply to protect and give effect to these rights. There was to be no restraint for any other purpose. Except as they were to be compelled to respect the rights of others, which

the natural man or ideal man would do without compulsion as a matter of reason, men were to be left free. In the nineteenth century this mode of thought takes a metaphysical turn. The ultimate thing for juristic purposes is the individual consciousness. The social problem is to reconcile conflicting free wills of conscious individuals independently asserting their wills in the varying activities of life. The natural equality becomes an equality in freedom of will. The end of law is to secure the greatest possible general individual self-assertion; to let men do freely everything they may consistently with a like free doing of everything they may by their fellow men.

Looking back at the history of this conception, which has governed theories of the end of law for more than two hundred years, we may note that it has been put to three uses. It has been used as a means of clearing away the restraints upon free economic activity which accumulated during the Middle Ages as incidents of the system of relational duties and as expressions of the idea of holding men to their place in a static social order. Again it has been used as a constructive idea, as in the seventeenth and eighteenth centuries, when a commercial law which gave effect to what men did as they willed it, which looked at intention and not at form, which interpreted the general security in terms of the security of transactions and sought to effectuate the will of individuals to bring about legal results, was developed out of Roman law and the custom of merchants through juristic theories of natural law. Finally it was used as a stabilizing idea, as in the latter part of the nineteenth century, when men proved that law was an evil, even if a necessary evil, that there should be as little law made as possible, since all law involved restraint upon free exertion of the will, and hence that jurist and legislator should be content to leave things legal as they are and allow the individual "to work out in freedom his own happiness or misery" on that basis.

III. The End of Law in Terms of the Harmonizing of Wants

[*Ch. II, cont.*] When this last stage in the development of the idea of law as existing to promote or permit the maximum of free individual self-assertion had been reached, the juristic possibilities of the conception had been exhausted. There were no more con-

tinents to discover. Natural resources had been discovered and exploited and the need was for conservation of what remained available. The forces of nature had been harnessed to human use. Industrial development had reached large proportions, and organization and division of labor in our economic order had gone so far that anyone who would could no longer go forth freely and do anything which a restless imagination and daring ambition suggested to him as a means of gain. Although lawyers went on repeating the old formula, the law began to move in another direction. The freedom of the owner of property to do upon it whatever he liked, so he did not overstep his limits or endanger the public health or safety, began to be restricted. Nay, the law began to make men act affirmatively upon their property in fashions which it dictated, where the general health was endangered by non-action. The power to make contracts began to be limited where industrial conditions made abstract freedom of contract defeat rather than advance full individual human life. The power of the owner to dispose freely of his property began to be limited in order to safeguard the security of the social institutions of marriage and the family. Freedom of appropriating *res nullius* and of using *res communes* came to be abridged in order to conserve the natural resources of society. Freedom of engaging in lawful callings came to be restricted, and an elaborate process of education and examination to be imposed upon those who would engage in them, lest there be injury to the public health, safety or morals. A regime in which anyone might freely set up a corporation to engage in a public service, or freely compete in such service was superseded by one of legal exemption of existing public utilities from destructive competition. In a crowded world, whose resources had been exploited, a system of promoting the maximum of individual self-assertion had come to produce more friction than it relieved and to further rather than to eliminate waste.

At the end of the last and the beginning of the present century, a new way of thinking grew up. Jurists began to think in terms of human wants or desires rather than of human wills. They began to think of the end of law not as a maximum of self-assertion, but as a maximum satisfaction of wants. Hence for a time they thought of the problem of ethics, of jurisprudence, and of politics as chiefly one of valuing; as a problem of finding criteria of the relative value of interests. In jurisprudence and politics they saw that we must

add practical problems of the possibility of making interests effective through governmental action, judicial or administrative. But the first question was one of the wants to be recognized—of the interests to be recognized and secured. Having inventoried the wants or claims or interests which are asserting and for which legal security is sought, we were to value them, select those to be recognized, determine the limits within which they were to be given effect in view of other recognized interests, and ascertain how far we might give them effect by law in view of the inherent limitations upon effective legal action. This mode of thinking may be seen, concealed under different terminologies, in more than one type of jurist in the last three decades.

Three elements contributed to shift the basis of theories as to the end of law from a reconciling or harmonizing of wills to a reconciling or harmonizing of wants. The most important part was played by psychology which undermined the foundation of the metaphysical will-philosophy of law. Through the movement for unification of the social sciences, economics also played an important part, especially indirectly through the attempts at economic interpretation of legal history, reinforcing psychology by showing the extent to which law had been shaped by the pressure of economic wants. Also the differentiation of society, involved in industrial organization, was no mean factor, when classes came to exist in which claims to a minimum human existence, under the standards of the given civilization, became more pressing than claims to self-assertion.

In its earlier form social utilitarianism, in common with all nineteenth-century philosophies of law, was too absolute. Its service to the philosophy of law was in compelling us to give over the ambiguous term "right" and to distinguish between claims or wants or demands, existing independently of law, the legally recognized or delimited claims or wants or demands, and the legal institutions, which broadly go by the name of legal rights, whereby the claims when recognized and delimited are secured. Also it first made clear how much the task of the lawmaker is one of compromise.

Social utilitarianism has stood in need of correction both from psychology and from sociology. It must be recognized that lawmaking and adjudication are not in fact determined precisely by a weighing of interests. In practice the pressure of wants, demands, desires, will warp the actual compromises made by the

legal system this way or that. In order to maintain the general security we endeavor in every way to minimize this warping. But one needs only to look below the surface of the law anywhere at any time to see it going on, even if covered up by mechanical devices to make the process appear an absolute one and the result a predetermined one. Yet there will be less of this subconscious warping if we have a clear picture before us of what we are seeking to do and to what end, and if we build in the image thereof so far as we consciously build and shape the law.

Difficulties arise chiefly in connection with criteria of value. If we say that interests are to be catalogued or inventoried, that they are then to be valued, that those which are found to be of requisite value are to be recognized legally and given effect within limits determined by the valuation, so far as inherent difficulties in effective legal securing of interests will permit, the question arises at once, How shall we do this work of valuing? Philosophers have devoted much ingenuity to the discovery of some method of getting at the intrinsic importance of various interests, so that an absolute formula may be reached in accordance wherewith it may be assured that the weightier interests intrinsically shall prevail. But I am skeptical as to the possibility of an absolute judgment. The last century preferred the general security. The present century has shown many signs of preferring the individual moral and social life. I doubt whether such preferences can maintain themselves.

Social utilitarians would say, weigh the several interests in terms of the end of law. But have we any given to us absolutely? Is the end of law anything less than to do whatever may be achieved thereby to satisfy human desires? Are the limits any other than those imposed by the tools with which we work, whereby we may lose more than we gain, if we attempt to apply them in certain situations? If so, there is always a possibility of improved tools. Better legal machinery extends the field of legal effectiveness as better machinery has extended the field of industrial effectiveness. I do not mean that the law should interfere as of course in every human relation and in every situation where some one chances to think a social want may be satisfied thereby. Experience has shown abundantly how futile legal machinery may be in its attempts to secure certain kinds of interests. What I do say is, that if in any field of human conduct or in any human relation the law, with such machinery as it has, may satisfy a social want without a dis-

proportionate sacrifice of other claims, there is no eternal limitation inherent in the nature of things, there are no bounds imposed at creation, to stand in the way of its doing so.

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 human enjoyment of the goods of existence—in short, a continually more efficacious social engineering.

IV. The Administrative Element in Adjudication

[*Ch. III.*] Typically judicial treatment of a controversy is a measuring of it by a rule in order to reach a universal solution for a class of causes of which the cause in hand is but an example. Typically administrative treatment of a situation is a disposition of it as a unique occurrence, an individualization whereby effect is given to its special rather than to its general features. But administration cannot ignore the universal aspects of situations without endangering the general security. Nor may judicial decision ignore their special aspects and exclude all individualization in application without sacrificing the social interest in the individual life through making justice too wooden and mechanical.

Almost all of the problems of jurisprudence come down to a fundamental one of rule and discretion, of administration of justice by law and administration of justice by the more or less trained intuition of experienced magistrates. Controversies as to the nature of law, whether the traditional element or the imperative element of legal systems is the typical law, controversies as to the nature of lawmaking, whether the law is found by judicial empiricism or made by conscious legislation, and controversies as to the bases of law's authority, whether in reason and science on the one hand or in command and sovereign will on the other hand, get their significance from their bearing upon this question. Controversies as to the relation of law and morals, as to the distinction of law and equity, as to the province of the court and of the jury, as to fixed rule or wide judicial power in procedure, and as to judicial sentence and administrative individualization in punitive justice are but forms of this fundamental problem. This is not the place to discuss that problem. Suffice it to say that both are neces-

sary elements in the administration of justice and that instead of eliminating either, we must partition the field between them. But it has been assumed that one or the other must govern exclusively, and there has been a continual movement in legal history back and forth between wide discretion and strict detailed rule, between justice without law, as it were, and justice according to law.

It is usual to describe law as an aggregate of rules. But unless the word rule is used in so wide a sense as to be misleading, such a definition, framed with reference to codes or by jurists whose eyes were fixed upon the law of property, gives an inadequate picture of the manifold components of a modern legal system. Rules, that is, definite, detailed provisions for definite, detailed states of fact, are the main reliance of the beginnings of law. In the maturity of law they are employed chiefly in situations where there is exceptional need of certainty in order to uphold the economic order. With the advent of legal writing and juristic theory in the transition from the strict law to equity and natural law, a second element develops and becomes a controlling factor in the administration of justice. In place of detailed rules precisely determining what shall take place upon a precisely detailed state of facts, reliance is had upon general premises for judicial and juristic reasoning. These legal principles, as we call them, are made use of to supply new rules, to interpret old ones, to meet new situations, to measure the scope and application of rules and to reconcile them when they conflict or overlap. Later, when juristic study seeks to put the materials of the law in order, a third element develops, which may be called legal conceptions. These are more or less exactly defined types, to which we refer cases or by which we classify them, so that when a state of facts is classified we may attribute thereto the legal consequences attaching to the type. All of these admit of mechanical or rigidly logical application. A fourth element, however, which plays a great part in the everyday administration of justice, is of quite another character.

Legal standards of conduct appear first in Roman equity. In certain cases of transactions or relations involving good faith, the formula was made to read that the defendant was to be condemned to that which in good faith he ought to give or do for or render to the plaintiff. Thus the judge had a margin of discretion to determine what good faith called for and in Cicero's time the greatest lawyer of the day thought these *actiones bonae fidei* re-

quired a strong judge because of the dangerous power which they allowed him. From this procedural device, Roman lawyers worked out certain standards or measures of conduct, such as what an upright and diligent head of a family would do, or the way in which a prudent and diligent husbandman would use his land. In similar fashion English equity worked out a standard of fair conduct on the part of a fiduciary. Later the Anglo-American law of torts worked out, as a measure for those who are pursuing some affirmative course of conduct, the standard of what a reasonable, prudent man would do under the circumstances. Also the law of public utilities worked out standards of reasonable service, reasonable facilities, reasonable incidents of the service and the like. In all these cases the rule is that the conduct of one who acts must come up to the requirements of the standard. Yet the significant thing is not the fixed rule but the margin of discretion involved in the standard and its regard for the circumstances of the individual case. For three characteristics may be seen in legal standards: (1) They all involve a certain moral judgment upon conduct. It is to be "fair," or "conscientious," or "reasonable," or "prudent," or "diligent." (2) They do not call for exact legal knowledge exactly applied, but for common sense about common things or trained intuition about things outside of everyone's experience. (3) They are not formulated absolutely and given an exact content, either by legislation or by judicial decision, but are relative to times and places and circumstances and are to be applied with reference to the facts of the case in hand. They recognize that within the bounds fixed each case is to a certain extent unique. Whether the standard of due care in an action for negligence is applying by a jury, or the standard of reasonable facilities for transportation is applying by a public service commission, the process is one of judging of the quality of a bit of conduct under its special circumstances and with reference to ideas of fairness entertained by the layman or the ideas of what is reasonable entertained by the more or less expert commissioner. Common sense, experience and intuition are relied upon, not technical rule and scrupulously mechanical application.

We are familiar with judicial individualization in the administration of equitable remedies. Another form, namely, individualization through latitude of application under the guise of choice or ascertainment of a rule, is concealed by the fiction of the logical

completeness of the legal system. To a large and apparently growing extent the practice of our application of law has been that jurors or courts, as the case may be, take the rules of law as a general guide, determine what the equities of the cause demand, and contrive to find a verdict or render a judgment accordingly, wrenching the law no more than is necessary. Many courts today are suspected of ascertaining what the equities of a controversy require, and then raking up adjudicated cases to justify the result desired. Often formulas are conveniently elastic so that they may or may not apply. Often rules of contrary tenor overlap, leaving a convenient no-man's-land wherein cases may be decided either way according to which rule the court chooses in order to reach a result arrived at on other grounds. Occasionally a judge is found who acknowledges frankly that he looks chiefly at the ethical situation between the parties and does not allow the law to interfere therewith beyond what is inevitable.

Thus we have in fact a crude equitable application, a crude individualization, throughout the field of judicial administration of justice. It is assumed by courts more widely than we suspect, or at least, more widely than we like to acknowledge. Such has been the result of attempts to exclude the administrative element in adjudication. In theory there is no such thing except with respect to equitable remedies, where it exists for historical reasons. In practice there is a great deal of it, and that in a form which is unhappily destructive of certainty and uniformity. Necessary as it is, the method by which we attain a needed individualization is injurious to respect for law. If the courts do not respect the law, who will? There is no exclusive cause of the current American attitude toward the law. But judicial evasion and warping of the law, in order to secure in practice a freedom of judicial action not conceded in theory, is certainly one cause. We need a theory which recognizes the administrative element as a legitimate part of the judicial function and insists that individualization in the application of legal precepts is no less important than the contents of those precepts themselves.

V. The Proper Field of Individualization in the Application of Law

[*Ch. III, cont.*] Analytical and historical theories of application of law seek to exclude the administrative element wholly and their

adherents resort to fictions to cover up the judicial individualization which none the less obtains in practice or else ignore it, saying that it is but a result of the imperfect constitution of tribunals or of the ignorance or sloth of those who sit therein. The latter explanation is no more satisfying than the fictions, and a new theory has sprung up of late in Continental Europe which may be understood best by calling it the equitable theory, since the methods of the English Chancellor had much to do with suggesting it. To the adherents of this theory the essential thing is a reasonable and just solution of the individual controversy. They conceive of the legal precept, whether legislative or traditional, as a guide to the judge, leading him toward the just result. But they insist that within wide limits he should be free to deal with the individual case so as to meet the demands of justice between the parties and accord with the reason and moral sense of ordinary men. They insist that application of law is not a purely mechanical process. They contend that it involves not logic only but moral judgments as to particular situations and courses of conduct in view of the special circumstances which are never exactly alike. They insist that such judgments involve intuitions based upon experience and are not to be expressed in definitely formulated rules. They argue that the cause is not to be fitted to the rule but the rule to the cause.

Much that has been written by advocates of the equitable theory of application of law is extravagant. As usually happens, in reaction from theories going too far in one direction this theory has gone too far in the other. The last century would have eliminated individualization of application. Now come those who would have nothing else; who would turn over the whole field of judicial justice to administrative methods. If we must choose, if judicial administration of justice must of necessity be wholly mechanical or else wholly administrative, it was a sound instinct of lawyers in the maturity of law that led them to prefer the former. Only a saint, such as Louis IX under the oak at Vincennes, may be trusted with the wide powers of a judge restrained only by a desire for just results in each case to be reached by taking the law for a general guide. And St. Louis did not have the crowded calendars that confront the modern judge. But are we required to choose? May we not learn something from the futility of all efforts to administer justice exclusively by either method? May we not find

the proper field of each by examining the means through which in fact we achieve an individualization which we deny in theory, and considering the cases in which those means operate most persistently and the actual administration of justice most obstinately refuses to become as mechanical in practice as we expect it to be in theory?

In Anglo-American law today there are no less than seven agencies for individualizing the application of law. We achieve an individualization in practice: (1) through the discretion of courts in the application of equitable remedies; (2) through legal standards applied to conduct generally when injury results and also to certain relations and callings; (3) through the power of juries to render general verdicts; (4) through latitude of judicial application involved in finding the law; (5) through devices for adjusting penal treatment to the individual offender; (6) through informal methods of judicial administration in petty courts; and (7) through administrative tribunals.

If we look at the means of individualizing the application of law which have developed in our legal system, it will be seen that almost without exception they have to do with cases involving the moral quality of individual conduct or of the conduct of enterprises, as distinguished from matters of property and of commercial law. Equity uses its powers of individualizing to the best advantage in connection with the conduct of those in whom trust and confidence have been reposed. Legal standards are used chiefly in the law of torts, in the law of public utilities and in the law as to fiduciary relations. Jury lawlessness is an agency of justice chiefly in connection with the moral quality of conduct where the special circumstances exclude that "intelligence without passion" which, according to Aristotle, characterizes the law. It is significant that in England today the civil jury is substantially confined to cases of defamation, malicious prosecution, assault and battery and breach of promise of marriage. Judicial individualization through choice of a rule is most noticeable in the law of torts, in the law of domestic relations and in passing upon the conduct of enterprises. The elaborate system of individualization in criminal procedure has to do wholly with individual human conduct. The informal methods of petty courts are meant for tribunals which pass upon conduct in the crowd and hurry of our large cities. The administrative tribunals, which are

setting up on every hand, are most called for and prove most effective as means of regulating the conduct of enterprises.

A like conclusion is suggested when we look into the related controversy as to the respective provinces of common law and of legislation. Inheritance and succession, definition of interests in property and the conveyance thereof, matters of commercial law and the creation, incidents and transfer of obligations have proved a fruitful field for legislation. In these cases the social interest in the general security is the controlling element. But where the questions are not of interests of substance but of the weighing of human conduct and passing upon its moral aspects, legislation has accomplished little. No codification of the law of torts has done more than provide a few significantly broad generalizations. On the other hand, succession to property is everywhere a matter of statute law and commercial law is codified or codifying throughout the world. Moreover the common law insists upon its doctrine of *stare decisis* chiefly in the two cases of property and commercial law. Where legislation is effective, there also mechanical application is effective and desirable. Where legislation is ineffective, the same difficulties that prevent its satisfactory operation require us to leave a wide margin of discretion in application, as in the standard of the reasonable man in our law of negligence and the standard of the upright and diligent head of a family applied by the Roman law. All attempts to cut down this margin have proved futile. May we not conclude that in the part of the law which has to do immediately with conduct complete justice is not to be attained by the mechanical application of fixed rules?

Philosophically the apportionment of the field between rule and discretion which is suggested by the use of rules and of standards respectively in modern law has its basis in the respective fields of intelligence and intuition. Bergson tells us that the former is more adapted to the inorganic, the latter more to life. According to him, intelligence is characterized by "its power of grasping the general element in a situation and relating it to past situations," and this power involves loss of "that perfect mastery of a special situation in which instinct rules." In the law of property and in the law of commercial transactions it is precisely this general element and its relation to past situations that is decisive. The rule, mechanically applied, works by repetition and precludes individuality in results, which would threaten the security of acquisitions

and the security of transactions. On the other hand, in the hand-made, as distinguished from the machine-made product, the specialized skill of the workman gives us something infinitely more subtle than can be expressed in rules. In law some situations call for the product of hands, not of machines, for they involve not repetition, where the general elements are significant, but unique events, in which the special circumstances are significant. Every promissory note is like every other. Every fee simple is like every other. Every distribution of assets repeats the conditions that have recurred since the Statute of Distributions. But no two cases of negligence have been alike or ever will be alike. Where the call is for individuality in the product of the legal mill, we resort to standards. And the sacrifice of certainty in so doing is more apparent than actual. For the certainty attained by mechanical application of fixed rules to human conduct has always been illusory.

III. THE ANALYSIS OF THE JUDICIAL PROCESS

The Nature of the Judicial Process (1921)

The Growth of the Law (1924)

Benjamin N. Cardozo (1870–)

Time was when the judicial process was a mystery. Judges in their judicial capacity were, like priests, the instruments of revelation. Even in its least mystic interpretation, the function of the courts was to find the law by deduction from established precedents. It was only with the rise of the utilitarian school that the legislative character of judicial decisions was clearly recognized, and Bentham and Austin were too much opposed to judicial legislation to attempt to analyze it into its elements. Examination of the judicial process was hardly attempted before the opening of the twentieth century.

Even in present-day criticism, denunciation of judicial failings is far more common than scientific analysis of the judicial function. The new jurisprudence is, however, squarely facing the problem. Especially in the United States, where the exercise of judicial review magnifies the rôle of the judiciary, distinguished judges discuss the subject in the light of their own experience. Stimulating observations are to be found in numerous opinions written by Oliver Wendell Holmes while on the United States Supreme Court, and a studied consideration of the entire problem is offered in the series of lectures entitled *The Nature of the Judicial Process* and *The Growth of the Law*, delivered at the law school of Yale University in 1921 and 1923 respectively by Benjamin N. Cardozo, then an associate judge of the Court of Appeals of New York.

Cardozo was born in New York City of Portuguese-Jewish parentage. Although his father had been driven from the bench on account of connection with the Tweed ring, the younger Cardozo chose the same profession and studied law at Columbia, where he had already taken his bachelor's degree. After twenty years of legal practice, especially in the appellate courts, he was elected to the important trial court known as the New York Supreme Court, and was almost immediately designated by the governor to serve as an additional judge on the Court of Appeals, the highest court of the state. Cardozo was subsequently elected to the Court of Appeals as a regular member, and in 1926 was elected Chief Judge with the endorsement of both the major political parties. In 1932 he was appointed to the United States Supreme Court to fill the vacancy caused by Holmes's resignation. Aside from the works already mentioned, Cardozo's chief contribution to legal philosophy is his *Paradoxes of Legal Science* (1928).

The readings here given are based on the text of the original editions of *The Nature of the Judicial Process* (Yale U. Press, New Haven, 1921) and *The Growth of the Law* (Yale U. Press, New Haven, 1924), and are reprinted by permission of the publishers. The footnotes are the author's own.

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THE NATURE OF THE JUDICIAL PROCESS

I. The Directive Force of Precedent

[*Lect. I.*] The work of deciding cases goes on every day in hundreds of courts throughout the land. Any judge, one might suppose, would find it easy to describe the process which he had followed a thousand times and more. Nothing could be farther from the truth. Let some intelligent layman ask him to explain: he will not go very far before taking refuge in the excuse that the language of craftsmen is unintelligible to those untutored in the craft. Such an excuse may cover with a semblance of respectability an otherwise ignominious retreat. It will hardly serve to still the pricks of curiosity and conscience. In moments of introspection, when there is no longer a necessity of putting off with a show of wisdom the uninitiated interlocutor, the troublesome problem will recur, and press for a solution. What is it that I

do when I decide a case? To what sources of information do I appeal for guidance? In what proportions do I permit them to contribute to the result? In what proportions ought they to contribute? If a precedent is applicable, when do I refuse to follow it? If no precedent is applicable, how do I reach the rule that will make a precedent for the future? If I am seeking logical consistency, the symmetry of the legal structure, how far shall I seek it? At what point shall the quest be halted by some discrepant custom, by some consideration of the social welfare, by my own or the common standards of justice and morals? Into that strange compound which is brewed daily in the caldron of the courts, all these ingredients enter in varying proportions. I am not concerned to inquire whether judges ought to be allowed to brew such a compound at all. I take judge-made law as one of the existing realities of life. There, before us, is the brew. Not a judge on the bench but has had a hand in the making. The elements have not come together by chance. *Some* principle, however unavowed and inarticulate and subconscious, has regulated the infusion. It may not have been the same principle for all judges at any time, nor the same principle for any judge at all times. But a choice there has been, not a submission to the decree of Fate; and the considerations and motives determining the choice, even if often obscure, do not utterly resist analysis.

Before we can determine the proportions of a blend, we must know the ingredients to be blended. Our first inquiry should therefore be: Where does the judge find the law which he embodies in his judgment? There are times when the source is obvious. The rule that fits the case may be supplied by the constitution or by statute. If that is so, the judge looks no farther. The correspondence ascertained, his duty is to obey. The constitution overrides a statute, but a statute, if consistent with the constitution, overrides the law of judges. In this sense, judge-made law is secondary and subordinate to the law that is made by legislators. It is true that codes and statutes do not render the judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are doubts and ambiguities to be cleared. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however obscure and latent, had none the less a real and ascertainable pre-existence

in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. "The fact is," says Gray in his lectures on the "Nature and Sources of the Law," [1] "that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

I will dwell no further for the moment upon the significance of constitution and statute as sources of the law. The work of a judge in interpreting and developing them has indeed its problems and its difficulties, but they are problems and difficulties not different in kind or measure from those besetting him in other fields. I think they can be better studied when those fields have been explored. Sometimes the rule of constitution or of statute is clear, and then the difficulties vanish. Even when they are present, they lack at times some of that element of mystery which accompanies creative energy. We reach the land of mystery when constitution and statute are silent, and the judge must look to the common law for the rule that fits the case. He is the "living oracle of the law" in Blackstone's vivid phrase. Looking at Sir Oracle in action, viewing his work in the dry light of realism, how does he set about his task?

The first thing he does is to compare the case before him with the precedents, whether stored in his mind or hidden in the books. If they are plain and to the point, there may be need of nothing more. *Stare decisis* is at least the everyday working rule of our law. I shall have something to say later about the propriety of relaxing the rule in exceptional conditions. But unless those conditions are present, the work of deciding cases in accordance with precedents that plainly fit them is a process similar in its nature to that of deciding cases in accordance with a statute. It is a process of search, comparison, and little more. It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins. He must then fashion law for the litigants before

[1] Sec. 370, p. 165.

him. In fashioning it for them, he will be fashioning it for others.

In the life of the mind as in life elsewhere, there is a tendency toward the reproduction of kind. Every judgment has a generative power. It begets in its own image. Until the sentence was pronounced, it was as yet in equilibrium. Its form and content were uncertain. Any one of many principles might lay hold of it and shape it. Once declared, it is a new stock of descent. It is charged with vital power. It is the source from which new principles or norms may spring to shape sentences thereafter.

The problem which confronts the judge is in reality a twofold one; he must first extract from the precedents the underlying principle, the *ratio decidendi;* he must then determine the path or direction along which the principle is to move and develop, if it is not to wither and die.

The first branch of the problem is the one to which we are accustomed to address ourselves more consciously than to the other. Cases do not unfold their principles for the asking. They yield up their kernel slowly and painfully. The instance cannot lead to a generalization till we know it as it is. That in itself is no easy task. For the thing adjudged comes to us oftentimes swathed in obscuring dicta, which must be stripped off and cast aside. Let us assume, however, that this task has been achieved, and that the precedent is known as it really is. Let us assume too that the principle, latent within it, has been skillfully extracted and accurately stated. Only half or less than half of the work has yet been done. The problem remains to fix the bounds and the tendencies of development and growth, to set the directive force in motion along the right path at the parting of the ways.

The directive force of a principle may be exerted along the line of logical progression; this I will call the rule of analogy or the method of philosophy; along the line of historical development; this I will call the method of evolution; along the line of the customs of the community; this I will call the method of tradition; along the lines of justice, morals and social welfare, the *mores* of the day; and this I will call the method of sociology.

I have put first among the principles of selection to guide our choice of paths, the rule of analogy or the method of philosophy. In putting it first, I do not mean to rate it as most important. On the contrary, it is often sacrificed to others. I have put it first be-

cause it has, I think, a certain presumption in its favor. Given a mass of particulars, a congeries of judgments on related topics, the principle that unifies and rationalizes them has a tendency, and a legitimate one, to project and extend itself to new cases within the limits of its capacity to unify and rationalize. It has the primacy that comes from natural and orderly and logical succession. Homage is due to it over every competing principle that is unable by appeal to history or tradition or policy or justice to make out a better right. All sorts of deflecting forces may appear to contest its sway and absorb its power. At least, it is the heir presumptive. A pretender to the title will have to fight his way.

The directive force of logic does not always exert itself, however, along a single and unobstructed path. One principle or precedent, pushed to the limit of its logic, may point to one conclusion; another principle or precedent, followed with like logic, may point with equal certainty to another. In this conflict, we must choose between the two paths, selecting one or other, or perhaps striking out upon a third, which will be the resultant of the two forces in combination, or will represent the mean between extremes. Let me take as an illustration of such conflict the famous case of Riggs v. Palmer, 115 N. Y. 506. That case decided that a legatee who had murdered his testator would not be permitted by a court of equity to enjoy the benefits of the will. Conflicting principles were there in competition for the mastery. One of them prevailed, and vanquished all the others. There was the principle of the binding force of a will disposing of the estate of a testator in conformity with law. That principle, pushed to the limit of its logic, seemed to uphold the title of the murderer. There was the principle that civil courts may not add to the pains and penalties of crimes. That, pushed to the limit of its logic, seemed again to uphold his title. But over against these was another principle, of greater generality, its roots deeply fastened in universal sentiments of justice, the principle that no man should profit from his own inequity or take advantage of his own wrong. The logic of this principle prevailed over the logic of the others. I say its logic prevailed. The thing which really interests us, however, is why and how the choice was made between one logic and another. In this instance, the reason is not obscure. One path was followed, another closed, because of the conviction in the judicial mind that the one selected led to justice. The murderer

lost the legacy for which the murder was committed because the social interest served by refusing to permit the criminal to profit by his crime is greater than that served by the preservation and enforcement of legal rights of ownership. My illustration, indeed, has brought me ahead of my story. The judicial process is there in microcosm. We go forward with our logic, with our analogies, with our philosophies, till we reach a certain point. At first, we have no trouble with the paths; they follow the same lines. Then they begin to diverge, and we must make a choice between them. History or custom or social utility or some compelling sentiment of justice or sometimes perhaps a semi-intuitive apprehension of the pervading spirit of our law, must come to the rescue of the anxious judge, and tell him where to go.

II. The Quest for Social Values

[*Lect. II.*] The tendency of a principle to expand itself to the limit of its logic may be counteracted by the tendency to confine itself within the limits of its history. I do not mean that even then the two methods are always in opposition. A classification which treats them as distinct is, doubtless, subject to the reproach that it involves a certain overlapping of the lines and principles of division. Very often, the effect of history is to make the path of logic clear. Growth may be logical whether it is shaped by the principle of consistency with the past or by that of consistency with some pre-established norm, some general conception, some "indwelling, and creative principle." [2] The directive force of the precedent may be found either in the events that made it what it is, or in some principle which enables us to say of it that it is what it ought to be. Development may involve either an investigation of origins or an effort of pure reason. Both methods have their logic. For the moment, however, it will be convenient to identify the method of history with the one, and to confine the method of logic or philosophy to the other.

If history and philosophy do not serve to fix the direction of a principle, custom may step in.

Undoubtedly the creative energy of custom in the development of common law is less today than it was in bygone times. Even in bygone times, its energy was very likely exaggerated by Blackstone and his followers. "Today we recognize," in the words of

[2] Bryce, "Studies in History and Jurisprudence," vol. II, p. 609.

Pound,[3] "that the custom is a custom of judicial decision, not of popular action." It is "doubtful," says Gray [4] "whether at all stages of legal history, rules laid down by judges have not generated custom, rather than custom generated the rules." In these days, at all events, we look to custom, not so much for the creation of new rules, but for the tests and standards that are to determine how established rules shall be applied. When custom seeks to do more than this, there is a growing tendency in the law to leave development to legislation. Judges do not feel the same need of putting the *imprimatur* of law upon customs of recent growth, knocking for entrance into the legal system, and viewed askance because of some novel aspect of form or feature, as they would if legislatures were not in frequent session, capable of establishing a title that will be unimpeached and unimpeachable. But the power is not lost because it is exercised with caution.

The constant assumption runs throughout the law that the natural and spontaneous evolutions of habit fix the limits of right and wrong. A slight extension of custom identifies it with customary morality, the prevailing standard of right conduct, the *mores* of the time. This is the point of contact between the method of tradition and the method of sociology. They have their roots in the same soil. Each method maintains the interaction between conduct and order, between life and law.

The final cause of law is the welfare of society. The rule that misses its aim cannot permanently justify its existence. Logic and history and custom have their place. We will shape the law to conform to them when we may; but only within bounds. The end which the law serves will dominate them all. I do not mean, of course, that judges are commissioned to set aside existing rules at pleasure in favor of any other set of rules which they may hold to be expedient or wise. I mean that when they are called upon to say how far existing rules are to be extended or restricted, they must let the welfare of society fix the path, its direction and its distance. We are not to forget, said Sir George Jessel, in an often quoted judgment, that there is this paramount public policy, that we are not lightly to interfere with freedom of contract.[5] So in this field, there may be a paramount public policy, one that

[3] "Common Law and Legislation," 21 Harvard L. R. 383, 406.
[4] "Nature and Sources of the Law," sec. 634.
[5] Printing etc. Registering Co. v. Sampson, L. R. 19 Eq. 462, 465.

will prevail over temporary inconvenience or occasional hardship, not lightly to sacrifice certainty and uniformity and order and coherence. All these elements must be considered. They are to be given such weight as sound judgment dictates. They are constituents of that social welfare which it is our business to discover. In a given instance we may find that they are constituents of preponderating value. In others, we may find that their value is subordinate. We must appraise them as best we can.

In a sense it is true that we are applying the method of sociology when we pursue logic and coherence and consistency as the greater social values. I am concerned for the moment with the fields in which the method is in antagonism to others rather than with those in which their action is in unison. Accurate division is, of course, impossible. A few broad areas may, however, be roughly marked as those in which the method of sociology has fruitful application.

I speak first of the constitution, and in particular of the great immunities with which it surrounds the individual. No one shall be deprived of liberty without due process of law. Here is a concept of the greatest generality. Yet it is put before the courts *en bloc*. Liberty is not defined. Its limits are not mapped and charted. How shall they be known? Does liberty mean the same thing for successive generations? May restraints that were arbitrary yesterday be useful and rational and therefore lawful today? May restraints that are arbitrary today become useful and rational and therefore lawful tomorrow? I have no doubt that the answer to these questions must be yes. There were times in our judicial history when the answer might have been no. Liberty was conceived of at first as something static and absolute. The Declaration of Independence had enshrined it. The blood of the Revolution had sanctified it. The political philosophy of Rousseau and of Locke and later of Herbert Spencer and of the Manchester school of economists had dignified and rationalized it. *Laissez faire* was not only a counsel of caution which statesmen would do well to heed. It was a categorical imperative which statesmen, as well as judges, must obey. Gradually, however, though not without frequent protest and intermittent movements backward, a new conception of the significance of constitutional limitations in the domain of individual liberty, emerged to recognition and to dominance. Even as late as 1905, the decision in Lochner v. N. Y., 198

U. S. 45, still spoke in terms untouched by the light of the new spirit. It is the dissenting opinion of Justice Holmes, which men will turn to in the future as the beginning of an era. In the instance, it was the voice of a minority. In principle, it has become the voice of a new dispensation, which has written itself into law. "The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics." [6] "A constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state, or of *laissez faire*." [7] "The word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law." [8] That is the conception of liberty which is dominant today. It has its critics even yet, but its dominance is, I think, assured. No doubt, there will at times be difference of opinion when a conception so delicate is applied to varying conditions. At times, indeed, the conditions themselves are imperfectly disclosed and inadequately known. Many and insidious are the agencies by which opinion is poisoned at its sources. Courts have often been led into error in passing upon the validity of a statute, not from misunderstanding of the law, but from misunderstanding of the facts. This happened in New York. A statute forbidding night work for women was declared arbitrary and void in 1907.[9] In 1915, with fuller knowledge of the investigations of social workers, a like statute was held to be reasonable and valid.[10] Courts know today that statutes are to be viewed, not in isolation or *in vacuo*, as pronouncements of abstract principles for the guidance of an ideal community, but in the setting and the framework of present-day conditions, as revealed by the labors of economists and students of the social sciences in our own country and abroad.

The courts, then, are free in marking the limits of the individual's immunities to shape their judgments in accordance with reason and justice. That does not mean that in judging the valid-

[6] 198 U. S. 75.
[7] P. 75.
[8] P. 76.
[9] People v. Williams, 189 N. Y. 131.
[10] People v. Schweinler Press, 214 N. Y. 395.

ity of statutes they are free to substitute their own ideas of reason and justice for those of the men and women whom they serve. Their standard must be an objective one. In such matters, the thing that counts is not what I believe to be right. It is what I may reasonably believe that some other man of normal intellect and conscience might reasonably look upon as right.

Some critics of our public law insist that the power of the courts to fix the limits of permissible encroachment by statute upon the liberty of the individual is one that ought to be withdrawn. It means, they say, either too much or too little. If it is freely exercised, if it is made an excuse for imposing the individual beliefs and philosophies of the judges upon other branches of the government, if it stereotypes legislation within the forms and limits that were expedient in the nineteenth or perhaps the eighteenth century, it shackles progress, and breeds distrust and suspicion of the courts. If, on the other hand, it is interpreted in the broad and variable sense which I believe to be the true one, if statutes are to be sustained unless they are so plainly arbitrary and oppressive that right-minded men and women could not reasonably regard them otherwise, the right of supervision, it is said, is not worth the danger of abuse. That is the argument of the critics of the existing system. My own belief is that it lays too little stress on the value of the "imponderables." The utility of an external power restraining the legislative judgment is not to be measured by counting the occasions of its exercise. The great ideals of liberty and equality are preserved against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments, the scorn and derision of those who have no patience with general principles, by enshrining them in constitutions, and consecrating to the task of their protection a body of defenders. By conscious or subconscious influence, the presence of this restraining power, aloof in the background, but none the less always in reserve, tends to stabilize and rationalize the legislative judgment, to infuse it with the glow of principle, to hold the standard aloft and visible for those who must run the race and keep the faith. I do not mean to deny that there have been times when the possibility of judicial review has worked the other way. Legislatures have sometimes disregarded their own responsibility, and passed it on to the courts. Such dangers must be balanced against those of independence from all restraint, independence on the

part of public officers elected for brief terms, without the guiding force of a continuous tradition. On the whole, I believe the latter dangers to be the more formidable of the two. Great maxims, if they may be violated with impunity, are honored often with lip-service, which passes easily into irreverence. The restraining power of the judiciary does not manifest its chief worth in the few cases in which the legislature has gone beyond the lines that mark the limits of discretion. Rather shall we find its chief worth in making vocal and audible the ideals that might otherwise be silenced, in giving them continuity of life and expression, in guiding and directing choice within the limits where choice ranges. This function should preserve to the courts the power that now belongs to them, if only the power is exercised with insight into social values, and with suppleness of adaptation to changing social needs.

THE GROWTH OF THE LAW

I. The Nature of Law

[*Lect. II.*] Law is something more than a succession of isolated judgments which spend their force as law when they have composed the controversies that led to them. "The general body of doctrine and tradition" from which the judgments were derived, and "by which we criticize them" [1] must be ranked as law also, not merely because it is the chief subject of our study, but because also the limits which it imposes upon a judge's liberty of choice are not purely advisory, but involve in greater or less degree an element of coercive power. At all events, if this is not law, some other word must be invented to describe it; and to it we shall then transfer the major portion of our interest. Judgments themselves have importance for the student so far, and so far only, as they permit a reasonable prediction that like judgments will be rendered if like situations are repeated. The study of the law is thus seen to be the study of principles of order revealing themselves in uniformities of antecedents and consequents. When the uniformities are sufficiently constant to be the subject of prediction with reasonable certainty, we say that law exists. Indeed, they may be so persuasive and compelling as to lead us to say, if the prediction miscarries, that the judgment which disappoints

[1] Pound, "Judge Holmes's Contributions to the Science of Law," 31 *Harv. L. R.* 449, 452.

us is error. We may even hazard a new prediction that the judgment which gives momentary currency to error will some day be reversed. On the other hand, situations may exist where the uniformities are so inconstant, the analogies so doubtful, the body of principles and tradition so equivocal in their directions, that we are unable to predict. We can at most argue or suggest. No doubt there is difficulty, upon occasion, in fixing the point of time at which one process shades into the other. When does a mere hypothesis become transformed into a principle or a rule, and when does the principle or rule put off the vestments of authority, and become a shattered or deposed hypothesis?

A maker of automobiles is sued by the victim of an accident. The plaintiff bought the vehicle, not from the maker, but from someone else. He asserts that there was negligence in the process of manufacture, and that privity of contract is unnecessary to confer a right of action. Since the decision in MacPherson v. Buick Mfg. Co., 217 N. Y. 382, decided in 1916, the law of New York must be said to be in accordance with the plaintiff's claim. What, however, was the posture of affairs before the Buick case had been determined? Was there any law on the subject? A mass of judgments, more or less relevant, had been rendered by the same and other courts. A body of particulars existed on which an hypothesis might be reared. None the less, their implications were equivocal. We see this in the fact that the judgment of the court was not rendered without dissent. Whether the law can be said to have existed in advance of the decision, will depend upon the varying estimates of the nexus between the conclusion and existing principle and precedent.

Let me take another case where the problem was yet more doubtful. Suppose a decision frankly new, covering a virgin field, or a decision reached as the result of the upsetting of another judgment.[2] Klein v. Maravelas held valid the sales in bulk act, and in so doing overruled an earlier decision which held it void. People v. Schweinler Press held valid the statute limiting hours of work for women, overruling an earlier decision to the contrary. In these judgments, appeal was made to a body of opinion which displayed uniformities at variance with the judgment to be nullified. A wrong answer was set right by the substitution of the true one.

[2] Klein v. Maravelas, 219 N. Y. 383, People v. Schweinler Press, 214 N. Y. 395; *cf.* Epstein v. Gluckin, 233 N. Y. 490.

The quality of law was maintained as the expression through the courts of a principle of order.

Now, we must note that in all these cases there was present the possibility that the prediction would miscarry. The distinction in that respect between one case and another is one merely of degree. So, indeed, it must always be. The court may reverse itself, and unsettle what seemed settled. It may ignore or misapply established rules through carelessness or ignorance or in rare instances corruption. What permits us to say that the principles are law is the force or persuasiveness of the prediction that they will or ought to be applied. Even when the conclusion upon a special state of facts is in doubt, as in the case of the manufacturer of the Buick car, there is little doubt that the conclusion will be drawn from a stock of principles and rules which will be treated as invested with legal obligation. The court will not roam at large, and light upon one conclusion or another as the result of favor or caprice. This stock of rules and principles is what for most purposes we mean by law. We may not draw the same deductions from them as the court does in this case or in that. There will be little difference in our premises. We shall unite in viewing as law that body of principle and dogma which with a reasonable measure of probability may be predicted as the basis for judgment in pending or in future controversies. When the prediction reaches a high degree of certainty or assurance, we speak of the law as settled, though, no matter how great the apparent settlement, the possibility of error in the prediction is always present. When the prediction does not reach so high a standard, we speak of the law as doubtful or uncertain. Farther down is the vanishing point where law does not exist, and must be brought into being, if at all, by an act of free creation.

I know there is a vagueness in all this that may dissatisfy the seeker for inflexible categories, clean-cut and definite compartments, ticketed and labeled and capable of being recognized at sight. The quest is constant and persistent, but it is doomed to disappointment. I do not need to enter into a discussion of the meaning of truth itself. The reality that is absolute and unconditioned may exist, but man must know it, if at all, through its manifestations in the conditioned and the relative. I am not concerned to inquire whether back of these uniformities which have their flower and fruit in judgments, there may be others still

higher and broader, revelations of a social order, norms of right and justice, to which the lower and narrower uniformities must conform, and after which they must be patterned, if they are to be effective and enduring. I doubt whether these types or patterns, except to the extent that they are consistent with statute or decision, should receive the name of law, though in the view of Duguit and others,[3] statute or decision is law only to the extent that it is a sharer in their essence, an expression of their spirit. If there is any law which is back of the sovereignty of the state, and superior thereto, it is not law in such a sense as to concern the judge or the lawyer, however much it concerns the statesman or the moralist. The courts are creatures of the state and of its power, and while their life as courts continues, they must obey the law of their creator.

A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is, then, for the purpose of our study, a principle or rule of law. In speaking of principles and rules of conduct, I include those norms or standards of behavior which, if not strictly rules or principles, since they have not been formally declared in statute or decision, are none the less the types or patterns to which statute or decision may be expected to conform. All that I mean to deny them is a potency superior to that of the established organs of the state. They have their roots in the customary forms and methods of business and of fellowship, the prevalent convictions of equity and justice, the complex of belief and practice which we style the *mores* of the day. They may lack an official *imprimatur*, but this will not always hinder us from resting securely on the assumption that the omission will be supplied when occasion so demands.[4] Unless and until our expectation is disappointed, a standard or rule or principle so verified is treated as law in the governance of conduct, and may fairly be characterized as law in the governance of speech. The uniformity that issues in a reasonable prediction of continuance is the uniformity obeyed.

I have not embarked on this inquiry as a mere exercise in dialectics. I am persuaded that at the root of any satisfactory philosophy

[3] *Cf.* H. Krabbe, *The Modern Idea of the State*.

[4] For illustrations of customs recently recognized by a court as invested with the force of law, see McKee v. Gratz, 260 U. S. 127, 136, and Walker v. Gish, 260 U. S. 447, 450.

of growth, there must be an understanding of what it is that is to grow, a philosophy of genesis or birth. We must get away at one extreme from the notion that law is fixed and immutable, that the conclusion which the judge declares, instead of being itself a more or less tentative hypothesis, an approximate formulation of a uniformity and an order inductively apprehended, has a genuine preëxistence, that judgment is a process of discovery, and not in any degree a process of creation. This is the extreme of which Blackstone is the most eminent exponent. On the other hand, we must avoid another extreme, which, if not the view of Austin, is a version of his thought, or perhaps a perversion, much developed by his successors,—the conception of law as a series of isolated dooms, the general merged in the particular, the principle dethroned and the instance exalted as supreme. Each extreme has a tendency, though for a different reason, to stifle the creative element. The one teaches the lesson that there is nothing to create. The other teaches the lesson that the thing created is a finality, and that the duty is to reproduce. The apotheosis of *stare decisis* is the result. The judgment is the thing. There is no law behind it or apart from it. Let us worship at the shrine of the literal and the actual. What has been held has a significance so unique that, in addition to accepting it as a datum, we are to accept its logical implications as supplying the sole instruments of advance. Between these two extremes we have the conception of law as a body of rules and principles and standards which in their extension to new combinations of events are to be sorted, selected, moulded, and adapted in subordination to an end. A process of trial and error brings judgments into being. A process of trial and error determines their right to reproduce their kind.

II. The Creative Element in the Judicial Process

[*Lect. III.*] From genesis I pass to growth. In what I have to say I propose to limit myself to growth through the judicial process. There may also, of course, be growth through legislation, but the science of legislation is no part of the field of my inquiry. How does the judge develop and extend the body of uniformities which we have named the law when changing combinations of events make development or extension needful? While I was in practice at the bar, I tried to find the pertinent authority, and fit it to the case at hand. I was not much concerned whether it was

right if I was sure that it was pertinent, and I had a blind faith which persisted in the face of reverses and discouragements, that if its pertinency was established, if it fitted well and truly, the courts would follow it inexorably to the limit of its logic. I learned by sad experience that they failed, now and again, to come out where I expected. I thought, however, in my simplicity that they had missed the road or carelessly misread the signposts; the divagations never had the aspect of willful adventures into the land of the unknown. The problem stood before me in a new light when I had to cope with it as judge. I found that the creative element was greater than I had fancied; the forks in the road more frequent; the signposts less complete. Some cases, of course, there are where one route and only one is possible. They are the cases where the law is fixed and settled. They make up in bulk what they lack in interest. Other cases present a genuine opportunity for choice—not a choice between two decisions, one of which may be said to be almost certainly right and the other almost certainly wrong, but a choice so nicely balanced that when once it is announced, a new right and a new wrong will emerge in the announcement. I do not mean, of course, that even in those cases, the preference is blind or arbitrary. The balance is swayed, not by gusts of fancy, but by reason. The judge who chooses believes with varying intensity of conviction that he has chosen well and wisely. None the less, even in his mind, there has been a genuine, not merely a nominal alternative. There have been two paths, each open, though leading to different goals. The fork in the road has not been neutralized for the traveler by a barrier across one of the prongs with the label of "no thoroughfare."

Judges march at times to pitiless conclusions under the prod of a remorseless logic which is supposed to leave them no alternative. They deplore the sacrificial rite. They perform it, none the less, with averted gaze, convinced as they plunge the knife that they obey the bidding of their office. The victim is offered up to the gods of jurisprudence on the altar of regularity. One who seeks examples may be referred to Dean Pound's illuminating paper on "Mechanical Jurisprudence." [5] I suspect that many of these sacrifices would have been discovered to be needless if a sounder analysis of the growth of law, a deeper and truer comprehension of its methods, had opened the priestly ears to the call of other voices.

[5] 8 *Col. L. R.* 603.

We should know, if thus informed, that magic words and incantations are as fatal to our science as they are to any other. Methods, when classified and separated, acquire their true bearing and perspective as means to an end, not as ends in themselves. We seek to find peace of mind in the word, the formula, the ritual. The hope is an illusion. We think we shall be satisfied to match the situation to the rule, and, finding correspondence, to declare it without flinching. Hardly is the ink dry upon our formula before the call of an unsuspected equity—the urge of a new group of facts, a new combination of events—bids us blur and blot and qualify and even, it may be, erase. The counterdrive—the tug of emotion—is too strong to be resisted. What Professor Dewey says of problems of morals [6] is true, not in like degree, but, none the less, in large measure, of the deepest problems of the law; the situations which they present, so far as they are real problems, are almost always unique. There is nothing that can relieve us of "the pain of choosing at every step."

[*Lect. IV.*] In the present state of our knowledge, the estimate of the comparative value of one social interest and another, when they come, two or more of them, into collision, will be shaped for the judge, as it is for the legislator, in accordance with an act of judgment in which many elements coöperate. It will be shaped by his experience of life; his understanding of the prevailing canons of justice and morality; his study of the social sciences; at times, in the end, by his intuitions, his guesses, even his ignorance or prejudice. The web is tangled and obscure, shot through with a multitude of shades and colors, the skeins irregular and broken. Many hues that seem to be simple, are found, when analyzed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards, or even to describe them, have never wholly succeeded. Aristotle distinguishes between corrective justice (*διορθωτικόν*), distributive justice (*διανεμητικόν*), and general justice (*τὸ καθόλον δίκαιον*).[7] Such a classification does not carry us far. What we are seeking is not merely the justice that one receives when his rights and duties are determined by the law as it is; what we are seeking is the justice to which law in its mak-

[6] *Reconstruction in Philosophy; Human Nature and Conduct.*
[7] Vinogradoff, *Historical Jurisprudence*, vol. II, pp. 45–57.

ing should conform. Justice in this sense is a concept by far more subtle and indefinite than any that is yielded by mere obedience to a rule. It remains to some extent, when all is said and done, the synonym of an aspiration, a mood of exaltation, a yearning for what is fine or high. "Justice," says Stammler in a recent paper,[8] "is the directing of a particular legal volition according to the conception of a pure community." Perhaps we shall even find at times that when talking about justice, the quality we have in mind is charity, and this though the one quality is often contrasted with the other. The ingredient which sours if left alone, is preserved by an infusion, sweetening the product without changing its identity. You may give what recipes you will. A trained sense of taste, approving or rejecting, will pass judgment on the whole.

The precept that emerges from this flux seems barren enough indeed, till the transfiguring process of creation has proved it to be fertile. "You shall not for some slight profit of convenience or utility depart from standards set by history or logic; the loss will be greater than the gain. You shall not drag in the dust the standards set by equity and justice to win some slight conformity to symmetry and order; the gain will be unequal to the loss." This and little more will be found inscribed upon the tables. We shall learn, none the less, that the commandment, jejune and vague upon its face, has unsuspected implications, hidden and unknown energies, that are revealed to the devout, to those who seek in very truth and with all their might to follow and obey. Between these poles there is room for an infinitude of nice adjustments, all swayed in some degree by the attraction of the force that radiates from either end. As new problems arise, equity and justice will direct the mind to solutions which will be found, when they are scrutinized, to be consistent with symmetry and order, or even to be the starting points of a symmetry and order theretofore unknown. Logic and history, the countless analogies suggested by the recorded wisdom of the past, will in turn inspire new expedients for the attainment of equity and justice.

[8] 21 *Mich L. R.* 889.

CHAPTER XVI. THE NEW PSYCHOLOGICAL APPROACH

I. THE PROBLEM OF SCIENTIFIC METHOD IN POLITICAL SCIENCE

Human Nature in Politics (1908)

Graham Wallas (1858–1932)

The psychology of the individual has frequently figured in the literature of political theory. Plato in his *Republic* elaborates on the three elements of the individual soul, Hobbes begins his *Leviathan* with an entire part on the nature of man, and even the legalistic philosophy of the Austinian school is colored by the pleasure-pain psychology of the utilitarians. But it is only in recent years that psychology has undertaken the objective study of behavior, and the scientific psychological approach to political behavior is distinctly a twentieth century development.

Even today political theory frequently employs psychology merely to attack some single concept such as the sovereignty of the state or the compulsive power of judicial precedents. On the other hand there are writers—like McDougall, Tarde, and LeBon—who attempt a constructive social psychology only by unscientific hypotheses concerning group minds and group wills. But Graham Wallas's *Human Nature in Politics* (1908) avoids both these shortcomings. This epoch-making volume undermines the foundations of the intellectualist fallacy traditional in political theory, and achieves a scientific analysis of the rôle of inductive method in political reasoning.

Wallas was the son of an English clergyman and received his education at Shrewsbury School and Corpus Christi College, Oxford. He taught school in early manhood and later helped to found the London School of Economics, where he taught, with extraordinary success, for almost thirty years. He also served for twenty years on the Senate of London University, making valuable contributions to university administration. Wallas had practical experience in politics as a member of the London School Board, the London County Council, and the Royal Commission on Civil Service. As an early member of the Fabian Society, he was the author of one of the essays in *Fabian Essays in Socialism* (1889). More important works were *Life of Francis Place* (1898), which was one of the first scientific studies of English working class history, *The Great Society* (1914), and *Our Social Heritage* (1921).

The readings here given are based on the text of the third American edition of *Human Nature in Politics* (Knopf, New York, 1921), and are reprinted by permission of F. S. Crofts and Company, the present publishers. The footnotes are the author's own.

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HUMAN NATURE IN POLITICS

I. The Material of Political Reasoning

[*Ch. IV.*] The universe which presents itself to our reason is the same as that which presents itself to our feelings and impulses —an unending stream of sensations and memories, every one of which is different from every other, and before which, unless we can select and recognize and simplify, we must stand helpless and unable either to act or think. Man has therefore to create entities that shall be the material of his reasoning, just as he creates entities to be the objects of his emotions and the stimulus of his instinctive inferences.

Exact reasoning requires exact comparison, and in the desert or the forest there were few things which our ancestors could compare exactly. The heavenly bodies seem, indeed, to have been the first objects of consciously exact reasoning, because they were so distant that nothing could be known of them except position and movement, and their position and movement could be exactly compared from night to night.

In the same way the foundation of the terrestrial sciences came from two discoveries, first, that it was possible to abstract single qualities in all things however unlike and to compare them exactly; and secondly, that it was possible artificially to create actual uniformities for the purpose of comparison. Geometry, for instance, came into the service of man when it was consciously realized that all units of land and water were exactly alike in so

far as they were extended surfaces. Metallurgy, on the other hand, only became a science when men could actually take two pieces of copper ore, unlike in shape and appearance and chemical constitution, and extract from them two pieces of copper so nearly alike that they would give the same results when treated in the same way.

This second power over his material the student of politics can never possess. He can never create an artificial uniformity in man. He cannot, after twenty generations of education or breeding render even two human beings sufficiently like each other for him to prophesy with any approach to certainty that they will behave alike under like circumstances.

How far has he the first power? How far can he abstract from the facts of man's state qualities in respect of which men are sufficiently comparable to allow of valid political reasoning?

One thing at least is becoming clear. We must aim at finding as many relevant and measurable facts about human nature as possible, and we must attempt to make all of them serviceable in political reasoning. In collecting, that is to say, the material for a political science, we must adopt the method of the biologist, who tries to discover how many common qualities can be observed and measured in a group of related beings, rather than that of the physicist, who constructs, or used to construct, a science out of a single quality common to the whole material world.

The facts when collected must, because they are many, be arranged. I believe that it would be found convenient by the political student to arrange them under three main heads: descriptive facts as to the human type; quantitative facts as to inherited variations from that type observed either in individuals or groups of individuals; and facts, both quantitative and descriptive, as to the environment into which men are born, and the observed effect of that environment upon their political actions and impulses.

At present, however, the politician who is trained for his work by reading the best-known treatises on political theory is still in the condition of the medical student trained by the study of Hippocrates or Galen. He is taught a few isolated, and therefore distorted, facts about the human type, about pleasure and pain, perhaps, and the association of ideas, or the influence of habit. He is told that these are selected from the other facts of human nature in order that he may think clearly on the hypothesis of

there being no others. What the others may be he is left to discover for himself; but he is likely to assume that they cannot be the subject of effective scientific thought. He learns also a few empirical maxims about liberty and caution and the like, and, after he has read a little of the history of institutions, his political education is complete.

A political thinker so trained is necessarily apt to preserve the conception of human nature which he learnt in his student days in a separate and sacred compartment of his mind, into which the facts of experience, however laboriously and carefully gathered, are not permitted to enter. Professor Ostrogorski published, for instance, in 1902, an important and extraordinarily interesting book on "Democracy and the Organization of Political Parties," containing the results of fifteen years' close observation of the party system in America and England. The instances given in the book might have been used as the basis of a fairly full account of those facts in the human type which are of importance to the politician—the nature of our impulses, the necessary limitations of our contact with the external world, and the methods of that thinking brain which was evolved in our distant past, and which we have now to put to such new and strange uses. But no indication was given that Professor Ostrogorski's experience had altered in the least degree the conception of human nature with which he started. The facts observed are throughout regretfully contrasted with "free reason," [1] "the general idea of liberty," [2] "the sentiments which inspired the men of 1848," [3] and the book ends with a sketch of a proposed constitution in which the voters are to be required to vote for candidates known to them through declarations of policy "from which all mention of party is rigorously excluded." [4] One seems to be reading a series of conscientious observations of the Copernican heavens by a loyal but saddened believer in the Ptolemaic astronomy.

The next step in the course of political training which I am advocating would be the quantitative study of the inherited variations of individual men when compared with the "normal" or "average" man who had so far served for the study of the type.

How is the student to approach this part of the course? Every man differs quantitatively from every other man in respect of

[1] *Passim, e.g.*, vol. ii, p. 728.
[2] *Ibid.*, p. 649.
[3] *Ibid.*, p. 442.
[4] *Ibid.*, p. 756.

every one of his qualities. The student obviously cannot carry in his mind or use for the purposes of thought all the variations even of a single inherited quality which are to be found among the fifteen hundred millions or so of human beings who at any one moment are in existence. Much less can he ascertain or remember the inter-relation of thousands of inherited qualities in the past history of a race in which individuals are at every moment dying and being born.

Fortunately the mathematical students of biology, of whom Professor Karl Pearson is the most distinguished leader, are already showing us that facts of inherited variation can be so arranged that we can remember them without having to get by heart millions of isolated instances. Professor Pearson and the other writers in the periodical *Biometrika* have measured innumerable beech leaves, snails' tongues, human skulls, etc., etc., and have recorded in each case the variations of any quality in a related group of individuals by that which Professor Pearson calls an "observation frequency polygon," but which I, in my own thinking, find that I call (from a vague memory of its shape) a "cocked hat."

Boot manufacturers, as the result of experience, construct in effect such a curve, making a large number of boots of the sizes which in length or breadth are near the mean, and a symmetrically diminishing number of the sizes above and below it.

In the next chapter I shall deal with the use in reasoning of such curves, either actually "plotted" or roughly imagined. In this chapter I point out, firstly, that they can be easily remembered (partly because our visual memory is extremely retentive of the image made by a black line on a white surface) and that we can in consequence carry in our minds the quantitative facts as to a number of variations enormously beyond the possibility of memory if they were treated as isolated instances; and secondly, that we can by imagining such curves form a roughly accurate idea of the character of the variations to be expected as to any inherited quality among groups of individuals not yet born or not yet measured.

The third and last division under which knowledge of man can be arranged for the purposes of political study consists of the facts of man's environment, and of the effect of environment upon his character and actions. The extreme instability and uncertainty of this element constitutes a special difficulty of politics. The

human type and the quantitative distribution of its variations are for the politician, who deals with a few generations only, practically permanent. Man's environment changes with ever-increasing rapidity. The inherited nature of every human being varies indeed from that of every other, but the relative frequency of the most important variations can be forecasted for each generation. The difference, on the other hand, between one man's environment and that of other men can be arranged on no curve and remembered or forecasted by no expedient. Buckle, it is true, attempted to explain the present and prophesy the future intellectual history of modern nations by the help of a few generalizations as to the effect of that small fraction of their environment which consisted of climate. But Buckle failed, and no one has attacked the problem again with anything like his confidence.

We can, of course, see that in the environment of any nation or class at any given time there are some facts which constitute for all its members a common experience, and therefore a common influence. Climate is such a fact, or the discovery of America, or the invention of printing, or the rates of wages and prices. All nonconformists are influenced by their memory of certain facts of which very few churchmen are aware, and all Irishmen by facts which most Englishmen try to forget. The student of politics must therefore read history, and particularly the history of those events and habits of thought in the immediate past which are likely to influence the generation in which he will work. But he must constantly be on his guard against the expectation that his reading will give him much power of accurate forecast. Where history shows him that such and such an experiment has succeeded or failed he must always attempt to ascertain how far success or failure was due to facts of the human type, which he may assume to have persisted into his own time, and how far to facts of environment. When he can show that failure was due to the ignoring of some fact of the type, and can state definitely what that fact is, he will be able to attach a real meaning to the repeated and unheeded maxims by which the elder members of any generation warn the younger that their ideas are "against human nature." But if it is possible that the cause was one of mental environment, that is to say, of habit or tradition or memory, he should be constantly on his guard against generalizations about national or racial "character."

II. The Method of Political Reasoning

[*Ch. V.*] The traditional method of political reasoning has inevitably shared the defects of its subject-matter. In thinking about politics we seldom penetrate behind those simple entities which form themselves so easily in our minds, or approach in earnest the infinite complexity of the actual world. Political abstractions, such as Justice, or Liberty, or the State, stand in our minds as things having a real existence. The names of political species, "governments," or "rights," or "Irishmen," suggest to us the idea of single "type specimens"; and we tend, like medieval naturalists, to assume that all the individual members of a species are in all respects identical with the type specimen and with each other.

In politics a true proposition in the form of "All A is B" almost invariably means that a number of individual persons or things possess the quality B in degrees of variation as numerous as are the individuals themselves. We tend, however, under the influence of our words and the mental habits associated with them to think of A either as a single individual possessing the quality B, or as a number of individuals equally possessing that quality. As we read in the newspaper that "the educated Bengalis are disaffected" we either see, in the half-conscious substratum of visual images which accompanies our reading, a single Babu with a disaffected expression or the vague suggestion of a long row of identical Babus all equally disaffected.

These personifications and uniformities, in their turn, tempt us to employ in our political thinking that method of *a priori* deduction from large and untried generalizations against which natural science from the days of Bacon has always protested. No scientist now argues that the planets move in circles, because planets are perfect, and the circle is a perfect figure. But "logical" democrats still argue in America that, because all men are equal, political offices ought to go by rotation, and "logical" collectivists sometimes argue from the "principle" that the State should own all the means of production to the conclusion that all railway managers should be elected by universal suffrage.

In natural science, again, the conception of the plurality and interaction of causes has become part of our habitual mental furniture; but in politics both the book-learned student and the

man in the street may be heard to talk as if each result had only one cause.

When Jevons published his "Theory of Political Economy" in 1871, it was already widely felt that a simple imaginary man, or even a composite picture made up of a series of different simple imaginary men, although useful in answering examination questions, was of very little use in drafting a Factory Act or arbitrating on a sliding scale of wages. Jevons therefore based his economic method upon the variety and not the uniformity of individual instances. He arranged the hours of labour in a working day, or the units of satisfaction from spending money, on curves of increase and decrease, and employed mathematical methods to indicate the point where one curve, whether representing an imaginary estimate or a record of ascertained facts, would cut the others to the best advantage.

Here was something which corresponded, however roughly, to the process by which practical people arrived at practical and responsible results. A railway manager who wishes to discover the highest rate of charges which his traffic will bear is not interested if he is told that the rate when fixed will have been due to the law that all men seek to obtain wealth with as little effort as possible, modified in its working by men's unwillingness to break an established business habit. He wants a method which, instead of merely providing him with a verbal "explanation" of what has happened, will enable him to form a quantitative estimate of what under given circumstances will happen. He can, however, and, I believe, now often does, use the Jevonian method to work out definite results in half-pennies and tons from the intersection of plotted curves recording actual statistics of rates and traffic.

Since Jevons's time the method which he initiated has been steadily extended; economic and statistical processes have become more nearly assimilated, and problems of fatigue or acquired skill, of family affection and personal thrift, of management by the *entrepreneur* or the paid official, have been stated and argued in quantitative form. As Professor Marshall said the other day, *qualitative* reasoning in economics is passing away and *quantitative* reasoning is beginning to take its place.[5]

How far is a similar change of method possible in the discussion not of industrial and financial processes but of the structure and working of political institutions?

[5] *Journal of Economics*, March 1907, pp. 7 and 8.

It is of course easy to pick out political questions which can obviously be treated by quantitative methods. One may take, for instance, the problem of the best size for a debating hall, to be used, say, by the Federal Deliberative Assembly of the British Empire—assuming that the shape is already settled. The main elements of the problem are that the hall should be large enough to accommodate with dignity a number of members sufficient both for the representation of interests and the carrying out of committee work, and not too large for each member to listen without strain to a debate. The resultant size will represent a compromise among these elements, accommodating a number smaller than would be desirable if the need of representation and dignity alone were to be considered, and larger than it would be if the convenience of debate alone were considered.

A body of economists could agree to plot out or imagine a succession of "curves" representing the advantage to be obtained from each additional unit of size in dignity, adequacy of representation, supply of members for committee work, healthiness, etc., and the disadvantage of each additional unit of size as affecting convenience of debate, etc. The curves of dignity and adequacy might be the result of direct estimation. The curve of marginal convenience in audibility would be founded upon actual "polygons of variation" recording measurements of the distance at which a sufficient number of individuals of the classes and ages expected could hear and make themselves heard in a room of that shape. The economists might further, after discussion, agree on the relative importance of each element to the final decision, and might give effect to their agreement by the familiar statistical device of "weighting."

The answer would perhaps provide fourteen square feet on the floor in a room twenty-six feet high for each of three hundred and seventeen members. There would, when the answer was settled, be a "marginal" man in point of hearing (representing, perhaps, an average healthy man of seventy-four), who would be unable or just able to hear the "marginal" man in point of clearness of speech —who might represent (on a polygon specially drawn up by the Oxford Professor of Biology) the least audible but two of the tutors at Balliol. The marginal point on the curve of the decreasing utility of successive increments of members from the point of view of committee work might show, perhaps, that such work

must either be reduced to a point far below that which is usual in national parliaments, or must be done very largely by persons not members of the assembly itself. The aesthetic curve of dignity might be cut at the point where the President of the Society of British Architects could just be induced not to write to the *Times*.

Any discussion which took place on such lines, even although the curves were mere forms of speech, would be real and practical. Instead of one man reiterating that the Parliament Hall of a great empire ought to represent the dignity of its task, and another man answering that a debating assembly which cannot debate is of no use, both would be forced to ask, "How much dignity?" and "How much debating convenience?" As it is, this particular question seems often to be settled by the architect, who is deeply concerned with aesthetic effect, and not at all concerned with debating convenience. The reasons that he gives in his reports seem convincing, because the other considerations are not in the minds of the Building Committee, who think of one element only of the problem at a time, and make no attempt to coördinate all the elements.

III. The Development of Quantitative Political Reasoning

[*Ch. V, cont.*] The history of human progress consists in the gradual and partial substitution of science for art, of the power over nature acquired in youth by study, for that which comes in late middle age as the half-conscious result of experience. Our problem therefore involves the further question, whether those forms of political thought which correspond to the complexity of nature are teachable or not? At present they are not often taught. In every generation thousands of young men and women are attracted to politics because their intellects are keener, and their sympathies wider than those of their fellows. They become followers of Liberalism or Imperialism, of Scientific Socialism or the Rights of Men or Women. To them, at first, Liberalism and the Empire, Rights and Principles, are real and simple things.

About all these things they argue by the old *a priori* methods which we have inherited with our political language. But after a time a sense of unreality grows upon them. Knowledge of the complex and difficult world forces itself into their minds. There are few among them, except those to whom politics has become a profession or a career, who hold on until through weariness and

disappointment they learn new confidence from new knowledge. Most men, after the first disappointment, fall back on habit or party spirit for their political opinions and actions. Having ceased to think of their unknown fellow citizens as uniform repetitions of a single type, they cease to think of them at all; and content themselves with using party phrases about the mass of mankind, and realizing the individual existence of their casual neighbours.

Wordsworth's "Prelude" describes with pathetic clearness a mental history, which must have been that of many thousands of men who could not write great poetry, and whose moral and intellectual forces have been blunted and wasted by political disillusionment. He tells us that the "man" whom he loved in 1792, when the French Revolution was still at its dawn, was seen in 1798 to be merely "the composition of the brain." After agonies of despair and baffled affection, he saw "the individual man . . . the man whom we behold with our own eyes."[6] But in that change from a false simplification of the whole to the mere contemplation of the individual, Wordsworth's power of estimating political forces or helping in political progress was gone for ever.

If this constantly repeated disappointment is to cease, quantitative method must spread in politics and must transform the vocabulary and the associations of that mental world into which the young politician enters. Fortunately such a change seems at least to be beginning. Every year larger and more exact collections of detailed political facts are being accumulated; and collections of detailed facts, if they are to be used at all in political reasoning, must be used quantitatively. The intellectual work of preparing legislation, whether carried on by permanent officials or Royal Commissions or Cabinet Ministers takes every year a more quantitative and a less qualitative form.

Compare for instance the methods of the present Commission on the Poor Law with those of the celebrated and extraordinarily able Commission which drew up the New Poor Law in 1833–34. The argument of the earlier Commissioners' Report runs on lines which it would be easy to put in *a priori* syllogistic form. All men seek pleasure and avoid pain. Society ought to secure that pain attaches to anti-social, and pleasure to social conduct. This may be done by making every man's livelihood and that of his children normally dependent upon his own exertions, by separat-

[6] *The Prelude*, Bk. xiii, ll. 81–84.

ing those destitute persons who cannot do work useful to the community from those who can, and by presenting these last with the alternative of voluntary effort or painful restriction. This leads to "a principle which we find universally admitted, even by those whose practice is at variance with it, that the situation [of the pauper] on the whole shall not be made really or apparently so eligible as the situation of the independent labourer of the lowest class."[7] The *a priori* argument is admirably illustrated by instances, reported by the sub-commissioners or given in evidence before the Commission, indicating that labouring men will not exert themselves unless they are offered the alternative of starvation or rigorous confinement, though no attempt is made to estimate the proportion of the working population of England whose character and conduct is represented by each instance.

This *a priori* deduction, illustrated, but not proved by particular instances, is throughout so clear and so easily apprehended by the ordinary man that the revolutionary Bill of 1834, which affected all sorts of vested interests, passed the House of Commons by a majority of four to one and the House of Lords by a majority of six to one.

The Poor Law Commission of 1905, on the other hand, though it contains many members trained in the traditions of 1834, is being driven, by the mere necessity of dealing with the mass of varied evidence before it, onto new lines. Instead of assuming half consciously that human energy is dependent solely on the working of the human will in the presence of the ideas of pleasure and pain, the Commissioners are forced to tabulate and consider innumerable quantitative observations relating to the very many factors affecting the will of paupers and possible paupers. They cannot, for instance, avoid the task of estimating the relative industrial effectiveness of health, which depends upon decent surroundings; of hope, which may be made possible by State provision for old age; and of the imaginative range which is the result of education; and of comparing all these with the "purely economic" motive created by ideas of future pleasure and pain.

The evidence before the Commission is, that is to say, collected, not to illustrate general propositions otherwise established, but to provide quantitative answers to quantitative questions; and instances are in each case accumulated according to a well-known

[7] *First Report of the Poor Law Commission*, 1834 (reprinted 1894), p. 187.

statistical rule until the repetition of results shows that further accumulations would be useless.

In 1834 it was enough, in dealing with the political machinery of the Poor Law, to argue that, since all men desire their own interest, the ratepayers would elect guardians who would, up to the limit of their knowledge, advance the interests of the whole community; provided that electoral areas were created in which all sectional interests were represented, and that voting power were given to each ratepayer in proportion to his interest. It did not then seem to matter much whether the areas chosen were new or old, or whether the body elected had other duties or not.

In 1908, on the other hand, it is felt to be necessary to seek for all the causes which are likely to influence the mind of the ratepayer or candidate during an election, and to estimate by such evidence as is available their relative importance. It has to be considered, for instance, whether men vote best in areas where they keep up habits of political action in connection with parliamentary as well as municipal contests; and whether an election involving other points besides poor-law administration is more likely to create interest among the electorate. If more than one election, again, is held in a district in any year it may be found by the record of the percentage of votes that electoral enthusiasm diminishes for each additional contest along a very rapidly descending curve.

The final decisions which will be taken either by the Commission or by Parliament on questions of administrative policy and electoral machinery must therefore involve the balancing of all these and many other considerations by an essentially quantitative process. The lines, that is to say, which ultimately cut the curves indicated by the evidence will allow less weight either to anxiety for the future as a motive for exertion, or to personal health as increasing personal efficiency, than would be given to either if it were the sole factor to be considered. There will be more "bureaucracy" than would be desirable if it were not for the need of economizing the energies of the elected representatives, and less bureaucracy than there would be if it were not desirable to retain popular sympathy and consent. Throughout the argument the population of England will be looked upon not (as John Stuart Mill would have said) "on the average or *en masse*" [8] but as consisting of

[8] *System of Logic*, Book vi, vol. ii (1875), p. 462.

individuals who can be arranged in "polygons of variation" according to their nervous and physical strength, their "character" and the degree to which ideas of the future are likely to affect their present conduct.

Meanwhile the public which will discuss the Report has changed since 1834. Newspaper writers, in discussing the problem of destitution, tend now to use, not general terms applied to whole social classes like "the poor," "the working class," or "the lower orders," but terms expressing quantitative estimates of individual variations, like "the submerged tenth," or the "unemployable"; while every newspaper reader is fairly familiar with the figures in the Board of Trade monthly returns which record seasonal and periodical variations of actual employment among Trade Unionists.

One could give many other instances of this beginning of a tendency in political thinking to change from qualitative to quantitative forms of argument.

II. THE ANALYSIS OF GROUP PRESSURE IN GOVERNMENT

The Process of Government (1908)

Arthur F. Bentley (1870–)

The barrenness of American political theory throughout the nineteenth century has not continued into the twentieth. On the contrary, a number of Americans have been prominent in the reconstruction of political philosophy in the light of the related social sciences. The most notable American contributions have been in the field of jurisprudence, but American writers have also undertaken interpretations of governmental and political activity as phenomena of social psychology.

The Process of Government (1908) by Arthur F. Bentley should be placed in the latter category. Although the author undertakes the examination of both statutory and judge-made law, his work has a much wider scope and his interest is primarily in the practical operation of government. While much inferior to Wallas's exactly contemporaneous *Human Nature in Politics*, Bentley's book proposes a suggestive analysis of the part played by interest groups in the functioning of politics and government.

After graduating from Johns Hopkins, Bentley studied in Germany and then returned to Johns Hopkins to complete his studies for the degree of doctor of philosophy. He later worked for more than fifteen years as reporter and editorial writer for the Chicago *Times-Herald* and *Record-Herald*, and it was during this period of newspaper activity that he prepared his *Process of Government*. In later years his interests have ranged

from mathematics to psychology. His publications include *Relativity in Man and Society* (1926) and *Linguistic Analysis of Mathematics* (1932).

The readings here given are based on the original edition of *The Process of Government* (Chicago U. Press, Chicago, 1908), and are reprinted by permission of the publishers.

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THE PROCESS OF GOVERNMENT

I. The Analysis of Group Activities

[*Ch. VII.*] Every classification of the elements of a population must involve an analysis of the population into groups. It is impossible—at least, for any pending scientific problem—to make a classification so comprehensive and thorough that we can put it forth as "the" classification of the population. The purpose of the classification must always be kept in mind. This is because of the limitless criss-cross of the groups. It would only be in a rigorous caste organization of society, or perhaps in a very severe slavery in which one race held another in subjection, that the groups would so consolidate in separate masses of men that a classification—as, say, into white masters and black slaves—would serve for all the leading purposes of investigation.

In great modern nations we are indeed often told that such a mass grouping, such an all-embracing classification, does actually exist in the form of the classes that enter into the class war of socialism. No socialist or other person has made an analysis, however, which can in any sense be said to prove that this hard grouping exists; nothing better is offered than emotional assumptions and class "ideas." Moreover the observed reactions in our societies are not such as would follow from such a grouping in which the criss-cross had disappeared—the war in fact is not to the finish, the socialism that extends itself is a socialism that ends in political compromises. And compromise is the very process itself of the criss-cross groups in action.

The great task in the study of any form of social life is the analysis of these groups. It is much more than classification, as that term is ordinarily used. When the groups are adequately stated, everything is stated. When I say everything I mean every-

thing. The complete description will mean the complete science, in the study of social phenomena, as in any other field. There will be no more room for animistic "causes" here than there.

But it is not our task in this work to make an analysis of the groups that operate in the whole social life. We are to confine our attention to the process of politics, and the political groups are the only ones with which we shall be directly concerned. And indeed, our task even here concerns the method of analysis, not the exact statement of the groups that are operating at any particular time or place.

It would at first sight seem that the political process could not be studied till the process of the underlying groups had been studied, for political groups are built up out of, or, better said, upon, the other groups. Political groups are highly differentiated groups reflecting, or representing, other groups, which latter can easily, and I believe for most purposes properly, be regarded as more fundamental in society.

Nevertheless, it is my conviction that one has better chance of success in studying the political groups first. The very fact that they are so highly representative makes it easier to handle them. They are in closer connection with "ideas," "ideals," "emotions," "policies," "public opinion," etc., than are some of the other groups.

We shall confine ourselves then to the groups that appear in politics, and as they appear in politics. Now the political groups can never safely be taken to be the same identical groups that we would analyze out in studies of other phases of the social life. The political action reflects, represents, the underlying groups; but the political groups will have different boundaries than the other groups; there will be splittings and consolidations; and even if as regards the persons belonging to them they are ever the same, even then they will have different ways of reaction, different activities; and the activities *are* the groups. I do not mean at all that political parties, the Democratic, Republican, Prohibition, Socialist, and so on, are the essential groups for a political study. These are certain of the political groups, but we have to strike much deeper than their level. We have to get hold of the lower-lying political groups which they reflect or represent. We shall have to get hold of political institutions, legislatures, courts, executive officers, and get them stated as groups, and in terms of

other groups. We shall have to get all the ideas and policies and selfishnesses that enter into current talk or specialized political talk stated in the same way, as differentiated activity, as the reflection of lower-lying activity.

The term "group" will be used throughout this work in a technical sense. It means a certain portion of the men of a society, taken, however, not as a physical mass cut off from other masses of men, but as a mass activity, which does not preclude the men who participate in it from participating likewise in many other group activities. Group and group activity are equivalent terms with just a little difference of emphasis, useful only for clearness of expression in different contexts.

There is no group without its interest. An interest, as the term will be used in this work, is the equivalent of a group. We may speak also of an interest group or of a group interest, again merely for the sake of clearness in expression. The group and the interest are not separate. What we actually find in this world, what we can observe and study, is interested men, nothing more and nothing less. That is our raw material and it is our business to keep our eyes fastened to it.

The word interest in social studies is often limited to the economic interest. There is no justification whatever for such a limitation. I am restoring it to its broader meaning coextensive with all groups whatsover that participate in the social process. I am at the same time giving it definite, specific content wherever it is used. I shall have nothing to say about "political interest" as such, but very much about the multiform interests that work through the political process.

II. Public Opinion as Group Activity

[*Ch. VIII.*] Public opinion is a phenomenon of the group process. There is no public opinion that is not activity reflecting or representing the activity of a group or of a set of groups. There is no public opinion that is unanimous, none indicating the existence of any "social whole." Public opinion, public sentiment, and public will are three phases which are at times distinguished from one another, but they all indicate the same group activity. The difference in the shading of the words is not a difference that we meet with among social facts. The three words, opinion, sentiment, and will, are products of individual psychological analysis, not of

direct analysis of social phenomena at first hand. If the term "public opinion" were not so well established, one of the others might better be used, as indicating more closely the activity which the word "opinion" but crudely describes.

There is no use attempting to handle public opinion except in terms of the groups that hold it and that it represents. Public opinion is an expression of, by, or for a group of people. It is primarily an expression of the group interest by the group itself, but where it has become a differentiated activity representing an underlying group we may say it is expressed by the opinion group for the underlying group.

A public opinion that is supposed to be made up of a certain collection or fusion of the thin, colorless "ideas" that you read about in your psychological textbook cannot be found by any process I know of in social life. The abstractions, the ideas, all by themselves, cannot be found. To say "municipal ownership is good" implies something further, namely "we want it," or, "we ought to have it," or, "we are tending to get it," three variations of the same thing. Our "opinion" is a pushing process in all its stages.

When we examine this public opinion with its onward tendencies, we find that, besides being born in a group, or given differentiated expression for a group, it always is directed against some activities of groups of men. Municipal ownership, for instance, is not to be discovered apart from men. The movement for it is directed against the activities of certain private owners of quasi-public enterprises, who have been acting in a way that interferes with the activities of the citizens who became believers in municipal ownership. Inadequate street-car service, illiberal treatment of patrons who are compelled to patronize the lines, the corruption of city governments in connection with franchises, all these are facts which precede any theories about governmental functions or any public opinion favorable or unfavorable to municipal ownership.

It often happens that street-car owners, for the sake of a few thousand dollars additional revenue, will refuse to give the traveling public some privilege or convenience, which, if one could estimate its money value in terms of added facilities, might be worth millions of dollars to them. It is solely because of the privileged, exclusive position of the company that it can and does take this

attitude. The group reaction of the populace, which otherwise would attain an adjustment through ordinary competitive process, now concentrates to strike for relief through the governmental agency. That is the municipal-ownership tendency, nothing more, nothing less. It is the removal of group irritation. It is a typical act of government, all the "theories" of the limits of state activity to the contrary notwithstanding.

But now if this is the nature of the municipal-ownership movement in fact, how about that "municipal ownership" which one hears vastly more about, the opinion, the theory, the creed? It is clearly a differentiated activity, consisting of talking, writing, printing, and so forth, and it clearly has something to do with the process of municipalizing certain industries in fact. But whether as excited talking or whether as reasoned theory, it is only a group activity reflecting other group activities; its fates are dependent on what society, that is to say, the complex of active groups in the case, proceeds to do. Those groups may find on meeting the obstacle in their paths that they can work most effectively along some other lines, and this they may proceed to do, leaving the theory group and the agitation group which gave them expression high and dry. Or again, those underlying groups may actually push their process through into municipal ownership as a fact without having given rise to any excited groups of talk and belief at all.

What value has this public opinion in society? It has just the value of the group that is given expression by it. What tests have we of it? None except in the examination and analysis of the group or groups behind it. What is it then? Precisely a differentiated group activity, expressing, or reflecting, or representing, or leading, as the case may be, a group activity, or subgroup activities still lower down in the social mass. It would appear, then, that, simply for the needs of scientific examination of the raw material of the social process, the group method of interpretation strips off the mystery of public opinion, and lays it open to analysis and eventually even to measurement, on the same plane with other social facts.

III. Law as Group Activity

[*Ch. X.*] The phenomena of government are from start to finish phenomena of force. But force is an objectionable word.

I prefer to use the word pressure instead of force, since it keeps the attention closely directed upon the groups themselves, instead of upon any mystical "realities" assumed to be underneath and supporting them; and since its connotation is not limited to the narrowly "physical." We frequently talk of "bringing pressure to bear" upon someone, and we can use the word here with but slight extension beyond this common meaning.

Pressure, as we shall use it, is always a group phenomenon. It indicates the push and resistance between groups. The balance of the group pressures *is* the existing state of society.

[*Ch. XI.*] Law matches government every inch of its course. The two are not different things but the same thing. We cannot call law a resultant of government. Rather we must say it *is* government—stated from a different angle. When we talk about government we put emphasis on the influence, the pressure, that is being exerted by group upon group. When we talk about law we think not of the influencing or pressure as process, but of the status of the activities, the pressures being assumed to have worked themselves through to a conclusion or balance. Of course, the pressures never do as a matter of fact work themselves through to a final balance, and law, stated as a completed balance, is therefore highly abstract. Law is activity, just as government is. It is a group process, just as government is. It is a forming, a systematization, a struggle, an adaptation, of group interests, just as government is.

Suppose we ask ourselves: "What is the law?" meaning not what is the meaning of the word, nor what is the best expression of what lawyers say about it, but what is the solid ground for our study of the law as it exists in the life of social men.

Certainly the law is not the attested document offered us by the secretary of state or by the clerk of the court. That is a definite enough thing, but it only indicates to us what to look for and where.

Certainly the law is not the theorizing activity of any group or portion of a group of men: that is, it is not the verbal or written arguments of the men who take part in its processes within or without the differentiated governing body. "Such is the law," may end neatly a speech or argument, but it merely indicates a tag or label of the law, an activity representing other activities and still others at possibly a great degree of removal.

The law is not primarily what the governor does, nor what the sheriff does, nor what the judge does, nor what the lawyer does, nor what the bailiff does, nor what the criminal does, nor what the man who varies from the prescribed (better said, described) rule in civil cases does.

The law at bottom can only be what the mass of the people actually does and tends to some extent to make other people do by means of governmental agencies. The law, then, is specified activity of men embodied in groups which tend to require conformity to it from variant individuals (these themselves appearing in groups), and which have at their disposal, to help them compel these variants to adapt themselves to the common type, certain specialized groups which form part of the governing body of the society, that is, certain organs of government.

We can now get light on the question whether the group having the habit must comprise a majority of the population of the society in question, in order to entitle its activity to rank as law. The distinction between majority and minority now comes to appear as a rule of thumb and not as crucial at all. Majority and minority are simply a bit of technique and they are used as tests mainly in certain stages of the legislative part of the government work. They cannot be transferred to this portion of our analysis with any claim of validity, and indeed they are practically not needed. Actual law tends to run well up toward general observance so swiftly that we hardly have a chance to notice it at the minority and majority dividing line.

To avoid misconception I have postponed to this stage the consideration of the perfectly valid assertion that all law strikes at something. That something will inevitably be human activity. This is only to put in other language the principle of the group interpretation itself. Suppose we have quarantine regulations "to promote the public health": they strike at certain objectionable activities of men. Revenue-raising is a stage in a great complex of striking processes. There would be no law, even in the most extreme socialistic state, without this quality.

I do not want to be understood, however, as saying that this is the only point of view, or for all purposes the best point of view, to take of the phenomena. Activity is very positive from the point of view of the actors. The striking done by the law is not anything negative which exists merely for striking's sake. But it

is never, on the other hand, a pure matter of everybody's welfare. However much any of it may be ennobled and glorified in the speech that accompanies and represents it, the conflict phase can be found when the whole range of the society in which it exists is taken into account. For its interpretation the discovery of this phase is essential.

IV. The Pressure of Interests in the Judiciary

[*Ch. XVI.*] The unique work of American courts in overriding legislatures and executives on constitutional points is well enough known. This activity places the courts—or, more properly, the supreme courts of states and nation—as intermediate agencies between legislatures and executives on the one side and constitutional conventions on the other. We have in the United States but rarely illustrations of the executive as representative of group interests interfering directly with the judiciary, though an organization like Tammany Hall can knit executives and judges together in a tight system, and President Roosevelt has recently made one or two vigorous attempts to bully federal courts. But we have luminous instances of the same group pressures which operate through executives and legislatures, operating also through supreme courts and bringing about changes in law in a field above the legislatures, but short of the constitutional conventions; changes which no process of legal or constitutional reasoning will adequately mediate, but which must be interpreted directly in terms of pressures of group interests. And we are clearly on the road to witnessing even more picturesque operations of the governmental process through our courts in this respect.

Early in 1906 the Supreme Court at Washington handed down a decision with reference to the asserted "ninety-nine-year rights" of the Chicago traction companies, which the city of Chicago was contesting in the hope not so much of overthrowing them as of limiting their application. I have not the slightest hesitation in asserting, and I think few persons who know the case will deny, that ten years ago the court, though it had been composed of the identical justices, would have yielded the companies their claim. Now, however, the decision was in favor of the city and some seventy million dollars' worth of franchise rights, more or less, were practically confiscated at the stroke of a pen, to the very great advantage of everybody concerned except those who lost their

respectable piece of plunder. Now it took most considerable ingenuity in legal reasoning for a line of argument to be developed whereby this decision could be justified. Most of the ordinary legal argument went the other way, and few of the really substantial lawyers on the city's side dreamed they would get such a victory. But they urged their case most vigorously, they pushed to the front before the Supreme Court their advocates most learned in the voice of the people rather than in the rules of the law, and they allowed "public opinion" all over the country about all sorts of related topics, such as municipal ownership, government ownership, wicked capitalists, socialism, and what not to speak for them. And the result was that the Supreme Court laid down a rule of strict construction so infinitely strict that it not only chopped off collateral benefits but annihilated the very grant which the legislature had most expressly granted, which the governor had most vehemently and unsuccessfully attacked with his veto, which capitalists had most confidently invested their money in, and which had seemed the very bedrock of the whole situation between city and traction companies.

I do not mean that the justices consciously forced the law to fit the case, nor that they showed any traces whatever of demagogism or of subserviency to popular clamor. Quite the contrary. I am convinced that they all, or at any rate most of them, acted with the most single-hearted desire—if one must use such phrasing—to render justice in strict accordance with precedent. What I do set forth about them is that so far from being a sort of legal machine, they are a functioning part of this government, responsive to the group pressures within it, representative of all sorts of pressures, and using their representative judgment to bring these pressures to balance, not indeed in just the same way, but on just the same basis, that any other agency of government does, and that in this Chicago case they let a changing weight of group interests come very clearly to expression.

In the matter of argument this case stood in somewhat the position that the railroad rate legislation of 1906 will stand if it comes before the Supreme Court for a test of the so-called fundamental principles involved. I have marked closely the course of a protracted discussion of the law points that will come before the court involving the interstate commerce commission's "law-making" powers, and I have heard presented by the two sides to

the controversy trains of reasoning that lead inevitably, the one to sustaining the commission's powers on each of the points at issue, the other to the denial of those powers. The reasoning on each side is so cogent, so unanswerable, that as reasoning it simply cannot be overthrown. The Supreme Court will effectively use whichever line of reasoning it wishes, to state and explain to the country the decision which it will actually render on lines which, although passing through reasoning, are reasoning's masters, not its servants. The most perfect of logical machines, set to the Constitution and to all the precedents, would have pathways through it which would deliver simultaneous contradictory judgments on the same point without the slightest shock to its mechanism. Compared with the multiform irregularities of the pressure of the interest groups in a highly complex society, the finest legal logic is but a trivial fly-by-night, and the very essence of unreliability.

It is incumbent upon us, nevertheless, to recognize the work that legal theory actually performs in the adjudication process, and to gain as exact an estimate of it as possible.

When a case is called in court it furnishes a plane upon which we have potentially the entire population arraying itself in groups. Sometimes we can observe a case in which such a group splitting is represented by a very widely extended discussion group, or in case "public opinion" is divided, we have two discussion groups making themselves evident in opposition to each other. Usually, however, the discussion groups do not form, and the interest groupings of the population are represented more or less adequately by the organized judicial agencies of government. In addition to this split on a plane formed by the direct issue in the case, we find involved, potentially, a myriad of other groupings cutting across the population at all angles, any of which may come out to direct action, or may show itself in the discussion plane, either inside or outside the courtroom.

Now the gradations of theory represent, or aim to represent, interest groupings on lines of varying generality. Just as we may have a lot of interest groups combining in a larger organization for certain ends, so we may have a theory, or rather a theoretical statement or argument, representing a complex of interest groups. In the progress of the trial of any case, or in preparatory stages before trial, or in the further stages as the whole social process

moves forward, we get complexes of interests expressed in the form of theory. Wherever the interests are blocked or clogged, and wherever under such circumstances the theory activity can enable them to function more freely, there we must give it a sort of individualized recognition for just what it is. The theory may be said to function as holding together the system of interests, and as furnishing a short-cut through which the interests that have balanced themselves once may escape being compelled to make their fight all over again and to work out the balance all over again at any and every moment in the process when their adjustment is threatened.

III. THE STUDY OF POLITICAL EXPERIENCE ON THE MOTOR LEVEL

Creative Experience (1924)

Mary P. Follett (1868–1933)

The psychological approach to political theory has its characteristic disadvantages, and not the least of these is the technical vocabulary of the modern psychologist. In the first decade of the twentieth century, Wallas and Bentley presented psychological data in the language of the educated layman, but a change has come about with the rapid subsequent development of the science of behavior. The terminology of the psychological laboratory renders parts of Mary P. Follett's *Creative Experience*, published in 1924, almost unintelligible to the uninitiated.

Miss Follett is primarily interested in the significance of the motor level in political experience. It is less easy to characterize her conclusions. On the basis of her interest in group activity and group representation, she is sometimes aligned with the pluralists; but on the other hand she treats the unifying function of the state in a manner pleasing to such an idealist as Bosanquet. In the preface to the third edition (1920) of *The Philosophical Theory of the State*, Bosanquet comments long and favorably upon Miss Follett's *New State* (1918), of which *Creative Experience* is the sequel.

Miss Follett was born and spent most of her life in Massachusetts. She graduated from Radcliffe with highest honors and later studied at Newnham College, Cambridge. On her return to this country, she turned to social work, her interests ranging from vocational guidance to civic education and community centers. She served, as a representative of the public, on minimum wage boards under the Massachusetts law, and became a recognized expert on personnel problems and industrial management. Long before writing the two books already mentioned she made a valuable contribution to political science in her monograph entitled *The Speaker of the House of Representatives* (1896).

The readings here given are based on the text of the original edition of *Creative Experience* (Longmans, Green, New York, 1924), and are reprinted by permission of the publishers.

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CREATIVE EXPERIENCE

I. The "Consent of the Governed"

[*Ch. XI.*] The problem of democracy is how to develop power from experience, from the interplay of our daily concrete activities. The expert cannot dictate and the people consent. This is the voice of the wax-doll; it has no reality. "Less bread, more taxes," the people cried under the palace windows in Lewis Carroll's political farce; but what else are we doing today when we "consent" to the tariff?

As "consent of the governed" is perhaps the most important conception of political science—it is the crux of the problem of dependent nations, it is the fundamental matter involved in all the talk of a unitary or pluralistic state, it lies below every discussion of local self-government—we ought to give it careful consideration.

Many write as if the problem of government would be solved when we had devised methods to obtain the consent of the people to the garnered wisdom of the expert. But assertion and assent, no matter how the latter is obtained, should not be the political process. You can often get a specious consensus on the intellectual level which in virtue of the prestige of verbal agreement arrests the activity of your mind, but the only real consensus is that which arises on the motor level. The theory of consent rests on the assumption that we think with our "minds" and we don't. Political leaders are supposed to put something before our minds to which we respond with our minds. Yet how often we see cases where we have not been able to persuade people, by our most

careful reasoning, to think differently, but later, by giving them an opportunity to enter on a certain course of action, their "minds" are thereby changed.

Thus the fullest freedom in passing on policies, is not self-government, because the participation has to take place further back, in the activity from which the policies emerge. Unfortunately a great deal of out-of-place ethics has been mixed up with the arguments against consent; it has been thought not "right" for the few to decide and the many to assent, but the fact is that it is an impossibility. We cannot really carry out the will of another, for we can use only our own behavior patterns. If we consent to the will of the expert or administrative official, it is still the will of expert or official; the people's will can be found only in their motor mechanisms or habit systems. If Wilson had had creative genius he would have known the futility of the formal acceptance of principles.

The "will of the people" then is found exactly where our own will is found, in our concrete existence. Men study "the art of persuasion," the method of obtaining consent, but it is usually merely a method of obtaining "power-over," the pernicious aim of much of our activity. The case of expert and people should be wholly a case of "power-with." The validity of the "will of the people" depends on the distinction between power-over and power-with. When our political scientists talk of gaining assent, they are usually thinking of overcoming wills. But our legal science has outgrown the error of talking of wills; as it no longer thinks of the conflict of wills, so political science must give up its idea of the overcoming of wills. It is not a sound political process.

The difficulty of all revolutions is this; the leaders think they can substitute new ideas for old before they have changed the action tendencies, habit systems, of the people. As this cannot be done, revolution after revolution fails. The first thing a normal class for revolutionists should be taught is that behavior must be changed through experience, that it cannot be changed by the impact of ideas. The Bolsheviki are intellectualists. When we say that "evolution is better than revolution," it is not because we are afraid of blood and battle, but because it is only by the slower process that you can get the habit systems changed. Leaders often act on the assumption that if you destroy existing institutions you have a *tabula rasa* on which to begin anew. But there is

no such thing as a *tabula rasa*. Again and again in our own lives we act on this assumption, always to find it a vain illusion.

We are willing to blame the revolutionists because they are revolutionists, but the expert faces exactly the same difficulty. His facts do not impress themselves on people's minds as words upon the blotter. The process is far different. Facts, objective situations, are activities, the activities of interacting men. I believe that the political process consists in connecting the will of the people which is in a situation with the will of the people which passes on a situation. How to do this is the problem of democracy. We cannot be satisfied with a political will which is not a psychological will. We can have no sound politics until psychological and political will are one. We must plan all our reorganization of industry, our coöperative enterprises, all new political units or reformed representation, all international experiments, on this principle. Our test of all political structure should be whether it allows for coincidence of psychological and formal will. Will after the event is as bad as will before the event; there is only will in the event.

Moreover, if the experts are to go round with cameras, and the administrative officials to sit at their desks and construct policies, and the people to assent, who is to do the living, who is to make the "objective situation" to be reported on? Its "objectivity" seems rather shadowy. But the people do live, do carry on their activities from day to day, and all that the advocates of democracy want is that this shall be recognized in its full significance. Democracy is a denial of dualism in every sense; it is an assertion that the people who do the doing are also thereby doing the thinking, that a divorce of these two is impossible. Our real problem is to connect the will of the people as it lives daily in the multitudinous activities of men with the political will.

Those who advocate "consent" as the rôle of the people are apt to tell us that there is no instinct for self-government. This is both true and untrue. In the sense of an urge or drive like hunger or sex, it is of course true. What seems like the urge to self-government is often, if you examine it carefully, the urge to power; the demand for *self*-government often merely masks a desire to govern *others*. But I do not see anyone who really wants the trouble of self-government. There is no "instinct" for self-government, but it is the law of our being; we escape it only to our harm, but

as a matter of fact we cannot escape it. Suicide is the only alternative.

You cannot tell people they "ought" to want to govern themselves, and then look around and try to invent something for them to do. You can only feed open mouths. When we see the relation between desire and attainment of desire through self-activity, we shall understand self-government better than we do at present. The development of the farmers' coöperative movement is rather interesting here. From California to Virginia it was presented to the farmers as a marketing proposition purely. They heard nothing of their "right" to control their produce on its passage from field to factory; they were told simply how they could get more money for the product. Now they are demanding a larger share in the overhead control and more power for the local groups. This has come directly from certain dissatisfactions, that is, the desire for increased control has come with the need.

We see now that within every process is its own momentum; therefore the guiding power is always within—and this is the vindication of democracy. Every living process is subject to its own authority, that is, the authority evolved by, or involved in, the process itself. We see this clearly in international relations: we shall never be able to make an international settlement and erect some power to enforce it; the settlement must be such as to provide its own momentum. We have been trying ever since the war to make international will run ahead of international activity. It is an impossibility.

Thus we see that there is no static collective will nor "group mind": we have continuing activity; at any one moment the function which that activity is of the situation is the collective will. Thus its nature is wholly dynamic. We must think no more in terms of social institutions but of social activities. As we no longer think of personality as a static entity, but as "so far integrated behavior," so the collective will also is "so far" integrated behavior.

What then is "the will of the people"? The deeper truth underlying all that I have said on this point is that truth emerges from difference, not from the difference of opinion chiefly, but from all the countless differings of our daily lives. If assertion and assent were the political process, then the political process would be different from the life process as described now by biology and

physiology and psychology, which hardly seems probable. Political seeing should grow exactly as physical seeing. In the organism's effort to respond to total environment we have the multitudinous responses which constitute the growth of the organism. Physical seeing creates itself by ceaseless integrating of response and situation, by refining itself into greater and greater sensitiveness which means for the individual wider objective environment and wider awareness. Thus we see the genesis of all new percipience.

Public opinion should be created by the same law by which all else is created. Thus we come to the conclusion again that the "will of the people" arises on the motor level. It is part of the whole social process: stimulus from total environment and response to total environment; interactions between people, and interactions between people and their environment. Here, as in all stimulus and response, we have the releasing of energy which produces new energy. We have the will of the people ideally when all desires are satisfied. In a power-society, however, it is the desire of the dominant classes which by the sorcery of consent becomes "the will of the people." The aim of democracy should be integrating-desires. I have said that truth emerges from difference. In the ballot-box there is no confronting of difference, hence no possibility of integrating, hence no creating; self-government is a creative process and nothing else. Democracy does not register various opinions; it is an attempt to create unity.

An interesting example of a very genuine misunderstanding of this occurred on a Minimum Wage Board in Massachusetts. Of the six representatives of the employees, five were girls working in the industry concerned, one a labor leader from a strong union. This man, after one or two meetings, long before the questions involved had been threshed out, suddenly proposed that the vote be taken on the minimum wage for that industry. Before the chairman could say anything, however, the Secretary of the Board of Labor and Industry, who sits with all Minimum Wage Boards, announced that the Board of Labor and Industry did not convene Minimum Wage Boards in order that they should take a vote, in order, that is, that they should register the preëxisting opinions of employers and employees; they were called together to see if by discussion based on a review of all the facts involved they could come to some agreement. If they could, or to substantial agreement, and should send in a report to that effect to the

Board of Labor and Industries, the latter would probably accept the report. It was thus expressly pointed out by an official of the state that this group of employees, employers, and public had been called together and given the job of trying to create unity. Our Minimum Wage Law in Massachusetts is far from perfect, but it has recognized the principle that a conference should not merely record existing differences of opinion, nor should it be a fight, with the vote registering the outcome of the struggle, but a sincere attempt to find agreement.

And through that attempt we learn the process of creative thinking.

II. Creative Political Experience

[*Ch. XII.*] Thinkers about democracy have passed the stage of merely perfecting mechanisms of voting and representation; their aim is to train minds to act together constructively. The democratic problem is now recognized as the problem of how to get collective action that is socially valid, that is satisfying by the criteria of enlightened living; the problem of how to maintain vigor and creativeness in the thinking of everybody, not merely of chosen spirits.

But the creative attitude has to be created. The people by virtue of being the people are not going to think creatively unless they have a rationale that sets them about it. Our first question might be: how is legitimate connection to be made between experts and people? Many are telling us of the importance of gathering accurate information; the way of conveying that information is still an unsolved problem. The large meeting is the method most in use in cities at present, and there is an honest endeavor, by having both sides presented, to bring all the facts before the people. But the approved method is to find a man who believes passionately in socialism, for instance, who is also a crowd orator who can play on every emotion, and ask him to give a talk on socialism. Then the next week you find a man who is passionately against socialism and is a good crowd orator. The idea seems to be that truth will emerge from this process; that out of all this bias and high feeling will, because there is equal prepossession and high feeling on both sides, be produced calm and reason and unbiased men. It is like the sculptor who tried to make a sexless head by using both a man and a woman as models.

But can we find a better way? For "accurate information" seems to bore people. How to give the people facts without an amount of dullness which leaves us with empty halls is our problem. A good many experiments should be tried in order to see if we could hit on one that might be successful. Democracy in every country in the world today needs not propaganda but ingenuity, inventiveness, in method. I should like, for instance, to try experience meetings. The first step in these would be to present the subject under consideration in such a way as to show clearly its relation to all our daily lives. This is very important and usually neglected; I have never heard anyone tell people the actual difference in their own lives a League of Nations might make. The second step would be for each one of us to try to find in our own experience anything that would throw light on the question. I am hoping that this might prove sufficiently interesting to induce us to put up with the "accurate information." Also that after such meetings have become a part of our community life, we should begin to observe and analyze our experience much more carefully than we do at present; it is almost wholly insignificant to us now as having social value. And I am hoping much more than this: that we shall take an experimental attitude toward our experience, and have many experiments to report with reasons for their success or failure, and suggestions as to what direction new experiments should take. The third step would be to see if we could unite our various experiences, one with the other and with the material provided by the expert. The material of the expert would always thus be thrown into the situation, not put up for acceptance or rejection. In the case of the farmer, get his experience and add to that of the agricultural expert. The scientific manager in the factory needs the experience of the workman. The Red Cross agent in the village needs the experience of the mother. We want to be governed neither by experts nor by the "innate" ideas of an all-born-equal people; what we want is co-operating experience, which means coöperating activity, which means a progressively more efficient activity.

Of course there are innumerable problems to be worked out when once we decide that we want a participant electorate. We have inherited many forms which canalize activities. We need geniuses to work out the problems of organization. We need inventive novelties in the way of functional organization, experi-

ments in other than hierarchical organizations with ramifying authority. Moreover, would it be possible for the executive policy to be presented in such a way that we do not have to take a for or against attitude? It is this attitude which makes conflict. Also there must be found ways of revaluing our interests while they are in solution. This is very important. Above all, is there any way of preventing an executive overhead, which is at first a functional agency of the whole body, from acquiring a solidarity of its own and drifting apart from the rank and file which created it? Many trade unionists feel that Gompers and his followers are acting in ways mainly intended to keep themselves in power. In such cases the organization keeps on after its function has ceased. The central body acquires a self-interest of its own apart from the functional relating. This is the danger of the group-mind; some of the pluralists have proved more than they meant to in what they have claimed for their groups. The problem is how to keep organization and function together, how to keep up the activity between central body and rank and file. There is sometimes a confusion of mind here; people blame "collective activity" for what is only the fault of an executive divorced from what it originally represented. There is no danger in a genuine collective activity.

When the process of coöperation between expert and people is given its legitimate chance, the experience of the people may change the conclusions of the expert while the conclusions of the expert are changing the experience of the people; further than that, the people's activity is a response to the relating of their own activity to that of the expert. Here we have the compound interest of all genuine coöperation. Industrial and political organization will take different forms when we understand coöperation not as addition, but as *progressive* interweaving.

An understanding of this is very important in regard to the relation of state and individual. The state is being made daily and hourly by the activities of its citizens; and as the activity of the citizens changes the state, the state exerts a different stimulus on the citizens so that their activity is different. Thus their activity is "causing" their own activity exactly as in Bok's law; the doctrine of circular behavior is as important for politics as for psychology or physiology.

When the political pluralists would allow individuals or groups

to decide whether the state is fulfilling its purpose, they tend to make the state purpose static. And the moment they make the state purpose static, they are back in the block universe they have repudiated. When we have a participant electorate instead of a consenting electorate, we cannot stand outside and judge the purpose of the state; we ourselves become part of that purpose. The political pluralists say that the state wins our loyalty by its achievements. But it doesn't. Our loyalty is bound up in the interweaving relation between ourselves and the state. That interweaving is the dynamo which produces both power and loyalty.

With the recent development of psychological thought then, we should have a different attitude toward the conception of "obedience" from that taken by the pluralists, who repudiate obedience as a loss of individuality, as an abandonment of moral integrity. What they forget is the dynamic nature of their "moral individual." Our main duty toward the state is not the contribution of a static self, but of a developing self. Hence obedience takes on new meaning.

Yet there is a strong argument for political pluralism. It is not that the various groups of a pluralistic state are voluntary associations (sometimes a great deal is made of that), not that they are functional associations (usually everything is made of that), but that they are close to the actual life of the people; men meet on the basis of their everyday interests and in small enough numbers to make an attempt at agreement possible. Everywhere we see that the kind of experience which develops us most is that which increases our motor reactions. Here where our action tendencies are formed, democracy must begin. Thus alone can psychological and political power coincide.

But our industrial and political structure must be such as to allow legitimate outlet for our motor reactions. When labor leader and ward boss get control of these, harm often ensues, for when dormant motor reactions are roused to activity by other stimuli than those which produced them, they are divorced from necessary safeguards and correctives. The problem of democracy is to find an outlet for our motor impulses within the conditions which produce them. We want to give to the local neighborhood unit political, economic and social activity; we want to make possible vigorous motor reactions and at the same time provide for

their outlet. As progress is through the release and integration of the action tendencies of each and every individual in society, way should be provided for such activity to take place normally. This is perhaps the sentence in this book which I want most to emphasize.

[*Ch. XVIII.*] Thinker after thinker is trying to find some way to get rid of conflict. Moralists hope that this will be done by changing human nature. The political scientists who have taken fact-finding for their slogan tell us that facts are the solvent for controversy. Economists are seeking a way by which the struggle between capital and labor may cease. Many writers on international relations would rid us of the conflict between nations. Some of the biologists tell us that we could abolish conflict and live together in peace and harmony like the well-known instances of the animal colonies; they seem to ignore the fact that most of us, even those peacefully inclined, do not wish to live like the ants and the beavers.

But on the other hand there are biologists who give us the tooth-and-claw-theory. There are sociologists who say that conflict is built into the structure of the world, that the world is cemented with blood and sweat. It seems to me that there is occasionally a little confusion of thought on one point both among those who wish to abolish conflict and those who regard it as beneficent and wish to retain it. What people often mean by getting rid of conflict is getting rid of diversity, and it is of the utmost importance that these should not be considered the same. We may wish to abolish conflict but we cannot get rid of diversity. We must face life as it is and understand that diversity is its most essential feature. I know a man whose fear of difference is so great that he looks alarmed if the most friendly argument appears at his dinner table; he always changes the subject immediately. But fear of difference is dread of life itself. It is possible to conceive conflict as not necessarily a wasteful outbreak of incompatibilities, but a *normal* process by which socially valuable differences register themselves for the enrichment of all concerned. One of the greatest values of controversy is its revealing nature. The real issues at stake come into the open and have the possibility of being reconciled. A fresh conflict between employers and employees is often not so much an upsetting of equilibrium, really, as an opportunity for stabilizing. Our unfortunate ethical connotations are a handi-

cap to clear thinking. The conflict of chemistry we do not think reprehensible. If we could look at social conflict as neither good nor bad, but simply a fact, we should make great strides in our thinking. On every level the movement of life is through the release of energy. Psychology has shown us release and what it calls integration as one process. Social conflict is constructive when it follows this normal process, when the release of energy is by one and the same movement carrying itself to a higher level.

The social process may be conceived either as the opposing and battle of desires with the victory of one over the other, or as the confronting and integrating of desires. The former means non-freedom for both sides, the defeated bound to the victor, the victor bound to the false situation thus created—both bound. The latter means a freeing for both sides and increased capacity in the world. The core of the development, expansion, growth, progress of humanity is the confronting and gripping of opposites. Integration is both the keel and the rudder of life: it supports all life's structure and guides every activity. This thought must be ever before us in social research. For we believe in the inexhaustible resources of life, in the fresh powers constantly springing up. The test of the vitality of any experience is its power to unite into a living, generating activity its self-yielding differences. We seek a richly diversified experience where every difference strengthens and reinforces the other. Through the interpenetrating of spirit and spirit, differences are conserved, accentuated and reconciled in the greater life which is the issue. Each remains forever himself that thereby the larger activity may be enriched and in its refluence, reinforce him. The activity of co-creating is the core of democracy, the essence of citizenship, the condition of world-citizenship.

IV. A PRAGMATIC THEORY OF THE STATE

The Public and Its Problems (*1927*)

John Dewey (1859–)

The shift of emphasis from will and subjectivity to behavior and objectivity may easily reduce philosophy to the level of mere description. This is perhaps the greatest danger in sociological jurisprudence and psychological political theory. But it is not inevitable. The objective psychological approach in no way precludes examination of the consequences of behavior, and a significant philosophy can be built on the consideration of consequences. This is implicit in Duguit's theory of

objective law and becomes explicit in the political philosophy of John Dewey.

It is no mere coincidence that it is a leading pragmatist who insists upon consequences as the key to the nature of the state. The essence of pragmatism is that the test of institutions is in the way they work,—that is, in their consequences. After years of preaching pragmatism in logic, ethics, and education, Dewey has recently made an important contribution to political theory in *The Public and Its Problems* (1927). The book is a revision and expansion of a series of lectures delivered in January 1926 upon the Larwill Foundation of Kenyon College, Gambier, Ohio.

Dewey was born in Burlington, Vermont. He received his bachelor's degree from the University of Vermont and his doctor's degree from Johns Hopkins. After teaching for ten years, chiefly at the University of Michigan, he was offered, in 1894, the chair of philosophy at the new University of Chicago, where his work in the field of education won him a more than nation-wide reputation. In 1904 Dewey was called to Columbia where he taught for twenty-five years. Since his retirement in 1929 he has been prominently identified with practical political movements of a somewhat radical nature,—especially as president of the League for Independent Political Action.

The readings here given are based on the text of the original edition of *The Public and Its Problems* (Henry Holt and Company, New York, 1927), and are reprinted by permission of the publishers.

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THE PUBLIC AND ITS PROBLEMS

I. The Search for the Public

[*Ch. I.*] The concept of the state, like most concepts which are introduced by "The," is both too rigid and too tied up with controversies to be of ready use. It is a concept which can be approached by a flank movement more easily than by a frontal attack. The moment we utter the words "The State" a score of intellectual ghosts rise to obscure our vision. Without our intention and without our notice, the notion of "The State" draws us

imperceptibly into a consideration of the logical relationship of various ideas to one another, and away from facts of human activity. It is better, if possible, to start from the latter and see if we are not led thereby into an idea of something which will turn out to implicate the marks and signs which characterize political behavior.

There is nothing novel in this method of approach. But very much depends upon what we select from which to start and very much depends upon whether we select our point of departure in order to tell at the terminus what the state *ought* to be or what it *is*. If we are too concerned with the former, there is a likelihood that we shall unwittingly have doctored the facts selected in order to come out at a predetermined point. The phase of human action we should *not* start with is that to which direct causative power is attributed. We should not look for state-forming forces. If we do, we are likely to get involved in mythology.

We must start from acts which are performed, not from hypothetical causes for those acts, and consider their consequences. We must also introduce intelligence, or the observation of consequences *as* consequences, that is, in connection with the acts from which they proceed. Since we must introduce it, it is better to do so knowingly than it is to smuggle it in in a way which deceives not only the customs officer—the reader—but ourselves as well. We take then our point of departure from the objective fact that human acts have consequences upon others, that some of these consequences are perceived, and that their perception leads to subsequent effort to control action so as to secure some consequences and avoid others. Following this clew, we are led to remark that the consequences are of two kinds, those which affect the persons directly engaged in a transaction, and those which affect others beyond those immediately concerned. In this distinction we find the germ of the distinction between the private and the public. When indirect consequences are recognized and there is effort to regulate them, something having the traits of a state comes into existence.

It is a commonplace that legal agencies for protecting the persons and properties of members of a community, and for redressing wrongs which they suffer, did not always exist. Legal institutions derive from an earlier period when the right of self-help obtained. If a person was harmed, it was strictly up to him what

he should do to get even. Injuring another and exacting a penalty for an injury received were private transactions. They were the affairs of those directly concerned and nobody else's direct business. But the injured party obtained readily the help of friends and relatives, and the aggressor did likewise. Feuds ensued, and the blood-quarrel might implicate large numbers and endure for generations. The recognition of this extensive and lasting embroilment and the harm wrought by it to whole families brought a public into existence. The transaction ceased to concern only the immediate parties to it. Those indirectly affected formed a public which took steps to conserve its interests by instituting composition and other means of pacification to localize the trouble.

The facts are simple and familiar. But they seem to present in embryonic form the traits that define a state, its agencies and officers. Recognition of evil consequences brought about a common interest which required for its maintenance certain measures and rules, together with the selection of certain persons as their guardians, interpreters, and, if need be, their executors.

If the account given is at all in the right direction, it explains the gap between the facts of political action and theories of the state. Men have looked in the wrong place. They have sought for the key to the nature of the state in the field of agencies, in that of doers of deeds, or in some will or purpose back of the deeds. They have sought to explain the state in terms of authorship. Ultimately all deliberate choices proceed from somebody in particular; acts are performed by somebody, and all arrangements and plans are made by somebody in the most concrete sense of "somebody." Some John Doe and Richard Roe figure in every transaction. We shall not, then, find the public if we look for it on the side of originators of voluntary actions. Some John Smith and his congeners decide whether or not to grow wheat and how much, where and how to invest money, what roads to build and travel, whether to wage war and if so how, what laws to pass and which to obey and disobey. The actual alternative to deliberate acts of individuals is not action by the public; it is routine, impulsive and other unreflected acts also performed by individuals.

Individual human beings may lose their identity in a mob or in a political convention or in a joint-stock corporation or at the polls. But this does not mean that some mysterious collective agency is making decisions, but that some few persons who know

what they are about are taking advantage of massed force to conduct the mob their way, boss a political machine, and manage the affairs of corporate business. When the public or state is involved in making social arrangements like passing laws, enforcing a contract, conferring a franchise, it still acts through concrete persons. The persons are now officers, representatives of a public and shared interest. The difference is an important one. But it is not a difference between single human beings and a collective impersonal will. It is between persons in their private and in their official or representative character.

There is an old tradition which regards the state and completely organized society as the same thing. The state is said to be the complete and inclusive realization of all social institutions. Whatever values result from any and every social arrangement are gathered together and asserted to be the work of the state. The counterpart of this method is that philosophical anarchism which assembles all the evils that result from all forms of human grouping and attributes them *en masse* to the state, whose elimination would then bring in a millennium of voluntary fraternal organization. That the state should be to some a deity and to others a devil is evidence of the defects of the premises from which discussion sets out. One theory is as indiscriminate as the other.

The state, instead of being all absorbing and inclusive, is under some circumstances the most idle and empty of social arrangements. Nevertheless, the temptation to generalize from these instances and conclude that the state generically is of no significance is at once challenged by the fact that when a family connection, a church, a trade union, a business corporation, or an educational institution conducts itself so as to affect large numbers outside of itself, those who are affected form a public which endeavors to act through suitable structures, and thus to organize itself for oversight and regulation.

This conception of statehood does not imply any belief as to the propriety or reasonableness of any particular political act, measure or system. Observations of consequences are at least as subject to error and illusion as is perception of natural objects. Judgments about what to undertake so as to regulate them, and how to do it, are as fallible as other plans. Mistakes pile up and consolidate themselves into laws and methods of administration which are more harmful than the consequences which they were

originally intended to control. And as all political history shows, the power and prestige which attend command of official position render rule something to be grasped and exploited for its own sake. Power to govern is distributed by the accident of birth or by the possession of qualities which enable a person to obtain office, but which are quite irrelevant to the performance of its representative functions. But the need which calls forth the organization of the public by means of rulers and agencies of government persists and to some extent is incarnated in political fact. Such progress as political history records depends upon some luminous emergence of the idea from the mass of irrelevancies which obscure and clutter it. Then some reconstruction occurs which provides the function with organs more apt for its fulfillment.

II. The Discovery of the State

[*Ch. II.*] In spite of the fact that diversity of political forms rather than uniformity is the rule, belief in *the* state as an archetypal entity persists in political philosophy and science. Much dialectical ingenuity has been expended in construction of an essence or intrinsic nature in virtue of which any particular association is entitled to have applied to it the concept of statehood. Equal ingenuity has been expended in explaining away all divergencies from this morphological type, and (the favored device) in ranking states in a hierarchical order of value as they approach the defining essence. The idea that there is a model pattern which makes a state a *good* or true state has affected practice as well as theory. It, more than anything else, is responsible for the effort to form constitutions offhand and impose them ready-made on peoples. Unfortunately, when the falsity of this view was perceived, it was replaced by the idea that states "grow" or develop instead of being made. This "growth" did not mean simply that states alter. Growth signified an evolution through regular stages to a predetermined end because of some intrinsic nisus or principle. This theory discouraged recourse to the only method by which alterations of political forms might be directed: namely, the use of intelligence to judge consequences. Equally with the theory which it displaced, it presumed the existence of a single standard form which defines *the* state as the essential and true article. After a false analogy with physical science, it was asserted that only the assumption of such a uniformity of process renders a "scientific"

treatment of society possible. Incidentally, the theory flattered the conceit of those nations which, being politically "advanced," assumed that they were so near the apex of evolution as to wear the crown of statehood.

The hypothesis presented makes possible a consistently empirical or *historical* treatment of the changes in political forms and arrangements, free from any overriding conceptual domination such as is inevitable when a "true" state is postulated, whether that be thought of as deliberately made or as evolving by its own inner law. Intrusions from non-political internal occurrences, industrial and technological, and from external events, borrowings, travel, migrations, explorations, wars, modify the consequences of pre-existing associations to such an extent that new agencies and functions are necessitated. Political forms are also subject to alterations of a more indirect sort. Developments of better methods of thinking bring about observation of consequences which were concealed from a vision which used coarser intellectual tools. Quickened intellectual insight also makes possible invention of new political devices. Science has not indeed played a large rôle. But intuitions of statesmen and of political theorists have occasionally penetrated into the operations of social forces in such a way that a new turn has been given to legislation and to administration. There is a margin of toleration in the body politic as well as in an organic body. Measures not in any sense inevitable are accommodated to after they have once been taken; and a further diversity is thereby introduced in political manners.

In short, the hypothesis which holds that publics are constituted by recognition of extensive and enduring indirect consequences of acts accounts for the relativity of states, while the theories which define them in terms of specific causal authorship imply an absoluteness which is contradicted by facts.

As we already noted, what are now crimes subject to public cognizance and adjudication were once private ebullitions, having the status now possessed by an insult proffered by one to another. Something of the same sort is manifested in contemporary life when modes of private business become "affected with a public interest" because of quantitative expansion.

A converse instance is presented in transfer from public to private domain of religious rites and beliefs. As long as the prevailing mentality thought that the consequences of piety and irreligion

affected the entire community, religion was of necessity a public affair. Scrupulous adherence to the customary cult was of the highest political import. Gods were tribal ancestors or founders of the community. They granted communal prosperity when they were duly acknowledged and were the authors of famine, pestilence and defeat in war if their interests were not zealously attended to. Naturally when religious acts had such extended consequences, temples were public buildings, like the agora and forum; rites were civic functions and priests public officials. Long after theocracy vanished, theurgy was a political institution. Even when disbelief was rife, few there were who would run the risk of neglecting the ceremonials.

The revolution by which piety and worship were relegated to the private sphere is often attributed to the rise of personal conscience and assertion of its rights. But this rise is just the thing to be accounted for. The supposition that it was there all the time in a submerged condition and finally dared to show itself reverses the order of events. Social changes, both intellectual and in the internal composition and external relations of peoples, took place so that men no longer connected attitudes of reverence or disrespect to the gods with the weal and woe of the community. Faith and unbelief still had serious consequences, but these were now thought to be confined to the temporal and eternal happiness of the persons directly concerned. Given the other belief, and persecution and intolerance are as justifiable as is organized hostility to any crime; impiety is the most dangerous of all threats to public peace and well-being. But social changes gradually effected as one of the new functions of the life of the community the rights of private conscience and creed.

No one can take into account all the consequences of the acts he performs. It is a matter of necessity for him, as a rule, to limit his attention and foresight to matters which, as we say, are distinctively his own business. Any one who looked too far abroad with regard to the outcome of what he is proposing to do would, if there were no general rules in existence, soon be lost in a hopelessly complicated muddle of considerations. The man of most generous outlook has to draw the line somewhere, and he is forced to draw it in whatever concerns those closely associated with himself. In the absence of some objective regulation, effects upon them are all he can be sure of in any reasonable degree. Much of

what is called selfishness is but the outcome of limitation of observation and imagination. Hence when consequences concern a large number, a number so mediately involved that a person cannot readily prefigure how they are to be affected, that number is constituted a public which intervenes. It is not merely that the combined observations of a number cover more ground than those of a single person. It is rather that the public itself, being unable to forecast and estimate all consequences, establishes certain dikes and channels so that actions are confined within prescribed limits, and insofar have moderately predictable consequences.

Rules of law are in fact the institution of conditions under which persons make their arrangements with one another. They are structures which canalize action; they are active forces only as are banks which confine the flow of a stream, and are commands only in the sense in which the banks command the current. If individuals had no stated conditions under which they come to agreement with one another, any agreement would either terminate in a twilight zone of vagueness or would have to cover such an enormous amount of detail as to be unwieldly and unworkable. Each agreement, moreover, might vary so from every other that nothing could be inferred from one arrangement as to the probable consequences of any other. Legal rules state certain conditions which when met make an agreement a contract. The terms of the agreement are thereby canalized within manageable limits, and it is possible to generalize and predict from one to another. Only the exigencies of a theory lead one to hold that there is a command that an agreement be made in such and such a form. What happens is that certain conditions are set such that *if* a person conform to them, he can count on certain consequences, while if he fails to do so he cannot forecast consequences. He takes a chance and runs the risk of having the whole transaction invalidated to his loss. There is no reason to interpret even the "prohibitions" of criminal law in any other way. Conditions are stated in reference to consequences which may be incurred if they are infringed or transgressed. We can similarly state the undesirable results which will happen if a stream breaks through its banks; if the stream were capable of foreseeing these consequences and directing its behavior by the foresight, we might metaphorically construe the banks as issuing a prohibition.

The all-inclusive nature of the state signifies only that officers

of the public (including, of course, law-makers) may act so as to fix conditions under which *any* form of association operates; its comprehensive character refers only to the impact of its behavior. A war like an earthquake may "include" in its consequences all elements in a given territory, but the inclusion is by way of effects, not by inherent nature or right. A beneficent law, like a condition of general economic prosperity, may favorably affect all interests in a particular region, but it cannot be called a whole of which the elements influenced are parts. Nor can the liberating and confirming results of public action be construed to yield a wholesale idealization of states in contrast with other associations. For state activity is often injurious to the latter. One of the chief occupations of states has been the waging of war and the suppression of dissentient minorities. Moreover, their action, even when benign, presupposes values due to non-political forms of living together which are but extended and reënforced by the public through its agents.

The hypothesis which we have supported has obvious points of contact with what is known as the pluralistic conception of the state. It presents also a marked point of difference. Our doctrine of plural forms is a statement of fact: that there exist a plurality of social groupings, good, bad, and indifferent. It is not a doctrine which prescribes inherent limits to state action. It does not intimate that the function of the state is limited to settling conflicts among other groups as if each one of them had a fixed scope of action of its own. Were that true, the state would be only an umpire to avert and remedy trespasses of one group upon another. Our hypothesis is neutral as to any general, sweeping implications as to how far state activity may extend. It does not indicate any particular polity of public action. At times, the consequences of the conjoint behavior of some persons may be such that a large public interest is generated which can be fulfilled only by laying down conditions which involve a large measure of reconstruction within that group. There is no more an inherent sanctity in a church, trade-union, business corporation, or family institution than there is in the state. Their value is also to be measured by their consequences. The consequences vary with concrete conditions; hence at one time and place a large measure of state activity may be indicated and at another time a policy of quiescence and *laissez-faire*. Just as publics and states vary

with conditions of time and place, so do the concrete functions which should be carried on by states. There is no antecedent universal proposition which can be laid down because of which the functions of a state should be limited or should be expanded. Their scope is something to be critically and experimentally determined.

CHAPTER XVII. THE REVOLT AGAINST DEMOCRATIC LIBERALISM

I. FASCISM

The Political Doctrine of Fascism (1925)

Alfredo Rocco (1875–)

The Philosophic Basis of Fascism (1928)

Giovanni Gentile (1875–)

In the last quarter of the eighteenth century democratic liberalism was poised for a victorious advance that mocked the fears and doubts of incredulous conservatives; in the second quarter of the twentieth century there is a widespread belief that it has already had its day. The prevalence of industrial and social problems even in the pre-war period, the inability of democratic governments to avert the World War, the compromises made by liberalism with dictatorship in order to win the war,—all this and more may be instanced to prove that democratic liberalism has been tried and found wanting. Furthermore the new psychology has undermined the rationalism that supported nineteenth century utilitarianism and idealism, while the pragmatic concept is easily interpreted to mean that order, efficiency, and sanitation imposed from above are indistinguishable from order, efficiency, and sanitation achieved by self-government. Despite Mill's eloquent defense of the ideal of representative government, post-war pragmatism tends to rally to the standard of the benevolent despot.

The most striking example of revolt against democratic liberalism is that which goes by the name of fascism. Originating in Italy in the period of economic distress and social and political instability that followed the Armistice, it was rooted in disappointed nationalism as well as in disgust with inefficient parliamentarianism. Fascism is thus nationalistic; also it relies on force to achieve its results; but it is reminiscent of Hegel, and even of Bosanquet, rather than of Treitschke. Although it attaches significance to national prestige in external affairs, fascism is primarily concerned with the internal aspects of society and the state.

As is fitting for a pragmatic movement, the practice of fascism antedated its theory. But its underlying philosophy has been eloquently voiced, as in Rocco's *Political Doctrine of Fascism* (1925), which was an address delivered at Perugia, and in Gentile's *Philosophic Basis of Fascism* (1928). Rocco, a jurist and professor of law, had been an ardent nationalist, and after Mussolini's march on Rome worked for a fusion be-

tween the nationalists and the fascists. He became president of the Chamber of Deputies in 1924 and Minister of Justice in 1925. Gentile, an idealist philosopher with an international reputation, had been a liberal. He amazed the intellectual world by joining the Fascist Party, but apparently found little difficulty in reconciling fascism with idealism. He was appointed Minister of Education and held that position for two years, during which he effected many significant reforms in the Italian educational system, in which he had long been interested.

The following readings from Rocco are based on the translation by Dino Bigongiari of *The Political Doctrine of Fascism* (International Conciliation Pamphlet, No. 223, Carnegie Endowment for International Peace, New York, 1926), and are reprinted by permission of the Carnegie Endowment for International Peace. The readings from Gentile are based on the article entitled *The Philosophic Basis of Fascism* in the January 1928 number of *Foreign Affairs*, New York (*Foreign Affairs*, VI, 290–304), and are reprinted by permission of *Foreign Affairs*, with the stipulation that all cuts in the article be indicated.

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THE POLITICAL DOCTRINE OF FASCISM

I. The Antithesis between Liberal—Democratic—Socialistic Concepts and the Doctrine of Fascism

Modern political thought remained, until recently, both in Italy and outside of Italy under the absolute control of those doctrines which, proceeding from the Protestant Reformation and developed by the adepts of natural law in the XVII and XVIII centuries, were firmly grounded in the institutions and customs of the English, of the American, and of the French Revolutions. Under different and sometimes clashing forms these doctrines have left a determining imprint upon all theories and actions both social and political, of the XIX and XX centuries down to the

rise of Fascism. The common basis of all these doctrines is a social and state concept which I shall call mechanical or atomistic.

Society according to this concept is merely a sum total of individuals, a plurality which breaks up into its single components. Therefore the ends of a society, so considered, are nothing more than the ends of the individuals which compose it and for whose sake it exists. An atomistic view of this kind is also necessarily anti-historical, inasmuch as it considers society in its spatial attributes and not in its temporal ones; and because it reduces social life to the existence of a single generation. Society becomes thus a sum of determined individuals, viz., the generation living at a given moment. This doctrine which I call atomistic and which appears to be anti-historical, reveals from under a concealing cloak a strongly materialistic nature. For in its endeavors to isolate the present from the past and the future, it rejects the spiritual inheritance of ideas and sentiments which each generation receives from those preceding and hands down to the following generation thus destroying the unity and the spiritual life itself of human society.

This common basis shows the close logical connection existing between all political doctrines; the substantial solidarity, which unites all the political movements, from Liberalism to Socialism, that until recently have dominated Europe. For these political schools differ from one another in their methods, but all agree as to the ends to be achieved. All of them see in society and in its juridical organization, the state, the mere instrument and means whereby individuals can attain their ends. They differ only in that the methods pursued for the attainment of these ends vary considerably one from the other.

Liberalism confines itself to the demand of certain guarantees which are to keep the state from overstepping its functions as general coördinator of liberties and from sacrificing the freedom of individuals more than is absolutely necessary for the accomplishment of its purpose. All the efforts are therefore directed to see to it that the ruler, mandatory of all and entrusted with the realization, through and by liberty, of the harmonious happiness of everybody, should never be clothed with undue power.

It was evident, however, that this moderate system, being fundamentally illogical and in contradiction with the very principles

from which it proceeded, would soon become the object of serious criticism. The state, if it exists for all, must be governed by all, and not by a small minority: if the state is for the people, sovereignty must reside in the people: if all individuals have the right to govern the state, liberty is no longer sufficient; equality must be added: and if sovereignty is vested in the people, the people must wield all sovereignty and not merely a part of it. The power to check and curb the government is not sufficient. The people must be the government. Thus, logically developed, Liberalism leads to Democracy.

Once started on this downward grade of logical deductions it was inevitable that this atomistic theory of state and society should pass on to a more advanced position. Great industrial developments and the existence of a huge mass of working men, as yet badly treated and in a condition of semi-servitude, pushed the labor problem violently to the fore. Social inequalities, possibly endurable in a régime of domestic industry, became intolerable after the industrial revolution. Hence we find Socialism, with its new economic organization of society, abolishing private ownership of capital and of the instruments and means of production, socializing the product, suppressing the extra profit of capital, and turning over to the working class the entire output of the productive processes. It is evident that Socialism contains and surpasses Democracy in the same way that Democracy comprises and surpasses Liberalism.

Thus Liberalism, Democracy, and Socialism, appear to be, as they are in reality, not only the offspring of one and the same theory of government, but also logical derivations one of the other. It is true that for many years, and with some justification, Socialism was looked upon as antithetical to Liberalism. But the antithesis is purely relative and breaks down as we approach the common origin and foundation of the two doctrines, for we find that the opposition is one of method, not of purpose. The end is the same for both, viz., the welfare of the individual members of society. The difference lies in the fact that Liberalism would be guided to its goal by liberty, whereas Socialism strives to attain it by the collective organization of production. The dissension therefore between these two points of view, or the antithesis if we wish so to call it, is limited to the economic field. Socialism is at odds with Liberalism only on the question of the organization of production

and of the division of wealth. In religious, intellectual, and moral matters it is liberal, as it is liberal and democratic in its politics. Even the anti-liberalism and anti-democracy of Bolshevism are in themselves purely contingent. For Bolshevism is opposed to Liberalism only in so far as the former is revolutionary, not in its socialistic aspect.

The true antithesis, not to this or that manifestation of the liberal-democratic-socialistic conception of the state but to the concept itself, is to be found in the doctrine of Fascism. For the rift between Socialism, Democracy, and Liberalism on one side and Fascism on the other is caused by a difference in concept. As a matter of fact, Fascism never raises the question of methods, using in its political praxis now liberal ways, now democratic means and at times even socialistic devices. This indifference to method often exposes Fascism to the charge of incoherence on the part of superficial observers, who do not see that what counts with us is the end and that therefore even when we employ the same means we act with a radically different spiritual attitude and strive for entirely different results. The Fascist concept rejects entirely the doctrine which forms the basis of the liberal, democratic, and socialistic ideology.

I shall not try here to expound this doctrine but shall limit myself to a brief résumé of its fundamental concepts.

Man—the political animal—according to the definition of Aristotle, lives and must live in society. A human being outside the pale of society is an inconceivable thing—a non-man. Humankind in its entirety lives in social groups that are still, today, very numerous and diverse, varying in importance and organization from the tribes of Central Africa to the great Western Empires. These various societies are fractions of the human species each one of them endowed with a unified organization. And as there is no unique organization of the human species, there is not "one" but there are "several" human societies. Humanity therefore exists solely as a biological concept not as a social one.

Each society on the other hand exists in the unity of both its biological and its social contents. Socially considered it is a fraction of the human species endowed with unity of organization for the attainment of the peculiar ends of the species.

If social groups are then fractions of the human species, they must possess the same fundamental traits of the human species,

which means that they must be considered as a succession of generations and not as a collection of individuals.

And as the ends of the human species are not those of the several individuals living at a certain moment, being occasionally in direct opposition to them, so the ends of the various social groups are not necessarily those of the individuals that belong to the groups but may even possibly be in conflict with such ends, as one sees clearly whenever the preservation and the development of the species demand the sacrifice of the individual, to wit, in times of war.

Fascism replaces therefore the old atomistic and mechanical state theory which was at the basis of the liberal and democratic doctrines with an organic and historic concept. When I say organic I do not wish to convey the impression that I consider society as an organism after the manner of the so-called "organic theories of the state"; but rather to indicate that the social groups as fractions of the species receive thereby a life and scope which transcend the scope and life of the individuals identifying themselves with the history and finalities of the uninterrupted series of generations. It is irrelevant in this connection to determine whether social groups, considered as fractions of the species, constitute organisms.

The relations therefore between state and citizens are completely reversed by the Fascist doctrine. Instead of the liberal-democratic formula, "society for the individual," we have, "individuals for society" with this difference however: that while the liberal doctrines eliminated society, Fascism does not submerge the individual in the social group. It subordinates him, but does not eliminate him; the individual as a part of his generation ever remaining an element of society however transient and insignificant he may be. Moreover the development of individuals in each generation, when coördinated and harmonized, conditions the development and prosperity of the entire social unit.

For Liberalism, the individual is the end and society the means; nor is it conceivable that the individual, considered in the dignity of an ultimate finality, be lowered to mere instrumentality. For Fascism, society is the end, individuals the means, and its whole life consists in using individuals as instruments for its social ends. The state therefore guards and protects the welfare and development of individuals not for their exclusive interest, but

because of the identity of needs of individuals with those of society as a whole. We can thus accept and explain institutions and practices, which like the death penalty, are condemned by Liberalism in the name of the preëminence of individualism.

The fundamental problem of society in the old doctrines is the question of the rights of individuals. It may be the right to freedom as the Liberals would have it; or the right to the government of the commonwealth as the Democrats claim it, or the right to economic justice as the Socialists contend; but in every case it is the right of individuals, or groups of individuals (classes). Fascism on the other hand faces squarely the problem of the right of the state and of the duty of individuals. Individual rights are only recognized in so far as they are implied in the rights of the state. In this preëminence of duty we find the highest ethical value of Fascism.

II. Liberty, Government, and Social Justice in the Doctrine of Fascism

This, however, does not mean that the problems raised by the other schools are ignored by Fascism. It means simply that it faces them and solves them differently, as, for example, the problem of liberty.

There is a Liberal theory of freedom, and there is a Fascist concept of liberty. Our concept of liberty is that the individual must be allowed to develop his personality in behalf of the state, for the ephemeral and infinitesimal elements of the complex and permanent life of society determine by their normal growth the development of the state. Freedom therefore is due to the citizen and to classes on condition that they exercise it in the interest of society as a whole and within the limits set by social exigencies, liberty being, like any other individual right, a concession of the state. What I say concerning civil liberties applies to economic freedom as well. Fascism does not look upon the doctrine of economic liberty as an absolute dogma. It does not refer economic problems to individual needs, to individual interest, to individual solutions. On the contrary it considers the economic development, and especially the production of wealth, as an eminently social concern, wealth being for society an essential element of power and prosperity. But Fascism maintains that in the ordinary run of events economic liberty serves the social purposes

best; that it is profitable to entrust to individual initiative the task of economic development both as to production and as to distribution; that in the economic world individual ambition is the most effective means for obtaining the best social results with the least effort. Therefore, on the question also of economic liberty the Fascists differ fundamentally from the Liberals; the latter see in liberty a principle, the Fascists accept it as a method. By the Liberals, freedom is recognized in the interest of the citizens; the Fascists grant it in the interest of society. In other terms, Fascists make of the individual an economic instrument for the advancement of society, an instrument which they use so long as it functions and which they subordinate when no longer serviceable. In this guise Fascism solves the eternal problem of economic freedom and of state interference, considering both as mere methods which may or may not be employed in accordance with the social needs of the moment.

What I have said concerning political and economic Liberalism applies also to Democracy. The latter envisages fundamentally the problem of sovereignty; Fascism does also, but in an entirely different manner. Democracy vests sovereignty in the people, that is to say, in the mass of human beings. Fascism discovers sovereignty to be inherent in society when it is juridically organized as a state. Democracy therefore turns over the government of the state to the multitude of living men that they may use it to further their own interests; Fascism insists that the government be entrusted to men capable of rising above their own private interests and of realizing the aspirations of the social collectivity, considered in its unity and in its relation to the past and future. Fascism therefore not only rejects the dogma of popular sovereignty and substitutes for it that of state sovereignty, but it also proclaims that the great mass of citizens is not a suitable advocate of social interests for the reason that the capacity to ignore individual private interests in favor of the higher demands of society and of history is a very rare gift and the privilege of the chosen few. Natural intelligence and cultural preparation are of great service in such tasks. Still more valuable perhaps is the intuitiveness of rare great minds, their traditionalism and their inherited qualities. This must not however be construed to mean that the masses are not to be allowed to exercise any influence on the life of the state. On the contrary, among peoples with a great history

and with noble traditions, even the lowest elements of society possess an instinctive discernment of what is necessary for the welfare of the race, which in moments of great historical crises reveals itself to be almost infallible. It is therefore as wise to afford to this instinct the means of declaring itself as it is judicious to entrust the normal control of the commonwealth to a selected élite.

As for Socialism, the Fascist doctrine frankly recognizes that the problem raised by it as to the relations between capital and labor is a very serious one, perhaps the central one of modern life. What Fascism does not countenance is the collectivistic solution proposed by the Socialists. The chief defect of the socialistic method has been clearly demonstrated by the experience of the last few years. The suppression of private ownership of capital carries with it the suppression of capital itself, for capital is formed by savings and no one will want to save, but will rather consume all he makes if he knows he cannot keep and hand down to his heirs the results of his labors. Socialism then, as experience has shown, leads to increase in consumption, to the dispersion of capital and therefore to poverty. Of what avail is it, then, to build a social machine which will more justly distribute wealth if this very wealth is destroyed by the construction of this machine? Socialism committed an irreparable error when it made of private property a matter of justice while in truth it is a problem of social utility. The recognition of individual property rights, then, is a part of the Fascist doctrine not because of its individual bearing but because of its social utility.

We must reject, therefore, the socialistic solution but we cannot allow the problem raised by the Socialists to remain unsolved, not only because justice demands a solution but also because the persistence of this problem in liberal and democratic régimes has been a menace to public order and to the authority of the state. Unlimited and unrestrained class self-defense, evinced by strikes and lockouts, by boycotts and sabotage, leads inevitably to anarchy.

Having reduced the problem to these terms, only one solution is possible, the realization of justice among the classes by and through the state. Centuries ago the state, as the specific organ of justice, abolished personal self-defense in individual controversies and substituted for it state justice. The time has now come when class self-defense also must be replaced by state justice. To facili-

tate the change Fascism has created its own syndicalism. Fascism has transformed the syndicate, that old revolutionary instrument of syndicalistic socialists, into an instrument of legal defense of the classes both within and without the law courts. This solution may encounter obstacles in its development; the obstacles of malevolence, of suspicion of the untried, of erroneous calculation, etc., but it is destined to triumph even though it must advance through progressive stages.

I might carry this analysis farther but what I have already said is sufficient to show that the rise of a Fascist ideology already gives evidence of an upheaval in the intellectual field as powerful as the change that was brought about in the XVII and XVIII centuries by the rise and diffusion of those doctrines of ius naturale which go under the name of "Philosophy of the French Revolution." The influence of these principles was so great that they determined the formation of a new culture, of a new civilization. Likewise the fervor of the ideas that go to make up the Fascist doctrine, now in its inception but destined to spread rapidly, will determine the course of a new culture and of a new conception of civil life. The deliverance of the individual from the state carried out in the XVIII century will be followed in the XX century by the rescue of the state from the individual.

THE PHILOSOPHIC BASIS OF FASCISM

I. The Spiritual Crisis in Pre-War Italy

[*I.*] For the Italian nation the World War was the solution of a deep spiritual crisis. . . . It was as though the Italian character were crossed by two different currents which divided it into two irreconcilable sections. One need think only of the days of Italian neutrality and of the debates that raged between Interventionists and Neutralists. The ease with which the most inconsistent ideas were pressed into service by both parties showed that the issue was not between two opposing political opinions, two conflicting concepts of history, but actually between two different temperaments, two different souls.

For one kind of person the important point was to fight the war, either on the side of Germany or against Germany: but in either event to fight the war, without regard to specific advantages—to fight the war in order that at last the Italian nation, created rather

by favoring conditions than by the will of its people to be a nation, might receive its test in blood, such a test as only war can bring by uniting all citizens in a single thought, a single passion, a single hope, emphasizing to each individual that all have something in common, something transcending private interests.

This was the very thing that frightened the other kind of person, the prudent man, the realist, who had a clear view of the mortal risks a young, inexperienced, badly prepared nation would be running in such a war, and who also saw—a most significant point—that, all things considered, a bargaining neutrality would surely win the country tangible rewards, as great as victorious participation itself.

The point at issue was just that: the Italian Neutralists stood for material advantages, advantages tangible, ponderable, palpable; the Interventionists stood for moral advantages, intangible, impalpable, imponderable—imponderable at least on the scales used by their antagonists. . . . Civil conflict seemed inevitable in Italy, and civil war was in fact averted only because the King took advantage of one of his prerogatives and declared war against the Central Powers.

This act of the King was the first decisive step toward the solution of the crisis.

[*II.*] The crisis had ancient origins. Its roots sank deep into the inner spirit of the Italian people.

What were the creative forces of the *Risorgimento?* The "Italian people," to which some historians are now tending to attribute an important if not a decisive rôle in our struggle for national unity and independence, was hardly on the scene at all. The active agency was always an idea become a person—it was one or several determined wills which were fixed on determined goals. There can be no question that the birth of modern Italy was the work of the few. And it could not be otherwise. It is always the few who represent the self-consciousness and the will of an epoch and determine what its history shall be; for it is they who see the forces at their disposal and through those forces actuate the one truly active and productive force—their own will.

That will we find in the song of the poets and the ideas of the political writers. . . . The notion of Italy had been sung in all kinds of music, propounded in all kinds of philosophy. But it was always an Italy that existed in the brain of some scholar

whose learning was more or less divorced from reality. Now reality demands that convictions be taken seriously, that ideas become actions. Accordingly it was necessary that this Italy, which was an affair of brains only, become also an affair of hearts, become, that is, something serious, something alive. This, and no other, was the meaning of Mazzini's great slogan: "Thought and Action." It was the essence of the great revolution which he preached and which he accomplished by instilling his doctrine into the hearts of others. Not many others—a small minority! But they were numerous enough and powerful enough to raise the question where it could be answered—in Italian public opinion (taken in conjunction with the political situation prevailing in the rest of Europe). They were able to establish the doctrine that life is not a game, but a mission; that, therefore, the individual has a law and a purpose in obedience to which and in fulfilment of which he alone attains his true value: that, accordingly, he must make sacrifices, now of personal comfort, now of private interest, now of life itself.

. . . Idealism—understood as faith in the advent of an ideal reality, as a manner of conceiving life not as fixed within the limits of existing fact, but as incessant progress and transformation toward the level of a higher law which controls men with the very force of the idea—was the sum and substance of Mazzini's teaching; and it supplied the most conspicuous characteristic of our great Italian revolution. . . . It was a conviction essentially religious in character, essentially anti-materialistic.

[*III.*] This religious and idealistic manner of looking at life, so characteristic of the *Risorgimento*, prevails even beyond the heroic age of the revolution and the establishment of the Kingdom. It survives down . . . to the occupation of Rome and the systemization of our national finances. . . . The outlook then changed, and not by the capriciousness or weakness of men, but by a necessity of history which it would be idiotic in our day to deplore. . . .

. . . The real truth was that the Right conceived liberty in a sense directly opposite to the notions of the Left. . . . The men of the Left thought of "the people" as merely the agglomerate of the citizens composing it. They therefore made the individual the center and the point of departure of all the rights and prerogatives which a régime of freedom was bound to respect.

The men of the Right, on the contrary, were firmly set in the notion that no freedom can be conceived except within the State, that freedom can have no important content apart from a solid régime of law indisputably sovereign over the activities and the interests of individuals. . . . In their eyes the general interest was always paramount over private interests. The law, therefore, should have absolute efficacy and embrace the whole life of the people.

This conception of the Right was evidently sound; but it involved great dangers when applied without regard to the motives which provoked it. Unless we are careful, too much law leads to stasis and therefore to the annihilation of the life which it is the State's function to regulate but which the State cannot suppress. . . . If the law comes upon the individual from without, if the individual is not absorbed in the life of the State, the individual feels the law and the State as limitations on his activity, as claims which will eventually strangle him unless he can break them down.

This was just the feeling of the men of '76. The country needed a breath of air. Its moral, economic, and social forces demanded the right to develop without interference from a law which took no account of them. This was the historical reason for the overturn of that year; and with the transference of power from Right to Left begins the period of growth and development in our nation: economic growth in industry, commerce, railroads, agriculture; intellectual growth in science, education. The nation had received its form from above. It had now to struggle to its new level, giving to a State which already had its constitution, its administrative and political organization, its army and its finance, a living content of forces springing from individual initiative prompted by interests which the *Risorgimento*, absorbed in its great ideals, had either neglected or altogether disregarded. . . .

From 1876 till the Great War, accordingly, we had an Italy that was materialistic and anti-Mazzinian, though an Italy far superior to the Italy of and before Mazzini's time. All our culture, whether in the natural or the moral sciences, in letters or in the arts, was dominated by a crude positivism, which conceived of the reality in which we live as something given, something ready-made, and which therefore limits and conditions human activity quite apart from so-called arbitrary and illusory demands of morality. Everybody wanted "facts," "positive facts." Every-

body laughed at "metaphysical dreams," at impalpable realities. The truth was there before the eyes of men. They had only to open their eyes to see it. The Beautiful itself could only be the mirror of the Truth present before us in Nature. Patriotism, like all the other virtues based on a religious attitude of mind, and which can be mentioned only when people have the courage to talk in earnest, became a rhetorical theme on which it was rather bad taste to touch. . . .

[*IV.*] But toward the end of the Nineteenth Century and in the first years of the Twentieth a vigorous spirit of reaction began to manifest itself in the young men of Italy against the preceding generation's ideas in politics, literature, science and philosophy. It was as though they were weary of the prosaic bourgeois life which they had inherited from their fathers and were eager to return to the lofty moral enthusiasms of their grandfathers. . . .

Positivism began forthwith to be attacked by neo-idealism. Materialistic approaches to the study of literature and art were refuted and discredited. Within the Church itself modernism came to rouse the Italian clergy to the need of a deeper and more modern culture. Even socialism was brought under the philosophical probe and criticized like other doctrines for its weaknesses and errors; and when, in France, George Sorel went beyond the fallacies of the materialistic theories of the Marxist social-democracy to his theory of syndicalism, our young Italian socialists turned to him. In Sorel's ideas they saw two things: first, the end of a hypocritical "collaborationism" which betrayed both proletariat and nation; and second, faith in a moral and ideal reality for which it was the individual's duty to sacrifice himself, and to defend which, even violence was justified. The anti-parliamentarian spirit and the moral spirit of syndicalism brought Italian socialists back within the Mazzinian orbit.

Of great importance, too, was nationalism, a new movement then just coming to the fore. Our Italian nationalism was less literary and more political in character than the similar movement in France, because with us it was attached to the old historic Right which had a long political tradition. The new nationalism differed from the old Right in the stress it laid on the idea of "nation"; but it was at one with the Right in regarding the State as the necessary premise to the individual rights and values. It was the special achievement of nationalism to rekindle faith in

the nation in Italian hearts, to arouse the country against parliamentary socialism, and to lead an open attack on Freemasonry, before which the Italian bourgeoisie was terrifiedly prostrating itself. Syndicalists, nationalists, idealists succeeded, between them, in bringing the great majority of Italian youth back to the spirit of Mazzini.

Official, legal, parliamentary Italy, the Italy that was anti-Mazzinian and anti-idealistic, stood against all this, finding its leader in a man of unfailing political intuition, and master as well of the political mechanism of the country, a man sceptical of all high-sounding words, impatient of complicated concepts, ironical, cold, hard-headed, practical—what Mazzini would have called a "shrewd materialist." In the persons, indeed, of Mazzini and Giolitti, we may find a picture of the two aspects of pre-war Italy, of that irreconcilable duality which paralyzed the vitality of the country and which the Great War was to solve.

II. The Solution of the Crisis

[*V.*] The effect of the war seemed at first to be quite in an opposite sense—to mark the beginning of a general *débâcle* of the Italian State and of the moral forces that must underlie any State. If entrance into the war had been a triumph of ideal Italy over materialistic Italy, the advent of peace seemed to give ample justification to the Neutralists who had represented the latter. After the Armistice our Allies turned their backs upon us. Our victory assumed all the aspects of a defeat. A defeatist psychology, as they say, took possession of the Italian people and expressed itself in hatred of the war, of those responsible for the war, even of our army which had won our war. An anarchical spirit of dissolution rose against all authority. The ganglia of our economic life seemed struck with mortal disease. Labor ran riot in strike after strike. The very bureaucracy seemed to align itself against the State. The measure of our spiritual dispersion was the return to power of Giolitti—the execrated Neutralist—who for five years had been held up as the exponent of an Italy which had died with the war.

But, curiously enough, it was under Giolitti that things suddenly changed in aspect, that against the Giolittian State a new State arose. Our soldiers, our genuine soldiers, men who had willed our war and fought it in full consciousness of what they were doing,

had the good fortune to find as their leader a man who could express in words things that were in all their hearts and who could make those words audible above the tumult.

Mussolini had left Italian socialism in 1915 in order to be a more faithful interpreter of "the Italian People" (the name he chose for his new paper). He was one of those who saw the necessity of our war, one of those mainly responsible for our entering the war. Already as a socialist he had fought Freemasonry; and, drawing his inspiration from Sorel's syndicalism, he had assailed the parliamentary corruption of Reformist Socialism with the idealistic postulates of revolution and violence. Then, later, on leaving the party and in defending the cause of intervention, he had come to oppose the illusory fancies of proletarian internationalism with an assertion of the infrangible integrity, not only moral but economic as well, of the national organism, affirming therefore the sanctity of country for the working classes as for other classes. . . . First by instinct, later by reflection, Mussolini had come to despise the futility of the socialists who kept preaching a revolution which they had neither the power nor the will to bring to pass even under the most favorable circumstances. More keenly than anyone else he had come to feel the necessity of a State which would be a State, of a law which would be respected as law, of an authority capable of exacting obedience but at the same time able to give indisputable evidence of its worthiness so to act. It seemed incredible to Mussolini that a country capable of fighting and winning such a war as Italy had fought and won should be thrown into disorder and held at the mercy of a handful of faithless politicians.

When Mussolini founded his Fasci in March, 1919, the movement toward dissolution and negation that featured the post-war period in Italy had virtually ceased. The Fasci made their appeal to Italians who, in spite of the disappointments of the peace, continued to believe in the war, and who, in order to validate the victory which was the proof of the war's value, were bent on recovering for Italy that control over her own destinies which could come only through a restoration of discipline and a reorganization of social and political forces. From the first, the Fascist Party was not one of believers but of action. What it needed was not a platform of principles, but an idea which would indicate a goal and a road by which the goal could be reached.

The four years between 1919 and 1923 inclusive were characterized by the development of the Fascist revolution through the action of "the squads." The Fascist "squads" were really the forces of a State not yet born but on the way to being. In its first period, Fascist "squadrism" transgressed the law of the old régime because it was determined to suppress that régime as incompatible with the national State to which Fascism was aspiring. The March on Rome was not the beginning, it was the end of that phase of the revolution; because, with Mussolini's advent to power, Fascism entered the sphere of legality. After October 28, 1922, Fascism was no longer at war with the State; it *was* the State, looking about for the organization which would realize Fascism as a concept of State. Fascism already had control of all the instruments necessary for the upbuilding of a new State. The Italy of Giolitti had been superseded, at least so far as militant politics were concerned. Between Giolitti's Italy and the new Italy there flowed, as an imaginative orator once said in the Chamber, "a torrent of blood" that would prevent any return to the past. The century-old crisis had been solved. The war at last had begun to bear fruit for Italy. . . .

III. The Nature of Fascism

[*VI.*] In the definition of Fascism, the first point to grasp is the comprehensive, or as Fascists say, the "totalitarian" scope of its doctrine, which concerns itself not only with political organization and political tendency, but with the whole will and thought and feeling of the nation.

There is a second and equally important point. Fascism is not a philosophy. Much less is it a religion. It is not even a political theory which may be stated in a series of formulae. The significance of Fascism is not to be grasped in the special theses which it from time to time assumes. When on occasion it has announced a program, a goal, a concept to be realized in action, Fascism has not hesitated to abandon them when in practice these were found to be inadequate or inconsistent with the principle of Fascism. Fascism has never been willing to compromise its future. Mussolini has boasted that he is a *tempista*, that his real pride is in "good timing." He makes decisions and acts on them at the precise moment when all the conditions and considerations which make them feasible and opportune are properly matured. This is a way

of saying that Fascism returns to the most rigorous meaning of Mazzini's "Thought and Action," whereby the two terms are so perfectly coincident that no thought has value which is not already expressed in action. The real "views" of the *Duce* are those which he formulates and executes at one and the same time.

Is Fascism therefore "anti-intellectual," as has been so often charged? It is eminently anti-intellectual, eminently Mazzinian, that is, if by intellectualism we mean the divorce of thought from action, of knowledge from life, of brain from heart, of theory from practice. Fascism is hostile to all Utopian systems which are destined never to face the test of reality. It is hostile to all science and all philosophy which remain matters of mere fancy or intelligence. It is not that Fascism denies value to culture, to the higher intellectual pursuits by which thought is invigorated as a source of action. Fascist anti-intellectualism holds in scorn a product peculiarly typical of the educated classes in Italy: the *leterato*—the man who plays with knowledge and with thought without any sense of responsibility for the practical world. It is hostile not so much to culture as to bad culture, the culture which does not educate, which does not make men, but rather creates pedants and aesthetes, egotists in a word, men morally and politically indifferent. It has no use, for instance, for the man who is "above the conflict" when his country or its important interests are at stake.

By virtue of its repugnance for "intellectualism," Fascism prefers not to waste time constructing abstract theories about itself. But when we say that it is not a system or a doctrine we must not conclude that it is a blind praxis or a purely instinctive method. If by system or philosophy we mean a living thought, a principle of universal character daily revealing its inner fertility and significance, then Fascism is a perfect system, with a solidly established foundation and with a rigorous logic in its development; and all who feel the truth and the vitality of the principle work day by day for its development, now doing, now undoing, now going forward, now retracing their steps, according as the things they do prove to be in harmony with the principle or to deviate from it.

And we come finally to a third point.

The Fascist system is not a political system, but it has its center of gravity in politics. Fascism came into being to meet serious

problems of politics in post-war Italy. And it presents itself as a political method. But in confronting and solving political problems it is carried by its very nature, that is to say by its method, to consider moral, religious, and philosophical questions and to unfold and demonstrate the comprehensive totalitarian character peculiar to it. It is only after we have grasped the political character of the Fascist principle that we are able adequately to appreciate the deeper concept of life which underlies that principle and from which the principle springs. The political doctrine of Fascism is not the whole of Fascism. It is rather its more prominent aspect and in general its most interesting one.

IV. The Synthesis of State and Individual

[*VII.*] The politic of Fascism revolves wholly about the concept of the national State; and accordingly it has points of contact with nationalist doctrines, along with distinctions from the latter which it is important to bear in mind.

Both Fascism and nationalism regard the State as the foundation of all rights and the source of all values in the individuals composing it. For the one as for the other the State is not a consequence—it is a principle. But in the case of nationalism, the relation which individualistic liberalism, and for that matter socialism also, assumed between individual and State is inverted. Since the State is a principle, the individual becomes a consequence—he is something which finds an antecedent in the State: the State limits him and determines his manner of existence, restricting his freedom, binding him to a piece of ground whereon he was born, whereon he must live and will die. In the case of Fascism, State and individual are one and the same things, or, rather, they are inseparable terms of a necessary synthesis.

Nationalism, in fact, founds the State on the concept of nation, the nation being an entity which transcends the will and the life of the individual because it is conceived as objectively existing apart from the consciousness of individuals, existing even if the individual does nothing to bring it into being. For the nationalist, the nation exists not by virtue of the citizen's will, but as datum, a fact, of nature.

For Fascism, on the contrary, the State is a wholly spiritual creation. It is a national State, because, from the Fascist point of view, the nation itself is a creation of the mind and is not a mate-

rial presupposition, is not a datum of nature. The nation, says the Fascist, is never really made; neither, therefore, can the State attain an absolute form, since it is merely the nation in the latter's concrete, political manifestation. For the Fascist, the State is always *in fieri*. It is in our hands, wholly; whence our very serious responsibility towards it.

But this State of the Fascists which is created by the consciousness and the will of the citizen, and is not a force descending on the citizen from above or from without, cannot have toward the mass of the population the relationship which was presumed by nationalism.

Nationalism identified State with Nation, and made of the nation an entity preëxisting, which needed not to be created but merely to be recognized or known. The nationalists, therefore, required a ruling class of an intellectual character, which was conscious of the nation and could understand, appreciate and exalt it. The authority of the State, furthermore, was not a product but a presupposition. It could not depend on the people—rather the people depended on the State and on the State's authority as the source of the life which they lived and apart from which they could not live. The nationalistic State was, therefore, an aristocratic State, enforcing itself upon the masses through the power conferred upon it by its origins.

The Fascist State, on the contrary, is a people's state, and, as such, the democratic State *par excellence*. The relationship between State and citizen (not this or that citizen, but all citizens) is accordingly so intimate that the State exists only as, and in so far as, the citizen causes it to exist. Its formation therefore is the formation of a consciousness of it in individuals, in the masses. Hence the need of the Party, and of all the instruments of propaganda and education which Fascism uses to make the thought and will of the *Duce* the thought and will of the masses. Hence the enormous task which Fascism sets itself in trying to bring the whole mass of the people, beginning with the little children, inside the fold of the Party.

On the popular character of the Fascist State likewise depends its greatest social and constitutional reform—the foundation of the Corporations of Syndicates. . . . The Corporations of Syndicates are a device through which the Fascist State goes looking for the individual in order to create itself through the individual's

will. But the individual it seeks is not the abstract political individual whom the old liberalism took for granted. He is the only individual who can ever be found, the individual who exists as a specialized productive force, and who, by the fact of his specialization, is brought to unite with other individuals of his same category and comes to belong with them to the one great economic unit which is none other than the nation.

This great reform is already well under way. Toward it nationalism, syndicalism, and even liberalism itself, were already tending in the past. For even liberalism was beginning to criticize the older forms of political representation, seeking some system of organic representation which would correspond to the structural reality of the State.

The Fascist conception of liberty merits passing notice. The *Duce* of Fascism once chose to discuss the theme of "Force or Consent?"; and he concluded that the two terms are inseparable, that the one implies the other and cannot exist apart from the other; that, in other words, the authority of the State and the freedom of the citizen constitute a continuous circle wherein authority presupposes liberty and liberty authority. For freedom can exist only within the State, and the State means authority. But the State is not an entity hovering in the air over the heads of its citizens. It is one with the personality of the citizen. Fascism, indeed, envisages the contrast not as between liberty and authority, but as between a true, a concrete liberty which exists, and an abstract, illusory liberty which cannot exist.

. . . The absurdities inherent in the liberal concept of freedom were apparent to liberals themselves early in the Nineteenth Century. It is no merit of Fascism to have again indicated them. Fascism has its own solution of the paradox of liberty and authority. The authority of the State is absolute. It does not compromise, it does not bargain, it does not surrender any portion of its field to other moral or religious principles which may interfere with the individual conscience. But on the other hand, the State becomes a reality only in the consciousness of its individuals. And the Fascist corporative State supplies a representative system more sincere and more in touch with realities than any other previously devised and is therefore freer than the old liberal State.

II. NEO-IDEALISM

The Method of Freedom (1934)

Walter Lippmann (1889–)

It is not only in Italy that the post-war period has seen a marked revulsion from both the theory and the practice of democratic liberalism. Germany, after a number of years of near-dictatorship under the emergency article of the Weimar Constitution, has since 1933 been under a Nazi régime that bears many resemblances to Italian fascism. Austria has abandoned socialistic republicanism for fascism on the Italian model. Even in Great Britain and the United States, although voters vote and legislators assemble as before the war, we meet with striking innovations in executive control and a marked decline of faith in representative institutions. It is repeatedly maintained that democracy is dying and that the choice is between fascism and communism.

If by democracy is meant the *laissez-faire* democracy of the nineteenth century, or even the modified version of the pre-war years, it is not only dying but dead. But it ought to be possible to find some middle ground between *laissez-faire* and dictatorship. Experiments in this direction are in actual operation in both Great Britain and the United States, and the new national control is already finding theoretical expression in what is often called neo-nationalism but may perhaps be better termed neo-idealism. An excellent illustration of this trend is the exposition of "free collectivism" given by Walter Lippmann in *The Method of Freedom*, a series of lectures delivered at Harvard in 1934.

Lippmann was born in New York City of Jewish parentage and received his college education at Harvard, where he was especially influenced by William James, George Santayana, and Graham Wallas, visiting professor from London. He began his journalistic career by serving for a year under Lincoln Steffens, and was one of the founders of the *New Republic*. Lippmann served on the editorial staff of the *New York World* from 1921 until it was discontinued, and has since 1931 been the writer of special articles for the *Herald Tribune*. He is the author of a number of books of distinct importance in political theory. Especially noteworthy are *A Preface to Politics* (1912), *Public Opinion* (1922), and *The Phantom Public* (1925).

The readings here given are based on the text of the original edition of *The Method of Freedom* (Macmillan, New York, 1934), and are reprinted by permission of The Macmillan Company.

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THE METHOD OF FREEDOM

I. The Collapse of the Old Economy

[*Pt. I, 2.*] The old economy was a world-wide system of transactions that no one had deliberately contrived. It had grown to be what it was by the initiative, the compliance, the foresight and the miscalculation of multitudes of men in the course of many generations. It was not a consciously constructed organization, and it was therefore, by its very nature, unsuited to conscious control. It was particularly intractable to the only kind of control which men were organized to exert, that is to say, the control by separate, sovereign, popular governments.

Large populations needed food and raw materials supplied by producers who were bound to them only by a cash nexus and were separated from them by political frontiers. To pay for these necessities they had to have access to markets within the jurisdiction of foreign sovereignties. The flow of capital, which determined how and where and at what men should work, was directed by private calculations of risk and profit. In order to facilitate foreign trade and foreign investment an international monetary system had developed. All important movements in the price level anywhere, whether due to changes in the supply of gold and silver, or the demand for them, or the use of them as the base of credit, or to alteration in the ratio of costs to prices in large countries, had to be transmitted to all other countries within the system. These changes in the value of money imposed upon the people what amounted to a periodic redistribution of the national wealth, which had no relation whatever to their conscious national purposes.

Yet these very same people, who had so little power over their own economic fate, had become organized in powerful states. The contrast between the political independence of the western peoples and their economic dependence, between their national pretensions and their subjection to cosmopolitan forces, developed gradually in the century from Waterloo to Sarajevo. At the end of the Eighteenth Century the control which governments exercised over industry and commerce, in the interest of the landed classes, was vexatious and destructive; the liberation of the entrepreneur from this obsolete political control was rational and

necessary. But the gospel of laissez-faire, which men treated as a revelation of the very nature of the universe, in fact reflected quite temporary conditions. The capitalist economy was undeveloped: the greater part of the population in all countries was still settled upon the land and was reasonably self-sufficient. Thus the early capitalism, though it soon produced great abuses in the treatment of labor, did not vitally implicate the whole mass of the people. There was therefore no overwhelmingly urgent demand that the capitalist economy should be controlled except in relatively minor ways. Moreover, the people who might have demanded control were pre-occupied with the effort to achieve political unity and political power. But by the end of the Nineteenth Century, capitalism had developed to a point where it involved the vital interests of whole nations, and democratic nationalism had developed to a point where the popular will, once it became articulate, was irresistible.

Sooner or later, gradually or violently, it was then certain that the political power of the masses would be used to defend and improve their economic position. When men achieve power, they will use it. They will use it to promote what they believe is their interest, and no abstract principle about the virtues of not using their power will long restrain them. The only thing which could and did restrain them, causing them to hesitate in the use of their power and to proceed moderately and gradually, was the success of the capitalist order in providing an immediate prosperity. Since the consolidation of popular power, laissez-faire capitalism has been like a man condemned who is reprieved repeatedly because he works miracles. The more the political state was democratized the more imperative it was for private capitalism to give off continual prosperity.

[*3.*] The war dislocated affairs so much that they were no longer manageable by the kind of effort which ordinary men engrossed in their interests were capable of making. Then the interdependence of the Great Society was seen to be not a rational cooperation but the fortuitous concourse of individual efforts undertaken without direction or a common view of the whole.

Though many people hoped and believed that the world would relapse into normalcy, the wiser statesmen and their financial advisers saw almost at once that the pre-war economy could not be restored merely by dis-establishing the war socialism. The restora-

tion had deliberately to be undertaken as a matter of conscious policy. It was undertaken. Between 1922 and 1928 the central banks and the international financiers co-operated in the reconstruction of what they believed to be the old cosmopolitan capitalism. But production and trade, which had been dislocated by the war and driven into new channels, did not follow this financial leadership. They remained obstinately nationalistic in the midst of the cosmopolitan financial restoration. Thus the bankers and financiers found themselves operating the mechanism of money and credit according to theories which did not conform to the practices of industry or the policies of government. The accounts would not balance, and the reconstruction broke down.

Conceivably it might have succeeded had the peoples been willing to keep their hands off and to refrain from exerting control at various points. But to have expected that, as most of us did, was to misunderstand the political realities. The people would gladly have seen capitalism revive and produce prosperity. They proved that by their votes between 1920 and 1928. But at the same time they held fast to the idea that they must never again be at the mercy of such an anarchy of senseless brutish forces as had prevailed in the war and just after it.

Confronted with chaos in the Great Society as a whole, men retreated into the smaller societies with which they were familiar, convulsively insisting that in them they would establish for themselves oases of order and well-being. Of course the more they did this, the more they dislocated the Great Society itself; their separatism became the most active agent in producing the evils against which separatism seemed the only practical defense. There were eloquent voices raised to summon the people to the kind of co-operation which the restoration of the world economy seemed to require. These voices went unheeded.

It is above all other things security that the people are seeking. They have lived dangerously for twenty years, and the elementary instinct to survive is aroused. This is the energy of their discontent, and so great is it that it will crush anything which seems to stand in the way of relief from the intolerable disturbance of their lives. Principles, constitutions, rights, liberties, all these things are as nothing compared with their overwhelming passion to make secure again the peace of human privacy. The surrender of liberty, the disenchantment with democracy, the revival of au-

tocracy, are all manifestations of the same desire: that amidst chaos there shall be organized power to defend them.

II. The Intervention of the State

[*Pt. I, 6.*] The classic theory of the business cycle recognizes the fallibility of individual judgments, and holds that periodic depressions are the necessary correction of the accumulated misjudgments of the previous era of prosperity. This is not a bad description of what happened in the business cycles of the Nineteenth Century. But, if it is proposed to treat the theory as a guide to policy in the future, it is a dangerous one. It leaves out of account the rise of democracy with all that that involves in the way of resistance and activity on the part of the masses of the people. As long as democracy was unconscious of its power, it was possible to let hard times be the purge of previous mistakes. But with democracy become active, there can no longer be a fatalistic acceptance of the purge. The debtor, threatened with the loss of his home, the worker thrown out of his job, the depositor, threatened with the loss of his savings, are not willing to go through the purgation. They fight back. They will, if necessary, overturn the government and the social order when their own security is destroyed.

Thus it has come about that under modern conditions the state is compelled to intervene. It has to prevent the purge from taking place. The modern state has to prevent unemployment. The task of insuring continuity of the standard of life for its people is now as much the fundamental duty of the state as the preservation of national independence.

[*Pt. II.*] It is in this sense that one may declare that laissez-faire is dead and that the collectivist principle is now generally accepted. The great issues of the contemporary world, as between conservatives and progressives, fascists, communists, and social democrats have to do with the kind of collectivism, how it is to be established, in whose interests, by whom it is to be controlled, and for what ends. But about the underlying premise of all these policies, which is that the continuity of an ordered life is a collective responsibility, there is no debate.

It is when the premise is accepted that the real debate begins. The issues of that debate can be clarified, I believe, by distinguishing two radically different forms of collectivism. In practice

neither of them exists anywhere in its pure and rigorous logical simplicity. Nor is it likely to. For all social orders are in fact hybrids of many principles. But it may nevertheless be useful to distinguish clearly the differences of pure principle so that in the choice of actual policies we may have a mark by which to take our bearings. And since, in order to discuss ideas, it is convenient to give them names, I shall call one the system of a Directed Economy, or Absolute Collectivism, and the other the system of a Compensated Economy, or Free Collectivism.

[*1.*] The military pattern is the basic pattern of any directed social order. If a multitude of people is to act according to a definite plan, it must be militarized. That is to say: centralized decision must replace distributed decisions. In place of argument, persuasion, bargaining, and compromise among individuals, there must be orders and the disciplined acceptance of those orders. If the social order is to be planned, it has to be directed as it is in war time, and the liberty of private transactions has to give way to regimentation.

Thus, if there is freedom to choose an occupation, there is no likelihood whatever that everyone will choose just that occupation which fits the plan. Successful planning is even more impossible where men have freedom to choose what they will buy, that is to say, freedom to determine what kind of life they will make for themselves out of the products of their labor. For then the planner must make guesses about the preferences of the people, and he might guess wrong. This problem does not arise in a country like Russia where the population is so poor that practically all income has to be spent on the obvious necessities of existence. But once a people has risen above the level of subsistence to the level where it has income to spend for comforts and luxuries, the caprices of individual taste become extremely disconcerting to the planning commissioners. It is best, therefore, under a directed economy to keep private incomes to a subsistence level, and to let the state spend the surplus on such collective pleasures and luxuries as it may in its wisdom deem it desirable to offer the people.

We should have no illusions as to the essential character of an economy which is directed according to a unified plan. When we see visions of the great abundance which we could all theoretically enjoy if we turned over the whole economic order to a general staff of technicians to run on the highest engineering principles, with

all waste and friction abolished, with everything carefully calculated as part of a comprehensive plan, let us have no illusions about the violence with which the technicians would have to suppress the contrariness of free men.

It is no accident that wherever and whenever planned collectivism has been instituted, in all countries during the war, in the post-war dictatorships, it has required censorship, espionage, and terrorism to make it work. What else can one expect? How else, except by suppressing the liberties of individual men, is the will of the officials to prevail without let or hindrance?

III. Free Collectivism

[*Pt. II, 2.*] It is often assumed in current discussion that all the nations must make an exclusive choice between the old theoretically neutral state on the one hand and some form of absolute collectivism and a directed economy on the other. The militant partisans have done their best to narrow the choice to these alternatives. Yet there exists a radically different method which is actually in use in most of the free countries.

I shall call it the method of free collectivism. It is collectivist because it acknowledges the obligation of the state for the standard of life and the operation of the economic order *as a whole*. It is free because it preserves within very wide limits the liberty of private transactions. Its object is not to direct individual enterprise and choice according to an official plan but to put them and keep them in a working equilibrium. Its method is to redress the balance of private actions by compensating public actions.

In the first instance it takes the form of measures which set limits within which private initiative is confined and fix standards to which it must conform. This part of the system has a long history and is well understood. It is based upon a recognition of the fact that initiative may be evil as well as good, and that it is the duty of the state to encourage initiative when it is socially beneficent and to discourage it when it is not.

The body of laws which regulates enterprise is enormous, and however foolish or unworkable some of these laws may be, no one imagines that all are unnecessary. In fact, there is every reason to think that if a regime of free transactions is to be preserved, even more searching and comprehensive standards will have to be set for it. It is more than likely, for example, that

secrecy in corporate accounting will have to be abolished, that all large enterprises will have to submit to publicly instituted systems of bookkeeping, and that their whole financial structure will become as visible as that of a railroad or a municipal corporation.

But all of this does not go to the heart of the matter. It can prevent abuses. It does not reach the vital defect of individualism which is that the multitude of individual decisions is not sufficiently enlightened to keep the economy *as a whole* in working order.

The data for a "sound" judgment are not any longer available to most men. For an integral part of every judgment is now a speculation on what other speculators will do. Take, for example, a banker who makes a loan to a reliable individual for a useful project on ample security at existing values. By every conventional rule it is a sound loan. Yet it may be a bad loan for no other reason than that too many bankers have made too many equally sound loans to too many reliable individuals for too many similar projects. The algebraic sum of a great number of reputable transactions may easily prove to be a disaster for all. We have seen this illustrated again and again in recent years. We have seen it in another phase of the cycle, when the individual decision to call a loan and make himself liquid becomes a collective disaster if the whole mass of individuals is stricken with prudence at the same time.

It follows that if individuals are to continue to decide when they will buy and sell, spend and save, borrow and lend, expand and contract their enterprises, some kind of compensatory mechanism to redress their liability to error must be set up by public authority. This is what I mean by a Compensated Economy and the method of Free Collectivism.

It is a conception which is not spun out of abstract theory. It is rather an induction from many experiments actually undertaken. The oldest example of the method is to be found in the operation of a highly developed central bank. The function of such a bank is to correct the decisions of the member banks. It is supposed to contract credit when they show a tendency to over-expand credit, and to make credit abundant when they are making it scarce. In the Nineteenth Century it was believed that a central bank was performing its compensatory function adequately when it managed the flow of domestic credit in such a way as to preserve the parity of the foreign exchanges without large shipments of gold.

More recently central bankers have been called upon to manage the flow of domestic credit with a view to stabilizing domestic trade, and, since the war, but more especially since 1931, the maintenance of exchange parity has tended to become a secondary concern as compared with the internal equilibrium.

But it is not only through the central banks that the modern state can assert compensatory control. It can act directly upon the various markets. This method is also recognized and has been tested experimentally. The state is itself a great employer, a great consumer, a great investor, and a great borrower. It can in theory, —and with experience it can probably learn how actually to do this,—time its operations so as to offset and balance the actions of private employers, consumers, investors, and borrowers. This involves the long range planning of public works of all kinds, and action in accordance with those plans as circumstances require. These are immense difficulties, I know, but they are, I believe, the difficulties of inexperience with a new social mechanism. There is nothing inherently impossible about a policy which would require the government to raise taxes and reduce its debts in good times and to lower taxes and borrow in bad times, to curtail public works when private employment is full, and to promote public works when private work is slack.

Through taxation it is possible to do many things besides raise revenue. Taxes can be raised so as to discourage all enterprise or any particular enterprise. They can be lowered in order to encourage all or any particular enterprise. They can be used to curtail consumption or capital investment. They can be used to encourage them. An ideal system of taxation would, therefore, be flexible so that rates rose when business was tending toward a boom and fell when it was slowing down. It would also be discriminating so as to encourage or discourage saving with a view to preserving the equilibrium between saving and investment.

Another powerful instrument is the state's control over the rates charged by common carriers and public utilities. These rates ought to rise in the upward phase of the business cycle and to fall in the downward phase, and under a proper system of reserves there is no inherent reason why public utilities should not be managed as a compensatory mechanism. It is even conceivable that they should be treated like public works, that they should make long-term plans of development, and that they should with-

hold projects in good times and push them in bad times. Thus, instead of competing for labor and materials with the rest of industry, they would complement the operations of private industry.

Such mechanisms, in conjunction with a strong central bank which was clear about its function, would provide an enormously powerful system of compensatory control. But they would still not be sufficient to keep the economy in balance. The state will be concerned not only with its own domestic budget but with the balance of payments across the national boundaries. If the international budget shows a tendency to excessive imports, it may raise the barriers; if there is a tendency to excessive exports, it may lower the barriers. If the volume of foreign loans appears to be abnormally large, it will cause the investment houses to curtail them. If the loans are abnormally small, and the export trades are suffering in consequence, it will through guaranties or direct public financing expand foreign credits. These are, of course, details suggested to illustrate the point, which is that in a modern economy tariffs and foreign credits can and should be treated as instruments for keeping the budget of international payments in approximate balance. For only by doing this can private judgment be made to operate within reasonably safe limits.

IV. Control in an Economy of Abundance

[*Pt. II, 4.*] The fact that the capitalist economy is the product of private enterprise creates a strong presumption in favor of any principle which preserves private enterprise. It is significant that the planned economy of Russia has been established in a country where, contrary to the prophecies of Karl Marx, capitalism had had no considerable development. It is significant, too, that the corporative state of the fascists has been instituted in a country which, of all the western powers, had the least elaborate capitalist organization. In America and in England the situation is very different. There the capitalist order has produced great results. It has distributed them among large masses of people who are attached to them. The vested interests which sustain the systems are not confined to the conspicuously rich; they are anchored in a very wide distribution of property and in the careers of multitudes, and it would be necessary to ruin millions before this attachment to the capitalist order was really broken. Not until something like that had occurred in Germany, a greater part of

the nation having become hopelessly proletarian, did Germany, which has an advanced type of capitalist organization, fall into absolute collectivism.

In a country like the United States private initiative is so deep a habit that only a complete paralysis of the economy can even temporarily induce the people to submit to centralized regimentation. Almost the first thing the people recover, when business picks up even a little, is their resentment against dictation and their noble capacity as free men to growl when officialdom is too officious. To impose a planned economy upon a people with habits like these would be an undertaking so formidable that we may call it impossible.

But even if the people could be made docile to regimentation, the sheer complexity of the industrial system they have created would baffle any set of official planners who set out to direct it. Indeed, it can be shown that the more varied are the products of an industrial order the less possible it becomes to deal with it as a planned economy.

The opportunity to plan is in proportion to the limitation of the consumer's choice. It is easier to plan in prisons than in hotels, in the commissariat of an army than in a department store. It is easier to plan and stabilize men's uniforms than women's evening gowns, men's hats than women's hats, telephones than newspapers, school text books than new novels, garbage collection than modernist paintings.

It is an interesting circumstance that all the actual experiments which can be cited by the enthusiasts of planning have been carried on where supply was insufficient. The two great examples are, of course, the war economy among the western nations and the Russian system. During the war there was a shortage of almost all necessities, and planning consisted in rationing the inadequate supply to the more or less clearly defined needs of the army and the civilians. In Russia, too, there has never been anything but a shortage of everything, including skilled labor, and planning is the rational method of dealing with a shortage.

In fact, a planned economy is an economy of scarcity. This truth has become very much more evident as a result of innumerable attempts in recent years to deal with the problem of glut, of over-supply, by the method of centralized planning. It has proved to be infinitely more difficult to plan a limitation of production in

America than to plan an increase of production in Russia. Is that because the Russians are better organizers than the Americans? Obviously not. Is it because they have communist principles and we have capitalist principles, because they are free of the profit motive and we are moved by it? That might be said until one realizes that the Russians in order to promote their plans for increasing production have been re-introducing the incentive of profit in the form of piece rates, wage differentials, and bonuses. So it cannot be maintained that Russian planning works better than American because the incentives are less selfish and more social. The real reason, I believe, is not psychological but economic.

The existence of plenty is a condition of liberty and multiplies the individual choices. These choices dominate production, render it speculative and unpredictable, and therefore intractable to planning. In an economy of plenty the consumer is master of the situation. The fundamental premise of a planned economy is that the producer is master of the market.

[*5.*] It could be shown with reasonable certainty that among the measures adopted by western governments to overcome the depression of 1929, only those measures have had a discernible influence in promoting recovery which are of the compensatory type. The British Government has used almost no measures except ones of this type, that is to say, inflationary monetary and credit policies, expenditures for relief and public works, and the regulation of the balance of international payments. We have employed similar measures. But parallel with them we have experimented with planning through regimentation. It is perhaps too early to say that the A.A.A. and the N.R.A. have failed to produce results commensurate with the effort exerted, but it is hardly open to dispute that it has been the compensatory measures, the management of the dollar and the inflationary expenditures through many channels, to the unemployed, to farmers, to depositors, and to debtors, which have had the most substantial and immediate effect in reviving trade and production. When one goes further into the matter, it is a coincidence so striking that perhaps it is more than a coincidence that our recovery in the spring of 1934, with N.R.A. and A.A.A., is no greater than the British, the Canadian, and Australian, without them; that, on the other hand, virtually all nations which have resorted to compensatory policies show much more definite signs of recovery than

do those, like France and Holland and Switzerland, which have rejected them.

V. Free Collectivism and Political Democracy

[*Pt. III, 1.*] Under popular rule the assumption is that the government should be governed by popular opinion. But the compensatory method of control requires that the state shall act, almost continually, contrary to the prevailing opinion in the economic world. The question that arises immediately is how and whether the people will consent to a policy which calls for decisive actions which are in their longer interest but contrary to their immediate opinions. Will a democracy authorize the government, which is its creature, to do the very opposite of what the majority at any time most wishes to do?

The general problem is, of course, not a new one. The authors of the Constitution were acutely aware of it and in setting up the frame of government they provided checks and balances which would, as they put it, "refine the will" of the people.

For various reasons, however, there has been a progressive popularization of the government, that is to say, all its separate organs have become increasingly responsive to the same prevailing opinion. The result is a system of government which is highly sensitive to immediate opinion. In practice this means, of course, that it is highly sensitive to articulate, willful, and organized opinion among the voters in the constituencies.

A free collectivism using the compensatory method of control would, under existing democratic institutions, be subject to constant conflicting pressures from organized interests. There is no use disguising or minimizing the seriousness of this difficulty, and for my part, I am prepared to concede that free collectivism is as incompatible with political democracy in its present manifestations as are the planned economy of communism or the corporate state of fascism. Democracy which responds sensitively to prevailing opinion with that opinion articulated in pressure groups is incapable of operating any government successfully in war or in peace where the government is called upon to intervene deeply in the social order.

We must be prepared to face the conclusion that it is not only capitalism but democracy that has to be reconstructed. Absolute democracy is as a matter of fact the political reflection of economic

laissez-faire. The neutral and irresponsible state, having in ordinary times no vital functions to perform, could be responsive to irresponsible opinion. But when the state becomes active, the ways of democracy have either to be adapted to the new responsibilities, or democracy itself will be overthrown.

[*2.*] If we ask ourselves what is the principal reason why a modern democratic state cannot now be trusted to administer policies that require independence and foresight, we shall find it, I believe, in the fact that legislatures have acquired the initiative in fiscal matters. They have arrogated to themselves the power to propose expenditures, taxes, and loans and to compel the executive to make the expenditures and collect the revenue. These are powers which a representative assembly, particularly one elected by territorial constituencies, cannot hope to exercise in the general interest and in the light of the larger consequences. On the other hand, an executive which has lost the initiative in fiscal matters is virtually impotent.

In time of national crisis the weaknesses of the system are disclosed. Nobody has the power to govern. The executive is bound by commitments which the legislature has made; the legislature is bound by its own commitments. Representatives cannot vote to repeal the privileges which they have initiated except by risking their own political extinction. The executive cannot suspend those privileges except by obtaining the initiative which the legislature has assumed. It is a hopeless deadlock which it is possible to resolve only by changing the balance of the constitution in order to restore to the executive his initiative in fiscal matters. It has been necessary to do this in all countries in recent years. In some it has been done by overthrowing the democratic state; in some by suspending the powers of the parliament and governing by decree; in others, by a pressure of public opinion and party discipline which have given the executive "leadership" for the period of the emergency.

But whatever the method of meeting the situation, the remedy in all cases is in principle the same; the initiative is transferred from territorial delegates to the executive. This is a political revolution which is temporarily necessary in any grave crisis and is permanently necessary if the modern state is to discharge the great task of regulating the national economy.

It becomes a revolution which imperils constitutional liberty if

the legislature loses not merely its right to initiate but also its right to consent. Only where the two powers are in balance is political liberty soundly organized. Where the balance is destroyed, the assembly having usurped the initiative, the corruption and weakness of the government will cause the pendulum to swing to a dictatorship in which the executive proposes and asks no one's consent.

VI. Pressure Groups and Proletarianism

[*Pt. III, 3.*] If we look at our political system as it now operates, and try to imagine what would happen if it were charged with the task of applying compensatory measures through a management of money and of government expenditures and taxation, and through the regulation of the balance of international payments, most men will conclude that pressure groups would confuse and distort the whole effort.

What are these people pressing for? They are pressing to correct their own position, to achieve for themselves that stability of sufficient income which the system of private enterprise does not automatically produce. Where the political system is set up so as to preserve executive initiative in fiscal matters, pressure groups are discouraged. They do not find it easy to act upon the government. Where the financial initiative is in the legislature, they are encouraged to exert pressure. Because it is so easy to make it successful, everyone presses. When everyone does it, everyone tends to feel that he has to do it. But while an improper distribution of political power greatly aggravates the pressure of groups, it is the fact that the economy is rarely in balance for any length of time which provokes these groups to action. In substance they are attempting to achieve by special measures the result which a compensated economy, if successfully administered, would achieve by its general measures.

[*4.*] It would be easy to fall into the fallacy of supposing that it is necessary or desirable to stop all the pressures of special groups. That is impossible. A dictatorship may suppress some group interests; it will certainly be powerfully influenced by others. In the ordinary processes of the best government that it is possible to conceive, public officials would still have to accommodate policy to the conflict of diverse interests. The real problem is not how to abolish these interests or how to silence them. It is how to

keep them manageable, how to prevent them from becoming intransigent and irresistible. If that can be done, the diverse groups will tend to check each other, and it is then not impossible to frame policies which compromise their demands and reconcile their claims.

The situation really tends to become unmanageable when in the electorate there is a considerable body of voters who have nothing to lose. They are the reserves from which are recruited political machines and political armies.

Let us take as an illustration the Tammany system, not because it is exceptionally bad but because it is broadly typical of popular government in which general and long-term interests are sacrificed to special and immediate interests. Reformers attack Tammany on two grounds. They cry out that it serves the Interests. They cry out that it panders to the People. They call it an engine of plutocracy and they say it is organized demagogy. Both charges are substantially true. To perpetuate itself in office Tammany makes as large a number of voters as possible dependent upon the public treasury. It is not necessary that they should be a numerical majority. It is sufficient to collect a compact minority who live on public money; it will normally prevail over the amorphous majority who are divided in their allegiance and vague or indifferent as to what they want. The compact minority of jobholders and direct beneficiaries, together with their dependents and friends, normally constitute a solid and dependable basis of political power. This power is then used, in the first instance, of course, to satisfy this compact minority. The machine will protect its supporters against all other interests. But if it is securely entrenched with its own adherents, it is open and ready to do business with public utilities, landlords, contractors, and any other organized interest. It deals in franchises, public improvements, real estate values, exemptions, privileges, monopolies. To do business with it is usually profitable. It is convenient. Not to do business with it is troublesome and often hazardous. Thus the enterprising class in the city tends to make terms with the machine, sometimes to obtain a profit, more frequently perhaps to avoid loss, delay, and obstruction.

Although in theory the proletariat and the plutocracy are in conflict, in fact they tend to combine in a dangerous union and to dominate the state. We can see the process under a magnifying

glass in the fascist countries where the plutocracy finances the private army that the dictator recruits among the unemployed and the disinherited. But essentially the same union of the two extremes is achieved in most democratic nations through the medium of the dominant political party.

[*5.*] It is by the reduction of the extremes and the fostering and the maintenance of a middle condition among its people that a modern state can make itself most solid and most serviceable. Therefore, to establish a state, of which the government is representative, in a community which desires to preserve an economy run by private transactions but held in balance by collective action, it is necessary to take as an avowed object of policy the abolition both of the proletariat and of the plutocracy.

In making this avowal we must not let ourselves be distracted or confused by the cry that this is socialism, Marxism, the class war, and confiscation. It is none of these things. It is their very opposite. It is a policy which is frankly and unashamedly middle class in its ideal; it envisages a nation in which private property for private use and private security is firmly established because most men possess it; it is opposed to the condition of proletarianism as a denial of the security, the independence and the liberty which sufficient property will provide; it is opposed to plutocracy because the inordinate accumulation of property means an inordinate accumulation of power. This is not a project to abolish private property and to make all the people servants of the state. On the contrary, it is a project to make the mass of people independent of the state: that they may be free citizens, who need not be fed by the government, who have no impelling reason to exploit the government, who cannot be bribed, who cannot be coerced, who have no fear of the state and expect no favors. For their livelihood and personal security rest upon private property and vested rights, not upon the acts of officials.

VII. Liberty, Property, and the Right to Work

[*Pt. III, 6.*] It has been the fashion to speak of the conflict between human rights and property rights, and from this it has come to be widely believed that the cause of private property is tainted with evil and should not be espoused by rational and civilized men. In so far as these ideas refer to plutocratic property, to great impersonal corporate properties, they make sense. These

are not in reality private properties. They are public properties privately controlled and they have either to be reduced to genuinely private properties or to be publicly controlled. But the issue between the giant corporation and the public should not be allowed to obscure the truth that the only dependable foundation of personal liberty is the personal economic security of private property.

The teaching of history is very certain on this point. It was in the mediaeval doctrine that to kings belong authority but to private persons, property, that the way was discovered to limit the authority of the king and to promote the liberties of the subject. Private property was the original source of freedom. It is still its main bulwark. Recent experience confirms this truth. Where men have yielded without serious resistance to the tyranny of new dictators, it is because they have lacked property. They dared not resist because resistance meant destitution. The lack of a strong middle class in Russia, the impoverishment of the middle class in Italy, the ruin of the middle class in Germany, are the real reasons, much more than the ruthlessness of the Black Shirts, the Brown Shirts, and the Red Army, why the state has become absolute and individual liberty is suppressed. What maintains liberty in France, in Scandinavia, and in the English-speaking countries is more than any other thing the great mass of people who are independent because they have, as Aristotle said, "a moderate and sufficient property." They resist the absolute state. An official, a teacher, a scholar, a minister, a journalist, all those whose business it is to make articulate and to lead opinion will act the part of free men if they can resign or be discharged without subjecting their wives, their children, and themselves to misery and squalor.

[7.] From this point of view the extinction of proletarian insecurity and the reduction of plutocratic power are means to an end: which is to fortify the regime of liberty upon a foundation of private property. And here I must say in a parenthesis that it is not necessary or possible to attempt too precise a definition of private property. I mean by it substantial security of income necessary to existence.

The question is how such a policy can most effectively be pursued. If my analysis was correct when it purported to show that the political power of the plutocracy was founded upon the pur-

chasable votes of the disinherited, then the cure is to strike at proletarianism, and absorb those who are now insecure into the middle class, attaching them to it by their vested interest, and multiplying its power by their numbers. A merely anti-plutocratic policy is essentially vindictive and punitive; it does not make the mass of people any more secure to make the rich insecure; but it may and usually does interrupt production and trade, and this produces a discontent which is easily turned against the reformers. On the other hand, a policy which is primarily anti-proletarian, which puts the chief emphasis upon constructing property for the unpropertied, is the radical method in that it goes to the root of the matter. It relieves the proletariat of its grievance and the plutocracy of its mercenaries, and thus makes preponderant in the state those who are in the middle condition.

The experimental beginnings of such a policy are to be found in the social services and the social insurance which all advanced industrial communities are compelled to provide. Through these social services, collective enterprise supplies education, health, housing and recreation to those who cannot buy them out of their own incomes. Through systems of insurance against accident, disease, old age, and unemployment; through pensions to the incapacitated and the handicapped some public provision is made for those who are without sufficient independent means. But all of these measures, though they are indispensable under modern conditions, are inadequate and, both to those who receive and to those who must pay for them, subtly repugnant. It is the ineradicable vice of this whole mass of palliative reforms that they create a caste of those who have to be specially taken care of and thus destroy the fellowship of morally equal men.

What they do is to provide substitutes for independence and relief for the insecure. They do not provide the opportunity to earn and acquire independence. In a modern state that can be done only, I believe, by recognizing the right to work as one of the rights of man. I know that it is not the fashion to speak of the rights of man, and I understand the theoretical and metaphysical objections to the doctrine of natural rights. All rights are, no doubt, ultimately a creation of the state and exist only where they are organized by the government. There are, however, certain rights of the individual which, except in nations that are sunk in absolutism, are provided by the state. There are rights of personal

liberty, rights of political participation, rights of property, rights of local self-government. To these rights we must add, I believe, the right of access to remunerative work.

The organization of this right requires the overcoming of technical, administrative, and financial difficulties. But there is no reason to think they are insuperable. The essential principle is to have on hand at all times varied projects of useful public work on which any citizen may find employment when he needs it. The Citizens Conservation Corps and the Civil Works Administration, hastily improvised as they were, and open to many criticisms in the details of their administration, have demonstrated, I believe, that the policy is practicable and sound. It is not the poverty of the public treasury but poverty of the public imagination which creates the real difficulties here: that, and a misguided and over-sophisticated commercialism, which identifies all productive effort with the immediate price in the marketplace. But there is such a thing as working for future use rather than for present sales, and the public works I have in mind have this character. A nation cannot impoverish itself by employing its labor to improve its resources and its equipment. It is not production but idleness,—it is unused materials and unused men—that are in the long run intolerably expensive.

The establishment of the right to work is consistent with the method of a compensated economy. It is inherent in the method since it calls for collective enterprises whenever private enterprise is slack. A free collectivism would seek to guarantee at all times the opportunity to labor.

[*8.*] Representative government, as it has developed under laissez-faire in most countries, *is* incompatible with a state which accepts responsibility for the economy as a whole. But the method of free collectivism goes to the base of those disorders which most commonly make democracy irresponsible. By this method political and economic liberty can, I believe, be made secure. Is there any other? It is impossible to go back to laissez-faire and the neutral state. And only through endless misery could nations with a highly developed capitalism and old democratic traditions be subjected to absolute collectivism and a planned economy. Therefore, until some other method is put forward which meets the conditions of the modern world, we may say that free collectivism, as indicated in the policies of the English-speaking countries dur-

ing the present crisis, is the method of liberty in the Twentieth Century as laissez-faire was its method in the Nineteenth.

The procedure is new. The ideal is old. It is the ideal of the free man secure as against all the principalities and powers of the world. Its permanent concern is for those who are, as Aristotle described them, in the middle condition. Its special concern is to bring as many as possible to this middle condition. Free men with vested rights in their own living: men like these alone, and not employees of the state or the disinherited who today walk the streets and are at home nowhere, can constitute a free society.

CHAPTER XVIII. PHILOSOPHIES OF INTERNATIONALISM

I. LIBERAL INTERNATIONALISM

The International Mind (1931)

Nicholas Murray Butler (1862-)

Equally significant with post-war nationalism and neo-nationalism is post-war internationalism. Whereas both fascists and neo-idealists seek in increased national self-dependence a bulwark against the recurrence of military and economic emergency, there are others who find the root of all evil in international anarchy. As never before in history, political science has developed philosophies of world coöperation and organization. Almost every political theory of the nineteenth century has its twentieth century counterpart on an international scale.

Liberalism naturally places its faith in international public opinion and international organization. The League of Nations and the World Court, whatever their shortcomings, hold out a hope for the future and have many sincere supporters in the United States as well as in the member states. And international public opinion is the object as well as the subject of such an address as *The International Mind*, delivered by President Nicholas Murray Butler in 1931 before the Institute of Arts and Sciences of Columbia University.

Butler was born in Elizabeth, New Jersey, and educated at Columbia, where he received his bachelor's, master's, and doctor's degrees in rapid succession. He immediately became an assistant in philosophy at Columbia, was shortly made first president of Teachers College, became dean of the faculty of philosophy of Columbia University in 1890 and President of the University in 1902. He has been prominent in Republican politics, and received almost seventy votes as a candidate for the presidential nomination at the Republican National Convention held in 1920. He was chairman of the Lake Mohonk Conference on International Arbitration in 1907 and in 1909–12, and has been associated with the Carnegie Endowment for International Peace since 1910.

The readings here given are based on the text of *The International Mind* as found in the pamphlet published in the form of a reprint from the *Columbia University Quarterly* for March 1932, although the address was never actually published in that periodical. The readings are reprinted by permission of the author, with the stipulation that all cuts in the address be indicated.

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THE INTERNATIONAL MIND

I. The Suicide of Competitive Nation-Building

. . . If there is anything which this world of ours needs more than another just now, it is, first, wider horizons and, second, deeper and more accurate thinking.

For several decades, and in some parts of the world for much longer than that, life has been so comparatively easy, so relatively simple, and in so many instances crowned with reasonable measure of success, that men have everywhere taken those happenings and those characteristics for granted. Our fathers and our grandfathers lived through a most amazing period in which year by year and sometimes almost day by day there were discoveries, happenings, achievements—intellectual, social, political, geographic—that changed the whole face of the earth and altered the conditions of life for every one. These happened so quietly and at the same time so rapidly that they seemed normal enough and only here and there a prophet with vision to see far into the future expressed now and then a notion that perhaps all these changes would bring with them some unforeseen and untoward results.

The great series of forces which in the western world (by which I mean western Europe and the Americas) have been guiding mankind for a thousand years, reached a climax in our own time, apparently expended a large portion if not all of their force, are now disintegrating, changing, giving way to other forces of which not so much is known, which may very well alter the whole face of the earth within the next generation or two. . . .

Those forces which have reached their climax are those which were concerned with the building of nations, and then, nations having started building, with the development of those institutions which we call civil and political liberty. Men began to build nations when experience taught that the whole world could not

be brought under one single, rigid, administrative rule such as the Roman Empire proposed, but must, if that were attempted, break into pieces through sheer brittleness. That ambition to unify the world's administration under a single control was one of the most magnificent of human dreams and one of the most hopeless. It had an amazing measure of success while it lasted and then came to its inevitable end. When it proved to be impossible to rule the world from a single capital, by a single authority, through a single administrative system, then the process of nation-building began. Men grouped themselves in families and in larger societies made of families and neighbors and friends. They were united by tradition, by blood, by language, by religion, and they sought for themselves homes where they might be safe from attack, where they should be comfortable and happy and where the earth would provide them with the necessities of their physical existence. They wandered over Europe in search of geographic homes with those characteristics. They shut themselves off behind mountain ranges or in land surrounded by deep water, or by broad rivers, and so endeavored to find security in relative isolation and then to develop the sort of civilization which was theirs and show themselves competent to live happily and wisely and well, to develop literature and language, science and philosophy, to enrich their form of religious faith and go about their work in the world to their own satisfaction.

But these nations looked upon themselves as competitors, as rivals. They were in the habit each of attacking the other. They went heavily armed and it took a high mountain range or a broad stretch of deep water or a very wide river, indeed, to keep them again and again from flying at each others' throats. As they gained true civilization they tried to find ways and means of living peaceably together. But personal and group and dynastic ambition, the pressure of economic interest or personal pride, were often too great for them and they were thrust into war after war until it became usual for the children of the world to study history not in terms of peaceful achievements, but in terms of military contests, first in this land or in that, first on this continent or on that. . . .

To make a long story short, all this great movement which had been going on for a thousand years reached its climax in the Great War of 1914–1918. There the process of separate and

competitive nation-building committed suicide. It revealed itself as incompetent to preserve the peace and order of the world, to advance civilization, but as almost necessarily accompanied sooner or later by armed and destructive conflict. . . .

Finally it has begun to dawn upon men that any continuance of that process means the death of what we have known as civilization. Dreadful as the war of 1914–1918 was, it is the play of children when compared with what would happen should any similar outbreak on like lines be conceivable in these later years. With poison gases, with the air crowded with ships able to drop upon innocent populations those destructive instrumentalities which would destroy cities in an hour, we are face to face with the absolute necessity either of changing our habit of mind and our habit of national conduct or of going over the precipice which, I repeat, is the final destruction of what we have known as civilization.

Hand in hand with this there has been going on for the better part of a thousand years in this same western world another tendency of a different sort. While philosophers in ancient Greece and Rome saw that of which we now speak, wrote of it and defined it, it was all very strange to the general mass of mankind, very remote from the thinking and feeling of men taken as a whole. But at bottom there began a search for liberty, a wish that men might in some way find how to guide and regulate their own lives and to shape for themselves the forces which governed and ruled them. It was a long and a difficult and a dangerous process. . . . You go back to Magna Carta for the first document which history puts in evidence to mark the official beginning of this tendency, and you come on down through one great record after another in the history of Great Britain, of France, of the United States, of the German State, of Italy, and trace the steps by which men have achieved and recorded their progress in the direction of liberty.

These two great tendencies have operated together and there has been constant and powerful interplay between them during all these centuries. Nation-building has been guided here and there so as to promote and advance liberty. Liberty has been applied here and there so as to promote and advance nation-building. There have been exceptions, to be sure, but these are the exceptions which mark and prove the general rule.

And now we are face to face with a situation in which nations and the system of liberty must defend themselves. They must

defend themselves against critics, against those who would attack, who are sincere, who are highly intelligent, who are well armed with argument and who cannot be answered with mere unproved assertion or by the traditional habit of pointing with pride. The nation must defend itself as a unit; patriotism must be given a moral and constructive meaning, and liberty must be shown to be able to bear the weight of the newest needs and ambitions of men or these institutions will give way to institutions which will better satisfy man.

For my part, I continue to believe that the nation as a unit is a great achievement in human history and that what remains for us to do is so to shape it, so to inspire it, so to guide it, that it will become and act as a moral personality; not as a combative competitor of its neighbors, but as a peace-loving, a friendly, a cooperating fellow citizen in a great commonwealth of nations which will include the whole civilized world.

So, too, I refuse to give up my faith in liberty. I am one of those who continue to believe that liberty as the foundation, liberty as the method and liberty as the guide of mankind are the safest and the surest, and that liberty has within the scope of its influence the satisfaction and the happiness of man if we shall only rise to the height of our responsibility in its use.

The alternative to liberty is compulsion. It may be compulsion of a definite and specific sort within a limited field. It may be compulsion covering every aspect of life, every activity and habit of man, or it may be sheer despotism, which is the power of the individual or the group to impress forms of conduct and belief upon men regardless of their own preferences and their own choice.

II. The International Mind as a Method and an Ideal

But the serious question is not what any of us may believe, but what do we propose to do to make our beliefs real. How do we propose to act so to elevate the nation that it will be no longer a combatant competitor with its neighbors but a coöperating friend? How do we propose so to use the institutions of liberty that they will not invite compulsion because of their failure to achieve their professed ends?

The answer to the first question I hold to be that we must achieve and we must act upon or in accordance with the international mind, that phrase I used some twenty-five years ago and

defined in these words and there is no reason why the definition should be changed:

> The international mind is nothing other than that habit of thinking of foreign relations and business and that habit of dealing with them which regard the several nations of the civilized world as friendly and coöperating equals in aiding the progress of civilization, in developing commerce and industry and in spreading enlightenment and culture throughout the world.

The international mind, then, is a point of view which reveals a method and suggests an ideal. And it is that, fortunately, toward which this world of ours is tending with difficulty, with halting steps, with stumbling, but now and then under fine leadership and grand inspiration proceeding toward that lofty goal. We need not be disappointed and we should not be surprised if the way toward the full achievement in the international mind is long and tortuous and difficult. It is hard enough for the individual to change his habits of thought and action. How infinitely harder is it for a group or for a nation or for the world to leave off doing something which it has contemplated as natural and normal for a thousand years and start to do something else under the inspiration and guidance of a new ideal. Here and there a great captain of the spirit on the mountain top catches the vision. He reveals it to his countrymen and to the world and little by little it percolates down into the great body of public opinion and fortunately, sometimes almost before one knows it, great progress is made in changing the habits of thought and of action among men.

We are living at a time when there are illustrations of the interdependence of nations and of the human race given us day by day. . . . The Credit Anstalt, the great bank of Vienna, closes its doors; all Europe shakes and the reverberation is heard in New York and in Chicago. . . . Great Britain finds itself in the throes of a great financial and economic crisis and is obliged for a time at least to surrender adherence to the time honored gold standard, and throughout the United States men and women begin to hoard their savings, to draw them from banks and worthy investments and put them in safe deposit boxes where they are useless to business as well as to their owners. All these facts, and a thousand others which are printed on the page of one's daily newspaper, are multiplying evidence of an interdependent world. . . .

We have come to a situation in which nothing that happens in the world of any consequence is foreign to any people in the world. It is surprising how few national problems there are left. For ourselves, we have national problems which do not interest the rest of the world in our attitude toward the Eighteenth Amendment to the Federal Constitution, in our attitude toward the public utilities, in our attitude toward the building of roads and various other purely domestic policies and problems. But the moment you come to finance, to agriculture, to a market for cotton or for wheat, or for textiles or for boots and shoes or for copper or for oil, the moment you begin to try to find ways and means to send more traffic by the railways, you are at once in touch with forces which are not national but international. Precisely the same thing is true of Great Britain, of France, of Germany, of Italy, of Argentina or Japan. National problems grow fewer and more and more specific; the international problems grow larger and larger, more numerous and more engrossing. . . . Contacts must be closer, more intimate; consultation more constant and more fundamental. We see men naturally, perhaps without reflecting upon what is at stake, tending in these directions. Who would have thought a generation ago of having Prime Ministers and chief executives visit their fellows and colleagues in one country after another to make personal acquaintance, greet the people of the other land, and to talk face to face over these difficult and far-reaching problems? You say there is nothing to be done in these conversations which could not be done by letter, by telegraph or by telephone. Possibly not, save one vitally important thing, most important of all, and that is the psychological effect upon public opinion. The very same thing which the President of the Council of Ministers of France would say to the President of the United States by letter becomes a wholly different thing when said to him face to face on American soil with the whole American people and the whole French people looking on. Psychology is the key to very much of the present situation if we are quickly to improve it. We must deal with the feelings, the emotions, the hopes, the aspirations, the reactions of men, and every step taken by any individual of importance in official or unofficial life which stirs national feeling, which rouses national ambition, which multiplies national interest in any of these great causes is a vast contribution to that of which we are all in search.

There are three things, three different kinds of tendency or force operating in the world which are making for these new and higher and more helpful ends.

First, come those forces which may be described as personal and intellectual international interpenetration. Science has always been international. Physics, chemistry, zoölogy, botany, geology, astronomy speak no language. Their facts, their laws, their findings, are common to all men no matter what language one may speak. Literature, enshrined in a given language, nevertheless speaks the voice of the spirit and the spirit of man knows no national boundary. The fine arts, appealing to the eye and to the ear are superior to all differences of speech or climate or soil or race. Then there are the international interpenetrations of individual men and women—travel, study, reading, interchange of ideas—which are going on with increasing constancy in all parts of the world. Our own land finds representative citizens in every port, in every capital, in every clime. The same is true of a half dozen of the other great peoples of the earth.

Second, there are these economic forces of which I speak, the forces which are the result of financial, commercial, industrial interdependence. . . . Great Britain, large as it is, can sustain itself, it has been estimated, not longer than five weeks without overseas trade and overseas supplies. . . . These economic forces work often silently, quietly beneath the surface but binding the world together in new and strong unities where there is the added incentive of self-interest. There is gain and profit to be had through multiplying these contacts and men seek them out and pursue them.

And then third, and highly important, men are building institutions, quietly, not always quickly, not always by direct road, to represent and to reveal this new point of view among the nations. There are three new capitals in the world which are destined to play an increasingly important part during the decades that lie just ahead of us. One of these is the city of Geneva which has become the capital of consultation. The second is the city of The Hague which has become the capital of judicial process and determination. And I should not be at all surprised should a third develop at Basle in Switzerland which would be a capital of financial interest and administration. The world is reaching out for ways and means of doing the new things that have to be done with-

out destroying the good that has been accomplished by the old methods and the old ways, by using all that and by lifting up the resultant institutions onto a higher plane of usefulness and endeavor. It will not always be found that the consultations at Geneva will yield complete satisfaction or that the judicial determinations at The Hague will be universally acclaimed, or that the processes of financial unification at Basle will go without criticism. It would be odd indeed should that happen. But nevertheless year by year, decade by decade, it seems perfectly certain that the world will come to use these three processes more and more for its own advantage, to avoid the dangers and difficulties of competition and conflict and to reveal to itself and to posterity that it has moved on to a higher moral and intellectual plane. . . .

We are building this new world. We are building it with the greatest difficulty. We are going through a period of loss and damage and difficulty and sorrow the like of which no one has ever seen and it is hoped the like of which none of us will ever see again. Those who have not come at close quarters with present conditions where they are worst can have no conception of the savage difficulties which confront greater masses of men and women and government of best intention and the finest tradition. We can only hope that by patience, by faith, by casting out fear and putting in its place confidence, by coöperation, we shall be able by taking counsel together with our fellows and by the use of these three new capitals of consultation, of judicial process and of financial administration to rebuild this broken world on a new and safe and strong foundation.

And as we do it, we find ourselves confronted by the problem of protecting liberty. When men are in doubt or in difficulty they are very apt to seize upon what appears to be the quickest solution of their problem without much regard to its soundness in principle or to its moral excellence. When men are in desperate want they will turn from anything however familiar to something however strange in the hope that by so turning they may improve their condition and answer some of the questions which so grievously confront them. We are concerned in all these changes with the protection of liberty, civil and political liberty, the right to speak, to think, to act as each moral individual chooses together with the obligation to use that individual power for the general good. It is the free man, socially minded, who is the hope of the

future. Not the overturning of liberty any more than the overturning of nations, but rather the enrichment of liberty, the teaching it new habits of expression, lifting it up to new heights of contemplation and operation for the general good. In other words the antithesis is the old and familiar one of construction or destruction. We are either to build our commonwealth of nations out of richer, fuller, freer, finer, more moral individual nations, or we are to sentence them to extermination. And so we are either to lift our institutions of liberty up to new heights of fairness, of justice, of human kindness and of general accomplishment, or we must be prepared to see them go down under the vigorous and violent attacks of those who prefer some other institutions to those which are ours.

So it is, my friends, that the times invite us not to mere casual comment on the news of the day, far from it, but to most serious and deeper thinking because the responsibility is ours. There is no possible way by which any man or woman in a democracy can devolve his or her responsibility upon anybody else. There is no use in saying that it is the government's business because the government is our government and the government must do as we determine. If we do not determine, if we have neither the intelligence nor the courage to determine, far be it from us then to find fault with what happens. Shall we accept our responsibility understandingly and with courage, our responsibility as American citizens for building the commonwealth of nations on a foundation of peace and friendship and coöperation and of strengthening the institutions of liberty that they may withstand all attacks from anybody anywhere? Or, shall we not? That is the one simple, single, crucial question which confronts every American mind and every American heart.

II. ECONOMIC INTERNATIONALISM

Economic Nationalism and World Coöperation (1933)

Lewis L. Lorwin (1883-)

Liberal internationalism is the heir of the democratic tradition. It attacks the problems of the twentieth century in the spirit of the eighteenth century *Federalist* and the nineteenth century utilitarians. Some of its exponents go so far as to advocate substituting world sovereignty for the system of sovereign national states, but the visioned world state is to function on a *laissez-faire* model.

Economic internationalism, on the other hand, aims at the enrichment of life through systematic international control in the economic sphere. It has much in common with nineteenth century idealism, especially of the later English school, and may be considered a variant of twentieth century neo-idealism. Like Lippmann's free collectivism, economic internationalism is an effort to combat the world-wide economic depression of the 1930's, but it differs in insisting upon international instead of national machinery as the organ of control. A particularly effective presentation of this viewpoint is the article entitled *Economic Nationalism and World Coöperation* prepared by Lewis L. Lorwin as a delegate to the Banff Conference of the Institute of Pacific Relations in the summer of 1933. Like much other discussion of economic internationalism, Lorwin's article was prompted by the difficulties faced by the World Economic Conference at London.

Lorwin was born in Russia of Jewish parentage, but was brought to the United States in early childhood. He received his bachelor's degree at the Classical College of Cherkassi, Russia, and his doctor's degree at Columbia University in New York City. After teaching in a number of American colleges and universities, he has been since 1925 a member of the staff of the Institute of Economics of Brookings Institution at Washington, D. C. He was an economic expert of the New York State Department of Labor in 1912–16, and served on the War Labor Policies Board in 1918–19. He is the author of a number of books on economic subjects,—among others, *The Labor Movement in France* (1912), *Syndicalism in France* (1914), *Labor and Internationalism* (1929), *Problems of Economic Planning* (1931), and *The American Federation of Labor* (1933).

The readings here given are based on the article entitled *Economic Nationalism and World Coöperation* in the August–September 1933 number of *Pacific Affairs* (*Pacific Affairs*, VI, 361–372), and are reprinted by permission of *Pacific Affairs*.

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ECONOMIC NATIONALISM AND WORLD COÖPERATION

I. The Challenge of the New Nationalism

[*Int.*] For several months now, we have been witnessing one of the most dramatic—some would say most pathetic—spectacles in recent world history. After many preliminary negotiations, careful

preparation of the agenda, and world-wide discussion of the exigencies of the situation, delegates from sixty-six nations assembled in the city of London to promote world recovery have not only been unable to make progress towards the end which they set themselves but have seemingly been drifting further apart in opposite directions. Those who have a vested interest or an acquired taste in sowing the seeds of international disharmony have been jubilant—and rightly so. Few international gatherings in the last decade and a half—which have not been models of international amity—have presented such a picture of strain and of working at cross-purposes.

These facts are leading a growing number of people to the conclusion that the World Economic and Monetary Conference at London proves once again the impossibility of world coöperation and marks the end of efforts to obtain it. We are being exhorted by these newly converted nationalists to abandon all hope of following the path of international understandings and to accept cheerfully the alternative of each nation pursuing its own course in its own way, regardless of the rest of the world. Men and women who but a few years ago were proud of their international outlook are now confessing the presumed error of their judgment and asking us to follow them to the other extreme of economic nationalism and national self-sufficiency.

But are these conclusions justified? Despite the growing literature on the need and value of national self-sufficiency, as opposed to world coöperation, the statement of this dilemma seems to be entirely false. The question before mankind today is not national self-sufficiency or world unity. To state the problem in the terms of such an alternative is to misread the facts of world economy and to misinterpret the currents of world history. The problem before the world is essentially what it has been during most of the modern epoch—namely to evolve a policy which would reconcile the economic and social needs of individual nations and to build a world society which would recognize and incorporate the legitimate elements of a rational nationalism. What has changed is the world configuration within which this problem has to be solved. New economic, political, and psychological factors have entered the situation, creating new complications and difficulties, and calling for new methods and procedures.

A fresh attack on the whole problem of nationalism and inter-

nationalism is thus now in order. A restatement is needed of the major issues involved and of the large facts upon which our thinking must be based. As a matter of tactics, one may accept the challenge of the neonationalists and examine the dilemma which they have formulated. This dilemma is in the center of current discussion of the subject and promises to be the issue around which men and women may well test the bias of their political sentiments for years to come.

[*I.*] We can understand the economic nationalism of today only if we examine the various elements that enter into it. It is a complex product of many factors, some of which are transitory in character and some of which may be more permanent. Some are economic, some are social, some are political. Four factors seem of greatest significance:

First, and in many ways one of the strongest factors in the economic nationalism of today, is the reaction on the part of younger and industrially less developed nations and countries against an international division of labor which has not been entirely beneficial to them. As is well known, the expansionist industrialism of the pre-war era, based upon international specialization and division of labor, accentuated the differentiation between the advanced industrial countries and the backward and semi-colonial countries, a differentiation which subordinated large areas of the world to a few great powers politically, and which retarded the utilization of the economic resources of many countries capable of more or less industrialization. The reaction against this situation began long before 1914, but it became really important only during and after the World War. Such countries as Japan, India, and Russia found that they could not utilize more fully their physical and human resources unless they adopted measures of special protection to their national industries. It may seem strange to put under the same bracket Japan, India, and Russia. But it is a matter of fact that though Soviet Russia has been a protagonist of political and revolutionary internationalism, it has in its economics pursued a distinctly nationalistic policy based upon the exclusive reservation of the domestic market for its own industries.

A second factor in the economic nationalism of today is more recent in origin and more political in character. It is the result of the fierce and indomitable desire of the newer nations created by

the Versailles Treaty to maintain their political independence even if that means recasting their internal economy on a costly protectionist basis. Akin in character is the rising consciousness of nations in other parts of the world, whose emphasis upon the value of racial and historic antecedents has been accompanied by a reaction against the international economy which involved dependence on foreign finances and foreign trade to a degree which was both humiliating and exploitative. Thus a political and cultural nationalism became mixed with a trend towards economic nationalism in Mexico and other Latin-American countries, in China, in the Near East, and elsewhere.

A third major factor in the economic nationalism of today is social in character. It is connected, on the one hand, with a reaction of large elements of the population in almost all countries against the insecurities and injustices of the system of *laissez faire*, and, on the other, with the accentuation of class differences and class struggles. This is one of the most important transformations of the post-war era, which carries within itself the potentialities of profound changes in the power relations and in the social structure of all western countries. What is happening is the resurgence of the middle classes in an effort to reassert themselves against both individualistic capitalism and collectivistic proletarianism. In this movement the middle classes are appropriating the socialistic program which the socialists had developed since the middle of the nineteenth century. But while the socialists connected their program with a general faith in internationalism, the middle-class groups are hitching it on to a philosophy of extreme nationalism, thus creating a hybrid of national socialism which would have seemed a monstrosity and impossibility to all the socialists of the nineteenth century—from Robert Owen to Karl Marx. The development is a result of the fact that the Marxian forecast—upon which the hope of a proletarian triumph was based—namely, that capitalism would promote a rapid numerical expansion of the workers which would make their assumption of political power painless and easy, has not materialized, at least within the time limits assigned. The unwillingness or incapacity of the socialists in most industrial countries to assume power forcibly created an economic and social impasse which could not but discredit socialist political leadership. On the other hand, the dangers to the middle classes exemplified by working-class socialism in

Soviet Russia could not but arouse these middle-class groups to try to establish a leadership of their own which would combine social security with nationalistic expansion. Under these conditions, the new nationalism had to become social, because the middle classes had to hold out a social promise to the workers and because they were interested in economic reorganization themselves.

These three factors received a tremendous impetus as a result of the present world depression which brought to a focus all the difficulties of the world economy bequeathed to us by the nineteenth century. The outcry against a capitalism subject to violent fluctuations, the protest against a system of world finance which could create a burden of debt under which no country could stand up, the reaction of mono-culture countries which found themselves impoverished by the fall in the price of their special export commodities—all this culminated in the widespread revolt against *laissez-faire* capitalism, especially in its world aspects. As *laissez faire* was combined with faith in the international division of labor and free trade, the odium suffered by *laissez-faire* capitalism was transferred to the entire liberal and internationalist outlook with which nineteenth century *laissez faire* was bound up. Instead, the need for economic control and planning as a method to subdue individualist capitalism was interpreted to imply the need also for national self-sufficiency and economic separatism.

II. The Impossible Ideal of National Self-Sufficiency

[*II.*] The analysis of the factors entering into economic nationalism is a step in the consideration of what may be regarded as the more important question, namely, what are its valid and invalid points? Briefly, the points which seem valid may be stated as follows:

First, the claim of the industrially backward countries to have a chance to develop their physical and human resources to the fullest extent possible so as to obtain a stronger economic position which is essential to greater political self-assertion in world affairs.

Second, the effort to raise the standards of living of the masses of the people by making the domestic market of every country a greater factor in its industrial development.

Third, the new tendency in each country to be able to control its economic activities in such a way as to reduce to a minimum the insecurity and inequalities of *laissez-faire* capitalism.

Fourth, the demand that each nation be able to regulate its own activities so as to establish a planned economy of one form or another in order to shape consciously its economic and social destinies.

While admitting these valid ideas and implications of economic nationalism, we must not close our eyes to the elements which cannot be justified on any grounds of rational and civilized living. These objectionable features of present-day nationalism are of supreme importance for a final judgment. Briefly stated, they are as follows:

First, the connection of economic nationalism with extreme racialism, chauvinism, and the stimulation of group animosities and hatreds.

Second, the tendency of nationalistic movements to become mutually exclusive and militaristically aggressive.

Third, the tendency of economic nationalism to develop into political expansionism fraught with all the dangers of political upheavals and conflicts.

But the supreme fact which must determine our attitude towards economic nationalism is that it is based on an impossible ideal of national self-sufficiency. It is obvious that the sixty-six separate and independent nations of the world cannot all practice self-sufficiency. Some of the nations are too small and others are devoid of the minimum of natural resources necessary for such purpose. Unless some of these countries should revert to a more primitive stage of existence and carry on life on a much lower economic level, they cannot sever their economic relations with other countries. In other words, economic nationalism in anything approaching the form of an enclosed state can only be indulged in or practiced by a few of the larger countries.

Because of this, the movement towards national self-sufficiency is bound to result in the formation of more or less self-contained regional blocs, imperialistic in character and gravitating around the major industrial countries. We may see this process today in outline, in the British Empire, the Soviet Union, the French imperial system, an East-Asiatic Empire under Japanese hegemony, and so on.

It is because of this that there is considerable justification for the view that the whole movement towards national economic self-sufficiency is largely a fight between the great powers for further expansion and control of world resources. Since only these great powers can afford to establish more or less self-contained systems,

they are bound to try to attach to themselves the smaller countries. Even the United States, regardless of its large resources and great wealth, will continue to depend for some of its raw materials on foreign sources and will therefore seek to control those countries which can supply them and which can serve as a more or less assured outlet for its manufactured goods.

If we keep in mind these inevitable developments, we may judge the validity of some of the arguments of the economic nationalists. It is said, for instance, that national self-sufficiency would be a surer guarantee of world peace. The economic internationalism of the nineteenth century, it is claimed, could not advance the cause of peace because the efforts of individual nations to expand their foreign trade, to capture new markets, to protect and advance their foreign investments, increased the points of friction and turned international trade into a process of sharp competition and rivalry which could not but lead to violent conflicts on an ever-increasing scale. But a world system composed of a small number of large imperial blocs will also be in a state of continuous disequilibrium, giving rise to friction and conflict. All historic experience indicates that large economic units will dispute both territory and markets. Besides, the centrifugal forces within these large areas, the tendency of different countries within the large blocs to find the best terms for themselves, will cause upheavals within each regional unit which will lead to collisions between the regional systems themselves.

Another argument advanced for national self-sufficiency is that the increase in world interdependence has been the cause of increasing susceptibility of separate nations to the possibilities of economic distress and dislocations. The very facts that communications have become so easy and so rapid, that the slightest breakdown in the financial and economic mechanism of any one country has repercussions throughout the world, are cited as reasons for trying to free ourselves from exposure to such danger. The idea is that we may insulate ourselves from trouble if we isolate ourselves from trade. This, however, is a delusion. Great disturbances in the life of nations occurred in the past before world economy developed to its present complex stage. Many commercial and dynastic wars of the eighteenth and nineteenth centuries were due to various causes, such as greed, jealousies, and the desire of smaller and younger nations to build up great states. National

self-sufficiency, under the conditions of the twentieth century, would not mean freedom from outside attack, nor would it mean the creation of a paradise at home while infernos surrounded us on all sides. The experience of all nationalistic ventures in the past is sufficient evidence that there is no assurance of peace in any policy of economic and political isolation. The more we disentangle ourselves from the economic system of the rest of the world, the more we shall expose ourselves to the greed, envy, and legitimate protests of less favored nations against our monopolization of the world's best resources. Self-sufficiency thus can be only another road to world catastrophe.

Another claim made by the exponents of self-contained national economy is that such a policy is called for by the great development of productive capacity parallel with a tendency towards diminishing markets. The reasoning is that the advantages of economic internationalism, which were more or less obvious in the nineteenth century because of differences in the economic structures of different countries, in their rate of industrialization, and in their opportunities for technical training, have largely disappeared. It is claimed that the idea of economic internationalism has been undermined by the development of industrial mechanisms in different countries which are exactly of the same type and character. That has meant a decreasing diversity in the output of different countries and an increasing sharpening of competition for world markets.

As indicated before, there is an important element of truth in this contention. It is true that to the extent to which all nations become equipped to make the same things in large quantities, to that extent they reduce the need for international exchange among themselves. But as a matter of fact, this capacity at present is limited only to a few essentials, such as textiles, if it exists at all. Its truth is doubtful even with regard to these essentials. There is much exaggeration in the current discussion of excess capacity and overproduction, especially if one looks at the world market in its potentialities. Tens of millions of human beings throughout the world are still hungry, underclad, and subject to disease due to insanitary and unwholesome conditions of living. There is still much need for developing productive capacity to meet even their most elementary needs.

It is true, however, that the growth of international trade has

in some ways been redirected because of the successive development of industrialism in many countries. The fact underlying this is the domination of industry exclusively by profit-seeking motives which often forced a country to expand its exports when that was entirely unjustified from the point of view of national welfare. Russia, for instance, exported wheat to other countries at a time when the peasants who grew the wheat were starving. England set itself with enthusiasm to the task of covering the bodies of naked "heathen" with the cotton goods of Lancashire at a time when hundreds of thousands of her own people were running about in rags. This process of exports facilitated the unification and industrialization of the world and increased the volume of international trade, but it certainly was far from having entirely benevolent results all around.

The conclusion to be drawn from this is not that we must diminish our world trade but that we must give it a more rational direction. Trade should expand as the nations of the world raise their standards of living and increase the capacity of their populations to buy more things, so as to be in a position to both offer and require more from other nations. We might adopt the principle that no country should undertake to export certain commodities until the consumption of that commodity in the country itself had met an acceptable standard of minimum requirements. For instance, it might be agreed upon that Russia should not export wheat until and unless her own people were supplied with a minimum amount of wheat necessary to maintain a standard of living which would be in accord with social progress. If we accepted that principle, the fact that many countries can produce the same goods in large quantities might be not a drawback but an advantage.

A large part in building up the economic nationalism of today is held by the advocates of national economic planning. These planners in their reaction against the private and planless economy of *laissez faire* feel impelled to abandon also the economic internationalism which was part of the *laissez faire* of the nineteenth century. An added influence affecting this group is the impatience of separate countries, especially the United States, with the prolonged depression. They feel that we might pull out of this depression much more rapidly if we rely on our own national measures than if we wait for some world scheme of recovery. The argument is also that we need greater national self-sufficiency and

greater isolation in order to make more freely our own social experiments, unhampered by world entanglements. In fact, we have a whole school of economic writers who have recently been filling the magazines and newspapers with variations on this theme. We are told by these writers that we shall only jeopardize the success of our national program if we try to plan internationally, that planning on a world scale is impossible because the enforcement of international agreements would require a super-state and would call for master minds beyond the scope of human ability.

As a matter of fact, every step so far taken in the direction of national economic planning is a refutation of that point of view. In the United States the adoption of the Agricultural Adjustment Act forced us at once to consider steps towards the regulation of the wheat production on a world scale. The Industrial Recovery Administration had hardly begun to operate when the newspapers were filled with the report that we would try to obtain an international agreement for a thirty-hour week. The logic of events seems thus to be for national planning to force us also into international planning, whether we desire it or not.

III. The Objectives and Methods of World Coöperation

[*III.*] Whatever alternative we contemplate, the need for cooperation between nations and regions will continue. Even if we assume a trend towards increasing regional self-sufficiency, we must coöperate to the end that this process take place with a minimum of friction. But the tendency towards greater national and regional economy will be accompanied by efforts to expand the use of all the resources of the world. This may and will mean a change in the content and direction of international economy, but not its disappearance. What we shall see is a new world economy based on greater coördination and on more regional and world planning.

If this analysis is valid, then the problem of world coöperation assumes a different character. Most collective efforts at international coöperation so far have been largely for the purpose of setting the rules of the game, of establishing conditions under which international commercial competition might proceed on a level which would make for world peace. There is no doubt that we have not been entirely successful in that effort. We have had a

repetition on a world scale of our experience in national economy. For two generations we tried to set the rules of domestic competition so as to eliminate its abuses. Our American anti-trust legislation was directed to that purpose. Our conclusion now is that the problem is to seek a way out from competitive evils not in setting competitive rules, but in organizing coöperation. The answer to the international issue lies in the same direction.

The question then is, what are the objectives towards which world coöperation should aim, and what methods should it apply? On the basis of the analysis made above, the major purpose of world coöperation is to increase simultaneously standards of living throughout the world and to plan production in such a way as to give each country an opportunity to develop its potentialities as fully as possible. The major line of development at present is in international agreements for the regulation of the production and distribution of world commodities. While I am not in entire sympathy with the procedure followed in London, which is based more upon the desire to curtail production rather than to seek the possible expansion of demand, I think that it is a beginning; and that, when the pressure of excessive stock accumulations has been removed, greater progress will be made in the direction of increasing demand.

A second line of development might be some form of organized exchange which may have a considerable element of barter in it. A World Exchange Board might be organized to serve as a clearing house for the study and promotion of exchange between countries of surplus products with a minimum dependence on gold and monetary movements.

A third line of development is the possibility of developmental projects, such as have been suggested by the International Labour Office—namely, public works carried out under international control and calculated to increase the real income of the countries where they are carried out, and indirectly of the rest of the world.

As to methods, these new needs of world coöperation call for new machinery. If the London Conference fails, it will be not only because of the contradictory interests and thought by which it is guided, but also because of inherent weaknesses of the method itself. The conference method of international negotiation is a post-war product and at one time had both justification and possi-

bilities. It was a valuable means for overcoming the animosities raised by the World War and for bringing people together so as to break national friction and difficulties. Perhaps to some extent it was also a reaction against the pre-war diplomacy which was carried on behind closed doors and which the World War presumably was to abolish by substituting for it "open covenants openly arrived at."

However, the conference method seems to have reached the limit of its usefulness. The problems which are now facing the world are no longer merely matters of good will but problems involving careful study and investigation. They require time and systematic application in view of continuously changing conditions. They call for clarification and for the preliminary elimination of preconceived ideas and prejudices.

In view of all this, world coöperation now depends for its success as much upon the invention of new devices as upon the formulation of proper objectives. The method which suggests itself is that of continuous negotiation through research carried on coöperatively by all nations. This method calls for the organization of permanent bodies and committees which would pursue specific programs continuously and which would help the process of conversion within separate countries of those responsible for national policies.

It is in this respect that coöperation between the United States and the League of Nations is both desirable and possible. The technical committees of the League, especially its financial and economic sections, represent the beginnings of such bodies as have been indicated above. They could be made the basis of still larger bodies—with representatives also from the United States and other countries not members of the League—for the continuous study of the problems of world economy as they emerge in the course of ever-changing situations and activities.

In brief, we must apply ingenuity and courage in projecting on a world scale the changes which are taking place in the forms and methods of national life. The general tendency within nations is towards the concentration of the process of formulating policies and of carrying out decisions. To weave such national methods into a world coöperative policy is no easy task. But we must achieve it—for on our success or failure in this respect hinges our fate.

III. COLLECTIVIST INTERNATIONALISM

Property or Peace (1934)

Henry N. Brailsford (1873–)

In the course of political philosophy since the last quarter of the eighteenth century we have followed four main currents,—democratic individualism (of both the natural rights and the utilitarian school), idealism (with its variant of nationalism), collectivism (with its variant of communist anarchism), and determinism (appearing in the conservative historical approach of the nineteenth century and in the objective socio-psychological method of the twentieth). The international phases of democratic liberalism and of idealism have already been noted, and determinist internationalism has not yet appeared upon the scene. Our study of recent political philosophy may be concluded with an examination of the fundamentals of collectivist internationalism.

Collectivism as the escape from international chaos is as distinctly a post-war philosophy as is liberal or economic internationalism. The *Communist Manifesto* of 1848 calls upon the workingmen of all countries to unite,—but they are to unite against industrial exploitation and not against war. It is the World War—as a conflict between indubitably capitalist states—that has furnished collectivism with the most effective weapon in its arsenal. On all sides socialists and communists are challenging the world to choose between collectivism and war. *Property or Peace* is the well chosen title for the discussion of this theme by the English socialist, Henry N. Brailsford, in 1934.

Brailsford was born in Yorkshire and educated at Glasgow University where he took philosophical and classical honors. After a brief teaching experience he turned to journalism and became the writer of leading articles for the *Manchester Guardian*, the *Tribune*, the *Daily News*, and the *Nation* in turn. He volunteered in the Greek Foreign Legion in 1897, served as relief agent in Macedonia in 1903, and was a member of the Carnegie Commission in the Balkans in 1913. He joined the Independent Labour Party in 1907 and for four years, beginning in 1922, was the editor of the Labour weekly, the *New Leader*. Among his principal books are *A League of Nations* (1917), *Socialism for To-Day* (1925), *Olives of Endless Age* (1927), and *Rebel India* (1932).

The readings here given are based on the text of the American edition of *Property or Peace* (Covici Friede, New York, 1934), and are reprinted by permission of the publishers. The footnote is the author's.

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PROPERTY OR PEACE

I. Property and Empire

[*Ch. IV, 1.*] We might hope for a living and creative peace, a peace compatible with orderly changes and adjustments, when the ownership and control of military power passed to the great international society. Why is it, then, that in the same breath we must confess that such a fundamental alteration in the structure of our world is, even in a modified, transitional form, hopelessly, infinitely, out of reach? Why are the Great Powers unwilling to consider such a transfer? What advantage do they derive from the possession of military power?

The question is as difficult as it is fascinating: but we must face it, for without an answer we can understand neither history, nor our own time. I shall venture to disregard the psychological *imponderabilia* (to use Bismarck's term) which may at moments in history have their importance. The purpose of war is to overcome the enemy's will. May we go further and assume that normally it will be found that this elaborate and costly mechanism of power is maintained for realistic ends? Power, in short, can be made to serve economic ends: or if this is too large an assumption, then those who aim at it cherish this belief.

Were all the belligerents the victims of "a great illusion"? Broadly, one grants that the result of the actual war was a triumphant demonstration of Sir Norman Angell's thesis. It brought no lasting economic advantage to the victor peoples, but only waste and loss, from which England, at least, has never wholly recovered. The vanquished, however, to say nothing of the mental and moral injury they suffered, fared very much worse than the victors; and this fact, one fears, may rob the thesis of its practical effect.

As yet, however, we have only touched the fringe of this problem of military power. That the main purpose of armaments is to be sought in war is an illusion to which both soldiers and pacifists are prone. They have their constant uses in periods of the profoundest peace. It would be a grave mistake to suppose that power, because no one dare challenge it, has ceased to work.

[*2.*] That the sword must hold what the sword won is a truism on which one need not insist. While this is the chief, it is not the only use of military power in time of peace. It is a potent factor in winning economic opportunity. It can be used and has been used, notably in China, to open closed markets to commodity goods. No less obvious is the part of military power in insuring the debts that weak governments owe to the financiers of the Imperial Powers. The British occupation of Egypt began on this account, and it accounted also for the appropriation of Tunis by the French. Much of the modern history of China and Turkey falls within this chapter, and the United States has varied the Old World theme of usury, backed by military power, round the shores and islands of the Caribbean. The central doctrine of Imperialism was proclaimed in 1850 by Palmerston, when he sent warships to the Piraeus to enforce the claims of a Levantine usurer named Don Pacifico:

> As the Roman in days of old held himself free from indignity, when he could say "Civis Romanus sum," so also a British subject, in whatever land he may be, shall feel confident that the watchful eye and the strong arm of England will protect him against injustice and wrong.

Every empire has followed this precedent, and American Secretaries of State have given it as wide a scope as their European models. When the patriot of tradition thought of defence, he meant that he would give his lifeblood for the gardens and cornfields of his native land. Our range is wider. When we talk of defence, we are more likely to be concerned with an oil well in Persia or in Venezuela, in which our capital has been sunk. "Where freedom is," said Benjamin Franklin, "there is my country." The modern cosmopolitan puts it otherwise: "Where my capital is," he answers, "there is mine."

[*5.*] Two typical objections may be taken to this thesis that the interests of the propertied class, which receives "tribute," account for Imperialism, and therefore for armed power. It is often said that empire is a truly national interest, as profitable and necessary to the workers as it is to property. But from the opposite angle of political theory the whole suggestion of tribute is dismissed as meaningless and irrelevant, since the profits of empire go to the pockets of individuals and not to the national treasury.

At first sight the former objection is plausible. Soldiers, as well as officers, find employment in the white garrison in India, and draw pensions. White foremen are engaged at high wages by the

jute-mills that sweat Indian workers in Bengal. If India were suddenly to win her independence, and to close her markets to Lancashire, disaster for a time, at least, would fall on workers as well as on Property. To that extent there is an apparent solidarity of interest on a short-range view. The Lancashire weaver has certainly become partially dependent to-day on the Indian market. But his forefathers were brought to this position by the violent operations of a policy that aimed at anything but his well-being. The English peasant had first to be torn by violence and wrong from the soil, robbed of his common lands, subjected to a savage Poor Law, and then literally transported, often as a child, from the South to serve the machines of Lancashire. Property drew its human tools from the English village, and wrecked English husbandry for its own ends, with the same ruthlessness that it used in driving the Indian craftsmen onto the overcrowded land. To-day, the unknown soldiers, white and brown, in this industrial war face each other as unconscious antagonists. In reality, they were both passive pawns in a process that took no account of their interests, and was shaped from first to last by the search of Property for profit.

The second objection is interesting. It is true that the Treasury of the United Kingdom draws no tribute from India, or from any of the Dependencies. Empire, far from being profitable to the State, is a heavy liability. Why, then, should the State incur it? The answer is that the State, in this sense of the word, is a meaningless abstraction, that exists only for the less realistic aberrations of political theory. The State is an organisation of society, endowed with the powers of coercion and military action, which will always serve the purposes of those who, in fact, control it. Its paper constitution will seldom reveal its actual structure. The democratic State is an imposing façade behind which the real forces of Property work undisturbed for their own purposes, and can appropriate for their own ends, at the expense of the whole body of taxpayers, the costly mechanism of military power.

[*6.*] But how, it may be asked, can military power be useful in winning or retaining a market in this age of competitive trading? Will not the cheaper and better goods of the more alert salesman slip past your sentries? No, they will not, if you erect a tariff fence of sufficient height. We have now to reckon with a deliberately protective system, which fences in the British Empire.

The Indian Government since midsummer 1933 has imposed a 75 per cent. duty against the import of cotton goods from Japan.[1] That will alter nothing in the political relations between the Empire and Japan, nor need one suppose that it will cause any immediate study of defensive plans by the Staff. Japan is otherwise engaged, and will be preoccupied with nearer objectives for many a year to come. But she has even now her political and military writers who discuss her distant goal, a Pan-Asiatic Empire, which is to include China and "liberate" India. If England must wall off India by prohibitive duties against Japanese imports, it may have been a prudent precaution to build the Singapore naval dock. One cannot fence off valuable and coveted markets from well-equipped rivals without reference to military power.

This aspect of economic imperialism deserves more attention than it has received. It has its bearing on the new structure of the Empire which dates from the Ottawa Conference. The purpose of the British National Government was clear. While disclaiming in any rigid or logical form the ideal of a self-sufficient empire, the aim certainly was to secure for Great Britain, by preferences, a larger share in the imports of the Dominions and Colonies. The effects of such a policy may be slow, but if it brings about any marked change in the flow of world trade, they may, in the long run, tell heavily on our international life. Others, in their turn, will be driven to aim at self-sufficiency, and as that development proceeds, it may gather a cumulative momentum, till the normal processes of triangular trading become difficult. That would mean a permanent diminution in the volume of international trade, and a general fall in the standard of life. With this must go a slackening in the personal intercourse between nations, and a diminution in cultural contacts, with a consequent decline in the intellectual stimulation that comes from international intercourse. All this has been evident enough in these years of slump. Travel grew more difficult, and deliberate obstacles were raised in England against the visits or residence of foreign artists, lecturers and musicians. While Englishmen narrow their intellectual horizon in this way, the cruder forms of nationalist complacency flourish, and they, in turn, discourage every form of international coöperation, whether political or economic. From this to an outbreak of the

[1] Negotiations for a modification are still in suspense as I write.

militarist temper is a short step. One begins by "buying British": one ends by shouting for a colossal air-fleet.

What, in concrete terms, is the supposed advantage in this system of preferential trading within an Empire? Why is it desirable that I, an Englishman, should eat Tasmanian rather than Californian apples? The answer is usually befogged with a sentimentality that to me, at least, is unconvincing.

The reason why I must buy Australian rather than Californian fruit is that Australia is the mortgaged estate of the City of London, while California is the debtor of Chicago and New York. If I bought three Australian apples in 1930, the price of one of them went straight to Lombard Street. Property has an interest, therefore, in fostering Australian exports, and Property in this context means especially the banking and the *rentier* class. The marginal case in the history of British trading policy since Ottawa confirms this explanation. When quotas were fixed for the import of meat, the Argentine received favourable consideration—not without protests from the more sentimental school of imperialists. The Argentine is also the City's debtor, and outside the Empire the most considerable of its debtors. It, therefore, must be assisted to furnish its tribute. There is no question here of the ties of blood or of a common culture, nor does England count on this Latin-American Republic for military aid. None the less, her markets were opened to Argentinian produce, while she excluded the competing exports of Chicago.

That this relationship of creditor and debtor—the relationship that produces a tribute for Property—is the fundamental bond of Empire one may discern even in the reticent language of constitutional documents. This emerges from the draft of a Constitution for India. India may please herself as to what gods she worships, nor is she bound by any English traditions of liberty. The essential bond, however, is amply safeguarded. Her Legislature and her Minister of Finance may do nothing that might forfeit the confidence of British investors. The same preoccupation was legible in the deliberations of the Imperial Conference, that led up to the Statute of Westminster, which defines the constitutional position of the Dominions. There is only one restriction upon the otherwise unlimited freedom of action of their legislatures. They may alter the basic Common Law of England as they please. They may sweep away, as Ireland has done, any oath of allegiance

to the Crown. The Crown has no longer any power of veto, save over legislation that touches this one vital relationship of creditor and debtor. A Dominion may do nothing that would lessen the value of an imperial trustee security. What happens to a Dominion that defaults on debts due to the City of London, we now know. Newfoundland did it in 1933, and lost her rights of self-government as a penalty. The British Government in this instance actually took over this colony's liabilities for interest, lest any imperial banker or investor should suffer loss. Mr. Joseph Chamberlain used to say that "the Empire is Commerce." It would be more accurate to say that the Empire is Debt.

II. Property and Anarchy

[*Ch. IV, 8.*] The immanent logic that drove earlier generations of Englishmen into empire can be traced in the daily round of machine industry. Just as one can say that a primitive tribe which conducts its agriculture by wasteful processes will be driven to snatch more land when it has exhausted the fertility of its first clearing in the forest, so one can say that an industrial society which starves its own internal market must soon go pioneering overseas in search of fresh and wider markets. It starves its internal market because its search for profit compels it to treat wages as a cost of production that must be kept as low as possible. Internal purchasing power can never in these conditions keep pace with the expansion of mechanical production, which, in its turn, reflects the accumulation of wealth by a small owning class. This disorder in the internal market, this perpetual disproportion between accumulation and spending, is the prime mover in the process of imperial expansion. So long as British industry retained its early advantage as the pioneer in mechanical production, it could afford to preach and even to practise Free Trade. It believed that it could sell its goods, because they were the cheapest and the best, to all the world without the aid of privilege, protection, or monopoly. But as rivals, equipped from the start with the most modern technique, came into the field to compete with its older industries, handicapped as they were by a glorious past, Property now demanded closed markets. The younger industries of Continental Europe, North America and the Dominions, had led the way, since without tariffs they could never have established themselves against the prestige and experience of their

British competitors. The same revolt on the part of the owners and entrepreneurs against unrestricted competition that made cartels and trusts, tended also to create the fenced market overseas, the closed sphere of influence, and the empire based on preferential trading. Capital, accumulating in private hands so rapidly that its rate of hire, the customary level of interest, must have fallen heavily had it been confined to the home territory, was now exporting itself overseas. It had created at home a reaction against itself: it had set the class struggle in motion, and the growth of workers' combinations was restricting its profits. It turned, therefore, to primitive regions of the earth, where labour could be exploited ruthlessly without the shelter of Labour Unions and Factory Acts, and in its wake it dragged the imperial flag and military power, for it required the mechanism of the State to second it.

In this whole development there is more than the march of invention and the spread of mechanism. The march was led by the search of the propertied class for profit. Its pace, and its behaviour, were dictated from first to last by the institution of the private ownership of the machines. It happened in this way, and was bound to happen in this way, because the impetus to expand arose in a society based on unequal wealth and power, and because of this inequality. The same progress of invention, the same advance in mechanical production and transportation, had it occurred in a classless society based on public ownership of the machines under a planned and orderly economy, would also have made the possibility of expansion. It, too, would have sought to raise its own standard of life by exchanging the publicly owned surplus of manufactured goods which it could readily create, for the produce of India or the Tropics. But it would have felt itself under no imperious necessity to effect this exchange, for it would have produced the surplus only as and when the possibility of an exchange came in sight. International competition arises only in the effort to dispose of an existing surplus which the home market cannot absorb. Without that element of rivalry, the approach to India and even to the more primitive peoples would have been made under wholly different conditions, without urgency, without jostling, and therefore without arms. The psychology and the economics of such a relationship between the more advanced and the less advanced societies are difficult to imagine, because we do not

realise how profoundly the motive of profit has distorted human behaviour. Just as capital builds houses to-day not frankly to live in, but primarily to sell, not for use but for the abstract end of profit, so also it constructs cosmopolitan society and builds empires, not frankly for the mutual good and the happiest relationship of all the tribes and groups within them, but primarily for tribute. The nucleus of the imperial structure, the kernel that determines the character of the whole, is the typical factory, whose owner will not return to its workers the value their labour produces, and cannot himself consume the surplus he appropriates. When a whole national society is built on this pattern, when this owning class—because it can buy the levers that move opinion, and dominate its employees by its power to give advancement and deny it—also controls the State and its mechanism of power, the stage is set for imperial expansion. The surplus appropriated by this owning class must spill over the national frontiers and start, wherever it settles, the same infinite process of unrest, the endless search for an equilibrium between production and distribution unattainable where Property rules.

Ranged in competing national units, each jealous of its sovereignty, Property must rely on military power, partly to hold down its subject populations, partly to guard its fenced areas of privilege. It does not consciously desire war: it may even in its periods of repletion dread it; but alike by its competitive arming and its refusal to abate its claims to privilege and tribute, it is destined to defeat our hopes of a creative peace. Even when it is ready to consent to some scaling down of armaments, it maintains the relative power of the great empires, and against these no League of Nations dare enforce peace. Property, in short, is the principle of anarchy and the enemy of society. It must conspire against an ordered economic plan, nor can it tolerate an authoritative organisation of our international life. It is the disease of which slumps and wars are symptoms.

III. The Break in Evolution

[*Ch. V, 1.*] From the digging stick of primitive man to the motor-plow, the line of evolution runs clear and straight. None the less, in this continuous evolution, there were moments when men turned their backs with a brusque movement on the past, and made a revolutionary decision. At such turning points one does not

compromise: only an imbecile would try to yoke a horse with a tractor.

Those who tell us that there is evolution also in our social and political life are assuredly right. But the politician who talks evolution commonly uses this comforting word to evade the act of will that makes a new departure. The clear-cut decision that rejects the old system is as necessary in politics as it is in mechanics.

Our generation has reached, in its political and economic life, a moment when it must face one of these abrupt decisions. The system of private enterprise with the motive of profit and the institution of property, is so ill adapted to the machine age that it threatens us with disaster.

Plenty and leisure are within our grasp, we have the means in our laboratories and our machines to attain them so easily, that the failures of these recent years, with all the strife of classes and peoples that attend them, would be laughable, if they were not shameful. Strife is intelligible when there is not enough to go round. That is not our case. But we shall delude ourselves, if we suppose that we can think ourselves into a planned economy. We have first to struggle for the right and liberty to plan. Property is in the way, with its claim to do what it will with its own. The first step is to assert the authority of our whole working society over the land, the machines and the mechanism of credit. In our path is the owning class that draws from these things its disorderly profits, its right to command, and its claim to social distinction. By turns it will be defiant and plausible. In the second of these attitudes, it will offer itself to plan: it will undertake to systematise production and marketing, even to admit labour and the consumer to some modest place in its consultations. It will offer, in short, to make the familiar structure of the trust or cartel universal. That, though it means an advance in efficiency, is no solution of the problem: it is not even a step towards it. It leaves intact the rights of ownership: the entire mechanism is still directed towards the end of amassing a maximum surplus, which in private hands must always defeat the attempt to balance the equation between production and consumption. If we could get by such means some approximation to economic order—and experience suggests that in fact we should get only the organised scarcity of limited output and high prices that makes wealth for the fortunate few—we should be no nearer to the realisation of democracy, nor yet to the

ending of empires based on monopoly, debt and armaments. Our goal of order and peace can be reached only by a relentless concentration on the single purpose of abolishing private property in the means of life.

[*6.*] Empires, based on the exclusive ownership and the privileged exploitation of territories beyond their national borders, cannot disarm. As little can a great capitalist State dispense with such fields for the investment of its surplus capital. The starved home market must be supplemented. We must add an adjective to Kant's hard condition. The league that enjoys eternal peace must consist of socialist Republics.

This is a hard saying—as hard as the scriptural aphorism about the camel and the needle's eye. It means substantially the same thing. As little can you carry your property with you into the earthly league of peace, as you can carry it into the Kingdom of Heaven. It is a principle antagonistic to peace, as to economic order and democracy.

We have to recognise then, that there are breaks in evolution, in our international as in our national life. The brief essay in capitalist internationalism has come to an end. Abroad, as at home, we must face a revolutionary decision. Our faces must be set towards the creation of a socialist world-order. Look at the map. Denmark and Sweden, though by a somewhat precarious tenure, are under moderate socialist governments. Concede to the Labour Party an eventual victory in England, and already our socialist League stretches from Land's End to Vladivostok. The nucleus consists of a socialist Britain and a communist Russia. They are, if we hold our end by a secure tenure, ideally complementary. They can in the economic field assist one another as no other pair of Powers could do, and if no wisdom, or patience, or offer of arbitration can stave off war, again on land and sea they are complementary.

The tie in the first years cannot be federal. The two socialist systems, the Russian and the British, will be, in tradition and mentality, too distinct, and too much attached to their individuality to accept the kind of tie that unites the numerous Republics within the Soviet Union. There are, moreover, natural limits set by geography. Much common work, much common planning, is none the less possible. The essential tie would be a determination to work for the cosmopolitan socialist Federation, to act in its

spirit, to build our mutual relations of trade and defence on a pattern that can be universalised.

In the same tentative way one would seek to knit our relations with especial intimacy with Denmark and Sweden. In their case also, the difficulty is that one cannot yet call them socialist countries. They are capitalist kingdoms which happen to-day to have socialist ministries. The closer, however, we can make the cultural and economic tie, the more we can base it on ordered and planned exchange, the more probable is it that we can all hope for permanence. A successful and unflinching socialist venture in Great Britain would give prestige to Socialism and hope to socialists all over Europe.

"But why this narrow pedantry?" the reader may ask. "Are there not, up and down the world, harmless liberal kingdoms and republics, that hold no empires by force of arms? If the New Deal makes a new America, do you want a more sympathetic recruit than you would find there? Why must your federation wear this monotonous red uniform?" No: it is not possible. With these friendly and pacific powers, great and small, let us cultivate the closest and most helpful relations—assuredly with Norway, and above all with the United States. There should be a habit of continual consultation between Washington and London. But Federation? That is inconceivable. The last Power to abate one jot of her sovereignty will be America. She would no more enter an international league without the protection of the unanimity rule, than she would return to her allegiance to King George. She is not ready even to think about international government, and she will be the last of the Great Powers to do it. Then there is the democratic French Republic. Her case is different. She wants a stronger League. She is the pioneer of the idea of an international police force. But the basis of every future liberal advance is, in her view, that it should be a superstructure resting on the immutable Treaty of Versailles.

[7.] The key to the future lies in Germany. If and when she becomes a socialist Republic the Federation to which we aspire can be formed. It would not suffice that Social-Democrats should restore the Weimar Constitution: the change that would be decisive would be a transfer of economic power. It is vain to discuss whether, or how, or when, this will happen. It will not come easily or soon; it may never come at all, for we dare not confuse our hopes

with the "inevitable" course of history. But until it happens, the advance to any organised creative peace is blocked.

[*8.*] If ever a socialist Federation exists, its only military force will be international. But in affirming this idea, it is necessary to declare, as clearly, that it presupposes wide changes in international organisation. Firstly, there ought to be no national forces capable of opposing the international police. Secondly, this coercive apparatus would be objectionable, unless the League behind it conferred great economic benefits; in proportion as it does this, the coercive apparatus will be inconspicuous and rarely used. Thirdly, to set up this coercive apparatus would be to create a stifling international despotism, unless (unhampered by any rule of unanimity) salutary changes could be made in the world, when change was due. These vital reservations mean that one would not propose to endow the League of Nations, as it exists to-day, with an international force.

[*10.*] The only constructive policy of peace is to end the rule of Property, first in England, and then in the Empire. That done, the way is open to create the socialist Federation that will ensure peace, because it will base the common economic life of its members on organised coöperation.

INDEX

Ability, rent of, 437, 443–445 (Shaw).
Abundance, economy of, 711–713 (Lippmann).
Abuse of property, right of, 354, 365 (Proudhon).
Achenwall, 173 (Kant).
Acts of Union, 96, 96n., 100–101, 101n. (Bentham); 121 (Austin); 552, 556–557, 557n. (Dicey).
Adjudication. *See* judiciary, function of.
Administrative element in adjudication, 608-615 (Pound).
Adoption, 156–158 (Maine).
Adult education, 329–330 (Owen).
Agreement, free, 373–374, 380–382, 385–387 (Kropotkin). *See* associations and groups.
Agriculture, 351 (Marx and Engels); 367 (Proudhon).
Alsace-Lorraine, 277 (Green); 304 (Treitschke).
Amendment, constitutional, 27 (*Federalist*); 35 (Paine); 45 (Constitution of 1791); 118–119 (Austin); 184 (Kant); 485 (Duguit); 501–502 (Krabbe); 579 (Dickinson); 655 (Bentley).
American Constitution. *See* Constitution, American.
American Revolution. *See* Revolution, American.
Analogy, method of, in judicial decision, 619–621 (Cardozo).
Analytical jurisprudence, 80–104 (Bentham); 104–131 (Austin); 266–268 (Green); 611–612 (Pound).
Anarchism, 353–368 (Proudhon); 368–387 (Kropotkin); 406 (Sorel); 416–417, 422 (Lenin); 433 (Shaw); 537 (Laski).
Anarchists. *See* anarchism.
Anarchy, 531–532, 536, 547, 549–550 (Laski); 750–752 (Brailsford).
Ancient Law (Maine), 146–162.
Angell, Norman, 745 (Brailsford).
Annulment of ordinances and statutes, 485–489 (Duguit).
Antithesis, 358 (Proudhon).
Apocalyptic myth, 396 (Sorel).
Appeal from the New to the Old Whigs, An (Burke), 46–63.
Arbitration, 525–526 (de Maeztu), 729–730 (Butler).
Aristocracy, 57–59 (Burke); 88–89, 91 (Blackstone); 88–93 (Bentham); 114–115 (Austin); 183 (Kant); 307–308 (Treitschke); 686-687 (Rocco).
Aristotle, 299, 305 (Treitschke); 433 (Shaw); 599, 603, 613 (Pound); 632 (Cardozo); 684 (Rocco); 718, 721 (Lippmann).
Armaments, 304–305 (Treitschke); 724–725 (Butler); 745–746, 748, 752, 754 (Brailsford). *See* war.
Armed masses, 421 (Engels); 425–426 (Lenin).
Armies, standing, 4 (Declaration of Independence); 8 (Virginia Declaration of Rights); 414 (Engels); 412–414 (Lenin).
Assent. *See* consent of the governed.
Associations, 450–452 (Cole); 490–491 (Duguit); 530–531, 538, 540–543 (Laski). *See* agreement and groups.
Austin, John, 104–105; *Lectures on Jurisprudence*, 105–131; 266 (Green); 435 (Shaw); 449 (Cole); 555, 558–560 (Dicey); 630 (Cardozo).
Austinian theory of law. *See* Austin, command theory of law, and sovereignty.
Austinian theory of sovereignty. *See* Austin and sovereignty.
Austrian state, nature of, 473 (Duguit); 508 (Kant).
Authoritarianism, 63–76 (de Maistre); 208–213 (Mill); 382–387 (Kropotkin); 520–522 (de Maeztu).
Authority, Liberty and Function in the Light of the War (de Maeztu), 516–528.

Bacon, 133, 139 (Savigny).
Bailey, Samuel, 240 (Mill).
Balance of group pressures, 653 (Bentley).
Balance of power, 305 (Treitschke).
Bank of International Settlements, 729–730 (Butler).
Banks, central, 708–709, 710 (Lippmann).
Bentham, Jeremy, 77–78; *A Fragment on Government*, 78–104, 107 (Austin); 148, 153 (Maine); 225, 240 (Mill); 435 (Shaw).
Bentley, Arthur F., 647–648; *The Process of Government*, 648–658.
Bergson, 614 (Pound).
Bicameralism, 20 (*Federalist*); 200 (Hegel).
Bignon, 64 (de Maistre).
Bismarck, 381 (Kropotkin); 587 (Stammler); 745 (Brailsford).
Blackstone, William, 76; *Commentaries on the Laws of England*, 79, 88, 89, 91, 94, 101, 103, 104; 78–104 (Bentham); 552, 555 (Dicey); 618, 621, 630 (Cardozo).
Blanc, Louis, 244 (Spencer).
Blood feuds, 601 (Pound); 672 (Dewey).
Bodin, 571, 573, 574, 579 (Dickinson).
Bok's law, 666 (Follett).
Bosanquet, Bernard, 279–280; *The Philosophical Theory of the State*, 280–297.
Bourgeoisie, 335–352 (Marx and Engels); 389–393 (Sorel); 411, 417 (Engels); 427 (Marx); 410–429 (Lenin); 432–433 (Shaw). *See* class struggle, middle class, proletariat, and property.
Brailsford, Henry N., 744–745; *Property or Peace*, 745–756.
Bread, The Conquest of (Kropotkin), 368–387.
British constitution. *See* constitution, British.
Bryce, 574 (Dickinson); 621 (Cardozo).
Buckle, 639 (Wallas).
Bureaucracy, 413–416, 420, 428–429 (Lenin); 435–436 (Shaw); 452–453 (Cole); 479–480 (Duguit); 646–647 (Wallas).
Burke, Edmund, 46–47; *An Appeal from the New to the Old Whigs*, 47–63; 30, 34–38 (Paine); 126 (Austin).
Business cycles, 338–339 (Marx and Engels); 705, 708 (Lippmann).
Butler, Nicholas Murray, 722–723; *The International Mind*, 723–731.

Capital. *See* property.
Capitalism. *See* bourgeoisie and property.
Cardozo, Benjamin N., 615–616; *The Nature of the Judicial Process*, 616–626; *The Growth of the Law*, 626–633.
Carroll, Lewis, 659 (Follett).
Cartels, 753 (Brailsford). *See* trusts.
Catholic authoritarian reaction, 63–76 (de Maistre).
Catholic church, 310 (Treitschke); 455 (Cole); 531, 533 (Laski); 561 (Dicey).
Chamberlain, Joseph, 750 (Brailsford).
Checks and balances. *See* separation of powers.
Child labor, 325–326, 327–328 (Owen); 347–348, 351 (Marx and Engels).
Children, rights of, 222–223, 225, 227–229 (Mill); 251–252, 251n. (Spencer). *See* education.
Christianity, 69, 75 (de Maistre); 216 (Mill); 349 (Marx and Engels); 393, 396 (Sorel). *See* religion.
Chrysostom, 69 (de Maistre).
Church. *See* church, established, Catholic church, and religion.
Church, established, 121 (Austin); 454 (Cole); 556–557, 561, 562 (Dicey).
Cicero, 609 (Pound).
Civic community. *See* community, civic.
Civil law. *See* law, civil.
Civil service. *See* bureaucracy.
Class, function of, 196–201 (Hegel); 291–292, 293 (Bosanquet).
Class struggle, 333–352 (Marx and Engels); 388–408 (Sorel); 408–429 (Lenin); 467–469 (Cole); 648 (Bentley); 688–689 (Rocco); 716–717 (Lippmann); 751 (Brailsford). *See* bourgeoisie and proletariat.

Clothing, expropriation of, 370–371, 377–378 (Kropotkin).
Code Napoléon, 484 (Duguit).
Codes. *See* codification and law, statutory.
Codification, 103–104 (Bentham); 137–140, 144–146 (Savigny); 149–152 (Maine). *See* law, statutory.
Coercion, 102 (Bentham); 105–109 (Austin); 166, 177–178, 181–182 (Kant); 264–265, 266–268 (Green); 284–289 (Bosanquet); 302–306 (Treitschke); 423 (Lenin); 449, 464, 466–467 (Cole); 534–535 (Laski); 756 (Brailsford).
Cole, George D. H., 447–448; *Social Theory*, 448–470.
Collectivism, 706–713 (Lippmann). *See* anarchism, communism, and socialism.
Collectivist internationalism, 744–756 (Brailsford).
Colonies, 474 (Duguit). *See* imperialism.
Command theory of law, 105–110 (Austin); 147–148 (Maine); 182 (Kant); 266–268 (Green); 481–484 (Duguit); 494–496 (Krabbe); 677 (Dewey). *See* Austin and sovereignty.
Commercial law. *See* law, commercial.
Common law, *See* law, common.
Commune, the, 309 (Treitschke); 377 (Kropotkin); 414, 415 (Marx); 417, 421–422 (Engels); 413–417, 421, 424 (Lenin).
Communications, 351 (Marx and Engels); 478–479 (Duguit); 526–527 (de Maeztu).
Communism, 246–247 (Spencer); 335, 343–352 (Marx and Engels); 357–359, 365–366 (Proudhon); 372–374, 382–387 (Kropotkin); 409–429 (Lenin); 705, 710–712 (Lippmann). *See* Marx, opportunism, and socialism.
Communist anarchism. *See* anarchism.
Communist Manifesto (Marx and Engels), 335–352, 413.
Community, 452 (Cole); 498–500, 507–512 (Krabbe). *See* neighborhood.
Community, civic, 188, 189, 190, 198, 199 (Hegel); 290–291, 293 (Bosanquet). *See* neighborhood.
Community, international, 512–515 (Krabbe).
Community, legal, 588–589, 593–597 (Stammler).
Compensated economy, 706–710, 712–713 (Lippmann).
Competition. *See laissez-faire.*
Compulsory character of state, 456 (Cole); 538–539, 541 (Laski). *See* coercion.
Comte, 438 (Shaw).
Conceptions, legal, 609 (Pound).
Confederacy, 117–120 (Austin).
Conflict, 668–669 (Follett). *See* class struggle and war.
Conquest of Bread, The (Kropotkin), 368–387.
Consent of the governed, 3 (Declaration of Independence); 7 (Virginia Declaration of Rights); 9 (Declaration of the Rights of Man and Citizen); 33–35 (Paine); 126–131 (Austin); 268–269 (Green); 455–456 (Cole); 531–532, 534–535 (Laski); 659–664 (Follett).
Consequences, 671–674 (Dewey).
Conservative reaction, 46–63 (Burke); 63–76 (de Maistre).
Considerations on France (de Maistre), 71.
Considerations on Representative Government (Mill), 229–241.
Constitution, American, 11–28 (*Federalist*); 118–119 (Austin); 617–618, 623–626 (Cardozo).
Constitution, British, 34–38 (Paine); 50–51, 62 (Burke); 65–66, 67 (de Maistre); 90–91 (Blackstone); 90–93 (Bentham); 115–117 (Austin); 175–176 (Kant); 551–568 (Dicey).
Constitution, French (of 1791), 29–40 (Paine); 40–45; 474, 486 (Duguit).
Constitution, Introduction to the Study of the Law of (Dicey), 551–568.
Constitution, nature of, 34–35 (Paine); 64–69 (de Maistre); 599 (Pound).
Constitution, rigid, 485 (Duguit).
Constitutional amendment. *See* amendment, constitutional.

Constitutional law. *See* constitution and judicial review.
Constructive law. *See* law, constructive.
Consumption, 371–372 (Kropotkin); 458–459 (Cole); 541–543 (Laski).
Contract, 87n. (Bentham); 161–162 (Maine); 247n. (Spencer); 484 (Duguit); 544–545 (Laski); 614–615 (Pound); 622–624 (Cardozo); 677 (Dewey); 686–687 (Rocco).
Contract, social, 33 (Paine); 53–54, 54n. (Burke); 79 (Blackstone); 83–88 (Bentham); 128–131 (Austin); 170–179 (Kant); 478 (Duguit).
Convention, express. *See* express convention.
Conventions of the British constitution, 565–568 (Dicey).
Coöperative villages, 317–324 (Owen).
Coördination, function of, 454–455, 459–460, 464–466 (Cole); 540–543 (Laski); 574–580 (Dickinson).
Corporations, 196, 197 (Hegel); 699–700 (Gentile).
Corporative state, 699–700 (Gentile).
Council of State, 487, 488, 489, 492 (Duguit).
Court of Cassation, 487 (Duguit).
Courts. *See* judiciary.
Covenant, original. *See* contract, social.
Cratology, 517 (de Maeztu).
Creative Experience (Follett), 658–669.
Crimes. *See* law, penal.
Crises. *See* business cycles and depression.
Culture, 306–307 (Treitschke); 346–347 (Marx and Engels); 527 (de Maeztu).
Curves of increase and decrease, 638, 641–643, 646 (Wallas).
Custom. *See* customary law.
Customary law, 109–110 (Austin); 135–137, 142–146 (Savigny); 147–149 (Maine); 482 (Duguit); 500–501, 505 (Krabbe); 619, 621–622 (Cardozo).
Cycles, business. *See* business cycles.
Cyclops, 156 (Maine).
Czar, the, 335 (Marx and Engels); 380 (Kropotkin); 557n. (Dicey).
Dante, 571 (Dickinson).
Darwin, 438 (Shaw).
Decentralization, 473, 474, 479–480 (Duguit); 502–503 (Krabbe); 543 (Laski).
Declaration of Independence, 1–6; 623 (Cardozo).
Declaration of Rights, Virginia, 1–2, 6–9.
Declaration of the Rights of Man and Citizen, 1–2, 9–11; 30–40 (Paine); 60, 60n., 62, 62n. (Burke); 446 (Shaw); 483 (Duguit).
Democracy, 16–17 (*Federalist*); 88–89, 91 (Blackstone); 88–93 (Bentham); 114 (Austin); 183, 184n., (Kant); 412, 414, 415, 420, 422–423, 424–425 (Lenin); 436–437, 438–439 (Shaw); 659, 665 (Follett); 682–684, 686, 687–688 (Rocco); 713–715 (Lippmann). *See* representative government and republican government.
Depression, 704–705 (Lippmann); 736 (Lorwin); 752 (Brailsford).
Despotism, 96–97 (Bentham); 124–125 (Austin); 229–231 (Mill). *See* dictatorship.
Determinate nature of sovereign, 112–113 (Austin); 449 (Cole).
Dewey, John, 669–670; *The Public and Its Problems*, 670–679; 535 (Laski); 632 (Cardozo).
Dialectics, Hegelian, 186, 333; 358 (Proudhon).
Dicey, Albert V., 551–552; *Introduction to the Study of the Law of the Constitution*, 552–568; 485 (Duguit); 574 (Dickinson).
Dickinson, John, 568–569; *A Working Theory of Sovereignty*, 569–580.
Dictatorship, 413 (Marx); 419, 423 (Engels); 413, 416, 420, 423–425 (Lenin); 687–688 (Rocco); 706–707, 711–712, 715–717 (Lippmann). *See* despotism.
Directed economy, 706–707, 711–712 (Lippmann).
Discretion in adjudication, 590–591 (Stammler); 608–615 (Pound).
Dissolution of Parliament, significance of, 567–568 (Dicey).
District. *See* neighborhood.

Diversity, 668–669 (Follett).
Divine right, 33, 38 (Paine); 67, 74 (de Maistre); 149 (Maine); 192–193 (Hegel); 435 (Shaw); 455–456 (Cole); 472–473 (Duguit).
Drudgery, elimination of, 378–380 (Kropotkin).
Drunkenness, 222–223, 225, 226–227 (Mill); 327 (Owen).
Duguit, Léon, 471–472; *The Transformation of the Theory of the State*, 472–473; 507, 511 (Krabbe); 523 (de Maeztu); 629 (Cardozo).
Duranton, 355 (Proudhon).
Duty, 51–55 (Burke); 102 (Bentham); 107–109 (Austin); 177–178, 179–180 (Kant); 197 (Hegel); 264–266 (Green); 366–367 (Proudhon); 548–550 (Laski); 686 (Rocco).
Duty of the state, 101 (Blackstone); 101–104 (Bentham); 253–256 (Spencer); 475–481 (Duguit); 539 (Laski).
Dwellings, 288 (Bosanquet); 370–371, 375–377 (Kropotkin); 417–418 (Engels); 418 (Lenin).

Economic activities of the state, 452–453, 457–459, 467–469 (Cole).
Economic associations, function of, 457–458, 459, 468–469 (Cole); 544–547 (Laski). *See* functional representation.
Economic internationalism, 731–743 (Lorwin).
Economic interpretation of history. *See* materialistic interpretation of history.
Economic Nationalism and World Cooperation (Lorwin), 731–743.
Economic planning, 706–707, 711–712 (Lippmann); 735–737, 740–741 (Lorwin); 753–754 (Brailsford).
Economists, classical, 432–434 (Shaw).
Economy, compensated, 706–710, 712–713 (Lippmann).
Economy, directed, 706–707, 711–712 (Lippmann).
Education, 227–229 (Mill); 259–261 (Spencer); 287–288 (Green); 286–288 (Bosanquet); 308 (Treitschke); 325–326, 327–330 (Owen); 347–348, 351 (Marx and Engels); 437, 438, 441, 445 (Shaw); 534 (Laski).
Education, adult, 329–330 (Owen).
Ehrlich, 506 (Krabbe).
Elections, frequency of, 646 (Wallas).
Electorate. *See* franchise.
Electorate, participant, 665–667 (Follett).
Empiricism. *See* pragmatism.
Employers' associations, 468–469 (Cole).
Energy, social, 517–519 (de Maeztu).
Engels, Friedrich, 333–334; *Communist Manifesto*, 335–352, 413; *Anti-Duhring*, 411, 413; *Neue Zeit*, 417, 419; *The Housing Question*, 418; *Critique of the Social-Democratic Programmes*, 419, 420; preface to *The Civil War in France*, 421, 422; *Aus meinen Leben*, 425.
Engineering, social, 607–608 (Pound).
English historical school, 147–162 (Maine).
English idealism, 263–279 (Green); 279–297 (Bosanquet).
English Revolution. *See* Revolution, English.
Entrepreneur, 443–445 (Shaw).
Environment, 636, 638–639 (Wallas). *See* neighborhood.
Equal freedom, law of. *See* freedom.
Equality, 3 (Declaration of Independence); 6 (Virginia Declaration of Rights); 9 (Declaration of the Rights of Man and Citizen); 31 (Paine); 166–168 (Kant); 237–239 (Mill); 242–243 (Spencer); 365–366 (Proudhon); 592 (Stammler); 603–604 (Pound).
Equity, 152, 153–154, 160–161 (Maine); 610–613 (Pound).
Eternal peace. *See Perpetual Peace.*
Ethical observance, 187, 188 (Hegel).
Ethical theory, 584–585 (Stammler).
Evolution, 674 (Dewey); 752–756 (Brailsford).
Executive, function of, 194–196 (Hegel); 364 (Proudhon); 714–715 (Lippmann).
Executive, relation to legislative and judiciary. *See* separation of powers.
Experience, Creative (Follett), 658–669.

Expert, function of, 659, 661, 664, 665, 666 (Follett).
Exploitation, 336–339, 350–351 (Marx and Engels); 357 (Proudhon); 411, 413 (Engels); 413–416, 424–425 (Lenin); 746–747, 750–752 (Brailsford).
Express convention, limitation of government by, 96, 96n., 99–101, 101n. (Bentham).
Expropriation, 369–372 (Kropotkin); 440–442 (Shaw).

Fabian Essays in Socialism (Shaw *et al.*), 430–447.
Fabian socialism, 430–447 (Shaw). *See* opportunism.
Faction, 13–18 (*Federalist*). *See* political parties.
Factory acts, 437, 438 (Shaw); 452 (Cole); 751 (Brailsford).
Factory system, 324–326 (Owen); 351 (Marx and Engels).
Faith, good, as standard in adjudication, 584 (Stammler); 609 (Pound).
Family, 156–162 (Maine); 187, 188, 190, 199 (Hegel); 290, 293 (Bosanquet); 347–348 (Marx and Engels); 601–602 (Pound); 671–672 (Dewey).
Fasci, 695 (Gentile).
Fascism, 680–689 (Rocco); 696–700 (Gentile); 705, 710–711 (Lippmann).
Fascism, The Philosophic Basis of (Gentile), 689–700.
Fascism, The Political Doctrine of (Rocco), 681–689.
Federalism, 117–120 (Austin); 420 (Engels); 420–421 (Lenin); 473, 474–475 (Duguit); 509–510 (Krabbe).
Federalist, The (Hamilton and Madison), 11–28.
Feudalism, 311 (Treitschke); 335–336, 342, 345, 347 (Marx and Engels); 411 (Engels); 431–432, 443 (Shaw); 570–571 (Dickinson); 602–603, 604 (Pound).
Fictions, 83–84 (Bentham); 152–153, 157–158, 160–161 (Maine); 611–612 (Pound).
Fiscal matters, 714–715 (Lippmann).
Follett, Mary P., 658–659; *Creative Experience*, 659–669.
Food, 370–371, 374–375 (Kropotkin).
Force. *See* coercion, pressure, and violence.
Foreign credit. *See* international finance.
Foreign relations. *See* international relations.
Foreign trade, 702–703, 710 (Lippmann); 734–735, 736–737, 738–741 (Lorwin); 746–752 (Brailsford). *See* free trade.
Forms of government. *See* government, forms of.
Fourier, 244 (Spencer); 372 (Kropotkin).
Fourteenth Amendment, 624 (Cardozo).
Fox, 50 (Burke).
Fragment on Government, A (Bentham), 77–104.
Franchise, 7 (Virginia Declaration of Rights); 42–43 (Constitution of 1791); 169 (Kant); 234–241 (Mill); 250, 250n., 252–253 (Spencer); 437, 438 (Shaw); 456 (Cole); 502–503 (Krabbe).
Franklin, 746 (Brailsford).
Free government, 96–97 (Bentham); 124–125 (Austin).
Free law, 590–591 (Stammler); 612–613 (Pound).
Free trade, 223–224 (Mill); 248 (Spencer); 345 (Marx and Engels); 445 (Shaw); 750–751 (Brailsford). *See* tariffs.
Free will, 165, 180–181 (Kant); 187–190 (Hegel); 604 (Pound). *See* general will.
Free-Masonry, 694, 695 (Gentile).
Freedom, 3 (Declaration of Independence); 6 (Virginia Declaration of Rights); 9 (Declaration of the Rights of Man and Citizen); 33 (Paine); 123 (Austin); 165–166 (Kant); 208–229 (Mill); 242–252 (Spencer); 264, 267 (Green); 283 (Bosanquet); 345, 349–350 (Marx and Engels); 365–368 (Proudhon); 372–374 (Kropotkin); 476, 483 (Duguit); 519 (de Maeztu); 537 (Laski); 591–592 (Stammler); 623–

625 (Cardozo); 686–687 (Rocco); 700 (Gentile); 702–721 (Lippmann); 725–726, 730–731 (Butler).
Freedom, law of equal, 180–182 (Kant); 187 (Hegel); 242–249, 251, 253–254 (Spencer).
Freedom, The Method of (Lippmann), 701–721.
Freedom of religion. *See* religious toleration.
Freedom of speech and of the press, 8 (Virginia Declaration of Rights); 10 (Declaration of the Rights of Man and Citizen); 13 (*Federalist*); 31–32, 37 (Paine); 41 (Constitution of 1791); 96–97 (Bentham); 176–178 (Kant); 213–222 (Mill).
French constitution (of 1791). *See* constitution, French (of 1791).
French Revolution. *See* Revolution, French.
Function, Authority, Liberty and, in the Light of the War (de Maeztu), 516–528.
Function, nature of, 200 (Hegel); 451–452 (Cole); 516–528 (de Maeztu).
Functional representation, 200 (Hegel); 253n. (Spencer); 460–467 (Cole); 540–543 (Laski); 667–668 (Follett); 699–700 (Gentile).

Gambling houses, 225–226 (Mill).
General strike, 393–408 (Sorel).
General will, 182 (Kant); 266–268 (Green); 281–284 (Bosanquet); 455–456 (Cole); 481 (Duguit); 660, 662–663 (Follett). *See* free will.
Generative Principle of Political Constitutions, Essay on the (de Maistre), 63–76.
Gentile, Giovanni, 680–681; *The Philosophic Basis of Fascism*, 689–700.
George, Henry, 438, 440 (Shaw).
German Economic Council, 543 (Laski).
German historical school, 132–146 (Savigny).
German idealism, 163–185 (Kant); 185–206 (Hegel).
Gibbon, 300 (Treitschke).
Gierke, 474 (Duguit).
Giolitti, 694, 696 (Gentile).
God, law of, 105, 128–129 (Austin).
God, state as march of, in the world, 189 (Hegel).
God, will of, in political constitutions, 69–76 (de Maistre). *See* divine right.
Gompers, 666 (Follett).
Government, forms of, 15–16 (*Federalist*); 38–40 (Paine); 88–89, 91 (Blackstone); 88–93 (Bentham); 114–120 (Austin); 182–185 (Kant).
Government, obligations upon. *See* duty of the state.
Government, The Process of (Bentley), 647–658.
Government enterprise. *See* public services.
Grammar of Politics, A (Laski), 536–550.
Gray, John Chipman, 533 (Laski); 618, 622 (Cardozo).
Green, Thomas Hill, 263–264; *Lectures on the Principles of Political Obligation*, 264–279; 286 (Bosanquet); 539 (Laski).
Ground rents, 439–443 (Shaw). *See* rent.
Groups, 648–658 (Bentley); 665–667 (Follett); 678–679 (Dewey); 685 (Rocco). *See* associations.
Growth of the Law, The (Cardozo), 626–633.
Guild socialism, 447–470 (Cole); 543 (Laski).
Guizot, 335 (Marx and Engels).
Gustavus Adolphus, 303 (Treitschke).

Habit, 316–317, 319, 322–323 (Owen).
Habit of obedience. *See* obedience, habit of.
Hague Conferences, 526 (de Maeztu).
Hallam, 553, 554 (Dicey).
Hamilton, Alexander, 11–12; *The Federalist*, 19–28.
Happiness, 84–88, 95–97 (Bentham); 124–126 (Austin); 166, 171–172, 174–175 (Kant); 212 (Mill); 592–593 (Stammler); 606–608 (Pound); 622 (Cardozo); 636–637, 644–645 (Wallas).
Hare, 239, 240 (Mill); 291 (Bosanquet).
Hauriou, 487–488 (Duguit).

Hegel, Georg W. F., 185–186; *The Philosophy of Right*, 186–206; 302, 312 (Treitschke); 358 (Proudhon); 435 (Shaw); 520 (de Maeztu).
Hegelian dialectics. *See* dialectics.
Hegelianism, English, 279–297 (Bosanquet).
Hereditary judiciary, 72–74 (de Maistre).
Hereditary principle in government. *See* divine right.
Hindrance of hindrance to freedom, 181–182 (Kant); 286–289 (Bosanquet).
Historical jurisprudence, 132–146 (Savigny); 146–162 (Maine); 587–588 (Stammler); 611–612 (Pound).
History, method of, in judicial decision, 619, 621 (Cardozo).
Hobbes, 176 (Kant); 433 (Shaw); 536 (Laski).
Hobhouse, Lord, 439–441 (Shaw).
Holland, 555 (Dicey).
Holmes, 624 (Cardozo).
Homer, 147, 156 (Maine).
Housing. *See* dwellings.
Human Nature in Politics (Wallas), 634–647.
Humboldt, 591 (Stammler).
Hume, 83 (Bentham); 433 (Shaw).

Idealism, 163–185 (Kant); 185–206 (Hegel); 263–279 (Green); 279–298 (Bosanquet); 690, 693, 694 (Gentile). *See* neo-idealism.
Imperial Conference, 749 (Brailsford).
Imperialism, 419 (Lenin); 445–446 (Shaw); 737–739 (Lorwin); 746–752 (Brailsford).
Inalienable rights. *See* natural rights.
Income, 458–459 (Cole).
Income tax, 350 (Marx and Engels); 437, 438, 440, 442, 445 (Shaw). *See* taxation.
Increase, right of, 355–356 (Proudhon). *See* property and rent.
Independence, Declaration of, 1–6; 623 (Cardozo).
Independence, desire of newer nations for, 734–735 (Lorwin).
India, law of, 150–151 (Maine).
India, relation to England, 296 (Bosanquet); 746–747 (Brailsford).
Individual rights. *See* natural rights, resistance and revolution, right of, and rights against the state.
Individualism, 1–11 (Declarations of Rights); 11–28 (*Federalist*); 29–40 (Paine); 40–45 (Constitution of 1791); 207–241 (Mill); 241–262 (Spencer); 405–407 (Sorel); 522–523 (de Maeztu); 536 (Laski); 681–686, 689 (Rocco); 698–700 (Gentile). *See laissez-faire* and natural rights.
Individuality, 221–222 (Mill); 345 (Marx and Engels); 536 (Laski).
Individualization in adjudication, 608–615 (Pound).
Industrial Revolution, 314–316 (Owen); 335–342 (Marx and Engels); 432–433 (Shaw).
Inheritance, 299 (Treitschke); 350 (Marx and Engels); 367 (Proudhon).
Insecurity, 704–705 (Lippmann); 735–737 (Lorwin).
Institutions as ethical ideas, 290–293 (Bosanquet).
Instruments of production, 371–372 (Kropotkin); 426–427 (Lenin).
Integration of differences, 662–664, 667–669 (Follett).
Intellectualism, 697 (Gentile).
Intelligence, sphere of, in adjudication, 614–615 (Pound).
Interdependence, international. *See* international interdependence.
Interdependence, social, 478, 482 (Duguit).
Interests, valuation of, 605–608 (Pound).
International coöperation, 741–743 (Lorwin).
International division of labor, 734, 736 (Lorwin).
International finance, 702–704, 710 (Lippmann); 729–730 (Butler); 742 (Lorwin).
International interdependence, 702–705 (Lippmann); 727–728 (Butler).
International interpenetration, 729 (Butler).
International Labour Office, 742 (Lorwin).
International law, 106 (Austin); 202–203 (Hegel); 512–513 (Krabbe);

526 (de Maeztu); 555–556 (Dicey); 571–572, 579–580 (Dickinson); 729–730 (Butler).
International machinery, 729–730 (Butler); 742–743 (Lorwin).
International Mind, The (Butler), 722–731.
International relations, 201–205 (Hegel); 276–278 (Green); 293–297 (Bosanquet); 454–455, 466–467 (Cole); 491–492 (Duguit); 512–515 (Krabbe); 525–528 (de Maeztu); 540 (Laski); 726–730 (Butler).
International trade. *See* foreign trade.
Internationalism, 722–731 (Butler); 731–743 (Lorwin); 744–756 (Brailsford).
Interventionists, 689–690, 695 (Gentile).
Interweaving of experience, 666–667 (Follett).
Introduction to the Philosophy of Law, An (Pound), 598–615.
Introduction to the Study of the Law of the Constitution (Dicey), 551–568.
Intuition, sphere of, in adjudication, 614–615 (Pound).
Italy, spiritual crisis in, 689–696 (Gentile).

James, 530 (Laski).
Jevons, 641 (Wallas).
Jews, 312 (Treitschke).
Jèze, 487 (Duguit).
Jhering, 309 (Treitschke).
Joffre, 418 (de Maeztu).
Judgments, 147–149 (Maine); 626–627 (Cardozo).
Judicial process, 615–626, 630–633 (Cardozo).
Judicial Process, The Nature of the (Cardozo), 615–626.
Judicial review, 24–27 (*Federalist*); 98–99 (Bentham); 118–119 (Austin); 484–489 (Duguit); 623–626 (Cardozo); 655–658 (Bentley).
Judiciary, function of, 23–28 (*Federalist*); 505–507 (Krabbe); 655–658 (Bentley); 671–672 (Dewey).
Judiciary, hereditary, 72–74 (de Maistre).
Judiciary, relation to executive and legislative. *See* judicial review and separation of powers.
Jurisprudence, analytical. *See* analytical jurisprudence.
Jurisprudence, historical. *See* historical jurisprudence.
Jurisprudence, Lectures on (Austin), 104–131.
Jurisprudence, new, 581–597 (Stammler); 598–615 (Pound); 615–633 (Cardozo).
Jurisprudence, Of the Vocation of Our Age for Legislation and (Savigny), 132–146.
Jury, function of, 608, 610, 613 (Pound).
Justice, 254–256 (Spencer); 349–350 (Marx and Engels); 357, 364, 366 (Proudhon); 582–597 (Stammler); 632–633 (Cardozo).
Justice (Spencer), 242n., 245n., 246n., 247n., 249n., 250n., 251n., 253n.
Justice, The Theory of (Stammler), 581–597.
Justinian, 142 (Savigny); 159 (Maine).

Kaiser, the, 518, 519 (de Maeztu).
Kant, Immanuel, 163–164; *The Principles of Political Right*, 164–179; *The Philosophy of Law*, 169n., 179–185; *Perpetual Peace*, 184n.; 187, 203 (Hegel); 286 (Bosanquet); 300 (Treitschke); 754 (Brailsford).
Kautsky, 419 (Lenin).
Kin organization. *See* family.
Krabbe, Hugo, 493–494; *The Modern Idea of the State*, 494–515; 629n. (Cardozo).
Kranenburg, 502 (Krabbe).
Kropotkin, Piotr A., 368–369; *The Conquest of Bread*, 369–387; 433 (Shaw).

Labor, 231–232 (Mill); 384–385 (Kropotkin); 427–428 (Lenin); 688–689 (Rocco). *See* proletariat, syndicates, and trade unions.
Labor unions. *See* trade unions.
Laissez-faire, 246–248, 256–262 (Spencer); 603–605 (Pound); 623–624 (Cardozo); 673, 678–679 (Dewey); 702–705, 720–721 (Lippmann);

735–736, 740 (Lorwin). *See* individualism.
Lanark, experiment at New, 324–333 (Owen).
Land, 243–245, 245n. (Spencer); 433–434, 440–443 (Shaw); 527 (de Maeztu). *See* property.
Laski, Harold J., 528–529; *The Sovereignty of the State*, 529–536; *A Grammar of Politics*, 537–550.
Law, 105–110 (Austin); 147–149 (Maine); 362–366 (Proudhon); 481–487 (Duguit); 496–498 (Krabbe); 575–576 (Dickinson); 584 (Stammler); 626–630 (Cardozo); 652–655 (Bentley); 676–677 (Dewey). *See* jurisprudence and legislation.
Law, civil, 484 (Duguit); 676–677 (Dewey).
Law, commercial, 604, 614 (Pound).
Law, common, 109–110 (Austin); 148 (Maine); 614 (Pound); 618–619 (Cardozo). *See* customary law.
Law, constitutional. *See* constitution and judicial review.
Law, constructive, 482–484 (Duguit).
Law, customary. *See* customary law.
Law, growth of, 135–137 (Savigny); 147–154 (Maine); 494–496 (Krabbe); 604–608 (Pound); 626–633 (Cardozo).
Law, The Growth of the (Cardozo), 626–633.
Law, An Introduction to the Philosophy of (Pound), 599–615.
Law, normative, 481–482 (Duguit).
Law, organic, 483 (Duguit). *See* constitution.
Law, penal, 482, 483–484 (Duguit); 671–672, 677 (Dewey).
Law, positive, 106–109 (Austin); 481–482 (Duguit); 505–507 (Krabbe).
Law, Roman, 135, 136, 137, 140–142, 143, 145 (Savigny); 149–151, 153–154, 158–161 (Maine); 602, 604, 609, 610, 614 (Pound).
Law, statutory, 501–502 (Krabbe); 617–618 (Cardozo). *See* codification.
Law, unwritten, 505–507 (Krabbe). *See* customary law and law, common.
Law of the Constitution, Introduction to the Study of the (Dicey), 551–568.
Le Fur, 474 (Duguit).
Leadership, 687–688 (Rocco).
League of Nations, 466–467 (Cole); 665 (Follett); 729–730 (Butler); 743 (Lorwin); 755–756 (Brailsford).
Lectures on Jurisprudence (Austin), 104–131.
Lectures on the Principles of Political Obligation (Green), 263–279.
Legal community. *See* community, legal.
Legal order, 570–571, 575–576 (Dickinson); 600–602 (Pound); 626–630 (Cardozo).
Legal philosophy, function of, 599–600 (Pound). *See* jurisprudence.
Legal science, problems of, 582–583, 585 (Stammler).
Legislation, 152, 154, 160–161 (Maine); 614 (Pound). *See* codification and law, statutory.
Legislation and Jurisprudence, Of the Vocation of Our Age for (Savigny), 132–146.
Legislative, relation to executive and judiciary. *See* separation of powers.
Legislature, functions of, 196–201 (Hegel); 714–715 (Lippmann). *See* representation, basis of and representative government.
Lenin, Vladimir I., 409–410; *State and Revolution*, 410–429.
Liberal internationalism, 722–731 (Butler).
Liberalism, 207–241 (Mill); 519–522 (de Maeztu); 682–684, 685–687 (Rocco); 698–700 (Gentile); 722–731 (Butler). *See* freedom, individualism and *laissez-faire*.
Liberty. *See* freedom.
Liberty, Authority, and Function in the Light of the War (de Maeztu), 516–528.
Liberty, On (Mill), 207–229.
Limitations upon sovereignty. *See* sovereignty, limitations upon.
Lippmann, Walter, 701; *The Method of Freedom*, 702–721.
Literacy test, 235 (Mill).
Local self-government, 420 (Engels); 439–445 (Shaw).

Locke, 107 (Austin); 623 (Cardozo).
London Conference, 732–733, 742–743 (Lorwin).
Lorwin, Lewis L., 731–732; *Economic Nationalism and World Coöperation*, 732–743.

McIlwain, 574 (Dickinson).
Machines, political, 716–717 (Lippmann).
Madison, James, 11–12; *The Federalist*, 13–20.
Maeztu, Ramiro de, 516–517; *Authority, Liberty and Function in the Light of the War*, 517–528.
Magna Carta, 68 (de Maistre); 725 (Butler).
Maine, Henry Sumner, 146–147; *Ancient Law*, 147–162.
Maine Law, 224, 226 (Mill).
Maistre, Joseph de, 63–64; *Essay on the Generative Principle of Political Constitutions*, 64–76.
Majority, right of the, 56–57 (Burke); 209–210 (Mill); 274–275 (Green); 423 (Lenin); 500–502 (Krabbe); 654 (Bentley). *See* people, the idea of the.
Manufacturing Poor, Report to the Committee for the Relief of the (Owen), 313–324.
March on Rome, 696 (Gentile).
Marcus Aurelius, 49 (Burke); 216 (Mill).
Marshall, 641 (Wallas).
Marx, Karl, 333–334; *Communist Manifesto*, 335–352, 413; *The Civil War in France*, 414, 415; *Critique of the Social-Democratic Programmes*, 423, 426, 427; 390, 391, 392, 393, 398, 399, 400, 404, 405 (Sorel); 410, 411, 413, 417, 423, 424, 426, 427, 428 (Lenin); 438 (Shaw); 467–469 (Cole); 693 (Gentile); 710, 717 (Lippmann); 735 (Lorwin).
Marxism. *See* Marx.
Material of political reasoning, 635–639 (Wallas).
Materialism, 299 (Treitschke); 690, 692–693 (Gentile).
Materialistic interpretation of history, 467–468 (Cole); 606–607 (Pound).
Mazzini, 275 (Green); 396 (Sorel); 690–694, 697 (Gentile).
Method of Freedom, The (Lippmann), 701–721.
Method of political reasoning, 640–647 (Wallas).
Metternich, 335 (Marx and Engels).
Middle ages, law and society in. *See* feudalism.
Middle class, 196 (Hegel); 717, 718–719, 721 (Lippmann); 735–736 (Lorwin). *See* bourgeoisie.
Military power. *See* armaments and war.
Mill, John Stuart, 207–208; *On Liberty*, 208–229; *Considerations on Representative Government*, 229–241; 438 (Shaw); 520, 527 (de Maeztu); 646 (Wallas).
Minimum wage boards, 663–664 (Follett).
Ministerial responsibility. *See* parliamentary government.
Mixed governments, 38–40 (Paine); 91 (Blackstone); 90–92 (Bentham).
Modern Idea of the State, The (Krabbe), 493–515.
Monarchy, 36–37, 38–40 (Paine); 50–51 (Burke); 88–89, 91 (Blackstone); 88–93 (Bentham); 183 (Kant); 190–194 (Hegel). *See* divine right.
Monarchy, limited, 114–115, 122 (Austin).
Monism, 189–190 (Hegel); 271–272 (Green); 283–284 (Bosanquet); 529–530, 536 (Laski); 677–678 (Dewey). *See* idealism, sovereignty, and totalitarianism.
Montesquieu, 24n. (*Federalist*); 114 (Austin); 155 (Maine).
Moore, G. E., 520 (de Maeztu).
Moral rightness of state action, 95 (Bentham); 121–122, 125–126 (Austin); 179–180 (Kant); 189, 202–204 (Hegel); 270–271, 276–279 (Green); 293–297 (Bosanquet); 526–528 (de Maeztu); 534–536, 547–548, 549–550 (Laski).
Morality, 187, 188 (Hegel); 520–522 (de Maeztu); 609–610, 613–614 (Pound).
Morality as criterion of law, 506–507

(Krabbe); 555–556 (Dicey); 584–590 (Stammler).
More, 433 (Shaw).
Mores, 619, 622, 629 (Cardozo).
Motor level in political experience, 658–669 (Follett).
Municipal ownership, 651–652, 656 (Bentley). *See* public services.
Mussolini, 695, 696–697, 699–700 (Gentile).
Myths, 393–398 (Sorel).

Napoleon, 299 (Treitschke).
Napoleonic battle, 390, 393–394 (Sorel).
Nation, in contrast to state, 473–474 (Duguit).
National Assembly, French, of 1789, 9 (Declaration of the Rights of Man and Citizen); 35, 36, 37 (Paine); 40 (Constitution of 1791); 59–60 (Burke).
National self-sufficiency, 733, 736–741 (Lorwin).
Nationalism, 298–312 (Treitschke); 336, 348–349, 352 (Marx and Engels); 693–694, 698–699, 700 (Gentile); 723–725 (Butler); 732–741 (Lorwin).
Natural law, 94–95 (Blackstone); 94–95 (Bentham); 105 (Austin); 210 (Mill); 264–266 (Green); 555–556 (Dicey); 586–587 (Stammler); 681 (Rocco). *See* natural rights.
Natural rights, 3 (Declaration of Independence); 6 (Virginia Declaration of Rights); 9 (Declaration of the Rights of Man and Citizen); 30–32 (Paine); 40–42 (Constitution of 1791); 62, 62n. (Burke); 176 (Kant); 472–473, 476 (Duguit); 599 (Pound); 686 (Rocco); 719–720 (Lippmann). *See* individualism and natural law.
Natural society. *See* nature, state of.
Nature, state of, 79 (Blackstone); 78–83 (Bentham); 113–114, 126–128 (Austin). *See* origin of governments.
Nature of the Judicial Process, The (Cardozo), 615–626.
Neighbor, being one's own, 596–597 (Stammler).
Neighborhood, 291, 293 (Bosanquet); 667–668 (Follett).
Neo-idealism, 693 (Gentile); 701–721 (Lippmann).
Neo-Kantianism, 581–597 (Stammler).
Neo-nationalism, 701–721 (Lippmann); 732–736 (Lorwin).
Neutralists, 689–690, 694 (Gentile).
Neutrality, Italian, 689–690 (Gentile).
New Deal, 712, 720 (Lippmann); 741 (Lorwin); 755 (Brailsford).
New Institution at New Lanark, 328–333 (Owen).
New Lanark, experiment at, 324–333 (Owen).
New View of Society, A (Owen) 324–333.
Newfoundland, abolition of dominion government in, 750 (Brailsford).
Normative law. *See* law, normative.
Norms for international conduct, 526–528 (de Maeztu).

Obedience, 530–534, 535–536 (Laski); 666–667 (Follett).
Obedience, habit of, 79–83 (Bentham); 110–111 (Austin).
Objective law, 471–493 (Duguit); 628–629 (Cardozo).
Obligations of governments. *See* duty of the state and public services.
Old age pensions, 331–332 (Owen); 719 (Lippmann).
Opportunism, 392, 394, 398, 402, 404, 405, 407 (Sorel); 412, 415, 422, 424 (Lenin). *See* Fabian socialism.
Organic law. *See* law, organic.
Origin of governments, 32–34 (Paine); 184 (Kant); 478 (Duguit).
Original contract. *See* contract, social.
Original covenant. *See* contract, social.
Ostrogorski, 637 (Wallas).
Ottawa Conference, 748–749 (Brailsford).
Over-production, 315 (Owen); 338–339 (Marx and Engels); 739–740, 742 (Lorwin); 750–752 (Brailsford).

Owen, Robert, 313–314; *Report to the Committee for the Relief of the Manufacturing Poor*, 314–324; *A New View of Society*, 324–333; 244 (Spencer); 735 (Lorwin).

Pacifism, 525–526. *See* arbitration, internationalism, and war.
Paine, Thomas, 29–30; *The Rights of Man*, 30–40; 66 (de Maistre).
Paley, 107 (Austin).
Palmerston, 746 (Brailsford).
Parliamentarianism, 415 (Marx); 415 (Lenin); 461 (Cole).
Parliamentary government, 36, 39 (Paine); 197, 198 (Hegel); 435 (Shaw); 506 (Krabbe); 544 (Laski); 564, 565–568 (Dicey).
Parliamentary socialists. *See* opportunism.
Parliamentary sovereignty, 552–568 (Dicey).
Parliamentary system. *See* parliamentary government.
Participation, principles of, 597 (Stammler).
Parties, political. *See* political parties.
Paternalism, 166 (Kant); 210–213 (Mill); 256–262 (Spencer); 265 (Green); 286–289 (Bosanquet); 718–721 (Lippmann). *See* totalitarianism.
Patria potestas, 159–162 (Maine).
Peace, Perpetual. See Perpetual Peace.
Peace, Property or (Brailsford), 744–756.
Pearson, Karl, 638 (Wallas).
Penal law. *See* law, penal.
People, the idea of the, 32–35 (Paine); 55–59 (Burke); 174n. (Kant); 191–192 (Hegel). *See* majority, right of the.
Perpetual Peace (Kant), 184n.; 203 (Hegel); 754 (Brailsford).
Personality. *See* individuality.
Personality of the state, 300–302 (Treitschke); 529–530 (Laski).
Philosophic Basis of Fascism, The (Gentile), 689–700.
Philosophical Theory of the State, The (Bosanquet), 279–297.
Philosophy, legal. *See* jurisprudence and legal philosophy, function of.
Philosophy, materialistic interpretation of, 349–350 (Marx and Engels).
Philosophy, method of, in judicial decision, 619–621 (Cardozo); 657–658 (Bentley).
Philosophy of Law, An Introduction to the (Pound), 598–615.
Philosophy of Law, The (Kant), 179–185.
Philosophy of Right, The (Hegel), 187–206.
Pitt, 35 (Paine); 202 (Hegel).
Planlessness, 419 (Engels); 419 (Lenin).
Planned economy. *See* directed economy and economic planning.
Plato, 68 (de Maistre); 284 (Bosanquet).
Plebiscite, 687–688 (Rocco).
Pluralism, 528–550 (Laski); 665–667 (Follett); 678–679 (Dewey). *See* associations, groups, and guild socialism.
Plurality of votes, 237–239 (Mill).
Plutarch, 67 (de Maistre).
Poisons, sale of, 224–225 (Mill).
Political activities of state, 453–454, 457, 459 (Cole).
Political conception of state, 310–311 (Treitschke).
Political Doctrine of Fascism, The (Rocco), 681–689.
Political general strike, 401–405 (Sorel).
Political groups, 648–650 (Bentley).
Political Obligation, Lectures on the Principles of (Green), 263–279.
Political parties, 13–18 (*Federalist*); 401–402 (Sorel); 415 (Marx); 415, 424 (Lenin); 435 (Shaw); 636–637 (Wallas); 649–650 (Bentley); 715–717 (Lippmann).
Political power, nature of, 351 (Marx and Engels).
Political reasoning, material of, 635–639 (Wallas).
Political reasoning, method of, 640–647 (Wallas).
Political society, 79 (Blackstone); 78–83 (Bentham); 112–114, 126–128 (Austin); 267 (Green). *See* origin of governments and state, idea of the.

Political sovereignty, 559, 566–568 (Dicey); 573–574 (Dickinson).
Politics (Treitschke), 297–312.
Politics, A Grammar of (Laski), 536–550.
Politics, Human Nature in (Wallas), 634–647.
Politics, subjective and objective, 520–522 (de Maeztu).
Polygons of variation, 638, 642–643, 646–647 (Wallas).
Poor, condition of, 314–317 (Owen).
Poor, Report to the Committee for the Relief of the Manufacturing (Owen), 313–324.
Poor Law, the, 437 (Shaw); 644–647 (Wallas). *See* poor relief.
Poor relief, 236–237 (Mill); 257–259 (Spencer); 316, 321–322 (Owen). *See* Poor Law.
Pope, the, 33, 36 (Paine); 335 (Marx and Engels); 519 (de Maeztu); 562 (Dicey); 571 (Dickinson).
Positive law. *See* law, positive.
Positivism, 692–693 (Gentile).
Possession, 355, 367–368 (Proudhon).
Pound, Roscoe, 598; *An Introduction to the Philosophy of Law*, 599–615; 622, 626, 631 (Cardozo).
Power, 517–519 (de Maeztu); 660, 661–662 (Follett). *See* coercion.
Pragmatism, 174, 179 (Kant); 533–536 (Laski); 607–608 (Pound); 669–679 (Dewey); 684 (Rocco); 696–697 (Gentile).
Precedent, 109–110 (Austin); 148 (Maine); 574–575 (Dickinson); 616–623, 630–633 (Cardozo). *See* customary law and law, common.
Prerogative, 556, 566, 567 (Dicey).
Press, freedom of. *See* freedom of speech and of the press.
Pressure, analysis of group, 647–658 (Bentley).
Pressure groups, 713, 715–717 (Lippmann).
Price control, 431–432 (Shaw); 458–459 (Cole); 708–709, 712–713 (Lippmann).
Priestley, *Essay on Government*, 77; 554 (Dicey).
Prince, function of the, 190–194 (Hegel). *See* divine right and monarchy.
Principles, legal, 609 (Pound).
Principles derived from idea of the social ideal, 594–597 (Stammler).
Principles of Political Obligation, Lectures on the (Green), 263–279.
Principles of Political Right, The (Kant), 163–179.
Private enterprise, 710–711 (Lippmann). *See laissez-faire.*
Process of Government, The (Bentley), 647–658.
Procurors, 225–226 (Mill).
Profits, 745–754 (Brailsford). *See* increase, right of, property, and rent.
Progressive societies, 152, 161–162 (Maine).
Prohibition of intoxicants, 224, 226, 227 (Mill).
Proletariat, 335–352 (Marx and Engels); 389–401, 404–405 (Sorel); 411, 413, 417, 418, 419, 421 (Engels); 413, 414, 423 (Marx); 410–429 (Lenin); 716–717 (Lippmann); 746–747 (Brailsford). *See* class struggle, exploitation, and labor.
Promises, validity of, 84, 86–88 (Bentham).
Property, 6 (Virginia Declaration of Rights); 11 (Declaration of the Rights of Man and Citizen); 14–16 (*Federalist*); 41 (Constitution of 1791); 60n. (Burke); 166–169 (Kant); 187–188 (Hegel); 243–248 (Spencer); 308 (Treitschke); 343–346, 350–352 (Marx and Engels); 354–368 (Proudhon); 369–372, 374–378, 383–384 (Kropotkin); 417–418, 427–428 (Lenin); 433–436, 443–445 (Shaw); 468–469 (Cole); 483 (Duguit); 527 (de Maeztu); 688 (Rocco); 710–711, 717–718 (Lippmann); 745–756 (Brailsford). *See* bourgeoisie and exploitation.
Property, What is (Proudhon), 353–368.
Property or Peace (Brailsford), 744–756.
Property qualifications for voting. *See* franchise and plurality of votes.
Proportionality, 365–366 (Proudhon).

Proprietor. *See* bourgeoisie and property.
Protection, 15 (*Federalist*); 172n. (Kant); 389 (Sorel); 431–432 (Shaw); 747–752 (Brailsford). *See* tariffs.
Proudhon, Pierre Joseph, 353–354; *What is Property?* 354–358; 418 (Engels).
Psychological approach to political science, 634–647 (Wallas); 647–658 (Bentley); 658–669 (Follett); 669–679 (Dewey).
Psychology in relation to law, 574–575 (Dickinson); 606 (Pound).
Psychology in relation to politics, 636–637 (Wallas).
Psychology in relation to sovereignty, 572, 574–575 (Dickinson).
Public, nature of the, 670–679 (Dewey).
Public and Its Problems, The (Dewey), 669–679.
Public opinion, 106, 112 (Austin); 176–177 (Kant); 201 (Hegel); 210, 217–218 (Mill); 273 (Green); 385–386 (Kropotkin); 480 (Duguit); 650–652, 656–658 (Bentley); 663 (Follett); 713–714 (Lippmann); 726–727 (Butler).
Public services, 254–262 (Spencer); 286–288 (Bosanquet); 437–438, 440–445 (Shaw); 452–453, 458–459 (Cole); 477–481, 482–484 (Duguit); 510–512 (Krabbe); 541–542 (Laski); 607–608 (Pound); 678–679 (Dewey); 719 (Lippmann). *See laissez-faire* and public utilities.
Public utilities, 604, 610, 613 (Pound); 709–710 (Lippmann).
Public works, 709–710, 720 (Lippmann); 742 (Lorwin).

Quantitative method in reasoning, 636, 637–638, 640–647 (Wallas).
Quantity, transformation of, into quality, 414 (Lenin).

Racialism, 737 (Lorwin). *See* nationalism.
Railroads, 374, 380–381 (Kropotkin). *See* communications.
Reaction, conservative, 46–63 (Burke); 63–76 (de Maistre).
Real will. *See* general will.
Reasoning, political. *See* political reasoning.
Red Cross, 381–382 (Kropotkin).
Reflections on the Revolution in France (Burke), 51, 54n., 60n., 62n.
Reflections on Violence (Sorel), 388–408.
Reform Bills, 437, 438 (Shaw). *See* franchise.
Regimentation, 228 (Mill); 358 (Proudhon); 706–707, 711, 712 (Lippmann).
Relief of the Manufacturing Poor, Report to the Committee for the (Owen), 313–324.
Religion, 71, 74–76 (de Maistre); 147–151 (Maine); 311 (Treitschke); 349–350 (Marx and Engels); 422 (Lenin); 446 (Shaw); 454–455, 460 (Cole); 530, 531, 533, 538 (Laski); 583 (Stammler); 673, 675–676 (Dewey); 693 (Gentile). *See* religious toleration.
Religious toleration, 8–9 (Virginia Declaration of Rights); 10 (Declaration of the Rights of Man and Citizen); 32, 36 (Paine); 41 (Constitution of 1791); 210–211, 216 (Mill); 421–422 (Engels); 534 (Laski). *See* religion.
Rent, 244 (Spencer); 350 (Marx and Engels); 357, 360 (Proudhon); 371, 376 (Kropotkin); 418 (Engels); 418 (Lenin); 433–434, 439–445 (Shaw). *See* property.
Report to the Committee for the Relief of the Manufacturing Poor (Owen), 313–324.
Representation, basis of, 460–463 (Cole); 503–505 (Krabbe); 541–543, 544, 547 (Laski). *See* representative government.
Representation, functional. *See* functional representation.
Representative government, 16–18 (*Federalist*); 38–40 (Paine); 198 (Hegel); 229–241 (Mill); 415 (Lenin); 480 (Duguit); 544–547 (Laski); 713–715 (Lippmann).

Representative Government, Considerations on (Mill), 229–241.
Republican government, 16–18 (*Federalist*); 39 (Paine); 50 (Burke); 184–185, 184n. (Kant); 420, 422–423 (Lenin). *See* democracy and representative government.
Resistance and revolution, right of, 3 (Declaration of Independence); 7 (Virginia Declaration of Rights); 48–50 (Burke); 95–96, 97–98 (Bentham); 172–176 (Kant); 274–276 (Green); 289 (Bosanquet); 531, 535, 547–548, 549–550 (Laski).
Respect, principles of, 596–597 (Stammler).
Responsibility of the state, 544–547 (Laski). *See* duty of the state and parliamentary government.
Revolution, 48–51 (Burke); 350–352 (Marx and Engels); 369–372, 374–378 (Kropotkin); 390–393, 399–401 (Sorel); 411, 413, 417 (Engels); 410–413, 417 (Lenin); 423 (Marx); 436–437, 446–447 (Shaw); 544, 549 (Laski); 660–661 (Follett). *See* revolution, communist, in institutions and ideas, and resistance and revolution, right of.
Revolution, American, philosophy of, 1–6 (Declaration of Independence); 6–9 (Virginia Declaration of Rights); 623 (Cardozo); 681 (Rocco).
Revolution, communist, in institutions and ideas, 343–352 (Marx and Engels).
Revolution, English, of 1688, 49, 51 (Burke); 173 (Kant); 681 (Rocco).
Revolution, French, events of, 374 (Kropotkin); 392–393, 403, 406–408 (Sorel).
Revolution, French, philosophy of the, 1–3; 9–11 (Declaration of the Rights of Man and Citizen); 29–40 (Paine); 40–45 (Constitution of 1791), 51–62 (Burke); 65–66, 68, 69–70, 75–76 (de Maistre); 472–473 (Duguit); 681, 689 (Rocco).
Revolution, Industrial. *See* Industrial Revolution.
Revolution, right of. *See* resistance and revolution, right of.
Revolution, State and (Lenin), 409–429.
Revolution in France, Reflections on the (Burke), 46, 51, 54n., 60n., 62n.
Ricardo, 435 (Shaw).
Right, definition of, 165, 179–182 (Kant); 187–188 (Hegel); 212 (Mill).
Right, sense of, 496–515 (Krabbe); 587–588 (Stammler).
Right of resistance. *See* resistance and revolution, right of.
Right of revolution. *See* resistance and revolution, right of.
Right to work, 720 (Lippmann).
Rights, individual. *See* natural rights.
Rights, natural. *See* natural rights.
Rights, nature of, 60n., 62n., (Burke); 247 (Spencer); 272–274 (Green); 289 (Bosanquet); 366–367 (Proudhon); 518–519, 521–522, 523–524 (de Maeztu); 533–536, 539–540 (Laski).
Rights against the state, 176 (Kant); 270–274 (Green); 539–540, 548–550 (Laski). *See* duty of the state, natural rights, and resistance and revolution, right of.
Rights of man. *See* Declaration of the Rights of Man and Citizen, natural rights, and *The Rights of Man.*
Rights of Man, The (Paine), 29–40.
Rights of Man and Citizen, Declaration of the. *See* Declaration of the Rights of Man and Citizen.
Risorgimento, 690–693 (Gentile).
Robbery, 354, 359–360 (Proudhon). *See* exploitation.
Robespierre, 370 (Kropotkin).
Rocco, Alfredo, 680–681; *The Political Doctrine of Fascism,* 681–689.
Roman law. *See* law, Roman.
Roosevelt, 655 (Bentley).
Rousseau, 270 (Green); 281, 282, 283 (Bosanquet); 449 (Cole); 473, 481 (Duguit); 532, 542 (Laski); 586 (Stammler).
Royalty, 360–365 (Proudhon). *See* divine right and monarchy.
Rules, legal, 609 (Pound).
Russell, Lord John, 437 (Shaw).

Sacheverell, Dr., 51 (Burke).
Sanction of law, 107 (Austin).
Sanitation, 261–262 (Spencer).
Savigny, Friedrich Karl, 132–133; *Of the Vocation of Our Age for Legislation and Jurisprudence*, 133–146; 587, 588 (Stammler).
Scarcity, economy of, 711–712 (Lippmann).
Science, politics as, 363–365 (Proudhon).
Scientific method in political science, 634–647 (Wallas).
Scientific socialism. *See* socialism, scientific.
Security, general, as end of law, 600–603 (Pound).
Self-assertion as end of law, 602–606 (Pound).
Self-dependency, 168–170 (Kant).
Self-government, 209–210 (Mill); 280–284 (Bosanquet); 661–662 (Follett). *See* democracy.
Self-realization, 264–266 (Green); 539 (Laski).
Self-regarding actions, 222–223 (Mill).
Separation of powers, 7 (Virginia Declaration of Rights); 11 (Declaration of the Rights of Man and Citizen); 18–23 (*Federalist*); 91 (Blackstone); 91–92 (Bentham); 182–183 (Kant); 197–199 (Hegel); 463 (Cole); 486 (Duguit); 713 (Lippmann).
Septennial Act, 35, 36 (Paine); 552–554 (Dicey).
Serfdom, 342 (Marx and Engels); 383 (Kropotkin).
Seydel, 477 (Duguit).
Shaw, George Bernard, 430–431; *Transition*, 431–447.
Slavery, 90n. (Bentham); 161 (Maine); 342 (Marx and Engels); 383 (Kropotkin); 411 (Engels); 424 (Lenin); 433 (Shaw).
Social conception of state, 310–311 (Treitschke).
Social Democrats. *See* opportunism and socialism.
Social engineering, 607–608 (Pound).
Social ideal, 593–597 (Stammler).
Social insurance, 719 (Lippmann).
Social services. *See* public services.
Social Statics (Spencer), 241–262.
Social Theory (Cole), 447–470.
Socialism, 246–247 (Spencer); 307 (Treitschke); 313–332 (Owen); 372 (Kropotkin); 393, 394, 395, 397, 398, 400, 401, 402, 405, 407 (Sorel); 423, 426–427 (Lenin); 430–447 (Shaw); 447–470 (Cole); 522–523 (de Maeztu); 542–543 (Laski); 643 (Wallas); 648 (Bentley); 682–684, 686, 688 (Rocco); 693, 695 (Gentile); 717 (Lippmann); 735–736 (Lorwin); 754–756 (Brailsford). *See* communism, Marx, and opportunism.
Socialism, Fabian, 430–447 (Shaw). *See* opportunism.
Socialism, guild, 447–470 (Cole); 542–543 (Laski).
Socialism, national, 735–736 (Lorwin).
Socialism, scientific, 333–352 (Marx and Engels); 409–429 (Lenin); 643 (Wallas).
Socialism, state, 372 (Kropotkin); 419 (Lenin); 458 (Cole).
Socialism, Utopian, 313–333 (Owen); 435 (Shaw); 395, 398, 400 (Sorel); 416, 425, 427 (Lenin).
Society, 79 (Blackstone); 79–83 (Bentham); 285–286 (Bosanquet); 307–312 (Treitschke); 684 (Rocco).
Society, natural. *See* nature, state of.
Society, A New View of (Owen), 324–332.
Society, political. *See* political society.
Society, primitive, 147–149, 154–158 (Maine).
Society, sphere of control by, 211–212, 220–229 (Mill). *See* duty of the state.
Sociological approach to law, 598–615 (Pound); 622–626, 632–633 (Cardozo).
Sociology, method of, in judicial decision, 619, 622–626 (Cardozo).
Socrates, 216 (Mill).
Sorel, Georges, 388–389; *Reflections on Violence*, 389–408; 693, 695 (Gentile).
Sovereign, duty of, 101 (Blackstone); 101–104 (Bentham). *See* duty of

the state, and moral rightness of state action.
Sovereign, rights of, 125–126 (Austin). *See* state, rights of.
Sovereignty, 9 (Declaration of the Rights of Man and Citizen); 39–40 (Paine); 42 (Constitution of 1791); 50–51 (Burke); 79–83, 94–102 (Bentham); 104–131 (Austin); 166, 171–172 (Kant); 191–192 (Hegel); 270–271 (Green); 281, 283–284, 285–286, 292–295 (Bosanquet); 302–307 (Treitschke); 363–365 (Proudhon); 460, 464, 467–468 (Cole); 471–493 (Duguit); 494–496, 512–515 (Krabbe); 531–536, 540–542 (Laski); 551–568 (Dicey); 568–580 (Dickinson); 687 (Rocco).
Sovereignty, abdication of, 557n. (Dicey).
Sovereignty, distinction between political and legal, 551–568 (Dicey); 573–574 (Dickinson).
Sovereignty, evolution of concept of, 569–574 (Dickinson).
Sovereignty, international law concept of, 571–572 (Dickinson).
Sovereignty, juristic concept of, 570–571 (Dickinson).
Sovereignty, limitations upon, 96, 96n., 99–101, 101n. (Bentham); 120–126 (Austin); 558–564 (Dicey); 572–574 (Dickinson).
Sovereignty, location of, 576–579 (Dickinson).
Sovereignty, political. *See* political sovereignty.
Sovereignty, popular, 572–573 (Dickinson); 687 (Rocco).
Sovereignty, state, 495 (Krabbe); 576–578 (Dickinson); 687 (Rocco).
Sovereignty, A Working Theory of (Dickinson), 568–580.
Sovereignty in the United States, 118 (Austin); 578–579 (Dickinson).
Sovereignty of the State, The (Laski), 529–536.
Spanish jurist theologians, 602–603 (Pound).
Speculation, 708 (Lippmann).
Spencer, Herbert, 241–242; *Social Statics*, 242–262; *Justice*, 242n., 245n., 246n., 247n., 249n., 250n., 251n., 253n.; 433, 438 (Shaw); 623 (Cardozo).
Stammler, Rudolf, 581–582; *The Theory of Justice*, 582–597; 633 (Cardozo).
Standards, legal, 609–611, 613 (Pound).
Stanhope, 553 (Dicey).
Stare decisis, 614 (Pound); 618 (Cardozo).
State. *See* society and sovereignty.
State, evolution of, 674–675 (Dewey).
State, expansion of, 285, 296–297 (Bosanquet).
State, functions of, 253–257 (Spencer); 265 (Green); 286–289 (Bosanquet); 452–455, 457–460 (Cole); 475–479 (Duguit); 510–512 (Krabbe); 541–543 (Laski); 673–674 (Dewey).
State, idea of the, 164–170 (Kant); 187–190 (Hegel); 256–257 (Spencer); 267 (Green); 283–286 (Bosanquet); 298–307 (Treitschke); 411 (Engels); 412, 414, 422–423 (Lenin); 435–438 (Shaw); 455–456 (Cole); 477–478 (Duguit); 507–512 (Krabbe); 530–533, 537–540 (Laski); 669–679 (Dewey); 685–686 (Rocco); 698–700 (Gentile); 747 (Brailsford). *See* political society.
State, liability of, 489–493 (Duguit).
State, The Modern Idea of the (Krabbe), 493–515.
State, moral rightness of. *See* moral rightness of state action.
State, The Philosophical Theory of the (Bosanquet), 279–297.
State, responsibility of. *See* responsibility of state.
State, rights of, 686 (Rocco). *See* sovereign, rights of.
State, The Sovereignty of the (Laski), 528–536.
State, structure of, 454–457 (Cole).
State, The Transformation of the Theory of the (Duguit), 471–493.
State, withering away of the. *See* withering away of the state.
State and Revolution (Lenin), 409–429.
State machinery, 413–416 (Lenin).
State of nature. *See* nature, state of.

Statute of Westminster, 749–750 (Brailsford).
Statutory law. *See* law, statutory.
Status, 162 (Maine).
Status quo, 525–526 (de Maeztu); 601–603 (Pound).
Stephens, Leslie, 562–563 (Dicey).
Strikes, 231–232 (Mill); 389–390, 397, 399, 400, 407–408 (Sorel). *See* general strike and political general strike.
Subjective morality and politics, 520–522 (de Maeztu).
Suffrage. *See* franchise.
Supreme power. *See* sovereignty.
Sweating, 441, 443 (Shaw).
Syndicalism, 388–408 (Sorel); 523 (de Maeztu); 689 (Rocco); 693, 694, 695, 700 (Gentile).
Syndicates, 388–408 (Sorel); 689 (Rocco); 699–700 (Gentile). *See* trade unions.
Synthesis, 358, 365–368 (Proudhon).

Tacitus, 155 (Maine).
Tammany, 655 (Bentley); 716–717 (Lippmann).
Tariffs, 710 (Lippmann); 734–736 (Lorwin); 747–752 (Brailsford). *See* free trade, foreign trade, and protection.
Taxation, 5 (Declaration of Independence); 7 (Virginia Declaration of Rights); 10–11 (Declaration of the Rights of Man and Citizen); 15 (*Federalist*); 39 (Paine); 41 (Constitution of 1791); 170n. (Kant); 198–199 (Hegel); 256–257 (Spencer); 286–287 (Bosanquet); 350 (Marx and Engels); 437–445 (Shaw); 453, 458–459 (Cole); 709 (Lippmann).
Tax-paying qualification for voting, 42 (Constitution of 1791); 235–236 (Mill).
Test oaths, 217 (Mill).
Themistes, 147–149, 156, 160 (Maine).
Theory, Social (Cole), 447–470.
Theory of Justice, The (Stammler), 581–597.
Theory of Sovereignty, A Working (Dickinson), 568–580.
Theory of the State, The Philosophical (Bosanquet), 279–297.
Theory of the State, The Transformation of the (Duguit), 471–493.
Thesis, 358 (Proudhon).
Things, primacy of, 519, 522–525 (de Maeztu).
Third estate, 35 (Paine); 336 (Marx and Engels).
Toleration, religious. *See* religious toleration.
Totalitarianism, 696–698 (Gentile).
Toullier, 355 (Proudhon).
Trade, foreign. *See* foreign trade.
Trade, free. *See* free trade.
Trade unions, 41 (Constitution of 1791); 213, 231–232 (Mill); 340 (Marx and Engels); 388–408 (Sorel); 454–455, 457, 460, 468–469 (Cole); 530, 533, 538, 544–545 (Laski); 663–664, 666 (Follett); 673, 678 (Dewey); 751 (Brailsford). *See* syndicates.
Tradition, method of, in judicial decision, 619, 621–622 (Cardozo).
Transactions. *See* contract.
Transformation of the Theory of the State, The (Duguit), 471–493.
Transition (Shaw), 430–447.
Transportation. *See* communications and railroads.
Treaties, 203–204 (Hegel); 303–304 (Treitschke); 466–467 (Cole); 526 (de Maeztu).
Treitschke, Heinrich von, 297–298; *Politics*, 298–312.
Tribute, 746–747. *See* imperialism.
Trusts, 419 (Lenin); 741–742 (Lorwin); 753 (Brailsford).
Truths, eternal, 349–350 (Marx and Engels).
Tucker, Benjamin, 354; 433 (Shaw).
Turgot, 128 (Austin); 433 (Shaw).

Unemployment relief, 314–324 (Owen); 709–710, 712, 719–720 (Lippmann).
Union, Acts of. *See* Acts of Union.
Unions, trade. *See* trade unions.
Unwritten law. *See* law, unwritten.
Utilitarianism, 77–104 (Bentham); 104–131 (Austin); 207–241 (Mill); 636, 644–646 (Wallas); 606–608 (Pound).

Utility. *See* happiness.
Utopian socialism. *See* socialism, Utopian.

Versailles, Treaty of, 755 (Brailsford).
Veto, 20–23 (*Federalist*).
Villages, cooperative, 317–324 (Owen).
Violence, Reflections on (Sorel), 388–408.
Violence contrasted with force, 404–405 (Sorel); 413 (Engels).
Virginia Declaration of Rights, 1–2, 6–9.
Vocation of Our Age for Legislation and Jurisprudence, Of the (Savigny), 132–146.
Vocational representation. *See* functional representation.
Voltaire, 72–74 (de Maistre).
Votes. *See* franchise and plurality of votes.

Wages, 336, 339, 342–343, 344, 346 (Marx and Engels); 372, 383, 385 (Kropotkin); 411 (Engels); 414 (Marx); 414, 416, 425 (Lenin); 431, 437, 441, 443, 444 (Shaw); 750, 752 (Brailsford).
Wallas, Graham, 634–635; *Human Nature in Politics*, 635–647; 532, 535 (Laski).
Walpole, 554 (Dicey).
Wants, harmonizing of, as end of law, 605–606 (Pound).
War, 170n. (Kant); 201–204 (Hegel); 256 (Spencer); 276–279 (Green); 294–295 (Bosanquet); 302–307, 309 (Treitschke); 330–331 (Owen); 381–382 (Kropotkin); 402–404, 406–408 (Sorel); 466–467 (Cole); 476, 492 (Duguit); 525–527 (de Maeztu); 724–725 (Butler); 737–739 (Lorwin); 745, 752 (Brailsford). *See* armaments, class struggle, and international relations.
Webb, Sidney, 395 (Sorel).
Weimar Constitution, 755 (Brailsford).
Welfare. *See* happiness.
Westminster, Statute of, 749–750 (Brailsford).
What is Property? (Proudhon), 353–368.
Whigs, 47–51, 61 (Burke); 435 (Shaw).
Whigs, An Appeal from the New to the Old (Burke), 46–63.
Will, free. *See* free will.
Will, general. *See* general will.
Will that turns back, 187, 205 (Hegel); 283–284 (Bosanquet).
Will theory of state, 449–450 (Cole). *See* general will.
Wilson, 660 (Follett).
Withering away of the state, 411 (Engels); 412–413, 425–426, 427–429 (Lenin).
Woman suffrage, 239–241 (Mill); 250, 250n. (Spencer); 438 (Shaw).
Women, position of, 248–250 (Spencer); 348 (Marx and Engels); 379–380 (Kropotkin).
Wordsworth, 644 (Wallas).
Work, the right to, 720 (Lippmann).
Working class. *See* labor and proletariat.
Working Theory of Sovereignty, A (Dickinson), 568–580.
World Court, 729–730 (Butler).
World federation, 296, 296n. (Bosanquet); 754–756 (Brailsford). *See* League of Nations.
World history, 188, 205–206 (Hegel).
World spirit, 188, 205–206 (Hegel).
World state, 301–302 (Treitschke).
Written constitution, fallacy of, 64–69 (de Maistre).