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A SHORT HISTORY OF DEMOCRACY

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A SHORT HISTORY OF DEMOCRACY

by

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PREFACE

THE nineteenth century witnessed a notable development of democratic principles. One hundred years ago, government almost everywhere was in the hands of wealthy or influential men. The French Revolution proclaimed the doctrine that only in a democratic state could liberty exist, but the implications of popular sovereignty were not fully worked out till a much later date. In the first decade of the twentieth century, a considerable area of western Europe remained under autocratic rule. The desire for self-government was, however, everywhere becoming more powerful. Democracy was evidently in accordance with the trend of affairs. It remained for the Great War decisively to vindicate the principles of democratic government, and its conclusion has been followed by the wide extension of popular constitutions. The forms of self-government are now almost universal. In the new constitutions of the post-War epoch, equal universal suffrage is the rule. At the same time, the principles of democracy have been applied to international relations. Nevertheless, it would be rash to assume that all nations are capable of maintaining and developing free institutions. Under unfavourable conditions, parliamentary government has already proved a failure and been abandoned in some countries of western Europe. But the failure of democratic forms of government may be no more than an indication that these forms have not been vitalised by the spontaneous energy and intelligent co-operation of the people. Democracy is not purely a

matter of political machinery. A nation cannot be truly self-governing without the knowledge of affairs and the opportunity to exercise a well-informed public opinion. There must be a clear understanding of the problems of government and a vigorous spirit of mutual responsibility. Without these qualities of mind and spirit, the establishment of the democratic system may involve disaster.

The writer has been sufficiently optimistic to think that a brief survey of the history of democratic government might be of service in exhibiting the tendencies of various governmental forms. Knowledge of the changes and developments which have taken place in the past may, not unreasonably, be expected to assist the citizen of the twentieth century to give rational direction to his political ideas and aspirations. Of late years, the question which has come to the forefront is the manner in which the mass of enfranchised citizens will use their new power. This can only depend upon the average standard of knowledge and capacity. In small political communities it is relatively easy to promote self-determination, and consequently to make popular government a living reality. The tendency of the present age, however, is towards larger political units. Can popular sovereignty be effective in the complex communities of the modern era? One method of maintaining spiritual vitality in great states is to establish direct popular control of legislation and administration. This involves modification of the representative system, and a partial return to the democratic practice of antiquity. The wisdom of such modification is a political problem of the greatest magnitude. Is representative government the only form of democracy which is practicable under modern conditions,

and are the devices of the initiative and the referendum compatible with the retention of the parliamentary system?

To attempt a comprehensive and unprejudiced examination of the forms of democracy in the past, and of the principles upon which they have rested, would be to undertake the task of a lifetime. The writer's object has been more modest. He has sought to trace, in brief outline only, the path of political development, and to lay bare the process by which the democratic institutions of the present day have come to be established. He has found it necessary to furnish a short description and analysis of the main types of democratic government, in order that their comparative merits might be examined. The analysis has been somewhat more detailed in the case of those forms of direct democracy which existed in the city states of antiquity, for the fundamental problems of modern politics were evidently problems for the Athenians and Romans also. It is not suggested that the lessons of history can be readily applied to the solution of these problems, but only that a working acquaintance with constitutional development may help to make fundamental issues clearer, and perhaps to indicate the advantage of certain methods of dealing with political questions. At the same time, care has been taken to judge institutions not by their abstract merits, but in relation to the political and social circumstances under which they were utilised.

It has been no part of the writer's purpose to expound doctrines of political philosophy. On the other hand, the changing outlook of man on the problems of government has found expression in institutional growth, and it has accordingly been necessary to insert, here and

there in the narrative of political development, a brief discussion of democratic theory.

It will be manifest to readers of this book that the writer has made full use of secondary authorities. He desires to acknowledge a special debt to the volumes of the late Lord Bryce.

January 1930 A. F. H.

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A SHORT HISTORY OF DEMOCRACY

CHAPTER I

The Meaning of Democracy

ONE hundred years ago the political and social system of Europe was aristocratic. We may safely say that it has now become predominantly democratic. What is the meaning which lies behind these words?

In its general and commonest sense, democracy is government subjected to popular sovereignty. Legislation and administration are under the control of persons elected by universal, or at least wide, popular suffrage. To Sir Henry Maine, democracy was "simply and solely a form of government....It is government of the state by the many".[1] In *political* democracy, the common element is the vesting of supreme power in the majority of the citizen body.

A very important assumption is at the basis of this explanation. It is implied that democracy is a matter of politics. Now there is no general agreement in support of this proposition. To many, democracy is a spirit, or aspiration, which may animate society. It is a moral and religious principle, and its authentic note is belief in the fundamental equality of man. A democratic society will not tolerate governmental interference with the personal

1 *Popular Government* (1885), p. 59.

habits and normal occupations of citizens. Attachment to personal freedom is found at very remote periods of history, and *social* democracy is accordingly said to be of greater antiquity than *political*.[1]

As an aspiration or tendency, democracy is clearly progressive. It rests on the principles of liberty and equality, and these principles admit of degrees. The full expression of the democratic ideal postulates a society of equals, each citizen having entire liberty to realise his aspirations and, in return, sharing in the moral responsibility towards the community. It is recognised that every member of the state has his own life to lead and his own contribution to make towards the general well-being of the whole. Belief in the value of the distinctive contribution which every one has to make is fundamental in democracy. It gives real meaning to the doctrine of human equality. It implies that the welfare of all is the end of society, and it involves the repudiation of every form of restriction and privilege. Its animating force is faith in humanity and in the moral worth of each citizen. The contribution which each makes is not indeed assumed to be of equal value. But the business of the democratic state is to guarantee that individual points of view shall find expression. The spontaneous activity of the individual is the end of government, and all are responsible for the active promotion of the common good. Participation in the management of public affairs is thus both a privilege and a responsibility.

This is to take a wide view of the meaning of democracy. As a progressive ideal, it can function in every

1 Chap. ii, *passim*. Even under feudalism the everyday occupations of the common man were regulated by the custom of the community, rather than by the will of his superiors.

department of social life. In this book, we shall be mainly concerned with the application of democracy to the problems of political government. We shall be concerned with communities which have adopted, in greater or less degree, the principle that government must be roughly in accordance with the general will of the people. We shall have to discuss not merely the principles of democracy, but also the machinery by which men have sought to give expression to those principles. This distinction is sometimes[1] expressed in another way. There is the democratic state, and there is democracy in the form of the government. In the democratic state, the community is sovereign, and the government is subjected to popular control. The state may, however, adopt almost any form of political constitution, for government is no more than the machinery through which democratic aspirations may be expressed. The tendency indeed is for the democratic state progressively to enlarge the scope of popular government. On the other hand, even hereditary monarchy may be in accord with the general will.

With the spread of popular education, democratic government has been widely extended. In the middle decades of the nineteenth century, a liberal franchise and some measure of parliamentary control over the administration were regarded as sufficient to insure the dominance of the popular will. In the last fifty years, however, the degree of popular participation in public affairs has been enlarged. Nowadays, democracy demands more than merely universal suffrage. In many parts of Europe, the people are the direct holders of

1 *E.g.* by Professor F. J. C. Hearnshaw, in *Democracy at the Crossways* (1918), p. 16.

political power, and the democratic principle has received more complete expression.

It will be necessary to examine many different forms of democratic government. Unfortunately, there is no agreement as to what constitutes democratic rule. Everyone is familiar with the statement of the Greek philosopher, Aristotle, that democracy is the government of the many, but Aristotle's experience was, for the most part, confined to city states where the personal rule of the citizen presented few difficulties. Moreover, the existence of slavery involved an immense simplification of the problems of government. All the so-called democracies of antiquity were based on slave labour. At the same time the complicated questions of the relationship of capital and labour were non-existent in the Greek world. In modern communities, the numerically large class of wage-earners, endowed with full political rights, are yet economically dependent upon employers, and exposed to the fluctuations of capitalist industry. Since the commencement of the nineteenth century, all western states have taken some steps towards equality of opportunity and the betterment of the economic and social status of the working classes. But, in the city states of antiquity, the democracy of the few was compatible with the degradation of the many. The labouring population was not necessarily ill-treated, but it had no claim to participation in the governmental and social privileges of citizens. It is important to lay emphasis on this fact in any comparison of the political and social structure of the Greek and the modern world. Nowadays, the ideal of democracy is held to require that the state should offer an abundant means of livelihood to all its subjects. The Greek city state restricted avenues of political and

economic advancement to a citizen body which was not always a minority,[1] but which was invariably animated by a spirit of selfish exclusiveness.

At Athens and other democratic cities of antiquity, it was possible to admit the claim of every freeborn citizen to equality of participation in the affairs of the state. Under modern conditions, the people must be content with the exercise, directly or indirectly, of ultimate powers.[2] The unit of political government is now far too large to admit of government by public assembly of all the citizens. In the national state, the community must act through agents, and democracy becomes *representative*. Now this principle of representation has made more complex the forms of democratic government. It has given rise to the difficult problem of the control of representative bodies. Is it sufficient that they should be responsible in a general way to the sovereign people? or must the impact of public opinion be continuous and effective? Again, is the recognition that government is, in some measure, a function for the trained expert rather than the average citizen, admissible in a democratic community? Lastly, there is the basis of representation. Certain classes of inhabitants may be, directly or indirectly, excluded from the franchise. Is such exclusion compatible with democratic doctrine?

These are difficult questions. We must not expect to

1 At Athens, there appear to have been not less than 150,000 citizens in the latter half of the fifth century B.C., whilst the number of slaves did not exceed 120,000. Resident aliens numbered perhaps 35,000. In inland agricultural states this latter class did not exist, whilst the citizens formed the great majority of the inhabitants. See *Cambridge Ancient History*, V, chap. i.

2 Cases where the people exercise direct powers of legislation and supervision are mentioned in chap. xi.

find any single pattern of democracy. The degree of popular control over the elected agents of the people will vary with the development, in any country, of the democratic ideal. Democracy will only be logically complete where the action of the agent corresponds closely with the general will of the community which he represents.

On the other hand, we have already noticed that there is no real incompatibility between democracy and the retention of certain aristocratic features in the organisation of the government. Provided that the popular will is admitted to be supreme, the details of administration may well be left to expert officials. The determination of policy must, however, be subject to popular control.

There is perhaps good reason to affirm that democracy is inconsistent with the exclusion of any considerable class of the population from political rights. Modern states have transcended slavery. But equality of voting rights is not yet universal. In the Union of South Africa, the franchise is partially undemocratic, for in two of the four provinces coloured persons are debarred from the exercise of political privileges. In the Transvaal and the Orange Free State, the coloured inhabitant may be compared with the Athenian *metoic*, or resident stranger. He is personally free, and enjoys the protection of the law. Yet he is not politically a citizen for he has no share whatsoever in the government of the state. He is also, to some extent, restricted as regards the ownership of real property.

It is more difficult to regard as undemocratic modern states which leave women unenfranchised. Such considerations are not, however, of primary importance. The practical working of any constitution affords the

only reliable indication of the character of its government. A government is democratic if events show that the popular will is supreme in the really weighty affairs of the state.

There are thinkers who have questioned the possibility, under modern political conditions, of democratic government. It is an effective criticism of democracy that government is a matter of organisation and leadership. It is claimed that the people, as a whole, show little interest in politics, and that public opinion cannot direct the activities of the state unless it is focussed and guided by experts. Democracy postulates the activity in politics of the great mass of the people, whereas the masses are normally passive and incapable of common aims. Moreover, a community may possess so little unity and cohesion that a genuine public opinion on many vital questions may not exist. For democratic government to be possible, "the people should be homogeneous to such a point that the minority is willing to accept the decision of the majority on all questions normally expected to arise".[1] Where the people are not agreed upon the ends of government, there can be no spontaneous general will. Democracy thus implies a readiness to subordinate local and sectional differences to the good of the whole. Even where such readiness may be assumed, under the representative system, democracy tends to be government by the majority. Average men and women are not likely to reach a more or less identical judgment even on simple issues. Effective public opinion is commonly opinion that has been to a large extent suggested by the influence of a few. On these grounds, a strong element of aristo-

1 A. L. Lowell, *Public Opinion and Popular Government* (1913), p. 35.

cracy has been declared to be inevitable. Is democracy possible where government can only function in the hands of trained officials, whilst the impact of "public opinion" on those officials is itself a manifestation of the influence of special interests?[1]

These considerations do not really exclude the possibility of democratic government, which depends upon the reality of the ultimate control over the officials which the community retains. It may be true that the popular will can only be effective if it is guided by deliberate organisation into certain channels. Apart from the expert work of the administrator, leadership, directed towards co-ordinating the functions of government and concentrating the powers of the community, will always be necessary. In this sense the business of government is indeed largely confined to a few. Nevertheless, in a democratic state, the people determine the broad lines of policy, and the leaders and agents of the people must act in such a way as to obtain the approval of the majority of the citizens.

This is the modern *parliamentary* form of democracy. It is representative, as compared with *pure* democracy, which is based on the direct participation of the masses in public affairs. In pure democracy, it is said that the people themselves rule. The ordinary citizen, without special training, is held to be fully competent to undertake the highest functions of government. Equality of

1 "The mere use of unrestricted speech gives to a few powers inconsistent with the absolute equality of influence which Pure Democracy postulates" (W. H. Mallock, *The Limitations of Pure Democracy* (1918), p. 41). "Expert manipulation of men in the mass, drilled and disciplined parties, and all the other phenomena of modern large scale democracies are not democracy at all" (A. D. Lindsay, *The Essentials of Democracy* (1929), pp. 9–10).

representation in the government is fundamental. In the representative system, on the other hand, the details of government are deliberately left to an expert civil service. The people do not directly rule, but they are the ultimate source of authority and they exercise supreme control over the administration. The distinction is of some value. There is, however, as Lord Bryce pointed out,[1] a sense in which the people, under the representative or parliamentary system, are always ruling, owing to the constant impact of public opinion. In either case, democracy in the last resort tends to be the right of the populace to criticise and to punish, and upon the reality of this power depends much of the effectiveness of democratic rule.

Under the parliamentary system, popular control is inevitably less direct. The sovereignty of the people is not the actual basis of government, but a correspondence is assumed between the acts of the government and the general will of the people. This assumption is not always justified. It must depend largely on two things,—the right of the people to elect and to remove their leaders, and the right to determine the main lines of policy. Now it is true that under the cabinet system, the electors do, in a broad sense, authorise the government. At a general election, they pass judgment on a ministry, and decide, by their votes, the political complexion of its successor. So long, however, as party candidates are selected by irresponsible organisations on non-democratic grounds,

1 *Modern Democracies* (1921), I, p. 174. This work has been largely utilised in connection with the argument of this chapter. Compare: "Public Opinion, instead of being something expressing itself only at authorised times, and only in a choice of representatives, became something always there—always being influenced and influencing —an invisible public meeting of the whole country in perpetual session" (A. D. Lindsay, *op. cit.* p. 27).

it can scarcely be said that the people choose their leaders. Nor is the representative once chosen subject to the continuous supervision and control of his constituents. As regards policy, it is not hard to demonstrate how seldom the spontaneous will of the people has been able directly to determine issues of government. We are compelled therefore to return to our conclusion that democracy is a matter of degree, and that no complete expression has yet been given to democratic ideals.

When we consider what is involved in the democratic ideal of government, we shall find it difficult to reach finality. It may be argued that the essence of democracy is government by consent, and that the consent of the individual citizen should be spontaneous. It is indeed impossible to ignore the fact that government and full individual consent are incompatible. But government can, and does, rest on generalised consent, and steps can be taken to ensure that the power of the state shall not be misapplied to unpopular uses. The fundamental obstacle to the full realisation of the democratic ideal lies in the absence of any sustained and formulated popular will. The people can express their approval or disapproval by their votes, but only organised groups can produce constructive proposals. Even the machinery of the popular initiative, which will be considered in a later chapter, is liable to distortion in the hands of active and well-organised minorities. Democracy insists on the fullest measure of consent to acts of government, but mass persuasion and propaganda have so far proved to be the only reliable instruments for securing such consent in the modern political community. The suffrage is important mainly as a veto, and what parliamentary democracy has so far achieved has been the establishment of the rule

that the work of the expert officials shall be submitted at intervals to the bar of public opinion. The necessity for popular approval has been made more frequent, and the sensitiveness of the administration to public opinion is properly regarded as the hall mark of democratic liberty.

We have seen that there are certain fundamental democratic beliefs which afford a partial explanation of the democratic movement of recent years. Carlyle pointed out one hundred years ago that the reform agitation of the early nineteenth century was sustained by a belief in the fitness of men in quite humble stations in life for public duties. This was largely a protest against the classical view that wealth and leisure were necessary conditions of active citizenship, and that certain classes were qualified to rule over others by the possession of a higher degree of political ability. The democratic reply to this was that any single citizen was as well qualified as his fellows for governmental duties. In its extreme form, it demanded absolute equality of representation in the government for all citizens. A more moderate view admits that experience and an informed mind are important in politics, and that the exercise of political power is a trust, and not simply a question of right. It has further been suggested that a principal function of democracy is to remove obstacles to the discovery of the persons who are most fitted, by character and intellect, to govern. Evidently, all but extreme forms of democracy admit a considerable measure of aristocracy.

Belief in the fundamental good sense of the average man, in his honesty of intention and impartiality of judgment, was originally expressed by Aristotle, and has come to command wide acceptance. It is the justification for the adoption by a democratic society of an increasingly

democratic form of government. We have observed that liberty, equality and social progress may be achieved under an aristocratic constitution, and that an equal share in political power may legitimately be denied to the citizens as individuals. In other words, the sovereign people may, consistently with democratic professions, give practical recognition to distinctions between citizens, provided they are based on character or talents, and not on wealth or birth. Nevertheless, the contention that, broadly speaking, the collective judgment of the masses is a more reliable guide than the opinion of highly trained officials has been advanced to justify an increasing measure of popular control over the government. Faith in the ability of the ordinary man to reach a fair and unprejudiced decision on public questions has led, in many countries, to measures restricting the competence and the discretion of public officials, and enlarging the scope of direct popular action. The logical outcome of this development is the state in which a deliberate effort is made to render inoperative the influence exercised by men of more than commonplace ability. It has been said that the democracy of the future will be government by the mass of inconspicuous citizens.

This does not mean, however, that expert knowledge and education are likely to play a decreasingly important part in the working of political machinery. We should rather emphasise the interdependence of political democracy and of democratic associations which are non-political in character. The growth of professional and occupational associations has been a notable feature of the twentieth century, and the democratic state has derived specialised knowledge and wisdom from the co-operation of their members. The democracies of the

future must rest on a basis of democratic associations, each with a voluntary membership and functioning in free activity for the service of the community. The unit of political government, the local constituency, has long since outgrown the capacity for effective discussion. At the same time, the conditions of human life have become more complex. The need for unrestrained deliberation and frank criticism is greater than ever, yet an immense mass of public business can no longer be done by average people. The remedy lies partly in education, but only in such education as will inculcate a respect for specialised knowledge and promote the habit of co-operation. Democracy must survive in the functioning of professional and industrial associations in order that the co-operation of such bodies should make possible the maintenance of democracy in the state.

It is often stated that democracy implies a large measure of freedom from executive restraint. The ideals of liberty and equality, on which democracy rests, require recognition of the individual's right to realise his aspirations with the smallest degree of governmental interference. This point of view is derived from the prevailing individualist thought of the early nineteenth century. At the present day, reliance is placed rather on forms of voluntary association than on the isolated individual to safeguard human freedom from the tyranny of the collectivist state. The absence of external restraint is indeed often selected as the test of democratic efficiency. Thus, Lord Bryce wrote of France that she was "the least democratic of democracies, for state authority is strong against the individual citizen".[1] It is worth noting that direct and equal popular participation in the government

1 *Op. cit.* II, p. 491.

at Athens and other ancient democratic cities was compatible with the absolute subjection of the individual to the power of the state.

In the chapters which follow we shall be concerned mainly with political democracy which may be understood to be a system of government under which the popular will, in the long run, prevails. The definition is sufficiently wide to cover various degrees of democratic control. In considering the different manifestations of political democracy, we must bear in mind the fact that the actual machinery of government is commonly less significant than the spirit in which the machinery is worked.

CHAPTER II

Primitive Democracy

It is at a comparatively late stage of human history that the idea of government emerges. The regular exertion of authority is not a feature of early societies. Leadership, indeed, is not uncommon in the primitive community, but the functions which we associate with government are seldom exercised by the leader.

It is, perhaps, hazardous to venture beyond the domain of written history, into that of *pre-history*, but observation of the life of existing primitive peoples justifies the conclusion that conditions, which may not inappropriately be described as democratic, were a feature of the existence of our remotest ancestors. In the small hunting, or collecting, group, which preceded the advent of the organised agricultural tribe, there appears to have been a real measure of self-management and equality. The natural products of the land were shared, on a communal basis, among the members of the group. Private ownership was unknown, except in the individually fashioned tools of the chase.

It is, then, admissible to refer, in a general sense, the origin of social democracy to the most remote period of human history. Everywhere, in this stage, the forms of communal life appear to have prevailed. The interests of the individual were merged in those of the group. Immemorial custom and group sentiment made machinery of government unnecessary. As civilisation progressed, sources of food supply were multiplied, and life became

easier. The hunting band settled down as cultivators of the soil, and a more permanent system of relationship became possible. Nevertheless, primitive communism and democracy in the everyday life and occupations of the members of the group, persisted into historic times.

These propositions must, indeed, be regarded as little more than intelligent conjecture. The probability, however, that the earliest organisation of the people was democratic may be admitted. This democratic basis is compatible with the emergence of kingship, for kingship was not, at first, associated with the functions of government. It was in the ordering of ceremonial that the importance of the primitive king, or chief, rested. His function was to propitiate the gods, and thus to ensure success in warfare and a regular food supply. There is little indication of the exertion of actual authority. Even the administration of justice, a function of government which, in historic times, is early associated with the royal prerogative, appears to have been effectively in the hands of the tribal council.

Class divisions, and the germ of oligarchy, developed from the increasing inequality of human conditions, aggravated perhaps by climate and by the differentiation of occupations. Agriculture was unfavourable to the maintenance of democratic society. Greater prestige was involved in the possession of fertile land and large herds. Private property accentuated human inequalities, for surplus wealth could be used to create a relationship of lordship and dependence. At the same time, contact between peoples in different stages of culture led to the recognition of the superior rights of men of the higher

culture. A graded social order developed on the basis of individualism. Authority became increasingly manifest, and group sentiment less pervasive.

With the increase in wealth, and the adoption of private ownership, primitive democracy could scarcely continue. Equality ceased and was replaced by group privilege. Within the tribe, family life developed, until the patriarchal form appeared. The organisation of the community was thus moving in the direction of authority and domination. The change, for the most part, was slow and unconscious. It was accompanied by the increased security of life and the general progress of civilisation. The origin of urban settlements and of commercial dealings necessitated some organisation of government. The rule of custom tended to give place to a new social order in which obedience to a superior was paramount.

Within the agricultural tribe, this tendency to the establishment of governmental authority was modified by the survival of earlier notions. In tribal society, the rule appears to have been government in accordance with tribal custom. This custom, to use a modern expression, is *sovereign*. Individual authority is only very rarely found. The chief administers justice, but the notions of what constitutes justice are preserved in the sentiment and memory of the group. In giving effect to these notions, moreover, the chief is usually assisted by a council. The council may be constituted in a very indefinite way, but its presence is a reminder that custom is the real governing force in the tribe. When kingship emerges, an oath to rule justly, and in accordance with the customs of the folk, seems to have been a universal feature. When the ceremonial of royalty appears, consecration is con-

ditional on just rule. "The constitution is as old as kingship."[1]

In Europe, nothing like a state emerged until the latter half of the first millennium B.C. Frequent migrations of people, in search of a constant food supply, precluded stability and organisation. Owing to the weakness of authority, the tribe split up into clans and villages. No government existed which was capable of maintaining internal peace. Villages were constantly warring against one another.

This condition of chronic warfare proved to be another factor favourable to the development of authority, and inimical to the continuance of primitive democracy. The life of the community depended upon the adequacy of the protection afforded to its crops and herds. The working of iron meant, in the long run, the introduction of costly weapons and of body armour. The differentiation of a warrior class, able to afford the expensive equipment and claiming in return prerogatives and special rights, was the natural consequence. In the tribal society of western Europe at the dawn of written history, the chief had already begun to concentrate in his own hands the power of the community. During the intervals of peace, customary determination, characteristic of primitive democracy, still prevailed: but, in time of war, the chief and his followers, as specialists in the military arts, were essential to the tribe's existence.

To recapitulate, we find, in the remotest age of recorded tribal history, a period of political freedom which is succeeded by one in which authority and privilege are dominant. To this earlier stage historians have sometimes

1 A. M. Hocart, *Kingship* (Oxford, 1927), p. 95.

attributed the origin of democratic government. Sir T. E. May discovered the germs of democracy in the Homeric assemblies before the walls of Troy.[1] Homeric kingship, indeed, was evidently of the constitutional type. Discussion and even criticism appear to have been the rule in the Greek councils of war portrayed by Homer. The power of the king was subject to the limitation that, when an important decision had to be made, it was necessary that he should convince, not merely the elders in council but also the general body of freemen in assembly. There was, indeed, a total absence of formality. We are far from any conception of a constitutional right to bind the king through the decisions of an assembly. It is even doubtful whether the assembly ever reached the point of a formal decision. In the majority of cases, the practical result was doubtless determined by the nobles, or elders. Similarly, in the award of justice, though the assembly might meet, it is not clear that this involved the actual participation of the ordinary tribesman in the judgment of the assembled body. Nevertheless, the important fact remains, that, in the simple organisation of the people, which is characteristic of the Homeric period, the business of the tribe was conducted in assemblies. The kingship rested on a popular basis.

The Hebrew monarchy was subject, in a similar way, to popular criticism, as well as subordinate to the divinely instituted law.

In western Europe, before the period of the wanderings of the peoples, the authoritative form of kingship had, generally speaking, not appeared. In Tacitus's day (*c.* A.D. 55–120), monarchy was exceptional among the

1 *Democracy in Europe* (1877), I, p. 45.

Germanic tribes. Its occasional existence did not impa the essentially democratic character of the communit for effective power lay, it appears, with the assembly freemen. In many cases, kingship was elective; and all, the king, or chief, appears as essentially the executi officer, rather than the ruler of the tribe. Without t concurrence of the assembly, he had no power to leg late, or to take important decisions affecting the whc tribe.

This democratic organisation did not survive t period of migration and conquest. In war, the king h exclusive command of the tribe, and the dispersal of t freemen over wide areas favoured the concentration power. The authority of the monarch naturally gre with the increasing specialisation of military pursui and the honour and prestige consequently attached successful leadership in warfare. In Anglo-Saxon En land, there is, for example, no trace of a national assemb which is popular in nature. The governmental machine is dependent entirely on the king.

In this chapter, we have been considering types primitive democracy which precede the emergence of t state. The democratic aspect lies not so much in the forr of government, as in the absence of any system authority and restraint. It was by reason of the ve simplicity of primitive societies that group determin tion in assemblies of the tribesmen was possible. Tl people were, as yet, weak in organisation and in politic self-consciousness. They were unfitted for the privileg and functions of democratic government. Only an e larged intelligence, consequent upon an increase in tl wealth of the community, could make possible a degr of popular participation in the conduct of public affai

Such a development followed closely on the rise of city life among the alert-minded peoples of northern and western Europe. It was among the Greeks and Italians of the first millennium B.C. that the first conscious steps were taken towards democracy as a system of government.

CHAPTER III

Democracy at Athens

WE have seen that, when the peoples of western Europe first emerge into the dim light of recorded history, their political and social institutions are characterised by a primitive and unorganised democracy. In the simple societies of early man, communal custom could effectively regulate the affairs of the group. Organised democracy, on the other hand, is the product of town life. The town, unlike the loosely organised units of tribal society, demands the continuous exercise of governmental authority.

The Greek town, or *polis*, represents a distinctive form of city life. It was essentially an enlarged family, membership of which depended, not on residence, but on birth. The original *Hellenic* invaders of Greece appear to have settled down in small village communities, to which the strength of clan sentiment supplied cohesion. Gradually villages united to form a larger unit, in which the kinship tie was still dominant. The resulting state was, accordingly, a moral association, the purpose of which was to promote a particular ideal of life.

The chief feature in the history of ancient Greece is the incessant political activity, culminating in the development of the autonomous city state. Though the Greeks showed great capacity for political progress, it may, however, be doubted whether their bold experiments in government were the result of political idealism, so much as physical environment. The democratic city,

in which the functions of government were directly shared among all the citizens, was largely the product of geographical conditions. The mountain barriers, dividing the land into small secluded plains, in contact with the outside world, for the exchange of commodities and ideas but largely isolated from inland neighbours, were favourable to the rise of the small self-governing community. Democracy was a natural growth in a land where climate promoted open air life, whilst intercourse with foreign communities stimulated the intelligence and fostered the restless, critical spirit characteristic of Athens and her commercial rivals. At the same time, the complicated problems of modern government, such as the control of industry and the organisation of local government, had not yet arisen.

Democracy, once adopted, was developed and maintained largely for economic reasons. Ancient Greece was a land of agricultural poverty. The struggle for the necessities of life was at the root of the conflict between democrats and oligarchs. To the Greeks, democracy meant not merely a democratic form of government, but a redistribution of wealth. The payment of citizens for their services to the state was dependent on the maintenance of the constitution. Hence the rigidity of Greek democracy, and the drastic safeguards against its overthrow.[1]

It is probable that the Greeks were not advanced democrats by political conviction. At Athens and many of the other democratic cities, the ultra-democratic party seems to have enjoyed no more than a precarious ascendancy. There was always a more moderate party, to whom

1 G. B. Grundy, *A History of the Greek and Roman World* (1926), p. 287.

democracy meant a property franchise, rather than the method of the lot, which implied acceptance of absolute equality in the distribution of political office. In a number of cities, the government was effectively in the hands of the middle, or *hoplite*,[1] class. Thus property and wisdom obtained a certain recognition, though the citizens in whose hands the destinies of the state were placed were a sufficiently large minority to justify, in Greek eyes, the use of the term "democracy". In the larger commercial and industrial centres, however, the more moderate citizens were at a disadvantage. Their strength lay among the agricultural population, whereas, in the seaboard cities at any rate, power tended to fall into the hands of the urban proletariat who were at hand for meetings of the assembly.

Of the various forms of democracy developed by the ancient Greeks, that about which we know most is Athenian democracy. The essential feature is the personal government exercised by each individual citizen. Though the principle of representation was not entirely unknown to the Greeks, representative government was never adopted within the city state. The most conspicuous contrast between Athenian and modern democracy lies in the absence, at Athens, of any distinction between the general body of the citizens and the governing few. The machinery of government was deliberately constructed with a view to ensuring the participation in public affairs of nearly all the citizens. We shall see that membership of the council and of the law courts, and the tenure of the great majority of public offices depended on

1 Those who could afford to provide themselves with the full and relatively expensive, equipment of the heavy armed infantryman, or *hoplite*.

the accident of the lot, whilst the short term, combined with ineligibility for re-election, practically guaranteed that every citizen should take his turn in administrative or judicial service. Whereas in modern states there is the essential contrast between the electorate and those to whom, as a result of their experience or professional ability, the actual administration of public affairs is entrusted, at Athens these powers were exercised directly by the sovereign *demos*. It is true that political ability and moral qualities were often recognised by the people in the filling of offices where the method of election had been retained; but the tendency was always to place checks on the exercise of authority by the magistrates. Under the fully democratic *régime* at Athens, officials and council were reduced to the position of mere subordinate agents of the popular assembly.

It must accordingly be admitted that Athenian democracy went further than any democratic community of modern times has yet gone in associating the general body of citizens with the actual government of the state. In another respect, however, Athens fell far short of the modern ideal of democracy, which insists on the right of every individual adult inhabitant to a share in political responsibility. At Athens, political rights were narrowly restricted to a minority of privileged citizens who possessed the essential qualification of Athenian parentage. The citizens alone had the leisure and wealth enabling them to play an active part in public affairs. Women, resident aliens and slaves, together with all those who were unable to prove their Athenian parentage on both sides,[1] were debarred from the privileges of citizenship.

1 This was, apparently, an innovation of the statesman Pericles, *c.* 450 B.C. Aliens and others outside the benefits of citizenship

It is indeed not difficult to perceive that slavery and the adoption of the principle of exclusive citizenship alone made democratic institutions workable in Greece. Without the slave basis, the leisure and liberty of the Greek citizen could hardly have been maintained. Moreover, if the citizen body were allowed to grow unmanageably large, democracy of the type enjoyed at Athens would soon become impossible. Not only would the people be unable to form an opinion on the personal qualities of their leaders, but the payment to the poorer citizens for their attendance at the council or assembly must have come to an end. Nevertheless, a deliberate policy of restriction of citizenship could not but involve a weakening of the organic strength of the community, whilst negativing the fundamental necessity of a wide franchise, upon which all modern democracies insist.

The proportion of citizens to the general body of inhabitants varied from state to state. Whilst it is true that every Greek city reserved to the privileged body of citizens certain lucrative occupations, aliens, freedmen and even slaves participated in the commercial life of Athens and other trading cities. In the inland agricultural states, the citizens probably comprised the majority of the population. But, the more intensely democratic the constitution of a state came to be, the more exclusive was its policy, as regards the conferment of civic privileges.

Athenian democracy of the fifth and fourth centuries B.C. was a development of the earlier monarchical and

might, by special resolution of the Athenian assembly, be declared citizens, but this was comparatively rare. On the other hand, several of the Peloponnesian states ultimately admitted to citizenship the agricultural serfs, and others of the originally rightless classes.

aristocratic polity of heroic times. The change from monarchy to aristocracy was the result of the adoption of the concentrated type of city life. There followed a period of aristocratic rule of the noble houses, and, in the case of the commercial cities, of growing social unrest. The tendency of a governing caste to rule oppressively, in conjunction with the increase in the wealth of the community, contributed gradually to undermine the old basis of society. At Athens, the movement to enlarge the basis of political power derived its force from the ambitions of the wealthy non-noble section of the community, supported by the resentment of the peasantry at the increasing burdens of landholding. It was under such circumstances that a demand arose for the admission to the assembly of the bulk of the citizens, and ultimately the recognition of their eligibility, equally with the noble and landowning class, to all public offices. In the early sixth century B.C. the foundations of democracy were laid by the legislator, Solon. In its origin, democracy was essentially an attack on the wide powers of the magistracy. Solon erected a new council to prepare business for the popular assembly, and he is also credited with the significant innovation whereby all magistrates could be brought to judgment before the newly erected popular jury courts.

A period of arbitrary rule, or *tyranny*, supervened before democracy was fully established at Athens. Cleisthenes, under whom the council of five hundred took definite shape as a body set over against the magistrates, is usually regarded as the founder of the democratic constitution of the fifth century. Many further changes were, however, necessary before the fully developed democracy of the period of the Peloponnesian War could be

realised. The moderate constitution which stood Athens in good stead during the Persian invasions, still admitted of indirect interference with the popular will on the part of an aristocratic court of law (the *Areopagus*). As a result, however, of a series of constitutional changes of the middle fifth century B.C., Periclean Athens came to be a state wherein supreme power was effectively in the hands of the popular assembly, or *Ecclesia*. The popular will now dominated every department of public affairs.

This transition to what is often termed "pure" democracy came about as a result mainly of military and naval considerations. The naval superiority of the Athenians depended on the supply of trained seamen. The seafaring population of Athens and the Piræus, drawn as it was from the most radical element in the population of Attica, thus came to be the dominating influence in the politics of the city. Inasmuch as the preeminence of Athens in the Aegean, with the consequent influx of wealth to the dominant city, could only be maintained with the assistance of this class, the democratic movement of the fifth century must be related to the development of the Athenian Empire and the problem of its preservation.

The military origin of the democracy at Athens did not make for constitutional stability. Though the lower classes furnished the crews of Athenian navies, the financial burden of the constant wars fell mainly on the propertied citizens. In times of national danger, the claims of the wealthy oligarchs who had the means to serve the state without pay tended to become increasingly insistent. In 412 B.C., there actually occurred at Athens a reaction towards a more moderate form of democracy with limitations on the power of the assembly

and council. But the democrats possessed the incomparable advantage of residence in close proximity to the meeting place of the assembly, and the limitations of 412 B.C. were speedily abolished. Nevertheless, it would be wrong to ignore the fact that the extreme democrats were never quite certain of their ascendancy over the moderates, and that an irregular class war between rich and poor was a normal condition in Athenian politics.

We must now briefly describe the organs of government at Athens under the democratic *régime*. The real sovereign in the Athenian constitution was the popular assembly, or *Ecclesia*. Composed theoretically of all adult citizens, this body met forty times a year, apart from special occasions. For a few designated purposes, the quorum was six thousand, but attendance seldom exceeded five thousand and was mostly given by the radical dwellers in the urban area. Though not technically a legislature, the assembly was competent to deliberate and to resolve—its resolutions taking the form of decrees, which could cover cases not specifically dealt with by the laws. Whereas in oligarchical constitutions, or under a moderate form of democracy, the popular assembly had only the power to express approval or dissent to proposals introduced by the magistrates, at Athens the Ecclesia was only in theory restricted to matters which had been already considered by the council. Constitutionally, indeed, it was powerless to enact or to repeal laws, and its decrees, if in conflict with the laws, were at once invalid. In practice, there was a growing tendency to trespass on the domain which was properly covered by the ancient codes. In the early centuries of Athenian history, the laws had been regarded as sacred and eternal. By the year 530 B.C., it might still be true

that the only sovereign power at Athens was the constitution itself. Nevertheless, the direct powers of the assembly had come to be so effective that the most important issues were decided by a simple majority of votes.

The absence of organised parties and of any regularly constituted ministry responsible for important measures, made it necessary for the Athenians to devise some safeguards against the adoption of ill-considered proposals. In modern communities, such safeguards are elaborated in the constitution. There is commonly an appeal from the legislature to the law courts, or to the electorate. In many states, a sufficient degree of stability is imparted to the constitution by requiring a special majority before constitutional amendments can be adopted. At Athens, such safeguards were hard to devise. There could be no appeal from the Ecclesia to the electorate, for the Ecclesia were themselves the electorate. Moreover, there was an invincible repugnance to any direct restriction of the power of the popular assembly. The difficulty was avoided by the expedient known as the "indictment for illegality", under which an individual citizen could be prosecuted before the law courts for the introduction of a measure into the Ecclesia which transgressed the laws. The right of individual initiative was thus restrained, and a measure of constitutional stability made practicable, without the necessity for any direct limitation on the authority of the Ecclesia itself.

The power of the assembly was thus absolute and direct. In administration, it was the real sovereign authority in the state. The details of government were indeed often delegated to magistrates or to the council, but subject to constant supervision as well as ultimate control. Even in the department of foreign policy, the

Ecclesia paid attention to the details of administration. Nor did it hesitate to censure and to punish generals for their conduct of military campaigns. All this work it performed without the guidance of any group of experienced and responsible advisers,[1] and dependent for its wise control of the complicated affairs of a commercial empire, on the knowledge of the commonplace citizen. So strong was the conviction of the Athenians that direct popular control of public affairs was an essential feature of democratic rule, that, in the fourth century B.C., they were ready to introduce payment for attendance at the assembly, as the sole means, in times of restricted prosperity, of making possible the employment of the poorer citizens on public affairs.

On the whole, the Ecclesia managed the business of the state with marked ability and moderation. It is evident, indeed, that the interested appeals of unscrupulous demagogues occasionally exercised an undue influence. The assembly's record is not unmarred by hasty decisions and gross blunders. Nevertheless, it showed a degree of insight and capacity in its management of the Peloponnesian War, not less remarkable than its tenacity and courage in the dark days of the Sicilian expedition.

Current business was largely entrusted to the council of 500. Its members were chosen by lot from citizens who, not having previously served more than once, offered themselves for selection. The main functions of the council were to prepare business for the assembly, and to supervise the daily work of the magistrates. Its duties invite comparison with those of the modern parliamentary council of ministers. Like the latter body, it was

1 We shall notice later that the generals, or *strategoi*, were never a united ministerial board.

in a sense the connecting link between the assembly and the executive officials of the state. It reported on, and drafted measures intended to be introduced into the Ecclesia. It took charge of resolutions in somewhat the same way as the cabinet assumes responsibility for the preparation and initiation of public measures in parliament. It was also responsible for the estimates and the details of public expenditure. Though subject to control by the Ecclesia, it was the authority which was most intimately concerned with every department of the administration.

The resemblance, however, can be carried no further. The council was too large a body effectively to transact public business. Even the committees, or *prytaneis*, into which it was, for general purposes, divided, were too unwieldy for the kind of consultation which the purposes of a modern cabinet demand. Its members, moreover, being chosen by lot, represented the rank and file, rather than the leaders. It was not collectively responsible for policy, and it was unable to guide the deliberations of the assembly. In the sixth century B.C., the rule that the Ecclesia could only consider business introduced by the council had been effective, and the council had perhaps been the dominant element in the constitution. By the middle of the succeeding century, it had ceased to be more than an advisory committee, though its powers of supervision over the magistrates gave it a valuable function in co-ordinating the administration. Its utility to the state is not to be measured by the extent of its authority. The council afforded a valuable training in politics to a large proportion of the whole citizen body. The successful government of Athens by the people in assembly was largely due to the political education which

the citizen derived from his term of membership of the council.

Another institution which contributed to the intellectual development of the Athenian citizen was the *Heliaia*—the name given to the popular jury courts, or *dikasteries*. These courts were an essential part of the democratic constitution, since they made effective the subordination of the magistrates to the popular will. Every citizen was entitled to take the judicial oath, and a small fee was introduced to compensate him for his loss of time. The inducement was insufficient to attract the more independent class of citizens, and it was usually the neediest who offered themselves for judicial service. The lot decided membership of a particular section, or dikastery, the number entrusted with the conduct of a particular case being normally five hundred. It is difficult to resist the conclusion that these *dikasts* were the real masters of the constitution. Their jurisdiction extended to political offences as well as to private suits, and they decided by their votes questions both of law and of fact. Their courts were in continual session, and there was no appeal from their decisions.

The judicial machinery at Athens is usually regarded as the weakest link in the constitution. There was no safeguard against misuse of the courts to serve purely private ends. Proceedings against a magistrate could be initiated by the private individual. Precedents did not rule, and orators unhesitatingly appealed to passion and sentiment. Even the presiding magistrate was without expert knowledge of the law. There was consequently no impartial summing up of the facts, and no skilled direction to the jury. The worst feature was the tendency to encourage a class of professional informer, as a result

of whose mischievous activities, innocent politicians and generals were only too frequently condemned. Systematic blackmail of the rich was also prevalent. On the other hand; the mere size of the judicial panel operated to render difficult open bribery and intimidation. The Athenian courts were, for the most part, free from corruption; and it has been suggested that they were alive to the necessity of protecting commercial contracts.[1]

In our account of the working of the organs of government at Athens, we have made no mention as yet of the personal element. By strict democratic theory, there was no place for the recognition of special qualities in the individual citizen, so far as concerned the transaction of public business. Nevertheless, Pericles was not the only Athenian to exercise a personal ascendancy in the democratic period. From time to time, men of renowned political ability exercised a potent influence on the politics of the city. Despite the tendency towards subordination of the magistracies, there remained at least one office—that of the general, or *strategos*, invested with potentially formidable powers. The generals formed a college of ten magistrates, and they were chosen, not by lot, but by election from the tribes. The fact inevitably suggests the possibility of some political conflict, approximating to the parliamentary election of modern representative democracy. It has been suggested that the choice of candidates was made, by party management, from among the aristocratic families. There is some reason to believe that the election of the generals was regarded as a real trial of party strength.

1 M. Cary, "Athenian Democracy", in *History*, XIII, p. 212. Cases of judicial corruption, however, did occur. *Vide Cambridge Ancient History*, V, p. 351.

This is not to say that anything of the nature of party government existed at Athens in the fifth century B.C. The absence of the principle of representation sharply differentiates Greek practice from the modern parliamentary system. Nor was the principle of ministerial solidarity accepted at Athens. The Athenians saw nothing anomalous in the representation on the board of generals of both parties. In fact, each of the ten generals was clearly intended, in a vague way, to act as a check on his colleagues. On the other hand, the generals were normally expected to exercise their functions jointly, and there is evidence for the existence of a president of the board with some power presumably to direct the activities of his colleagues. It remains true, however, that individual generals were elected for their military skill only, that they might be at variance on political issues with their colleagues, and that the resignation of the board as a whole did not follow defeat or censure in the assembly. These qualifications admitted, it is not altogether misleading to speak of the generals as a ministry directing public affairs. They alone possessed the important power of summoning special meetings of the Ecclesia, at which their proposals were the only business which could be competently discussed. The conduct of foreign affairs, the raising and expenditure of money required for military, naval and diplomatic purposes, and the organisation of public defence were among their regular functions. It is not surprising that they came to be viewed as the real executive government at Athens, and as a substantial limitation on the working of "pure" democracy.

The *strategia* opened the way for personal ascendancy in Athenian politics. The wide discretionary powers of

the generals were clearly a menace to that theory of absolute political equality which was latent in democracy as it was understood by the Greeks. During the Peloponnesian War, there was a marked tendency for the generals to acquire additional prerogatives. Contrary to the practice in the case of other magistracies, there was nothing to exclude the possibility of indefinite re-election. We know that there was competition among prominent men to obtain a seat on so influential a board. Nevertheless, the strategia was not destined to develop into a powerful cabinet of ministers. Its source of strength as against the Ecclesia, lay in the union of civil and military authority in the hands of the president of the generals, but in the fourth century, the rule, in the appointment of all generals, came to be the selection of the professional soldier. In consequence, the generals came to play a merely subordinate part in the political life of the city, and the only magistracy which had retained a measure of independence was subjected to the detailed supervision and control of the assembly.

In the case of the other magistrates, their subordination was effectively secured by the adoption of the method of the lot. This method must be considered in conjunction with the rotation of political office. In both cases, the object was the safeguarding of democracy. It is true that the lot was occasionally employed under an oligarchy, usually to prevent bribery and intimidation, but also to settle differences caused by equality of voting. At Athens, however, under the fully democratic *régime*, the lot was intended to give practical effect to the doctrine that all citizens were equally qualified for political office. The democrat was prepared to admit that delegation of authority was sometimes unavoidable, but, in the

selection of delegates, his preference was invariably for those who might be regarded as "fair samples" of the sovereign people. The use of the lot met the democratic demand for some method of appointment which would place government in the hands of the average citizen, rather than the skilled few. At the same time, the Athenians were farsighted enough to realise that the lot could not be safely employed in the case of magistracies endowed with discretionary authority. Hence the progressive tendency to reduce the duties of all magistracies to mere matters of administrative routine. Moreover, the lot was preceded in most cases by a preliminary stage of examination and selection. Under such circumstances, the system worked less disastrously than might have been anticipated. Nevertheless, it remains true that Athens, under the democracy, had no civilian magistrates who were chosen for their merits, and it may be conjectured that this operated in a non-democratic direction by enlarging the prestige and importance of the elected generals.

The lot did not disappear with the downfall of democracy at Athens, but was maintained during the Hellenistic period for offices with purely routine duties.

Another feature of Athenian democracy was the banishment, or *ostracism*, of leading politicians by vote of the whole people. Ostracism may be compared with the modern democratic device of the *recall*. This latter institution has as its object the securing of a more complete harmony between the will of the people and the actions of executive and judicial officers. Its successful employment is followed by the retirement of the official from the particular office which he held. At Athens, ostracism was intended to guard against the unconsti-

tutional ascendancy of the ambitious individual. Its operation involved the banishment of the offending citizen for ten years. It must be admitted that the institution tended to deprive the community of the services of some of its ablest citizens. The deliberate adoption of a policy which aimed at the exclusion of men of genius from political influence in the state not merely made difficult the working of a party system, but led to the employment of unconstitutional and violent methods.

We have already noticed that there is a connection between the development of democracy at Athens and the growth of the Athenian Empire. It is scarcely too much to say that the full adoption of democracy at Athens was conditioned by the suppression of liberty and equality among the allied cities. There is no need to examine in detail the organisation of the Athenian Empire, or, as it was called in the earlier stages, the Confederacy of Delos, for no true federation of Greek cities was ever intended by its founders. Unlike Rome, Athens did not contemplate the extension of Athenian government over detached territories, or the admission of allied and subject peoples to Athenian citizenship. There was never any question of the application of the democratic institutions of the city state to a wider area. The tributary states remained separate, though not autonomous, communities. From the start, equality between the members of the alliance had been rendered precarious by the disproportionate strength of the leading state. It is not therefore surprising to find that, despite the establishment of a general assembly at Delos with some nominal control over general policy, the direction of the affairs of the Confederacy rested effectively with the Athenian Ecclesia. It was not long before the deliberative assembly

passed quietly out of existence. In the course of a generation, the great majority of the allied cities had ceased to be even nominally autonomous, and had come to be merely tribute-paying dependents of Athens. The jurisdiction of the Athenian courts now extended over serious criminal cases and commercial suits arising in any part of the Confederacy, or Empire.

It can scarcely be denied that democracy, as exemplified at Athens during the fifth century B.C., proved to be an oppressive government. Athenian statesmen did not hesitate to take what opportunities offered for the overthrow of oligarchical constitutions.[1] The democracies which they insisted on establishing in their stead were supported by Athenian officials, and even in some cases by an Athenian garrison. It was by no means unusual for an oath to be required from all magistrates and councillors of a subject state that no constitutional change would be attempted without the sanction of Athens. Such measures not merely strengthened the hold of the dominant city, but enabled her to suppress her commercial rivals. It may be said, indeed, that the Athenian Empire fostered popular government in the Aegean area, but this is to ignore the fact that the democracies established in the subject cities were neither autonomous nor genuinely popular. Thus, in many of the cities, the council was only nominally democratic. The election of its members was controlled in the interests of Athens by Athenian officials, and the determination of policy rested with this body rather than with the citizen assembly. Moreover, Athenian interests in states suspected of disloyalty were protected by the estab-

1 This point may be said to have been conclusively established by Mr E. M. Walker, in *Cambridge Ancient History*, v, pp. 471–2.

lishment of colonies, or *cleruchies*, of indigent Athenian citizens.

It is, however, possible to exaggerate the degree of oppression and maladministration in the control of the Empire by Athens. The burden of the tribute levied on the states was never heavy, and tended appreciably to diminish. In return for this payment, the cities obtained not merely security from a revival of the Persian menace, but the suppression of piracy, the advantages of a common currency, and the effective protection of the commercial interests of the allied states against external competition. There is reason to believe that the maritime cities, under Athenian hegemony, enjoyed a substantial measure of commercial prosperity. Under such circumstances, the cities could scarcely complain if the surplus derived from the tribute, when the needs of the navy had been met, were applied by Athens to her own purposes. This is the basis of the charge that democracy at Athens was parasitical. The Empire indirectly financed democracy by supplying the funds needed for the remuneration of Athenian citizens. But the building programme of Pericles was largely supported out of the surplus wealth of the city.

It remains to add that condemnation of the imperial rule of Athens does not necessarily involve strictures on democracy as a form of government for an empire. It is significant that the Empire was destroyed as the result of two great naval disasters, rather than internal revolt; and that, in the fourth century, the majority of the maritime states again consented to place themselves under the leadership of Athens. The terms of alliance were indeed carefully drawn up to guard against repetition of the earlier abuses, but more significant is the fact that the

Athenian democracy revealed its ability to profit from the experience of the previous century. Athens expressly repudiated the right of interference in the domestic affairs of an ally, and for the most part, the autonomy of the allied cities was scrupulously respected. Moreover, a genuinely federal organ was created for the determination of the common affairs of the confederacy. A kind of federal synod or council, composed of one or more representatives from each city, Athens alone excepted, was provided for in the constitution of the league. The rule that each city, whether large or small, was to have one vote only foreshadows a feature of modern federal organisation. Over against this synod was the assembly and council of Athens. The relationship between the two branches of the government is involved in obscurity. Apparently, war could not be declared, nor peace concluded, except with the concurrence of synod and Athenian Ecclesia. The possibility of a deadlock was not provided for, doubtless due to the lack of experience of the Greeks in matters of federal government. The solution of a single federal assembly, on which all the allies including Athens would be proportionately represented, seems never to have occurred to Athenian statesmen. The constitution eventually proved unworkable, for divergence of view as between the dominant city and the allies soon arose on matters which had been, perhaps intentionally, left undecided. Within the constitution, the Ecclesia inevitably became the dominant partner. As no executive had been provided for, Athenian generals and magistrates assumed the direction of the affairs of the league. Some of the undesirable features of the earlier Empire became again apparent. Nevertheless, the second Athenian Confederacy did evolve a representative

system as a means of giving expression to public opinion over a wide area. It was perhaps the first deliberate modification of the principle of direct democracy, which, under ancient conditions, could not fail to be an obstacle to wider political union.

From the earliest days, there had been forces making for unity in the Greek world. Unfortunately, these forces found expression in the religious and artistic, rather than the political, sphere. The movement of colonisation, indeed, tended to spread Hellenic culture over the whole Aegean area. Corinth, however, was the only city which attempted to maintain a measure of control over her colonies, and the colonising efforts of Greek cities thus failed to bring into existence any wider political organisation. Isolation, originally the product of geographical conditions, gave rise to a passion for city independence, which proved a fatal obstacle to any permanent union of cities, since such a union must have involved surrender of sovereign rights, and the retention by the city of merely municipal autonomy.

Nor was the political experience of the ancient Greeks sufficiently full and varied to admit of any larger organic unity than that of the city state. The principle of representation was as yet little understood. The problem of how to give subjects organic membership of a country state, with some share in its government, appeared to the Greeks to be insoluble. Nor were they prepared to make more than a temporary and partial surrender of the sovereign rights of the individual city, when such surrender appeared to be unavoidable under the pressure of danger from without.

The antipathy of the Greeks to any wider political union than the city state gave way gradually before the

logic of facts in the fourth and third centuries B.C. In the early years of the fourth century, the Bœotian and Arcadian Leagues were genuine steps towards federal union. In each case, the individual cities retained separate citizenship, whilst surrendering the control of external relations to a new federal authority. But the principle of the autonomous city was still strong in the fourth century, and the federal associations proved to be short-lived. It was not until the third century B.C., that any stable federal constitution was erected. In that century, the Achæan and Ætolian Leagues came near to evolving a true system of representative government. In both, there was a representative assembly composed of official delegates from the cities, yet retaining some of the characteristics of a direct popular assembly. Thus, any citizen of a component state was entitled to attend the assembly, and to vote in it. In both leagues, however, the federal element was safeguarded by the adoption of the system of group voting. Each city was entitled to one vote, the majority of those who happened to be present from the city determining how the vote was to be cast. The representative character of the government was thus modified by the persistence of a principle typical of pure democracy, namely recognition of the right of the individual citizen actively to participate in governmental functions. Even so, democracy in the federal leagues was very different from the Athenian system. Though every citizen was at liberty to attend the meetings of the federal assembly, few would have the wealth or leisure to do so regularly. Moreover, the infrequent meetings enhanced the prestige and the powers of the single general, who represented the chief executive authority in the league. Democracy in the federal leagues,

therefore, approximated to the more moderate type of popular government, which Aristotle termed *polity*.

In the fourth century, even within the city state, there was a tendency to abandon the more extreme type of democracy, and to admit features hitherto associated with oligarchy. At Athens, the constitution was revised on more than one occasion, and notably in the year 322–321 B.C. In that year, the franchise was restricted to those liable, through the possession of property of a certain value, for hoplite service. Appointment by lot and the rotation of offices were abolished at the same time, whilst payment for attendance at Ecclesia and jury courts now ceased to be necessary. These changes amounted to abandonment of the democratic principle that all citizens were equally qualified for the functions of government, and recognition of the alternative principle that government is a specialised function, for which particular qualities are essential. In the last years of the fourth century, something was done to strengthen the hands of the magistracy. Though democracy was restored in 307 B.C. and the restricted franchise swept away, a reasonable compromise was reached between the principles of extreme democracy and those of aristocracy. The enlargement of the council made more complete the participation of all the citizens in the administrative work of the state. At the same time, the discretionary authority of the generals was somewhat enlarged, and room was found for the recognition of the natural aptitude of certain men for administrative office.

The rise of the Macedonian power made less significant the internal conflicts of the Greek city states. The so-called *Hellenistic* period witnessed constant alteration of the constitutions of Athens and other Greek states,

but the days of the independent city had reached a close. In the third and later centuries B.C., the institutions of democracy at Athens remained largely what they had been at the close of the Peloponnesian War. The judicial audit of magistrates and the use of the lot for the filling of civil offices were still maintained. But many of these institutions had long ceased to be important in a political sense. Within Athens, control had for many years been effectively exercised by the wealthier citizens. Externally, the Macedonian monarchy had grievously circumscribed the autonomy of the Greek cities. So early as 338 B.C. (the battle of Chæronea), leadership of the Greek world had passed from Athens, Sparta and Thebes to a new type of political community. In the early years of the second century, Macedonian supremacy was successfully challenged by the rising power of Rome. With the capture of Corinth by the Romans (146 B.C.), the independence of the Greek world was extinguished. At Athens, the overthrow of democracy took place, under pressure from Rome, in 102 B.C.

The modification and final abandonment of democracy cannot be attributed to any single cause. The failure lay primarily in the sphere of foreign policy, and was rooted in the incurable objection of the Greeks to the smallest infraction of the sovereign independence of the city state. Greek passion for freedom and self-government produced an antagonism and a lack of compromise in inter-city relations, which even imminent danger from foreign invaders failed to correct. The Greeks showed signal inability to rise to the conception of common citizenship in a Pan-Hellenic state. The chief obstacle to the development of any such conception was the tenacity with which they adhered to the principle that citizenship

was incomplete unless it involved direct and active participation in the government of the state. Citizenship of that type was unrealisable in any larger political unit than the city, with its attendant area of countryside.

The failure of the Greeks in foreign policy involved the destruction of the autonomous city state; but it is important to realise that there were economic factors at work. Democracy at Athens, in its extreme form, had always been partly dependent upon tribute from subject states. It had proved to be a very expensive form of government; and, in the fourth and succeeding centuries, Athens had not the resources to maintain a consistent and stable democracy.

It remains to consider briefly the merits and the faults of democracy at Athens.

In the first place, the government was effectively in the hands of the majority of the citizens, who expressed their will, after free debate, in a regularly constituted assembly. Athens realised, to a remarkable degree, the democratic ideal of continuous participation in the affairs of the community. It attained this end by adopting what we have described as *direct* democracy. Under this system, the individual citizen enjoyed membership of the governing assembly, and took his share in administrative office. It is true that this direct participation of the citizen in the work of government was made possible by measures which would now be regarded as incapable of justification—by the restrictions on Athenian citizenship, the maintenance of slave labour, and the employment of incoming tribute to meet expenditure involved in the payment of Athenians for public services. Nevertheless, the view that the Athenian citizen was "a professional idler", whose leisured existence was dependent on resources

derived from the labour of others, must be rejected. The payments for public duties were too small to compete with the wages of industry, and there is ample evidence that a large proportion of the citizens maintained themselves in agricultural or industrial pursuits. Nor was the popular assembly inclined to impose excessive taxation on the wealthy. Heavy fines were doubtless occasionally levied on rich defendants by the jury courts, but the evidence is against the theory that there was a constant tendency to confiscate the property of well-to-do men. On the whole, the democrats seem to have ruled with conspicuous fairness.

Nor can the government be described as weak and anarchic. The assembly was doubtless subject to hasty impulses, but the ordinary routine of government was handled with vigour and competence. There was more security for personal liberty and individual property than was normal in oligarchical states. Order was well kept, and justice courageously administered. The jury courts might be open to sentimental appeals, but there was very little corruption, and less intimidation. In the organisation of a poor law system, with provision for state expenditure on poor relief, Athens was much more successful than the aristocratic government of Rome, which adopted the demoralising expedient of a free distribution of corn. Athens further succeeded, where Rome failed, in measures directed against corruption and embezzlement on the part of officials, attaining this end through the regular and strict audit of magistrates' accounts.

The gravest defect in the machinery of government at Athens was the weakness of executive authority. This is directly traceable to the passion for absolute equality, which led to distrust of all personal leadership and

guidance. Apart from the rule that a citizen might be indicted for introducing an unconstitutional proposal, there was no sort of restraint on the will of the sovereign people. The lengths to which the Assembly might go, in moments of popular excitement, to the complete disregard of all moral considerations, are indicated in the decision to exterminate the Melians (416 B.C.). The danger lay in the absence of any provision for responsibility, when measures were discussed in the sovereign Ecclesia. The initiative lay with the individual citizen, and responsibility for a policy could not be brought home to its initiator, when its execution was entrusted to others. The outcome of such a system was the concentration of power in the hands of demagogues, who employed their talents in the criticism and prosecution of officials. At the same time, the constant tendency to restrict the initiative of the magistrates, together with the rule prohibiting re-election, operated to place a premium upon inexperience. If the policy of the Athenian state were to be characterised by vigour and consistency, it was imperative that some restriction should be placed upon the activities of the demagogues, and some addition made to the independence and authority of the magistrates. Unfortunately, measures to that effect were never adopted in the period of democracy.

Something must now be said of the philosophic theory of democracy in ancient Greece. The greatest name is that of Aristotle (384–322 B.C.), who is commonly regarded as the founder of the science of politics. In his book, *Politics*, Aristotle set out to describe the various forms of government which had been tried in Greece, and to consider what was necessary for the suc-

cessful practice of each. The most significant point is that his enquiry was restricted to the city state. Though he was personally acquainted with the Macedonian monarchy, Aristotle insists that the state should not be so large that its citizens cannot know one another. Aristotle thus pronounces in favour of continuance of the small city state. The best state, he wrote, was that in which every citizen was able to lead a complete public life, for a man who did not fully share in the government was not properly a citizen at all. In all this, Aristotle was expressing the commonplace Athenian view of citizenship. He proceeds, however, to pass severe strictures on democracy, where the will of the people is unrestrained by the necessity for obedience to an established constitution.

Aristotle was prepared to admit that no single form of government was necessarily the best under all conditions. Governmental stability depended not so much on the merits of a particular government, as on its conformity to the intelligence and morals of the average citizen. Democracy was, thus, suitable when the majority of the citizens was poor. In all constitutions, however, it was expedient that the citizen should be entrusted with certain political functions. The people, as a whole, were eminently fitted for the duties of electing the magistrates, and bringing them to account at the close of their term of office. Where the community attained a high level of virtue and intelligence, the enactment of decrees might also be entrusted to the citizens. It was important, however, that the legislative activity of the people should be confined within limits, for every class, once it obtained possession of the machinery of government, was apt to seek exclusively its own advantage. Accordingly, though for the sake of stability it might be expedient to

allow all to participate in assembly and law courts, it was essential that the ultimate authority should lie, not with the citizens themselves, but in the constitution.

This is the form of government which Aristotle terms "polity". Every citizen is a member of the assembly, but the assembly is not free to do exactly what it pleases, and is not above the law. It is based on liberty and equality, but liberty does not mean absence of control, whilst equality is proportionate, and not absolute. In other words, moderate democracy, or polity, recognises that talented citizens have special qualifications for government. On the other hand, the use of the lot and the payment of citizens for public duties are characteristic of extreme democracy. The citizens, and more particularly the poor citizens, are unrestrained by any obligation to conform to law and precedent, and the result is commonly anarchy.

Aristotle was inclined to exaggerate the mischiefs attendant on extreme democracy. We have noticed that democracy at Athens was, on the whole, very successful in maintaining discipline and order, and that the assembly respected personal property and was by no means oppressive in its treatment of the wealthy citizens. In other parts of his book, Aristotle indeed admitted that the people possessed the faculty of judgment. His belief in the validity of the popular judgment in politics is indeed a signal pronouncement in favour of democratic rule. He had no hesitation in preferring the sovereignty of the people to that of a class, or single individual. His own preference was for a mixed form of government, but the many were, in any case, less easily corrupted than the few, and the political capacity of an individual could never equal that of a number of persons. Thus, though a

critic of the form of democracy which he believed to be characteristic of Athens, Aristotle arrived at an ideal not far removed from that of popular sovereignty.

Other thinkers, notably Isocrates and Plato, reached somewhat similar conclusions. Isocrates raised his voice against appointment by lot, as a system which inevitably excluded talent and capacity from the service of the state. Plato went further and denied the capacity of the ordinary citizen in politics. Democracy he regarded as necessarily weak and inefficient. The absolute equality upon which the democrat insisted was artificial and could only lead to absence of principle and ability in the government. Plato was, nevertheless, prepared to admit an element of democracy in the system which he sketched in *The Laws*, wherein the popular assembly was to be composed of all citizens and to enjoy the power of electing the magistrates. But this was a concession to expediency in a constitution designed for imperfect conditions. Plato made clear in *The Republic* that his ideal constitution was government by an aristocracy of the intellect.

To conclude our survey of Athenian democracy, it may be possible to indicate certain tendencies, without claiming to draw any general political conclusions. It is often declared that, where the form of government admits the citizen to a direct share in governmental functions, liberty is most secure. The peculiar merit of Athenian democracy is the association of every citizen with the business of the state. Liberty was indeed confined to a minority of the adult inhabitants, but this was the general rule in ancient times, and the leisured liberty of the citizen at least involved freedom from trivial cares

and consequent devotion to art, literature and other non-material interests. Democratic conditions at Athens were, in the highest degree, productive in the arts of civilisation. It is arguable that no state, ancient or modern, offered so deep a stimulus to original creative effort.

Having achieved liberty and self-government, Athens failed to solve the problem of the reconciliation of freedom and authority. There were no effective checks upon the sovereign Ecclesia. The participation of all in the public business opened the way to interference in the private life of the individual citizen. In the days of democracy, Athens was full of informers and sycophants, and Socrates was condemned to death for spreading unorthodox opinions. Having no conception of the spiritual equality of man, the Athenians were prepared to subordinate the individual to society in a manner which could not but obstruct the free development of personality.

The Greeks failed to realise that only by some surrender of liberty could effective resistance be offered to foreign aggression. Democracy was a failure in foreign policy, not so much because democratic government favoured incompetence, but arising from the influence of extreme democracy on the mentality of the citizens. The Athenians lacked the wisdom and sense of compromise which were needed in the government of allied and dependent cities. There was little patriotism outside the contracted ideal of the city state. The citizens were themselves the state. Direct democracy operated to exclude realisation of duty towards other communities. Hence the attempt of Athens and Sparta to limit liberty to themselves. The Greek cities failed to achieve such a

unification as might have preserved and extended Hellenic civilisation, despite the strength of its foes.

Within the city state, Athenian democracy proved to be a comparatively stable and successful form of government. Life and property were, for the most part, secure. Constitutional revolutions were conspicuously infrequent. The rule of law, and the principles of equality and self-government were effectively realised. But the stubborn refusal to sacrifice the ideal of the independent and isolated city made it impossible for the Greek states to lead the Mediterranean world towards some larger unity. With the collapse of the independent *polis*, supremacy passed first to Macedon and later to Rome.

CHAPTER IV

The Democratic Element in the Government at Rome

THERE is a complete and instructive contrast between the development of the Athenian state and the constitutional evolution at Rome. The early stages of Greek and Roman history, indeed, reveal a close resemblance. In both communities, the stage of kingship was followed by aristocratic rule, in which the directing power of the state rested with the magistrates. In the succeeding period, there was a tendency to encroach on the functions of the magistracy, whilst a claim was advanced, in the long run successfully, for the admission to a share in political power of a new aristocracy of wealth. The outcome of this development at Athens was the progressive adoption of methods of democracy. At Rome, on the other hand, the constitution, from an early period, was a democracy in form, but an oligarchy in fact. The institutions of the Roman state were democratic, but in their spirit and working they revealed the principle of aristocracy.

The most essential difference between the Athenian state and Roman Republic lies in the divergent conception of citizenship. At Athens, citizenship was comprehensive and all-embracing. It implied the fullest partnership in every aspect of the life of the city. Roman citizenship was, in the main, a matter of civil and political rights. It followed that there was not the same solidarity and cohesion among the citizen body at Rome. Unlike the Athenian *demos*, it was in no true sense a united

people. It might even be said that there was a community within the community, since the *plebs romana*[1] was only a part of the *populus romanus*, and yet had its own separate and co-ordinate government. The existence of two parallel systems of government is one of the peculiar features of Roman development.

And yet it was in the solution of the problem of citizenship that Rome achieved its most signal success. The recognition of the co-ordinate authority of the *plebeian* assembly threatened to raise disturbing problems of administration, but it sufficed to heal internal dissensions. The extension of civic privileges within the city of Rome paved the way for Rome's success as a governing city. Whereas the Athenian democracy narrowly restricted the civic franchise, there were at Rome various means by which citizenship might be acquired. The bestowal of Roman franchise on conquered and allied communities eventually made Italy a single political unit. The Romans thus succeeded where the Athenians failed. They achieved a more comprehensive type of community in which the nascent sentiment of Italian unity could find expression.

Rome's concession of citizenship to all the Italian communities was not accompanied by any drastic reconstruction of the machinery of government. The right to vote could not effectively convey political power, unless the principle of representation were adopted to meet the needs of distant cities. Rome, however, never

1 There appears to have been no racial distinction between the privileged patricians, who alone belonged to the *gentes*, and had full rights of citizenship, and the plebeians. The latter seem to have been outsiders who came to Rome under the patronage of the king or of wealthy patricians. They gradually acquired social and political equality with the patricians.

authorised the election of provincial representatives to the Roman assembly or senate. The system of government remained the direct type characteristic of the ancient city state.

The machinery of government was, nevertheless, cumbersome and complicated. The piety and conservatism of the Romans led them to modify and retain, rather than abolish, institutions which had become antiquated or inconvenient. Like the constitution of the United Kingdom, a large part of the Roman constitution was covered by precedent, rather than legislative enactment. It was much more flexible than that of Athens, for there were no penalties attached to the initiation of unconstitutional proposals. The process of alteration of the law was relatively simple.

The Roman government became a nominal democracy at quite an early date. The practice of election by the assembled people and for a limited period, of the chief executive officials of the state implied recognition of the ultimate sovereignty of the people. Even in the monarchical period, election, rather than hereditary right, appears to have been the rule. 509 B.C. is the accepted date for the replacement of the monarchy by the system of annual consulship. It marks at the same time the real commencement of the struggle for equality of civil and political rights as between patricians and plebeians.

The impetus towards democracy was afforded by the determination of the plebeians to protect themselves against injustice and oppression. They desired security against misgovernment, rather than the right to govern themselves. A notable step towards freedom was the issue of a definite and intelligible code of laws. It was, nevertheless, discovered that no genuine security for

civil liberty could be obtained unless an advance were made towards political democracy. Only by securing ultimate control over the government could the people effectively secure their new-found liberties. In this conflict the deciding factor proved to be the need for union against the foreigner. It was through their military services to the state that the plebeians won equality of political privilege with the patricians. Unlike the Greeks, the Romans learned the lesson of the necessity for internal union.

The fully developed constitution of the Republic resembled in some measure that moderate democracy, or *polity*, which Aristotle considered to be the most suitable to the circumstances of the city state. It avoided the executive weakness which accompanied the achievement of pure democracy at Athens and other cities. In fact, the strength of the magistracy is the characteristic feature of Roman government. Magisterial functions were not confined to the sphere of administration. The *imperium* which the higher officers of the state inherited from the monarchy covered not merely the whole administration of the Republic, but the sole right to initiate legislation, and important judicial functions. It is true that these powers were restrained by the principle of collegiality, under which every magistrate had at least one, and usually several, colleagues, his discretion being subject to the equality of power possessed by each member of the particular board. Thus, it was technically possible for a single official to paralyse the activity of his fellow magistrates. The right, however, was rarely used, for its disregard entailed no immediate and certain penalties, whilst the practice came to be adopted of dividing the functions of the office among the several members of the

board. Conflicts of opinion seem to have been avoided by the device of the lot. Except in the case of the tribune, whose intervention could be made effective against any of the regular magistrates, the veto power was but seldom employed to limit the authority of the more important state officials. On the other hand, the magistrates not merely exercised important prerogatives, but possessed, in the right of *coercitio*, summary means of enforcing their authority.

The power of those magistrates who possessed the *imperium* was almost absolute during their term of office. They alone possessed the right to summon and preside over meetings of the popular assembly. Whereas, at Athens, the generals could claim no more than precedence for their motions, at specially summoned meetings of the Ecclesia, at Rome, the magistrates *cum imperio* were alone competent to introduce public business. Moreover, the individual magistrate possessed quasi-legislative powers, within the province of his jurisdiction. He could issue proclamations, or edicts, which were valid for the term of his office, and, as such edicts were not infrequently re-issued by successive magistrates, they gradually acquired the force of laws. In the department of justice, his civil and criminal jurisdiction was limited by the right, in certain cases, of appeal to the popular assembly. It was nevertheless considerable, and in many respects unrestrained. Such wide powers may be attributed to the Roman conception of official power, the *imperium* being regarded as, in its nature, absolute and incapable of limitation.

There are, however, traces of a doctrine of popular control over the magistracy. Tenure of office was limited to a single year. Re-election was in some cases prohibited,

in others, it was possible after an interval of ten years. Offices had normally to be held in a fixed order. These arrangements were not dictated by the desire that all citizens should share equally in the work of administration, though they were perhaps a measure of the determination of the ruling senatorial class to open to young and talented citizens an avenue for political advancement. There existed at Rome none of that antipathy to the expert official, which found expression at Athens in the arrangements for the rotation of offices and for their distribution by the method of the lot.

Except in the case of the highest magistrates, it was legally possible to bring an action against an official of the state during his term of office, in precisely the same way as against a private individual. It is accordingly admissible to refer to the operation at Rome of the system which the late Professor Dicey termed "the Rule of Law".[1] Such actions seem however to have been discouraged on public grounds. It was not until the second century B.C., that an attempt was made to introduce into Roman public life the principle of direct popular sovereignty over state officials. In securing the removal from office of his colleague Octavius, the tribune Tiberius Gracchus propounded the theory that magistrates were representatives of the people, and that, if they ceased to retain the popular confidence, their resignation or removal should automatically follow. But the summary removal of magistrates from office was not destined to become a normal feature of Roman politics.[2] The

1 A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (1915), chap. iv.

2 See F. F. Abbott, *Roman Politics*, p. 148, for a comparison with the modern democratic expedient of the Recall.

Romans believed that independence and discretion were essential to the proper performance of functions of administration.

The democratic element in the constitution at Rome was represented by the assembly, or *Comitia*. Of this there were three forms, distinguished according to the principle by which citizens were grouped. The original form was the *Comitia Curiata*, where the division was into wards or clans.[1] Before the close of the monarchical period, the assembly also met in regiments, or *centuries* (*Comitia Centuriata*), and at a still later date in tribes (*Comitia Tributa*). Soon after the establishment of the Republic, the *Comitia Curiata* was reduced to formal functions, notably the ceremonial investiture of the higher magistrates with the *imperium*. The legislative and elective functions of the people were transferred to the centuriate assembly, which seems to have been regarded as a more democratic body than the *Comitia Curiata*. The tribal assembly was also relatively immune from aristocratic influences, the tie of residence not necessarily involving any relation of kinship.

In addition to these three forms of the popular assembly, there existed the *Concilium Plebis*, a gathering, differing from the Comitia in that it was composed of plebeians only. This assembly also was organised on the basis of tribal grouping, and, as time went on, its simple procedure and democratic composition made the Concilium Plebis the chief legislative authority at Rome.

In composition and in their internal arrangements, all these popular bodies presented a common feature—they were based on the system of group voting. Whereas the members of the Athenian Ecclesia enjoyed the prero-

1 The exact meaning of the word *curia* is much disputed.

gative of free debate and voted as individuals, the Roman citizen exercised his legislative and elective functions in an assembly which was denied effective powers of deliberation, and which voted in groups. This system inevitably favoured the interests of the educated and wealthy, for the groups varied greatly in size, and by official manipulation it was possible so to distribute the votes of the poorer citizens that the wealthier and more influential classes retained effective control. So far as the centuriate assembly is concerned, it is clear that its organisation was deliberately intended to give preponderance to the richer citizens, who controlled 98 of the 193 centuries into which the assembly was divided. As for the Comitia Tributa, the fact that no further tribes were created after the year 241 B.C. meant that newly enfranchised communities could only be enrolled in one or more of the existing tribes. This also made possible manipulation by the censor, upon whom devolved the duty of registering new voters. The principle of group voting thus involved a very significant limitation of popular government.

We have seen that the Athenian Ecclesia, though supreme in all executive decisions, was not a sovereign legislature—that, in fact, legislation was not properly a function of the Ecclesia at all. On the other hand, the Roman Comitia, in its various forms, was technically the sole legislative authority. In practice, however, it was dependent on the initiative of the magistrates and the concurrence of the Senate. It could only meet when summoned by a magistrate, it had no power to discuss or amend proposals, and its resolutions were subject to veto by the higher magistrates. Some powers, indeed, it effectively retained. Its concurrence was necessary for

the declaration of an offensive war, and it could choose between several candidates for magisterial office. In its elective and legislative functions, it might be hampered by the refusal of the Senate to ratify a popular decision, but this direct right of veto was rendered largely inoperative in 339 B.C., when it was enacted that the Senate's approval must be secured beforehand. Nevertheless, the initiative and independence of the popular assembly continued to be fettered by the discretionary powers of the presiding magistrate.

The purely plebeian assembly was not competent to pass laws, but only *plebiscita*. These resolutions were, however, binding on the plebeians, and, after the passage of the famous Hortensian law, on the whole community. *Plebiscita* thus came to possess the full force of the law whilst the Concilium Plebis was recognised to be the chief legislative assembly of the Roman people. Its authority was doubtless limited by the discretion of the tribunes, acting in close consultation with the Senate. It continued, however, to be customary to bring broad issues of policy before the people; and the competence of the plebeian assembly to legislate on almost any subject that was properly introduced does not seem to have been questioned.

With the progressive expansion of the Roman state, the popular element in the government was maintained with increasing difficulty. Broadly, the effect of this expansion was to intensify the unrepresentative character of both Comitia and Concilium Plebis. The prolonged absences of the ordinary voter on military campaigns made inevitable some encroachment on the part of the Senate on the functions of the Comitia. The large increase in the number of citizens still further lowered the

prestige of the assemblies, since few of the newly enfranchised voters could exercise political functions. Under such circumstances, it came to be recognised that the Senate was a body much better adapted to the transaction of the public business.

The high-water mark of democratic development at Rome was reached in the year 287 B.C. with the enactment of the *Lex Hortensia*. This well-known law laid down that the resolutions of the Concilium Plebis were binding on the whole people. Inasmuch as these resolutions had never been subject to the veto of the Senate, it established, in constitutional theory, the sovereignty of the plebeian assembly. That the Hortensian law did not in practice lead to the effective establishment of democratic government must be attributed to the innate conservatism of the Roman people, together with the control over the initiative in legislation, retained by the magistrates. Events showed that the forms of democracy were compatible with the actual ascendancy of the Senate.

The Senate was essentially a body of ex-magistrates. Its ancestor was that primitive council of elders which we have noticed as ordinarily existing under patriarchal conditions. The selection of its members from the ranks of the magistrates and ex-magistrates was entrusted at an early date to the censor. Its powers rested largely on custom and precedent, and were supported by that reverence for the past, and for age and experience, which was a conspicuous *trait* in the Roman character. Nevertheless, the Senate was based on indirect popular election, for its members had, at some time or other, been candidates for the popular suffrage.

The fact that senators normally held their seats for

life, and their selection, in the main, from the wealthy class determined the aristocratic complexion of the assembly which came to be the chief governing authority at Rome. The experience and technical knowledge of its members inevitably increased its prestige and influence in the long and critical period of warfare, upon which Rome entered in the fourth and third centuries B.C. The acquiescence of the magistrates was readily secured, for the term of all offices was short, and such as were not already senators would hope to become so at its conclusion. Technically the magistrates were under no obligation to consult the Senate. In the enactment of *leges* it had no competence, and its resolutions, *senatus consulta*, never acquired the force of laws. It was however to the interest of all magistrates to cultivate friendly relations with so august a body. The domain of foreign policy had always been its peculiar and almost exclusive domain. Hence, the Senate had been obliged in a difficult period of stress to assume responsibility for the safety of the state. Under such circumstances, the reference by magistrates of important decisions to the Senate became an established constitutional practice, and, in course of time, the Senate began to encroach on the function of legislation.

We have noticed that the power of initiating laws rested with the magistrates. In the third century B.C. this power came to be exercised only with the Senate's concurrence. It never became strict law that a resolution should not be admitted into the Comitia, or the Concilium Plebis, without the permission of the Senate, but this result was in fact achieved through the employment of the tribunician power. Each of the ten tribunes enjoyed the prerogative of vetoing the proposals of a magis-

trate, and it was not difficult for the Senate to establish an effective influence over one or more of these officers. But, apart from the indirect influence which it was thus able to bring to bear on the assembly, the Senate could in practice legislate directly by means of *senatus consulta*. These senatorial resolutions, admittedly, were not competent to annul a law, and were only strictly valid in fields not covered by legislative enactment. Nevertheless, the Senate did not hesitate to exercise a power of dispensing, in individual cases, with the requirement of the law, and we shall notice presently that in emergencies its claim to suspend altogether the operation of the ordinary laws was admitted. In financial affairs it fixed the tribute for the provinces, appropriated money for various departments of state, and supervised the expenditure of officials. If we add to these powers the control of foreign policy, the supervision of military campaigns and the right to establish judicial commissions for the trial of cases of treason and other public offences, it will be evident that the real governing authority at Rome was not the popular assembly, but the aristocratic Senate.

The amount and nature of the business which came up before the Senate invite comparison with the functions of a modern parliamentary assembly. In the procedure followed, we shall find many points of contrast. The Senate could only meet when summoned by one of the higher magistrates. Its agenda was confined to business introduced by the magistrates. In the selection of proposals to put to the vote and in bringing the debate to a conclusion, a great deal of discretion was allowed the presiding official. The first motion to secure a majority of votes decided the action of the Senate. Usages such as these appear, at first sight, to be restrictive of the

initiative and independence of the Senate. There were, however, effective means of compelling the magistrates to introduce motions. The Senate, moreover, was free from the disturbing influence of party. Business was not prepared for it by the magistrates in accordance with the official programme of a party. Motions came direct before the whole assembly, without prior reference to committees. It must be remembered that nearly all its members were experienced in administration, and that they enjoyed the independence of outlook which comes from security of tenure. Hence, despite the absence of machinery of deliberation which is nowadays considered essential to the transaction of the business of a legislature, the Senate achieved a continuity of policy and an elimination of the personal factor which could not have been possible had control of policy rested with the annually elected magistrates.

In a genuine democracy, the will of the people must in the long run prevail, though the actual depositary of supreme power may be some representative body over which the people exercise ultimate, rather than constant, control. It is generally admitted that some discretionary authority to suspend the constitutional rights of the citizens must be provided. Legal sovereignty may be said to reside in the body, or individual, entrusted with the right to decide when the safety of the state demands suspension of the regular constitutional guarantees. It is difficult to resist the conclusion that sovereignty, in this sense, rested with the Senate. It was the Senate which, in times of national danger, advised the consuls to appoint a dictator, and bestowed on the magistrates extraordinary prerogatives. Moreover, the *senatus consultum ultimum* amounted to the establishment, by sena-

torial decree, of arbitrary government, under which it was competent to impose the death penalty on a citizen, without appeal to the people. On the other hand, it could be argued that the senators themselves were indirectly the nominees of the people, and that the decrees of the Senate were invalid so far as they were in conflict with the laws enacted by the sovereign assembly. It is certainly true that the assembly possessed in law the right to restrain the action of the Senate. The choice of the tribunes rested with the Concilium Plebis, and this body could clearly select for the office men who would be amenable to its wishes. The complete paralysis of senatorial action by means of the tribunician veto was indeed at no date seriously attempted, but it remained a possibility. The undoubted fact that the people could, if they wished, override the resolutions of the Senate is the foundation for the theory that the popular will was, in the last resort, supreme at Rome. The various assemblies were indeed, on most occasions, willing to accept guidance. It was recognised that the aristocratic and experienced senators were better qualified to deal with the minutiæ of government. The relation between the Senate and the assemblies may be compared with that which exists in some modern communities between the legislature and the electorate. Behind the regular machinery of government the electorate is organised as a final court of appeal. Just as some issues of policy and legislation are, in democratic states such as Switzerland and Australia, referred[1] for decision to the people, similarly at Rome certain matters, notably the declaration of an offensive war, were reserved to the popular

1 The working of the Referendum is discussed at some length in chap. xi of this book.

assembly. The latter indeed seldom ventured to override the Senate, which remained, for the greater part of the republican period, the supreme governing authority. The institutions of government worked in harmony, and the underlying theory of popular sovereignty was in fact compatible with an aristocratic administration.

The Roman Republic differed most markedly from the city states of the Greeks in its attitude towards neighbouring communities. From an early date, Rome and the other cities of the original Latin League enjoyed reciprocal privileges within the territory of the League. It was possible, under certain conditions, for a citizen of one town to migrate to another, and become entitled to the privileges of full citizenship. This is a most significant divergence from Greek practice, for it was through the extension of citizenship that the unity of Italy and ultimately of the whole Western World was consolidated. The principal achievement of the Romans was the extension of the city state to incorporate a wider area, to which a degree of organic unity was given by the bestowal of the privileges of Roman citizenship. This was achieved without destroying the unity and vitality of the city state, which retained a substantial measure of local autonomy. The control of foreign relations was indeed concentrated in the Roman Senate. But Rome was, for the most part, averse to the acquisition of territory, and this fact compelled her citizens to consider the problem of local self-government.

The conquest of the Italian peninsula was a very gradual process. It was only by slow steps that Rome formulated a policy of settling the affairs of conquered communities. It must not be supposed that Rome furnished any direct bond of union between the various

Italian peoples. It was no part of her policy to establish a common government for Italy. Even in the first century B.C., Italy remained a number of separate communities, bound to Rome in varying degrees of relationship. The original Latin League bore some resemblance to a federal unit, for Rome and her allies were bound to one another on terms of equality. But, after the break up of the Latin League, the principle of equality was rejected, and that of graduated privilege substituted. Favoured peoples were admitted to full Roman citizenship, others received civil, but not political, rights. There was no common form of government, and the degree of civilisation attained by the community was taken into account in determining the nature of the privileges bestowed. This policy had the effect of dividing the interests of the subject and allied peoples. It encouraged loyalty to Rome, which in any case retained effective means of control, inasmuch as external relations were a monopoly of the dominant city.

In the later years of the third century B.C., Rome's policy towards conquered territory began to undergo deterioration. The annexation of Sicily, following the conclusion of the struggle with Carthage, brought under Roman rule communities comparatively backward in civilisation.[1] Moreover, in Sicily the Romans stepped in as heirs of the Carthaginians, and the exaction of tribute was a regular feature of the Carthaginian system of government. The confiscation of Sicilian estates led to the scandals of exploitation, under corrupt governors, of lands nominally held for the public advantage. In later centuries, rights of citizenship were bestowed with

1 It must not, however, be supposed that Sicily as a whole was backward in the arts of civilisation.

conspicuous reluctance, whilst an increasing number of communities tended to fall under the class of cities whose privileges were conditional on the favour of the Roman Senate.

These facts must not blind us to the essential magnanimity of Rome, or to the importance of her achievement in reconciling the domestic autonomy of the city with a measure of unified government. Rome accepted the city state as the unit, sanctioned the continuance of its machinery of government, and did not materially impair its domestic sovereignty. With a few exceptions, a citizen continued to be amenable exclusively to the jurisdiction of the courts of his own city. Nor was he taxed for the benefit of Rome. Rome's success in safeguarding her own supremacy without any undue restriction of local autonomy explains the achievement, in ancient times, of an organic Italian unity.

Governmental unity was not, however, destined to be on the basis of democracy. The increase in the number of citizens made difficult the summoning of a popular assembly which would be representative of the Roman people as a whole. The necessity for prompt action dictated preference for the Senate, with its experienced *personnel* and its unrestricted powers of debate. The people were more concerned to safeguard their civic privileges than to establish a control over the government. Democracy in the Athenian sense was never established at Rome. Equality of privilege was sought and won, but this did not constitute the Republic a democracy. The Roman ideal was orderliness and efficiency. So far as administration was concerned the Romans were content with such measure of control as was involved in popular election of the magistrates. They had little of the insight

and quick intelligence in politics which characterised the *demos* at Athens. The Athenians had been quick to perceive that a direct popular assembly cannot adequately deal with the routine business of government, and, for the despatch of such business, had established at an early date a democratic council chosen by lot. At Rome, the transaction of public affairs was left undisputed to magistrates and Senate, and the constant warfare in which the city was engaged inevitably led to an increase in aristocratic control. The active participation of the individual citizen in government had few attractions for the Romans.

Though without attachment to democratic ideals of government, the Romans were determined to safeguard effectively the liberties of the subject. The chief constitutional guarantee for individual freedom lay in the right of appeal, where life or civic status was involved, from the magistrate to the Comitia. This right was indeed menaced by the claim of the Senate to set in abeyance the operation of the law, when this was, in the Senate's opinion, necessary for the safety of the state. Such action was, however, rarely taken, whilst the liberty of the citizen was further protected by the activity of the tribunes. Magistrates could be indicted by the tribunes before the Concilium Plebis. It is true that no popular jury courts existed in permanent session, as at Athens, and that there was no regular *audit of magistrates* at the conclusion of their term of office. Nevertheless, the officials of the state could be held responsible for any violation of civic privileges.

From the middle of the second century B.C., the forces which were to bring about the downfall of the Republic and the enthronement of imperial autocracy may be

discerned in partial operation. Immense social changes were involved in the decline of agriculture, except on the basis of slave-run estates—a condition directly traceable to the wars and the influx of tributary corn. The more vigorous and intelligent citizens were constantly away from Rome on military service. Those who remained were actuated by the new spirit of commercialism, which found a field for exploitation in the newly-conquered provinces. The increase in the size of the army proved a formidable menace to republican institutions. Under such circumstances, senatorial government began to break down, and the old Roman aristocracy to disappear from political life.

In the first century B.C., the democratic institutions of Rome ceased to have any significance. The widening of the citizen body merely increased the numbers of those who were unable to take part in the proceedings of the popular assemblies. Proposals had indeed been made for the erection of a representative assembly at Rome, to which the allies would send delegates, but the idea had not met with acceptance.[1] The admission to the franchise of the Italians, without the adoption of the principle of representation, still further weakened the influence and prestige of the Comitia. It may indeed be doubted whether, in view of the political backwardness of the greater part of the Mediterranean world and the difficulties of communication, any representative system of government could have been successfully applied. It is probably true that the corruption of the Roman aristocracy forced despotism on the Roman world, for the only real force was in the hands of the army. Direct democracy of the city state type had clearly proved unworkable.

1 *Cambridge Ancient History*, VII, pp. 661–2.

There was no genuine element of democracy in the government of the Roman Empire. From the time of Julius Cæsar, citizenship ceased to be associated with self-government. Its bestowal on the non-Italian peoples of the new provinces was probably intended by Cæsar to be a preparation for imperial rule. It automatically lowered the prestige of the Roman Senate and people, and it is significant that the legislative functions of the Comitia were largely in abeyance during Cæsar's dictatorship. Under Augustus, meetings were more regular, and magistrates continued to be elected in the popular assemblies. This amounted to no more, however, than the appearance of popular co-operation. The effective government of the state rested with the Emperor, and, though Augustus claimed to be the representative of the people, actually conferring on the Comitia the right to elect future emperors, the real decision, as time went on, rested more and more with the army. His successor, Tiberius, transferred to the Senate the elective functions of the Comitia. Legislation also tended to pass out of the hands of the popular assemblies, the *senatus consulta* acquiring the full force of laws. By the close of the first century A.D., the only function left to the Comitia was that of the formal confirmation of the powers voted by the Senate to a new emperor. Rome had now finally lost the conception of government by free discussion in an assembly. The Roman lawyers of the second century A.D. had no idea of citizenship as involving a share in the administration of the state. It is true that they regarded the people as the ultimate source of authority. The Emperor was the supreme legislator of the Roman world, but Ulpian and his fellow jurists were quite clear that this was so because the *populus* had, by their own act, made him

supreme. The conception of law as the settled will of the people was a noteworthy heritage from Roman theories of government. In practice, however, constitutional government was on the decline during the early Empire, and, in the troubled period which succeeded the Age of the Antonines (A.D. 138–180), even the tradition of democratic rule disappeared.

The peculiar merit of the republican system of government at Rome lay in the union of authority with responsibility. The Roman system secured the state from the disastrous interference of the irresponsible demagogue. The initiative of the magistrates in legislation doubtless operated to limit the competence of the popular assemblies, but it saved the state from policies thoughtlessly propounded by men who would not have the responsibility of carrying them into effect. At the same time, the democratic element was not without significance. The holders of the *imperium* were themselves the direct choice of the people. They were invested with the majesty of almost unrestricted power, yet adequate provision was made against the possibility of its abuse.

On the other hand, respect for the expert skill of the administrator encouraged the abdication of political functions by the people. In the republican period, the Comitia acquiesced too readily in the encroachments of the Senate and magistrates. Under the Empire, the defects of the Roman system became every year more manifest. In the long run, over-government by an efficient bureaucracy devitalised the state. Spontaneous growth was checked, and, though the provinces might be well governed, local autonomy was sacrificed. For

that reason, the provinces ceased to have a genuine interest in the preservation of the Empire.

The Romans cared little for principles or theories of government. Nevertheless, Roman law—perhaps the most significant of Rome's legacies to the modern world—is based on principles which have been influential in shaping the democratic movement of mediæval and modern times. By the Roman lawyers, the state is conceived as existing for the adequate protection of the rights of the individual citizen. It derives its authority from the will of the people, and no other sanction is conceived to be possible. The state, moreover, must promote the well-being of all of its citizens. The safety of the public may indeed dictate some measure of interference with liberty, but the citizens are viewed as having definite rights. On the other hand, the form of the government is regarded as less important. Individual Romans, notably Cicero, might come near to the Athenian view of democracy, believing that the individual citizen had some capacity for political functions, and should be allowed a share in the conduct of public affairs. But the Romans, as a whole, were content with a system under which magistrates received their authority from the people, and co-operated with the popular assemblies in the enactment of laws. The details of administration were the legitimate province of the experienced official. But we shall do well to emphasise the fact that to the Romans no government was legitimate which did not admit that the ultimate source of all political authority was the people.

CHAPTER V

The Mediæval Origins of Representative Democracy

THE foundations of modern society are to be traced to the early centuries of the mediæval era. In that period, despite the turbulence and barbarity which overwhelmed western Europe, the operation may be discerned of two new forces which were destined powerfully to transform the basis of society. The fundamental principles of Christian ethics and the political ideals of the Teutonic peoples were then superimposed upon ancient conceptions of the state and its government. From Christianity was derived the idea of the fundamental equality of all men, and a regard for human individuality, which slowly transformed slavery into serfdom, and insisted, within the organisation of the Church, on the invalidity of distinctions based on birth or class. Modern democracy rests on the recognition of the rights of the individual. That recognition is partly derived from religion. It may also be traced to the second great formative influence of the early Middle Ages, the Teutonic conceptions of government, as based on a voluntary agreement or contract between freemen. This contractual element, in which original equality of rights is postulated, is the root of the democratic development of modern times.

Self-government of the direct popular type disappeared in the ancient world with the establishment of the Roman Empire. Large communities are apparently in-

capable of self-government except through the method of representation. We have noticed that even with so narrow a territory as that of Attica, Athenian democracy rested on the exclusion from political rights of the mass of producers, whilst the government of Rome grew more autocratic with the extension of its dominion. In the early mediæval period, however, there were no permanent territorial units, and the Teutonic tribe was originally small enough to admit of the reference of decisions to the whole body of assembled tribesmen.[1] Occasional gatherings of delegates were known to the Saxons and other peoples of the seventh and eighth centuries, whilst the principle of the necessity of assent to government was not lost in the medley of laws and customs characteristic of the feudal age. In course of time, unity and association appeared as a natural development, at a time when the needs of society could only be provided by combined effort. It was this tendency towards association which finally bore fruit in the union, through the principle of representation, of the lesser communities of shire and district, in the organic unity of the modern realm. It is thus to mediæval origins that the method of obtaining the consent of the nation to governmental decisions through its elected representatives must be traced.

The ideals of freedom and self-government were promoted throughout the Middle Ages by the organisation of the Christian Church. Not only did the Church emphatically proclaim the principle of the common humanity of mankind, achieving within its own ranks the social

1 The subject of the folkmoot of the Teutonic tribe has been briefly dealt with in the second chapter of this book.

ideals of democracy.[1] But the very existence of the Church over against the secular state safeguarded liberty by preventing the subjection of the individual to the domination of the lay government.

The origin of the principle of representation in government is lost in obscurity. The idea of representation had always been latent in the system of the Christian Church, and, at a comparatively early date, it had found expression in machinery of government. The election by cathedral and diocesan clergy of delegates to represent them at synods associated together the notions of representation and election. In the secular sphere also, the method was employed in the early Middle Ages, though not in direct connection with deliberation. It was for judicial and administrative purposes that representation was first employed by the secular state, and its introduction was in no sense a democratic measure. The right to compel representatives of local communities to give information on oath was originally a prerogative of Teutonic monarchy, and the extension of the system to cover financial, judicial and, ultimately, legislative business took place in the Middle Ages only where the monarchy was strong enough to insist on its employment. The movement is not associated with political ideals, and it was not until the fourteenth century that the introduction of the representative principle was seen to make possible a measure of popular control over the crown.

In England, where representative government first

1 The Catholic Church was indeed organised on a basis of authority, and eventually attained monarchical and even autocratic leadership. Ecclesiastical preferment, however, was open to the humblest man, whilst the lowly parish priest was, by virtue of his spiritual prerogatives, elevated to precedence over secular monarchs.

developed, the local courts of shire and hundred[1] were largely composed of delegates. Thus, the representation of the township by the priest, the *reeve* and "four best men" at meetings of the hundred court certainly dates back several years before the Norman Conquest. Their attendance was required chiefly for judicial purposes, in connection with the presentment of suspected malefactors for trial before the king's officers. They had no mandate from those whom they represented, and there was no opportunity for deliberation. Nor can we be certain that they were elected. In the eleventh and twelfth centuries, attendance at the shire court was an obligation attached to the holding of certain tenements. Representation was not a popular institution designed to give the subject a measure of control over the government, but a royal expedient adopted in the interests of justice and of the royal rights.

The establishment of a national assembly in England grew out of the earlier practice of assembling together in the shire courts the representatives of the local communities. There had probably never been anything in England resembling the Teutonic folkmoot or tribal assembly, described by the Roman Tacitus. Occasional local gatherings of the freemen probably occurred during the Anglo-Saxon period, but a folkmoot, in the sense of an assembly of all the tribesmen, was clearly an impossibility. The Anglo-Saxon council, or *Witan*, was a body of royal advisers without a definite constitution and depending, in its membership, largely on the royal pleasure. The tradition of popular co-operation was, however, to

1 The *hundred* emerges in the tenth century, as a subdivision of the county, or shire. Its origin is a matter of considerable obscurity.

some extent maintained by the shire moots. After the Norman Conquest, the chief governing authority, apart from the crown, was the king's council, or *Curia Regis*—a body partly composed of tenants-in-chief, and partly of advisers specially summoned by the king. Originally the Curia Regis performed universal functions, and the history of English government in the Middle Ages is largely the history of the gradual specialisation and differentiation of these functions, which are entrusted to various offshoots of the parent Curia. Of these the largest, and ultimately the most important, the great council (*Magnum Concilium*) was transformed into a national legislature by the device of summoning representatives of the shires and boroughs to confer with the king and his council at Westminster. This process was the origin of parliamentary institutions—the most valuable contribution of the English people to western civilisation.

In the thirteenth century, the assembling, together with the regular advisers of the crown, of representatives of the localities was no more than an occasional expedient, and the word "parliament", which first appears in records of the later years of Henry II, did not necessarily imply the presence of representatives.[1] It came to be understood, however, that, though fully competent in a legislative and judicial sense, the king's council lacked complete financial and taxative control, unless it were reinforced by the presence of barons, prelates and duly summoned representatives of the shires and boroughs. Largely as a result of the financial needs of the crown, though also arising from the growing pressure of judicial and administrative business, the irregular and spasmodic

1 A. F. Pollard, *The Evolution of Parliament* (1920), p. 33.

occasions when the great council met in its representative form gradually became more frequent and more regular. The election of members of Parliament became an additional duty of the shire and borough courts, and, though representation was in early days a burden rather than a privilege, there are indications that so early as 1327 towns were beginning to realise the advantages of parliamentary membership.[1]

Nevertheless, popular assemblies remained throughout the Middle Ages of little account as a means of controlling the government. Restraint on the arbitrary power of the king arose not from the progress of ideals of popular government, but as an outcome of mediæval feudal law. Under feudalism, government was held in check by the notion of restricted obligation. The recognition by the king of established feudal custom could be enforced by the withdrawal of allegiance, and, in the last resort, by the right of private warfare. The organisation of feudal society thus imposed a potentially effective check on absolutist tendencies. The king was indeed only considered to be in contractual relationship with the landowning classes, and more narrowly with his tenants-in-chief. Nevertheless, the principle that the king was below law and could be coerced to observe it was the origin of constitutional government in western Europe. In the eleventh and twelfth centuries, the feudal barons were content with individual opposition to the crown and the maintenance of feudal law and privilege. In England, under John (1199–1216), the baronage came

1 N. M. Trenholme, *English Monastic Boroughs* (1927), p. 33. The burgesses of St Albans are found, in that year, petitioning to be allowed to send two burgesses elected by themselves to serve in Parliament.

forward as a political party in opposition to the king, and *Magna Carta* was obtained by the concerted action of various classes in the community, each class being recognised as entitled to political rights.[1] Public control over the government was implied in the arrangements, albeit irregular and unconstitutional, for coercing the king to observe the provisions of the charter. These arrangements were characteristically English. There was no assertion of general principles of government, but merely the vindication of concrete rights. The needs of society were met by the recognition as law of established custom, which an arbitrary king had ignored. The principle of a limited monarchy, however, required to be associated with permanent machinery of government, and it was not until the fourteenth century that the development of a representative parliament provided the basis for a normal and constitutional limitation of the powers of the crown.

By that time, the character of Parliament had undergone a profound change. Not only had Parliament become a normal, rather than an occasional, expedient of government, but it had ceased to be largely a device for procuring additional taxation. Its functions now clearly included national deliberation and legislative enactment. It is true that there was as yet no agreement as to the competence of statutes made in Parliament to change the Common Law, whilst the king's claim to circumvent legislation by means of the prerogative remained undefeated until the close of the seventeenth century. But

1 The *villeins* and other customary tenants were not so regarded, though some protection was afforded them by the clauses of the charter. The Church and the native merchants undoubtedly co-operated with the barons.

the parliamentary organisation was slowly taking shape, and, when the representatives of the shires and boroughs, discarding the earlier practice of presenting mere local and individual requests, began to introduce the common petition, dealing with matters of public concern, they were taking a significant step towards democratic government of the modern type. Parliament grew into a national legislature through accumulated experience of common action, and, in the late fourteenth century, its share in legislation began to be safeguarded by the growing importance of its control over supplies. It was not, however, until modern times that the necessity of the assent to legislation of the representative House of Commons came to be fully acknowledged.

On the European Continent, self-governing institutions failed to establish themselves as permanent and effective parts of the machinery of government. In France, the relics of provincial independence sufficed to defeat the establishment of a uniform system of representation for the *States General*, whilst the existence of provincial estates made it possible for the crown to obtain money by separate negotiation. Moreover, the States General lacked the social solidarity of the English Parliament, its action being paralysed by class disunity. Behind Parliament lay the shires and boroughs with centuries of organic local life. Again, the crown in England insisted on the attendance of representatives with *procuratorial* powers, whereas in France and likewise in Spain, towns and local communities refused to be bound by the decisions of their agents. For these reasons, representative institutions decayed in many parts of Europe during the fifteenth century, the kings securing acknowledgement of their right to levy taxes and declare war

and peace, without the concurrence of the assemblies of estates. In this process of monarchical centralisation, Roman Law proved to be an effective instrument for augmenting the royal authority, whereas in England the Common Law imposed checks on the arbitrary action of the government.

In point of time, England was not the first country to develop, in the Middle Ages, a rudimentary Parliament. Representative *Cortes* appeared in Aragon in 1133 and in Castile in 1162. These institutions resembled the States General of France inasmuch as they were mediæval assemblies of estates, characterised by class disunity and with no regular system of representation. The Castilian Cortes, indeed, exercised some control over the raising and expenditure of money, but their vitality depended on the independence and public spirit of the towns, and in the fifteenth and sixteenth centuries, this was weakened by the growing tendency towards oligarchy.

In the Middle Ages, democratic institutions were maintained with difficulty. Monarchy was regarded as the only divinely-sanctioned form of government. Iceland, indeed, maintained (*c.* 930–1262) a republican government, with a folkmoot, or *Althing*, which was a primary assembly in so far as the freemen were concerned. The control of government, however, was confined to a minority, and, in the thirteenth century, Iceland passed under the sway of the Norwegian crown.

Whilst the development of representative institutions must be regarded as the most significant mediæval contribution towards the settlement of the problems of government, it remains to notice the reappearance in Italy and other parts of western Europe of the autonomous city state. Inasmuch as the Italian city of the

twelfth and subsequent centuries was the centre of active political and social life, comparison is possible with the city states of ancient Greece. In both countries the chief endeavour of the cities was to safeguard their sovereign independence, and, in many cases, this operated to check the internal development towards democracy. Democracy of the Athenian type was never realised, even in thirteenth century Florence, which may be regarded as the most democratic of the Italian towns. Eventually, as in Greece, the various cities tended to fall apart into two groups embracing respectively the rival principles of democracy and oligarchy. In the fifteenth century, the democratic principle was visibly on the decline. The Italian towns were, for the most part, encircled by the territories of larger states, and the policy of territorial consolidation ultimately proved fatal to city autonomy.

The origin of the movement towards civic self-government in Italy must be attributed to the rapid growth in wealth and population which characterised the eleventh and twelfth centuries. The development of Italian commerce and banking gave rise to a new sense of power and to a political self-consciousness, which found expression in the movement to establish *communes*. A commune was a collective lordship, a self-governing unit within the feudal hierarchy. Its characteristic feature was the taking of an oath of association, the commune being originally a private agreement for mutual advantage, which was extended to include the whole body of citizens when the oath was administered collectively to the popular assembly, or *arengo*. Towards the close of the twelfth century, communes had come into existence in many of the cities of Lombardy and Tuscany. Originally, the government of the commune had been

substantially democratic. Administration doubtless rested with the consuls, advised by a council of notables. The consuls, however, were elected in the arengo, and the right of legislation and of ratification of important executive decisions was vested in the same assembly. At Venice, the primary assembly of citizens elected the Doge, and possessed the ultimate power of sanctioning, or disallowing, the actions of the magistrates. In the thirteenth century, however, the consuls, and still more the council meeting in secret session, began to encroach on the legislative and elective functions of the arengo. At Florence, the assembly was rarely convoked, and its proceedings were mostly of a formal character. In all the cities, the fact that the people could not deliberate meant that the actual government of the town rested with various boards of magistrates, or with a small executive council. The possibility of divided control was guarded against by the appointment of an exceptional magistrate, or *podesta*, who shared with the small body of notables, now significantly called the great council, the direction of the state's activities.

The constitution of the city of Florence underwent frequent changes in the thirteenth and fourteenth centuries. Throughout this period, it remained a nominal democracy, inasmuch as the citizens met in popular assembly (*parlamento*) and had some share in the election of the magistrates. The privileges of citizenship were, however, restricted to those who were enrolled in the various trade guilds, or *arts*. The constitution of 1282 entrusted power to the priors of the six greater guilds, but the tendency towards commercial oligarchy was, to some extent, restrained by the short term (two months) of their office. In 1324–8, the constitution was amended,

the basis of political representation being slightly widened, whilst the lot was introduced to determine the order in which elected persons should hold office. Podestas and other magistrates were held strictly to account after the termination of their period of office. Nevertheless, the democratic element was more apparent than real. The ratification of proposals by a general assembly of the citizens was an occasional and irregular expedient. The parlamento enjoyed no freedom of speech, except by sufferance of the magistrates, who alone possessed the right of initiative. The privileged governing class was in reality a small minority of the burgesses. In other Italian cities, the great council normally legislated for the state and shared with the magistrates the control of policy.

The decline of urban democracy was due to various factors. The intensity of local patriotism operated, as in ancient Greece, to stimulate inter-city animosities. The necessity for safeguarding food supplies drove the cities to attempt the conquest and subjection of surrounding rural areas, or *contados*. The attempt to absorb these districts brought the cities into conflict with one another and with larger territorial units aiming at consolidation. The decline of citizen armies further contributed to the fall of the city democracies, and, in the fifteenth century, power in many towns was usurped by the tyrants.

The communes of France and Flanders were hindered by the strength of the monarchical principle from establishing an equal measure of independence. The organs of government bore a close resemblance to those which had been established in Italy, but the *parlamentum* rarely comprised the whole body of the citizens. On the other hand, representation of the *crafts*, or guilds of particular

trades, on the governing body of the town was conceded in many cases. The twelfth century commune of Marseilles may be regarded as the most democratic of the town governments of mediæval France. At Marseilles, all burgesses were equally admissible to office, the grand council was composed of representatives elected from the various crafts, whilst the general assembly of citizens met occasionally to take important decisions. In the north, the popular assembly appears less frequently, and a greater part in municipal government is taken by the officials of mercantile guilds. It was by association for the furtherance of trade that the burgesses of northern France and Flanders learnt to co-operate in self-government.

The French chartered cities differed from the Italian communes in that they were, for the most part, willing to recognise the royal sovereignty. Even those which attained the full communal status remained free municipalities, rather than autonomous city states. Nor was there the same party strife which was so manifest a feature of town development in Italy. In the twelfth century, the burgesses united to throw off servitude to the feudal lord. Wealth derived from commerce was employed to purchase privileges, exempting the townsfolk from the seigneurial courts and limiting their financial obligations. Self-government was attained step by step, the goal of the more ambitious towns being recognition as tenants-in-chief of the crown. The movement, however, was not destined to further democratic principles of government. In the thirteenth century, the richer and more influential townsfolk became dominant in the governing council of the town. Eventually the progress of monarchical centralisation operated to restrict within

narrow limits municipal autonomy. Nevertheless, the communal movement in all countries tended to promote democracy in the social sphere. It contracted the area of serfdom, and opened a new field for self-agency of the mediæval man. Though political self-government declined, the experience of association was to bear fruit in the department of commerce, and ultimately in other aspects of social life.

In Germany, the development of the self-managing town, with its council, or *rat*, was subject to less restraint than in France, owing to the weakness of the royal authority; but the repudiation of external control was not always accompanied by the adoption of democratic machinery of government.

The peculiar feature of Swiss development is that the towns were less democratic than the rural cantons. In the latter, the problems of government were simple. The community was self-sufficing and there was an absence of social inequality. The regulation of agriculture and pasture and the administration of the forests were the chief cares of the rural inhabitants. Under such circumstances, democracy of the direct type had few of the disadvantages involved in its application to larger, and predominantly commercial, communities. In the rural cantons, the highest authority was vested in the general assembly, or *landsgemeinde*, composed of all citizens over fourteen years of age.[1] At general meetings of this body, the magistrates, including the chief magistrate, or *landamman*, were elected, laws submitted for ratification or rejection, and a decision taken upon questions of war, peace and foreign relations. Though, in course of time,

1 In the majority of the cantons, the age was raised to sixteen during the fifteenth century.

many even of the rural cantons came to develop representative councils, it was in the landsgemeinden that the important business of the state was transacted. Only in the larger districts and in the towns was this system of pure democracy modified, or replaced, by representative, or aristocratic, government.

Swiss independence dates from the original compact of 1291, concluded by the men of Uri, Schwyz, and Unterwalden in resistance to Habsburg domination. Gradually, other districts and cities associated themselves with this nucleus of an autonomous Swiss state, and in the fourteenth century, the alliance had taken permanent shape in the first Swiss confederation. This was, however, in no sense the creation of an organic political community. The confederation, in mediæval times, was no more than the machinery by which the sovereign cantons vindicated their independence. In form, it was an alliance between particular cantons which agreed to establish a general body of delegates for the discussion of matters of common interest. This assembly, or *diet* as it soon came to be called, possessed no authority to coerce a recalcitrant canton, and important decisions were commonly referred back to the cantonal authorities. Nor was there equality of privilege within the confederation. The eight older cantons enjoyed the right of unrestricted treaty making, but the five junior cantons could not establish new alliances without the concurrence of the majority of the cantons.

Pure democracy prevailed in Uri, Schwyz, Unterwalden, Glarus, Zug and Appenzell. The landsgemeinden in these cantons differed, indeed, from the Athenian Ecclesia in important respects. They can scarcely be regarded as supreme governing assemblies, constantly

engaged with the details of policy and administration. Though extraordinary meetings were not infrequent, they met normally but once a year. Moreover, unlike the Ecclesia, the landsgemeinde met under the presidency of a single magistrate, the landamman. Nevertheless, during the mediæval period, the popular assemblies remained the sovereign authority in the rural cantons. In the fourteenth century, the need for a small administrative council led to such a body coming into existence in the majority of the cantons, but, outside the towns, the new councils exercised subordinate functions only.

The democratic rule of the older rural cantons proved to be compatible with the recognition of the self-governing rights of subordinate communities. The territories subject to their rule were allowed a substantial measure of democratic self-government. Swiss democracy of the Middle Ages succeeded where Athenian democracy had failed, perhaps owing to the conservative character of the Swiss people, and the simplicity of political conditions.

In the towns of Switzerland, public affairs were controlled by councils, in some cases elective, in others co-optive. The tendency in all the larger cantons was for the landsgemeinde to meet with decreasing frequency. Even where it was recognised as the ultimate arbiter in the constitution, recourse to the people took the form of a modern *referendum*, rather than the summoning of a regular organ of government. The power of assent, or dissent, to particular measures was reserved to the sovereign people, but the chief governing authority was no longer the landsgemeinde but one or more councils. Even in the older cantons, the growth of population inevitably resulted in recourse to representative machinery.

Some of the urban cantons had established aristocratic government at a very early date, admissibility to office being not infrequently confined to full burgesses of the chief city. For the most part, however, it was not difficult to acquire civic rights, and government was subject to a substantial measure of popular control.

The idea of a federal and democratic state was undeveloped in the Middle Ages, but the application of the principles of federalism and of democracy is found in small local communities. Thus, the league of the Grisons, an ally of the Swiss confederation, was established in the fifteenth century, on the basis of democracy. The autonomous village, transacting its business in public assembly of all the male inhabitants and with its separate jurisdiction and laws, was the local unit. The league was a federation of districts, subdivided into communes, and a simple machinery of representation led up from the self-governing village, through commune and district, to the diet of the league.

To conclude our survey of mediæval democracy, we must consider the nature and extent of the progress made towards constitutional government of the modern democratic type. The appearance and survival of direct democracy in the Swiss cantons must be regarded as a development from the normal, due to the simplicity of conditions and the smallness of the population. The chief legacy of the Middle Ages, in the department of government, is clearly the evolution of the principle of representation, and its application, first to local, then to national institutions, in such a way as to make possible the association of the merchants, and even the great mass of "commoners", in the government of the state. By

the close of the Middle Ages, many constitutional checks on the power of the monarchy had come into existence. Limitation of the royal authority originated in the resistance of the feudal baronage, but, in course of time, it found expression in permanent machinery of government. The English Parliament, the continental assemblies of estates, and the great representative councils of the Church were all expressions of the principle that monarchs should be constrained to give ear to the will of the community, expressed through duly-accredited representatives. Nevertheless, there was little sense of political responsibility in the Middle Ages. So late as the fifteenth century, effective opposition to the crown was concerted, not through parliaments, but through the resistance and rebellion of the nobility. Parliamentary opposition was powerless to restrain the king, except at moments of weakness in the monarchy, and when lack of union among the baronage precluded the alternative of aristocratic control. Even in England, with its centuries of experience of local self-management, it can scarcely be said that there was any conscious effort to establish self-government on a parliamentary basis. The importance of mediæval experiments at constitutional government lies in the fact that it was through the representative assemblies of the Middle Ages that men learnt to subordinate local and class prejudice to broad national interests.

CHAPTER VI

Democratic Thought in the Middle Ages

THE Middle Ages were dominated by the conception of a universal Christian Society. The notion of universality was in part derived from the practice and policy of the mediæval Church, which sought to expound for mediæval man its own principles of peace and righteousness. It was also part of the heritage from Rome, for it was under Roman rule that the various races of the Mediterranean world first came to feel their common interests. Hence it followed that, during the Middle Ages, the association of the peoples of the Christian West in an empire subject to single direction was universally accepted as both natural and divinely ordained.

The political thought of the Middle Ages was profoundly influenced by surviving notions of Roman law. From Rome, the mediæval period inherited the idea of universal *imperium*. With the establishment of the Roman Empire, the reality of democratic rule had disappeared, and the *imperium* ceased to be restrained by any independent rights in the people. Nevertheless, the tradition of democratic government persisted, and found expression in the theory of the lawyers that the ultimate source of sovereign power was the people. This doctrine of the popular origin of all rightful authority remained implicit in political theory until the time of the Renaissance. It explains the apparent paradox that, though the mediæval Emperor occupied a unique position as the symbol of the ideal unity of Christian humanity, his

authority in practice was closely circumscribed by custom and tradition. It was in virtue of a grant from the Roman people that the legislative authority of the Emperor was in theory exercised. The Middle Ages regarded with little favour the claims of an autocratic monarchy.

The modern theory of democracy owes not a little to this conception of representative authority, under which the ruler is regarded as essentially the agent of the community. In the political thought of the Middle Ages, lordship derives its sanction from the consent of those over whom it is exercised. Ceremonies of coronation and investiture call attention to the popular basis of government, and to the obligation of the ruler to respect the laws and customs of the state. The highest offices in Church and state are filled by election. It was even maintained that the people could resume the authority which it had alienated, since monarchy was no more than an office established for the performance of executive functions by the sovereign community.

The theory of the Roman lawyers did not pass unchallenged in the early centuries of the mediæval era. In that period, the weakness of authority encouraged the forces of anarchy and dissolution. Universal confusion followed in the course of the barbarian invasions which overwhelmed the Roman state. It was easy to see that only through unity and subordination could western Christendom recover a measure of civilised life. Even within the society of the Christian clergy, there were anarchical tendencies, which could only be disarmed by insistence on the divine origin of authority. The early Fathers of the Church, notably St Augustine and St Gregory, consequently proclaimed the principle of ab-

solute obedience to secular and ecclesiastical rule. To St Augustine, even the secular order of the state was divinely sanctioned. The doctrine of the sacred character of lay government was thus opposed to the conception of the popular origin of all authority.[1]

On the other hand, the Middle Ages derived from the earlier tribal organisation of society notions of limited monarchy. The chief feature of that society was the personal relationship between lord and follower. Teutonic kingship was modified by the persistence of this idea of a personal tie which made government a matter of private law and contract. Moreover, Germanic law was tribal and traditional. It proceeded from the whole tribe, and could not be added to or changed without the concurrence of the assembled tribesmen. The principle of consent to government was embedded in Teutonic ideas of the state.

It was not until a comparatively late stage of mediæval history that a central authority, capable of enforcing a system of common law, was established in any part of western Europe. The prevalence of disorder and of private warfare, however, led in course of time to exaltation of monarchy, as the sole means of preservation of unity and order. The almost ceaseless warfare by which society was torn made men welcome the development of monarchical authority. Good government was not possible under any other form of polity. It was the anarchy of the feudal period which gave strength to the monarchical ideal. Whereas, in the early Middle Ages, the king was, in the main, a feudal suzerain, exercising an authority which rested on a series of personal agree-

1 R. W. and A. J. Carlyle, *History of Mediæval Political Theory in the West* (1903), 1.

ments between lord and vassal, by the close of the eleventh century, he was successfully claiming to be first and foremost a political sovereign. In virtue of the *imperium* which mediæval monarchy inherited from Rome, the king was beginning to take his place as a public officer in direct relations with all his subjects. In the long run, this involved the substitution of the broad foundation of national law, administered in the royal courts, for the local operation of personal and private law.

Similarly, it was found that the Church could only exercise its rightful functions by becoming a monarchy. The full ideals of the mediæval Papacy came nearest to realisation under the Hildebrandine monarchy established in the eleventh century. In opposition to the claims of the centralised Church, Dante proclaimed the divine origin of the authority of the secular state, looking to the Holy Roman Empire to give force to a supreme law which should hold in check both national animosities and ecclesiastical pretensions.

In the second half of the eleventh century, the papal monarchy, under Gregory VII and his successors, was brought into conflict with the secular Empire. The contest between Empire and Papacy is the central theme of mediæval history, and its outcome in Germany and Italy was a substantial weakening of the position of the crown. In the western kingdoms, the trend was in favour of monarchy, for the growing recognition of the importance of internal unity led to a powerful sentiment opposed to division or limitation of the royal authority. In the course of the papal-imperial conflict, however, claims were advanced by the Church which threatened to reduce the sovereignty of the secular state to a mere lordship over temporal affairs. The papal conception of a

universal society subject to the absolute *imperium* of t
Pope involved the theory that, if a king neglected l
duty, he could be deposed. Zeal for papal suprema
led to expression of the idea of a social compact betwe
ruler and subjects. The secular prince was conceiv
as the recipient, at coronation or investiture, of
authority which was controlled by justice. Misrule i
volved breach of the original compact of governmei
and, in the eleventh century, the Papacy asserted t
power of judgment over kings. It sought to make
fective its penalties by releasing subjects from the du
of obedience to excommunicated rulers. Thus, in the ca
of the Emperor Henry IV, papal excommunication w
followed by the withdrawal of allegiance on the part
the chief magnates of Germany (1077), and the assertic
of the principle that there remained in the communi
the ultimate right of reviewing the actions of the ruler.

The subordination of state to Church was only a
complished after a bitter struggle. The papal claim
obedience from secular rulers rested on the assertion th
the Pope was the sovereign exponent of divine law.
was the duty of princes to govern for the spiritual welfa
of their subjects. Far from being irresponsible and irr
movable, they became at once amenable to the pap
jurisdiction, if they violated the rule of righteousnes
The claim of the Church was an assertion that the Pop
was the only supreme ruler of the Christian Commoi
wealth, and had no basis in popular sovereignty. Neve
theless, the outcome of the papal contention was a sig
nificant growth of democratic doctrine. The Churc
could only make effective its control over lay princes b
entrusting execution of its judgments to the feudal c
ecclesiastical aristocracy. This amounted to recognitio

of the right of such men to act in a representative capacity for the whole community. This is implicit in the writings of Manegold of Lautenbach, one of the first mediæval writers to develop, in the stress of the conflict between Gregory VII and Henry IV, theories of popular rights. According to Manegold, a legitimate ruler is one who acknowledges that lay authority is dependent on ecclesiastical sanction. In so far as he acts in accordance with the divine law, he is honouring the compact (*pactum*), under which he was originally entrusted with secular authority. Unjust rule, on the other hand, absolved the people from their duty of allegiance and justified the ruler's deposition. Though this theory was advanced in the interests of the papal monarchy, it was in fact a deeply significant expression of democratic notions of government.

Modern democratic doctrine is also, in part, derived from feudal ideas. Under feudalism, the relation between lord and man is contractual. It was natural that government also should be regarded as having its origin in a contract between ruler and subject. This inevitably tended to restrict the scope of governmental authority. Breach of the feudal contract involved for the tenant liability to forfeiture, whilst default on the part of the lord was held to justify the withdrawal of allegiance. The introduction of feudal ideas in the sphere of government thus tended sharply to define and limit the royal authority through the recognition of the right of resistance. In the Middle Ages, this was to the detriment of liberty and order, which could only be guaranteed under a strongly centralised form of monarchy. In the long run, however, it promoted popular rights by imposing limitations on the arbitrary will of rulers. In England, Magna

Carta, though reactionary inasmuch as it sought to maintain class privileges, promoted constitutional government, by giving practical effect to the principle that the king was under the law. And in the machinery which it established for compelling the king to observe the charter, it looked forward to a time when the great men of the kingdom would themselves undertake, in a constitutional capacity, the government of the realm.

The feudal notion of restricted obligation continued to exercise an influence on governmental practice, after feudalism itself had begun to pass away. In the thirteenth century, we can trace the origin of a movement to substitute royal enactments of universal application for the older customary law. In the later Middle Ages, legislation was coming to be an important function of government. The survival of feudal notions may be traced in the emphasis which is laid on the necessity for consent to legislation. In the raising of a financial aid or the establishment of a new principle of justice, the feudal ruler had been dependent on the co-operation of his vassals. It was now held that common consent was necessary in the making of laws for the whole community. These ideas bore fruit in the creation of a parliamentary assembly which was regarded as representative of the whole community.

The political thought of the Middle Ages thus admitted a democratic basis for monarchical government. St Thomas Aquinas taught that rulers should be elected by the people and remain responsible to them. The popular right to reject an unworthy prince is a cardinal principle of mediæval political thought. In the later Middle Ages, the conception of a pact between ruler and people gained a wide acceptance. At the same time, the

notion that all law and custom was invalid, if in conflict with *natural* law, placed a check on the development of the doctrine of sovereignty. It was not until the sixteenth century that law came to be viewed as the command of the ruler. In the Middle Ages the universal and eternal law of nature was the sovereign principle of society, and this conception excluded both absolute monarchy and popular sovereignty.

The most autocratic government of the Middle Ages was that of the Hildebrandine Papacy. Over the clergy of western Europe, the Pope indeed possessed the *plenitudo potestatis*. His supremacy over the priesthood and the local organs of ecclesiastical government was acknowledged to be absolute. In legislation, the Pope claimed a direct and uncontrolled authority over the whole Church. He could supersede local rules and set aside previous enactments by the exercise of the right of dispensation. Nevertheless, there lingered traces of the notion of an ultimate control vested in the Church as a whole. In matters of doctrine, the possibility that the Pope might be in error was admitted. For heresy, he might even be deposed by judgment of a representative council. Moreover, the papal office was elective, and this recalled the idea of the ultimate sovereignty of the entire Christian community.

In the fourteenth and early fifteenth centuries, the misfortunes of the Papacy, leading to the residence at Avignon (1309–77) and the Great Schism (1378–1417) brought into prominence a conception of papal power as limited by responsibility to some representative organ of the western Church. The view that authority was a trust and that ultimate sovereignty rested with the people was now to be applied, in the ecclesiastical sphere,

to restrict the autocracy of the mediæval Papacy. The Great Schism, during which the allegiance of the Christian West was claimed by two or more rival Popes, could only be brought to a conclusion by recognition that there existed, somewhere in the Church's organisation, an authority competent to judge, and even to depose, a Pope. The restoration of unity was accomplished by the great Council of Constance (1417), but the wider claim of the Council to exercise a jurisdiction superior to that of the Pope was defeated. The proposal that its resolutions should be unconditionally binding on the Church amounted to a suggestion that sovereignty was vested, not in the Pope, but in the General Council, as representative of the Church Universal. Its advocates claimed that the papal authority, like any other lordship, was subject to a right of regulation and correction retained by the community, and that, in all cases of schism, it was imperative that the superiority of the Council to the Pope should be authoritatively recognised.

There was much to be said logically for these views, which, if established, would have substituted a kind of mixed constitution for papal sovereignty over the Church. Their rejection was the outcome of successful papal diplomacy, taking advantage of the divided political state of western Europe. Nevertheless, the principles of the Conciliar Movement could be invoked on subsequent occasions. It is true that no active part in ecclesiastical affairs had been suggested for the laity, and that the representative councils were, in no sense, democratic in their composition. The notion of popular sovereignty, however, clearly underlay the arguments of the Conciliar party, whilst the debates in the Councils brought into prominence the proposal for a mixed government.

Theories of popular rights were more distinctly present in the writings of men like Marsilio of Padua (*c.* 1270–1350) and Nicholas of Cusa (1401–64). To Marsilio, the people remained the sovereign legislative authority, whilst monarchs, lay and ecclesiastical, were no more than the executive agents of the people. This is not far from the modern notion that the supremacy of the government is limited by the right of appeal beyond the government to the sovereign state. In the case of the Church, Marsilio held that the ultimate authority of all believers could only be expressed through a representative council, but he went further than others in asserting that the representation should be on a popular and elective basis. Of this body, the Pope was properly no more than president.

Marsilio's view of both Church and state is distinctly democratic. He believed that naturally and rightfully the exercise of sovereignty must belong to the citizens as a whole. They alone could grant valid authority to the ruler. This involved, in the ecclesiastical sphere, the proposition that the laity were entitled to active membership of the Christian community. The most forceful part of his[1] book, *Defensor Pacis*, is devoted to an assault on papal and clerical pretensions. Marsilio was indeed more insistent on the need for secular control of the Church than he was anxious to substitute for papal authority government by council. His teaching accordingly looked forward to the establishment of the modern centralised state, with the sovereign right to supervision over every department of the national life.

1 It is disputed whether the *Defensor Pacis* was the work of Marsilio alone, or of Marsilio, in collaboration with John of Jandun.

The trend of thought in the fifteenth century was distinctly towards limitation of monarchical authority. Both Gerson and Nicholas of Cusa would have reduced the Pope to the functions of a mere administrative officer of the community. Both are agreed that jurisdiction is dependent on the transfer of authority by the people. Nevertheless, even Marsilio of Padua was little concerned to advocate any particular form of democratic government. He certainly favoured elective representation of the people for the function of legislation, and, in the executive department, an elective monarchy. But he is careful to add, following Aristotle, that no one form of government is necessarily the best under all circumstances. Perhaps the most significant of Marsilio's ideas is his conception of law as the expressed will of the community. Law is obeyed because it expresses a common need. The executive government is only valid so long as it rules in the general interest, and in accordance with the general will. These notions are very similar to those later propounded by Rousseau.

In England, also, fundamental principles of democracy were being stated. Wycliffe gave currency to ideas which supported popular resistance to unworthy rulers. Though asserting that a strong monarchy was necessary to avoid confusion and disunity, Wycliffe claimed that the monarch was bound to observe justice. In the fifteenth century, Sir John Fortescue expressed his preference for limited monarchy, and did not hesitate to proclaim the sovereignty of the people.

These ideas were set in motion at a time when the principle of representative government was being widely extended. In Germany, the imperial constitution of the fourteenth century imposed, as a check on the royal

authority, an electoral college, which was regarded as, in a vague way, representative of Germany as a whole. In the western kingdoms, representative assemblies of estates had come to be properly constituted, and had adopted rules of procedure, and especially of majority voting, which were largely derived from the Roman law of corporations.[1] The English Parliament, in the period of the so-called *Lancastrian experiment*, had begun to assert claims to supremacy in legislation and taxation which were based on its character as representative of the whole community.

These experiments were largely premature. The problem of the Middle Ages was to develop some method of constitutional control over the government. It was generally admitted that governmental authority was founded on, and limited by, law, but it was not easy to provide for the practical application of this principle. Law was always above the king, but constitutional machinery was required to ensure that the king would respect the law. The exercise of authority in consultation with the recognised heads of the community was achieved in the Middle Ages; but it was not until the increase in popular knowledge, which followed upon the invention of the printing press and the whole movement which is known broadly as the *Renaissance*, that there arose any active desire for a share in the government on the part of the people. This extension of popular enlightenment was accompanied by profound political and religious changes, which indefinitely postponed the accomplishment of democratic government, and led to recognition of the absolutist state.

1 O. Gierke, *Political Theories of the Middle Ages*, ed. Maitland (1900), p. 64.

CHAPTER VII

The Influence of the Reformation upon the Development of Democracy

THE modern democratic movement may be traced to the political and religious conflicts of the era of the Reformation. This chapter will be devoted to the influence of the great religious changes of the sixteenth century upon the theory and practice of government. We shall see in the long run, that influence was in the direction of democracy, and that constitutional liberties were born out of religious liberty. A period of strong centralised government was, however, necessary before there could be a general development of representative institutions. Internal strife, resulting from the selfish and anti-national ambitions of the semi-feudal aristocracy, was still prevalent in the sixteenth century, whilst in many cases, foreign dominion imposed an obstacle to the achievement of unification. The century was accordingly monarchical in outlook, and, in countries where the need for unity was most pressing, monarchical theory was supported by the doctrine of absolutism. The monarchy was regarded as a divinely ordained institution, and constitutional assemblies and other checks on royal autocracy were held to be dependent on the king's pleasure.

It was natural that, in the period of the Renaissance and the New Monarchy, absolute authority should be regarded as indispensable to the safety of the state. Memories of feudal disorder made patriotic men insistent

on the need for efficient and energetic government. It was recognised that, in the later Middle Ages, restrictions on the monarchy had worked out to the selfish advantage of the disruptive elements in society. Even parliamentary assemblies had come to be associated with aristocratic ambitions, or with weak, purposeless opposition to the royal authority. Fear of violence and anarchy impelled men to take refuge in a strong centralised monarchy, and in the assertion that in every state there must exist some authority competent to take final decisions, and even to alter the law. The sixteenth century witnessed a revival of interest in Roman law with its doctrine of absolute power; and, under the hand of Bodin, this study gave birth to the modern theory of sovereignty. The need for a single authority to replace competing jurisdictions, and for a strong system of national law gave support to Bodin's argument that the crown alone was powerful enough to restore social peace and check incipient anarchy. The theory of sovereignty placed the king above the law, and, reinforced by theological conceptions, this doctrine led to kings being regarded as responsible to God alone.

The doctrine of sovereignty had no necessary connection with monarchical absolutism. Sovereignty might equally well reside in a numerical majority of the people, but in this case Bodin emphatically stated that there could be no security for order or for the enjoyment of civil liberties by the individual citizen. Bodin's criticism of democracy rested on his assumption that a popular majority was necessarily an inconstant factor, under which a consistent policy was unattainable. Democracy, he said, was supported by a theory of human equality, whereas men were naturally unequal. Bodin's rejection

of democratic government was the outcome of his appreciation of the importance of unity in the state. Monarchy appeared to him to be the only power in the community which could substitute an orderly government for chronic disorder and conflict.

The outbreak in western Europe of the Protestant Reformation intensified, in the early stages of the movement, the action of forces which were already tending strongly in the direction of monarchical absolutism. It destroyed the international authority of the Pope and assisted the territorial ruler to establish his control over ecclesiastical affairs. The idea of the sanctity of secular government gave to the king powerful moral support, and enabled him to insist on unlimited obedience, even in matters previously subject to papal jurisdiction. It removed the last check on the establishment of internal centralisation. In short, the Reformation reinforced the doctrine of absolutism with the sanction of divine right.[1]

This support to the monarchical principle was largely the outcome of the teaching of Luther and Calvin. Luther was indeed too deeply concerned with religion to take any direct and immediate interest in political affairs, but the contest with the Papacy inevitably led him to magnify the authority of the secular prince. He cared much more for order and security than he did for political liberty. His sympathies were readily enlisted on the side of the territorial rulers, by whom alone the reforms which he contemplated could be carried out. Nor did he believe in the natural equality of man. His bent of mind was in fact conservative, and he considered

1 J. N. Figgis, *The Theory of the Divine Right of Kings*, Cambridge (1896).

that social peace and unity were bound up with the cause of lay monarchy.

Calvin, though less conservative than Luther, was similarly disposed to uphold the authority of the government. Though democratic principles were admitted into the organisation of the Reformed Church, Calvin was careful to limit their force. Thus, the significance of the co-operation of the congregation in the election of a minister was minimised by the rule that the pastor must preside. Calvinism involved the rule of the Saints, and could not be really democratic. In the long run, as we shall see, Calvin's teaching promoted the conception of popular rights, but in Protestant countries, for many years, Calvinism supported, rather than undermined, monarchical authority.

Nevertheless, the Reformation paved the way for democratic government in both Church and state. German Protestantism found its justification in the principle of the direct relationship of the individual believer, through faith, with God. The substitution of free enquiry and private judgment for ecclesiastical authority could not but promote individualism in every sphere of thought and action. The overthrow of authority led logically to the recognition of the sovereignty of the community in matters of faith. Moreover, the Reformers were impelled by a strong desire to restore the primitive organisation and arrangements of the Christian Church, and this organisation had been democratic in spirit. Study of the Scriptures and of the writings of the Christian Fathers supplied a spiritual foundation for democracy.

Religious freedom was thus, in a sense, the parent of political. Whilst Luther emancipated the people from subjection to authoritative religion, Calvin established a

epresentative system of church government, which at east propagated the forms of self-government. In course of time, Calvinism came to be definitely hostile to absolutism in both Church and state. The religious earnestness of Calvinists proved to be a potent factor in the great struggles of the sixteenth and seventeenth centuries, from which finally emerged a substantial measure of civil liberty.

Of primary importance was the fact that the Protestant Reformation gave rise to a state of affairs under which, in many countries of western Europe, a substantial minority of subjects adhered to a religion different from that of the monarch. The claims of such dissenting minorities to be unmolested in the profession of their religion by the authority of the state set in motion forces hostile to centralisation and governmental control. The whole question of the obedience due from a subject to his ruler was revived in a new atmosphere of distrust and persecution. Doctrines of the sovereignty of the people and theories as to the origin of government were formulated by men who were striving to maintain their faith against the attempts of the monarch to enforce uniformity. The appeal to conscience was the only motive strong enough to withstand the claims of the sovereign state.

The ideas from which the modern democratic movement has descended thus in part owe their origin to the Reformation. In countries which accepted a form of the Protestant faith, powerful protests against the omnipotence of the secular government were made by Catholic writers. The Jesuit Mariana declared that the community reserved to itself the power to change the form of government, since it had made no irrecoverable surrender of its sovereign authority. The right of deposition was inherent

in the fundamental sovereignty of the people, which was part of the *ius gentium*.

The doctrine of the natural rights of the community is also expressed by Suarez (1548–1617), who was concerned to demonstrate that Catholic subjects owed no unlimited obedience to Protestant monarchs. Falling back on the mediæval argument that rulers derived their authority from a grant by the sovereign people, Suarez pronounced that such delegated authority could only be conditional on the observance by the ruler of the fundamental rights of the subject. Persistent neglect justified his deposition by duly authorised representatives of the people. Similar views had been expressed at an earlier date by another Jesuit, Lainez.

In the early seventeenth century, after the Protestant successes in England, Scotland and the Netherlands, the assertion by Catholic controversialists of popular rights was made with greater distinctness and emphasis. Althusius, in his *Politics* (1603), proclaimed the gospel of government by consent, using the fiction of an original contract between ruler and people in order to lay stress on the limited scope of governmental authority. To Althusius, the people were not merely the source of all political power. They remained sovereign by a right which could not be alienated. No rights had been irrevocably surrendered to the monarch, and such authority as had been delegated could be recalled at any moment.

The theory of popular sovereignty was at the same time proclaimed in the interests of Protestantism. Where, indeed, the government had embraced the Protestant cause, the arguments of Catholic writers could be effectively met by opposing to popular sovereignty the current doctrine of the unlimited jurisdiction of the

crown. The persecution of Protestant subjects in countries which retained the Catholic faith, on the other hand, gave a renewed impetus to the doctrine of resistance. It was in France that the most famous and original work in defence of Protestantism, the *Vindiciae contra Tyrannos*, was published.[1] The long series of religious wars, which were destined to absorb the energies of the French nation and to postpone the accomplishment of internal unity for more than a generation, had broken out in the year 1562. In the sixteenth century, in all parts of western Europe, men felt too strongly upon religious matters to admit of the recognition of the principle of toleration, and most governments attempted to secure unity of belief by persecution. For a period, the French Government, guided by the brilliant but ambitious and erratic Catharine de' Medici, endeavoured to pursue a conciliatory policy, but the intervention of political and even personal interests and ambitions eventually defeated this attempt. The massacre of French Protestants on St Bartholomew's Day, 1572, which had been promoted and authorised by the Court,[2] not unnaturally led to the growth of anti-monarchical sentiment among the rank and file of the Protestants. In the south, they had already established a representative and quasi-federal system of government, in defiance of the royal authority, and the theoretical justification of this repudiation of the jurisdiction of the monarch was supplied by the

1 This book is now thought to have been the work of Languet and Duplessis-Mornay in collaboration. There are evident traces of joint authorship.

2 It is now agreed among historians that Catharine de' Medici was the chief author of the massacre, and that it was planned with the knowledge of the king. Catharine is, however, entitled to credit for the remarkably tolerant Edict of 1576.

Vindiciae contra Tyrannos, and the *Franco Gallia* of Francis Hotman.

The central theme in the former work is the dependence of the existing order on agreement. The true basis of society is held to be a contract between God and the people. God is represented as having covenanted with a nation to maintain prosperity, so long as the people obeyed His will. Government rests upon a second covenant, in which the contracting parties are king and people respectively. Allegiance is accordingly conditional on good government. Resistance to a ruler who is attempting to defy the divine will is entirely justifiable. The king is, indeed, no more than a steward or administrator and, as such, is definitely subordinate to the laws.

The theory of a social contract is developed with great skill and lucidity. It is admitted that, in order to establish a political community, the individual had made a voluntary surrender of a portion of his natural liberty. But it was unreasonable to assume that the surrender had been unconditional, or indeed greater than was necessary, in order to guarantee peace and security. Sovereignty remained vested in the community at large. The right of resistance to an oppressive ruler belonged to the leaders of the community, presumably to the public officials and representative estates. It is important to note that there is no recognition of the legal or moral right of the individual to offer resistance. The book constructed a political philosophy which, in the long run, promoted democracy, but in conception and argument it was aristocratic rather than democratic. Its chief concern was to safeguard the existence and the liberty of a minority of the French people, and, in the sixteenth century, this end

could not have been achieved under any form of popular government.

The *Vindiciae contra Tyrannos* was the most notable book of the sixteenth century written in defence of constitutional liberties. It based the curtailment of governmental authority on abstract right, and it proclaimed in eloquent language the doctrine of man's inalienable liberties.

Whilst the authors of the *Vindiciae contra Tyrannos* appealed to philosophy and to ethics, Hotman in his *Franco Gallia* appealed to history. He endeavoured to show that the French Government in the Middle Ages had been a limited monarchy—that there existed, as a counterpoise to the power of the crown, other bodies in the state with claims to independent jurisdiction. Hotman was not a democrat, but he would have liked to vindicate for the States General ultimate powers of legislation and taxation. He failed to perceive how far removed, in composition and historical traditions, was the French assembly of estates from the High Court of Parliament in England.

A considerable element of aristocracy had been retained by Calvin in the organisation of his Church at Geneva. The Churches which his followers established elsewhere were governed on a more democratic basis. As time went on, Calvinists reacted more and more against the principle that the state should dominate the faith of the people, and denied that magistrates were entitled to exercise authority in ecclesiastical affairs, save in so far as this was sanctioned by the Church. The election of ministers by congregations became a reality. It was asserted that sovereignty in church matters lay with the community of the faithful. These notions were strong in

what came to be known as the *Presbyterian* Church of Scotland; but the full implications of the democratic theory of church government were only worked out in the reformed sects of the Anabaptists and Congregationalists. The principle of equality in the Church was largely realised in the Anabaptist polity. The Independent, or Congregational, Churches in England and North America applied in the ecclesiastical sphere the doctrine of a social contract. Their members, when desirous of forming a new Church, entered into a solemn engagement with one another to live a godly life. The congregations of the Independent Churches, which largely derived their inspiration from Robert Brown,[1] first realised in practice the conception of a society established by mutual compact between its members. The Congregationalist Church was thus a voluntary association of believers organised on a democratic basis. These arrangements were largely the outcome of Brown's insistence on the independence of each self-governing congregation, and on the complete separation of ecclesiastical from secular affairs. In matters of lay jurisdiction, his followers were enjoined to render obedience to the state, but in all questions of faith and of church government, Brown's emphatic statement of the sovereignty of the congregation left no room for royal intervention or for aristocratic control. In England, as we shall see in the next chapter, an attempt was made, with the establishment of a republican government, supported by an army with pronounced leanings towards Independency, to apply the

1 Brown was originally a disciple of the English Puritan Cartwright. In 1582 he published a statement of his principles in three works, notably his *Life and Manners of all True Christians*. See Gooch and Laski, *English Democratic Ideas in the Seventeenth Century*, 1927, pp. 42–3.

doctrine of the sovereignty of the people in the secular sphere also. The principles of civil freedom were suggested by the thought and the practice of the *Puritan* Churches.[1] The inspiration of political democracy in the modern world was thus derived from experience of the successful working of democracy in the independent congregation.

In England, the Puritan attack on the episcopal form of church government pointed the way to a democracy in church affairs, which the *Pilgrim Fathers* and their successors in North America were in a position to realise. The colonial communities, established at the commencement of the seventeenth century on American soil, provided an outlet for natural ability and an opportunity for political experimentation. From the outset, they were permeated by the spirit of equality, whilst the absence, in large measure, of governmental restraint strengthened the spirit of self-reliant individualism. These conditions go far to explain the tendency to break away from English ideas and to develop their own political and religious institutions.

It was in New England that the conception of a community in which both society and government should be on a democratic basis first took positive form. The Pilgrim Fathers had covenanted among themselves to establish in North America a Christian Commonwealth.

1 In the sixteenth century, the Puritans in England remained, for the most part, members of the established Anglican Church. Though largely Calvinistic in doctrine, Puritans fell apart into many sects, united only in their claim that the Church should be purified from superstitious and corrupt practices, and in their opposition to the coercive powers of the episcopacy. In the seventeenth century, the term was applied more particularly to ministers and laity who had broken away from the Anglican communion and founded churches of their own.

In the early days of the settlement at New Plymouth, democracy was firmly upheld. Legislation belonged to a popular assembly, composed of all adult male colonists. The subordinate functions of administration were entrusted to a Governor and Council elected by popular vote. Similarly, at Connecticut, the "Fundamental Orders"—a document which has been described as "the first written constitution of modern democracy",[1] provided for a general assembly of colonists as the sovereign power in the community, and a magistracy subject to annual re-election.

The growth in population and the scattering of settlements over a wide area soon necessitated the substitution of representative for direct democracy. In New Plymouth, an assembly of delegates from the various townships replaced the primary meeting of citizens, though direct democracy was retained for the management of the affairs of the township. The colony of Massachusetts established a General Assembly on a representative basis with manhood suffrage so far as the *freemen* were concerned, but democracy was here held in check by the strength of an ecclesiastical aristocracy. The majority of the colonists were excluded from the franchise on the ground that they were not members of the dominant Church. Moreover, the General Assembly, at its first meeting, entrusted legislation to the Governor and Council, and though this right was later restored to the Assembly, the sovereignty of the community was neither direct nor, in all cases, effective.

The most democratic of the Puritan settlements in North America was undoubtedly Rhode Island, esta-

1 C. Borgeaud, *The Rise of Modern Democracy in Old and New England* (1894), p. 123.

blished by Roger Williams, the leader of a group of settlers who were discontented with the theocratic government of Massachusetts. From the first, religious liberty and political equality were maintained, whilst legislative power resided in the Assembly of all free inhabitants. In 1663, this Assembly became representative, but the popular initiative in legislation was to some extent safeguarded by the practice of preliminary discussion of laws in primary meetings of the townships. Absolute liberty of conscience was proclaimed, whilst slavery was abolished within the territory of the colony. These principles were maintained with some difficulty, and Williams's decisions, as Governor, were not always consistent with his earlier professions. Nevertheless, the little colony produced an eloquent Declaration of the Rights of Man, whilst its *Fundamental Articles* (1647) enthroned democracy by ordaining that government must be in accordance with the "free and voluntary consent of all, or the greater part, of the free inhabitants".

In the more southerly parts of North America, representative institutions were also taking root. There, the colonists were for the most part Anglican or Catholic. It was in Virginia that the first representative assembly met on American soil (1619).

The trend towards democracy in the New World was thus evident. In their new environment, the colonists formulated the doctrine of the natural rights of man, independent of established law and custom. Their political arrangements, in all the colonies, came to embody the principle that every citizen should have a voice in the government of the community. Representative government was a reality in the American colonies of the eighteenth century, at a time when, even in England, the

government was unrepresentative and aristocratic. Even direct democracy survived in the town meetings of New England. In Europe, on the other hand, though the Reformation had led to a significant growth of democratic sentiment, the forces making for monarchical centralisation were too strong. The Reformers awakened the first revolt against governmental autocracy, but that revolt did not succeed in popularising the machinery of government. Only in England did religious controversy culminate in the effort to establish the constitution on a democratic basis. With this attempt and with the collapse of the organs of constitutional government on the European continent, we shall deal in the succeeding chapter.

CHAPTER VIII

Democracy in the Age of Absolutism

In modern times, democratic principles have had to contend against class privileges, ultimately derived from the feudal system, and, at the same time, monarchical power. The subordination of the feudal aristocracy, through the curtailment of the political authority of the great landowners, was accomplished, throughout the greater part of western Europe, in the sixteenth century. The social privileges of the nobles, however, survived, and it was the alliance between oligarchy in the social sphere and monarchical absolutism which impeded the progress of democracy. In the later Middle Ages, representative assemblies had indeed come into existence in the progressive countries of the Christian West. But they had not established their claim to be the sole channel for the exercise of legislative powers. In the early centuries of the modern era, representative legislatures appeared to be on the decline, and it was only in England that the transition to constitutional monarchy, through the recognition of the supremacy of parliament over the ministers of state, was accomplished in the seventeenth century. Modern democracy has been a gradual development, marked by the subordination, step by step, of the executive department of government to the popular legislature. In the eighteenth century, confidence in monarchy was still very strong, and the period from the Renaissance to the French Revolution may be termed, not inaptly, the *Age of Absolutism.*

Of this development the course of French history may be taken as typical. In the sixteenth and early seventeenth centuries, the monarchical authority had to struggle to supremacy through bitter conflicts with the nobility. The restoration of the central government, after the disorders of religious warfare, was accomplished by Henry IV. To curb the power of the aristocracy, Henry entrusted important governmental functions to middle class officials. In the succeeding period, the system of absolute government was gradually perfected. Louis XIV inherited, in 1661, a system of government through councils, which had been laboriously erected by Richelieu and Mazarin. The monarchy had triumphed over the separatist tendencies of both nobility and local organs of administration. It had not, indeed, altogether effaced the rival institutions of an earlier age. The supreme law courts, or *Parlements*, were maintained, but their claim to debate the king's ordinances, and, under certain circumstances, to refuse to register them, was decisively rejected. Provincial estates and municipal councils still existed, but their freedom of action was rigorously curtailed. Local self-government passed away, when the town officials came to be nominated by the government. Real power rested with the royal *intendants*, for the most part chosen from the unprivileged classes. The crown, in this way, secured direct control over the entire judicial and financial administration of the provinces. The Intendants were the local representatives of royal absolutism and, under their rule, France became, for the first time, an effective governmental unity.

In the seventeenth century, France was not ready for parliamentary government. The development of the States General into a national deliberative assembly had

been prevented by its lack of unity. Its organisation into three estates produced a rivalry of class interests, and destroyed its usefulness as a check on executive authority. The exemption from taxation of the members of the first two orders left the Third Estate to maintain alone the futile struggle against royal control of the finances. In 1614 its energies had been absorbed by issues of personal or sectional importance only. It had never acquired the power of legislation, and, after 1614, it was not again summoned till one hundred and seventy-five years later.

In other countries of western Europe, monarchs hastened to imitate the personal absolutism of the French crown. Lack of combination between the various elements in the state opposed to royal centralisation explains the success of the Habsburg rulers of Spain, in erecting an autocratic system of government. The vast revenues at the disposal of the Spanish crown made the king normally independent of the Cortes, whilst the exemption of the nobility from taxation operated, as in France, to weaken constitutional checks on the crown. Absolutism was never, indeed, erected on as firm a basis as in Spain's northerly neighbour. The Cortes of Aragon retained, until the early eighteenth century, constitutional rights as regards justice and taxation. These liberties were, however, essentially relics from an earlier age. They resembled the mediæval liberties of the feudal baron, inasmuch as they were not of universal application, and were negative rather than positive. They operated to restrict the omnipotence of the royal will, but they could not serve as a basis for parliamentary government.

In Germany, the weakness of the Imperial authority

encouraged the territorial princes to seek to exalt their power in imitation of the absolutism of the French crown. The settlement of the religious conflict in 1555 enabled each prince to impose his personal religion, Catholicism or Lutheranism, on his own territories, whilst the virtual independence of the component states of the Empire was acknowledged at the Peace of Westphalia (1648). In the seventeenth century, the rulers of the more important states were occupied in establishing their personal autocracy. The decline of the Imperial Diet into a mere congress of ambassadors from virtually sovereign states was followed by the disappearance, in many parts of Germany, of the local diets. Brandenburg-Prussia, where the provincial assemblies and administrative organs had been strictly subordinated to the royal council by the Great Elector Frederick William (1640–88), came to be the pattern of autocracy, which other German states were not slow to imitate.

In Scandinavia and in Russia, the co-operation of the people enabled the throne to overthrow the independent power of the nobility. Assemblies which were, to some extent, representative, continued to meet in western Russia in the seventeenth century, the establishment of the Romanov dynasty (1613) being accomplished by election, in an assembly which comprised representatives from the chief cities. Representative institutions, however, were not in keeping with the spirit of the age, and, by the close of the century, the autocracy of the Czar was subject to no effective restraint.

Only in Poland, Switzerland, the Dutch Netherlands and England were constitutional liberties maintained. In Poland, the monarchy possessed little authority. Under the Jagellon dynasty, it had been, in practice

though not in theory, hereditary. In 1672, however, the nobility succeeded in establishing its elective character, with the result that important restrictions were imposed on the royal power at each successive election. The limitation of the Polish monarchy merely served to throw light on the substantial merits of royal absolutism, for economic ruin and local oppression followed as a consequence of the weakness of the government and the realisation of the selfish aims of the nobles.

Even in Switzerland, democracy was somewhat curtailed during the Age of Absolutism. In the period of the Reformation, the principle of popular sovereignty was still acknowledged. It was by the method of the popular vote that many districts made the momentous decision between the old religion and the new. In cantons where no landsgemeinde existed the practice of consulting the people on important issues was followed. Thus, Bern decided by popular voting proposed alliances with foreign states and even articles of faith. In the larger cantons, where representative machinery had been established, it was nevertheless customary to make merely provisional decisions in council, subject to ratification by the people. But towards the middle of the seventeenth century, aristocratic influences began to predominate. Obstacles were imposed to the entry into full burghership of newcomers from the country districts. In many of the chief towns government fell into the hands of an urban aristocracy, or *patriciate*. At Bern, the method of referring decisions to the popular vote was discontinued after 1614. At Lucerne, Fribourg and other centres, the burgher privileges were monopolised by the few, the majority of the citizens being excluded even from elective rights. There was a tendency, in all the

larger towns, for the council to become a self-perpetuating corporation, and assume the sovereign powers of the community. Even in the country districts, the trend towards autocracy and the narrowing of the rights of citizenship became manifest. Equality was infringed by regulations which denied civil, as well as political, rights to new settlers from other districts. The spirit which animated the democratic cantons was, indeed, no less exclusive than that of the city states of ancient Greece, and the cruel treatment of some of her subject cities by Athens finds a parallel in the ruthless subjection of the self-governing district of the Val Leventina by the democracy of Uri (1755)[1]. There are also indications of fierce internal strife, and of electoral corruption on a large scale. It is evident that the direct democracies of republican Switzerland did not altogether succeed in upholding the principles of civic equality and freedom.

Nevertheless, despite the growth of oligarchy, the Swiss people maintained, in part, the democratic institutions of the mediæval period. In many cantons, the landsgemeinden continued to meet and to decide in sovereign assembly the affairs of the community. The persistence of these institutions of popular government throughout the absolutist era was to produce a profound impression on the thought of the eighteenth century.

In the Netherlands, the chief obstacle to the development of a system of parliamentary sovereignty was the particularism of the various provinces. The monarchical principle was weak, for no reigning dynasty had been identified with the progress and prosperity of the country as a whole. During the struggle for independence

[1] W. Oechsli, *History of Switzerland* (Cambridge, 1922), p. 258.

against Spain, the country became deeply indebted to its great leader, William of Orange, but the original constitution of the United Provinces was republican in nature, and provided for the exercise of executive, as well as legislative, powers by the representative States General. Throughout the greater part of the next century, the princes of Orange held the position of Stadtholder in the majority of the provinces, but it was not until 1747 that a single stadtholdership was established for the whole state, and made hereditary in the house of Orange. The Netherlands thus remained an exception to the general principle of absolute government in the states of western Europe. Its hereditary presidency did no more than balance the influence exerted by the wealthy province of Holland towards an oligarchical republicanism. The antagonism of these two forces did much to weaken the cause of national unity, and, in the long run, the principle of state rights triumphed over the conception of a compact and unified commonwealth. The sovereignty of the provinces had been virtually recognised so early as 1651, and thereafter the States General became little more than a congress of delegates from sovereign communities.

The Dutch system of local self-government and the election of judicial magistrates afforded a significant contrast to the centralised and autocratic administrations of neighbouring countries. But though the Netherlands promoted by their example the development of free institutions, it must not be supposed that the system of government was democratic. Excessive decentralisation placed the destinies of the country in the hands of the municipal councils, and these councils were controlled by a narrow oligarchy of leading citizens. The absence

of a strong national organisation and the constant strife of party politics prevented the accomplishment of national unity and strength.

In England alone were the foundations of political freedom truly laid. Under the Tudors (1485–1603), Parliament had become a permanent institution of government. The sixteenth century was a great period of parliamentary legislation, during which the representative House of Commons learnt to act together. Nevertheless, the development of political consciousness was incomplete, whilst the menace of foreign invasion made even the most combative parliamentarian acquiesce in a large measure of executive authority. With the accession of the Stuarts, the constitutional issue was forced into prominence. There was no sense of national gratitude to a monarch of "foreign" (Scottish) descent, and no longer any need, in time of national security, for the enjoyment by the monarch of wide discretionary powers. James, moreover, was a doctrinaire, fond of enunciating abstract principles of government. In consequence of this fatal predilection, distinct and conflicting theories of government were brought to the forefront. James and his son, Charles, claimed that the king was master of the state and above the law. They were determined to convert the practice of the Tudors into the accepted doctrine of the constitution, by which the crown should be admitted to possess emergency powers, which could be used at the royal discretion. Henry VIII and his successors had been content with the substance of power, and had carefully preserved the forms of constitutional government. The Stuart conception of the divine right of kings, on the other hand, erected the king above his subjects and beyond the reach of the law. Englishmen

were thus brought up against the fundamental problem of sovereignty, and forced to consider the question wherein lay supreme authority in the state.

It was only by gradual steps that a theory of parliamentary government was elaborated in reply to the contentions of the Stuart kings. There was, at first, little thought of limiting the crown by the establishment of the sovereignty of Parliament. The opponents of divine right fell back on the old notion of the supremacy of the law. Under James, the lawyers, and especially Chief Justice Coke, advanced the claim that statutes, in so far as they incorporated natural justice, were sovereign over both King and Parliament.

Parliamentary democracy has been achieved through the subordination of the executive ministers to the will of the representative legislature. In the seventeenth century, in England, the ministers were still primarily the King's servants, and it was not until a later period that any constitutional method of securing their political responsibility to Parliament was devised. The claim of the House of Commons, under the early Stuarts, was that the King should choose ministers who would refrain from violating the constitution. The impeachments of Buckingham and of Strafford were based on definite charges of having broken the law. Not until 1641 was there any suggestion of parliamentary sovereignty. Until that date, the Commons were content to press for recognition of their sole right to vote supplies and control taxation, and to repudiate the existence of any independent power of legislation and taxation vested in the crown. With the assembling of the Long Parliament in 1640, the significant assertion was advanced that the government was controlled by law.

The fact that both James and Charles held views of foreign policy and religion which were opposed to those of the majority of the nation was of immense advantage to Parliament, since it tended to identify the cause of the representative House of Commons with that of the nation as a whole. Under Charles I, the Commons appeared to be the champions of the people against an oppressive government. The confidence thus engendered, in conjunction with the fundamental distrust of Charles, led to a notable advance in parliamentary claims. The Long Parliament, which assembled after the eleven years' experiment of personal rule, was not republican in sentiment, but it was resolved not merely to abolish the discretionary powers of the crown, but also to transfer to itself control over the administration. The determination to secure executive as well as legislative power, including the control of the military forces, amounted to an attempt to substitute for royal government the sovereignty of Parliament. It led direct to the outbreak of civil war, for which Charles was now better prepared, inasmuch as a deep cleavage, on religious affairs, had appeared among the ranks of those who had hitherto co-operated against royal misgovernment.

The Civil War determined the issue as between King and Parliament. But Parliament had appealed to the nation to sustain its cause, and it was inevitable that the parliamentary victory should be followed by a movement to concede to the people some measure of ultimate control. Moreover, the claim of the Commons to make radical alterations in the framework of government could only be justified by the enunciation of democratic principles. Accordingly, the resolution of the Commons (January 4, 1649), asserting the validity of its ordinances

independent of the assent of the king, or hereditary chamber, was accompanied by the declaration that the people were the original of all just power in the state, and that supremacy belonged to the Commons, in virtue of its representative character.

Before the abolition of monarchy, definite proposals had been made for reforms which should not only ensure popular control over the crown, but also emphasise the representative nature of Parliament. The *Heads of the Proposals*, drawn up by Ireton and accepted by the Army Council (1647), advocated biennial parliaments elected by equal electoral districts. The proposals to allow a wide measure of toleration, and to take away the coercive power of ecclesiastical officials, reveal the intention to safeguard the rights of the private citizen against the authority of the state. Even more democratic in its nature was the *Agreement of the People*, originally drawn up in 1647, and presented to Parliament in a modified form in January 1649. This was the work of the genuinely democratic party in the army, known to their opponents as *Levellers*. These men, prominent among whom was John Lilburne, proposed to limit the authority of the legislature by reserving certain matters to be dealt with by the people. The authority of Parliament was thus to be unequivocably inferior to the power residing in the community. This arrangement was to be guaranteed by the relatively new device of a written constitution, which Parliament would be incompetent to amend. At the same time, a radical redistribution of seats was to be carried out. The absence of any provision for monarchy, or for an upper house of the legislature, reveals the strength of the democratic feeling.

The significance of this movement lies in the fact that

its authors assumed that it was necessary to provide against the tyranny of elected legislators. To accomplish this purpose, they did not hesitate to destroy the sovereignty in legislation, which Parliament appeared to have vindicated as against the monarchy. The idea of defining certain fundamental rights in a written constitution, and so reserving them from the jurisdiction of the legislature, was destined to be subsequently adopted in many modern constitutions, notably in that of the United States of America. It was the first elaborated suggestion, in any of the great European states, for the adoption of a written constitution based upon the sovereignty of the people.

The constitutional experiments of the Commonwealth period anticipated in some measure the development of governmental institutions in Europe and America. On the other hand, they afforded no prospect of permanence and stability, for the nation had not been consulted in 1649, and no general elections were held during the continuance of republican rule. Oliver Cromwell, who remained at the head of the administration until his death in 1658, was sincerely desirous of re-establishing constitutional authority, and bringing to an end military government, but the divided state of the country led him to believe that his personal control of affairs was necessary to avert anarchy. During Cromwell's *régime* the government was neither parliamentary nor democratic, but the outcome of the period was an unprecedented activity in political experimentation. For the most part these experiments took the form of ready-made constitutions, imposed upon the country by a small group of self-appointed legislators. Thus, the *Instrument of Government* (1653) was drawn up by the Army Council. It was, however, the most elaborate and statesmanlike scheme

yet devised, and, inasmuch as it was acted upon for a period of some three years, it may be regarded as the first written constitution actually applied to a great nation.

Under the Instrument, the legislative and executive powers of government were separated, on somewhat similar lines to the arrangements of the American constitution of the present day. Thus, whereas the Protector was to be head of the administration, with a general control of policy and a limited power of appointment to offices, he was to enjoy no more than a suspensive veto in legislation. Parliament was to consist of a single house of 460 members, of whom sixty were to represent Scottish and Irish constituencies, whilst a redistribution of seats and a widening of the county franchise pointed the way to democratic government. On the other hand, the Protector was to hold office for life, whereas the authority of Parliament was limited by its incompetence to discuss the fundamentals of the constitution. The disfranchisement of Royalists and Catholics, intended in the latter case to be permanent, indicated that the nation was not to be taken fully into the confidence of its self-appointed rulers, whilst the arbitrary exclusion from Parliament of members constitutionally elected under the Instrument must be attributed to the anxiety of Cromwell lest internal dissensions should altogether paralyse governmental efficiency. The failure of the Instrument led to further experiments marked by a gradual restoration of the old machinery of government. The *Humble Petition and Advice* transformed the protectorate into something very like a monarchy, and revived the second house of the legislature. With the death of Cromwell, a restoration of the Stuart dynasty was seen to be inevitable.

The Restoration did not throw back the cause of parliamentary government. It was not a restoration of kingship as Charles I had known it, but rather of the constitutional monarchy which the Long Parliament had established in 1641. The prerogative powers of the crown were not restored. Charles II might still control the militia and appoint his own ministers, but he was powerless to carry into effect a policy obnoxious to Parliament and to the nation. During the period of the Commonwealth, the Commons had acquired a larger knowledge of public affairs, and an experience in government, which led inevitably in the direction of parliamentary sovereignty. On the other hand, no machinery was yet in existence whereby co-operation between legislature and executive could be secured, whilst the absence of any effective popular control over Parliament negatived the possibility of democracy. In the seventeenth and eighteenth centuries, the king could still evade parliamentary control through the misuse of patronage. The party system was in its infancy, and a parliamentary majority could only be secured by bribery. Political representation was in theory complete, but in practice it was rendered nugatory by aristocratic control. Thus landed proprietors exercised a dominating influence over elections in both county and borough. In some boroughs no parliamentary contests whatever occurred during the eighteenth century. Seats were openly bought and sold, whilst the existence of treasury boroughs opened the door to royal influence. Nor was local government popularly controlled, the gentry monopolising offices and seats on the bench. The low standard of political morality contributed to the decline of parliamentary prestige, and helped to make the government subservient to oligarchic interests.

In the North American colonies of England, on the other hand, the individualism of colonial life promoted democracy. The Americans were forceful and self-reliant. They were, at the same time, tenacious of the principles of natural liberty, which they conceived to be their racial heritage. In the eighteenth century, the constitutional conflict within the colonies terminated in the victory of the popular assembly, which everywhere vindicated its right of initiative and of unfettered discussion. It had steadily encroached on the prerogative of governor and council, using its control of supplies to secure recognition of parliamentary privileges. Though the Imperial authorities refused to acknowledge the parliamentary status of the various colonial assemblies, the prerogative had become appreciably weaker. Before 1760, in all the mainland colonies, the assembly effectively controlled the government, whilst the omnipotence of the Imperial Parliament had been sharply disputed. Inasmuch as the assemblies fairly represented the voting constituencies, the government may be described as democratic.

We have traced, in the preceding chapter, the influence of the religious changes of the early modern era on democratic thought. In the secular sphere there were few manifestations of democratic doctrine during the age of absolutism. The Dutch jurist Grotius, indeed, in his famous book *De Jure Belli ac Pacis* (1625), stated that natural law was superior to the will of kings, and that the public welfare was the only legitimate object of any government. He unconsciously forwarded the democratic movement, by laying stress on human freedom and on the liberty of the conscience. His statements, however, were often vague and inconsistent, and it remains, broadly speaking, true that only in England,

during the seventeenth century, was democratic thought active.

Even in England, the influences which have been traced to the Reformation, and which tended to exalt the liberties of subjects, found a powerful opponent in the philosopher Thomas Hobbes. Hobbes proclaimed Bodin's notion of absolute sovereignty. The failure of the sovereign to enforce obedience was the origin of tumult and anarchy in a state. He vehemently repudiated the doctrine of the Parliamentarians that the monarchy was limited by fundamental law, since sovereignty, in his view, must be absolute and indivisible. The sovereignty of the people held no meaning for him, and he stigmatised democracy as "an aristocracy of orators, interrupted sometimes with the temporary monarchy of one orator". Hobbes, on the other hand, had no particular affection for monarchy, which he supported merely on the ground that a monarchical government could most readily and efficiently direct the activities of the state. His insistence on the subordination of all authority within the state to the absolute power of the monarch was supported by his argument that subjects had parted irrevocably with their liberty, in order to establish the state with its single and irresistible authority. There were flaws in Hobbes' argument. He embraced the notion of a social contract, yet employed the theory to bolster up absolutism. He little heeded the implication that the state originated in agreement. Moreover, he abandoned the old defences of autocratic kingship, and showed little patience with divine right. His outlook was purely secular and he showed government to be a matter of historical evolution. He was chiefly concerned to maintain the strength of the central govern-

ment, and his arguments were not really at variance with the principles of democratic government.

The republican *régime* in England lasted too short a time to influence in a democratic direction the prevailing trend of political thought. It produced more than one brilliant and eloquent defence of popular sovereignty, but these treatises were, for the most part, ahead of their time. Milton's *Tenure of Kings and Magistrates* (1649) argued that kings were accountable to the people, who had entrusted to them the administration of public affairs, whilst retaining ultimate authority, but the execution of Charles I had been unpopular with the bulk of the nation, and Milton was associated with a group of Army officers who refused to take the people into their confidence. His plea for personal and religious freedom was compatible with monarchical rule, and his later arguments in favour of popular resistance, and of revolution, failed to win favour with a people wearied of political changes, and desirous of re-establishing the ancient framework of government and society. It was in America, rather than in England, that Milton's political ideas met with a measure of support. Only the Cromwellians were likely to favour his suggestion that a grand council, composed of men of distinction and not subject to popular election, should be established, but his advocacy of local autonomy[1], exercised through popular assemblies, was welcomed by the Puritan communities of New England. Milton's proposal to safeguard liberty by the devolution of governmental powers to local representative bodies was a significant contribution to democratic doctrine.

More influential was Harrington's *Oceana* (1656), per-

1 *A Ready and Easy Way to Establish a Free Commonwealth* (1659).

haps on account of its practical and dispassionate outlook. Harrington's main theme was that governmental power should be connected with property in land, and in this he was doubtless expressing the views of the governing classes in England. The political system, he held, should be the outcome of social and economic conditions. Inasmuch as there had been a great increase in the numbers of landowners, Harrington considered that the time had come to substitute for the rule of a single man that of a republic of landowners. He insisted that the possession of landed estate should be the qualification for the exercise of political functions, and his logic taught him that this principle required a reform in the system of parliamentary representation. As a remedy for the evils of private ambition and governmental oppression, Harrington put his faith in popular election. At the same time, he proposed to erect a system of checks and balances, which would make democracy compatible with order and stability. Prominent among his suggestions was the proposal to introduce the ballot and the method of indirect election, expedients unfamiliar in England, but not unknown in the American colonies. Harrington borrowed freely from the political philosophy of the Puritan movement[1], and his system was open to the objection that too much reliance was placed on machinery. His elaborate constitution, including provision for a senate which could not vote and a popular house deprived of the essential right of initiation, was little calculated to satisfy democratic sentiment. In England his writings ceased to be seriously studied with the restora-

1 Some of his suggested expedients were perhaps derived from governmental practice in the city republics of Italy and the Netherlands.

tion of the Stuart dynasty, but in Carolina and Pennsylvania several of his suggestions were incorporated in the constitutions, though not altogether with the happiest results.

Nevertheless, Harrington's writings, perhaps because they set out in a clear and logical statement the prevailing Puritan doctrines, were destined to exercise an important influence upon the development of democracy in America. The separation of powers, especially the dissociation of the executive from the legislature, the method of indirect election, the multiplication of elective offices held on the principle of rotation, and the maintenance of the people's right to ratify or reject constitutional amendments, were contributions to political theory which were later reflected in the constitution of the United States.[1] Though Harrington was hardly a democrat, and did not propose to give the popular chamber the initiative in legislation, he was optimistic enough to assert that the adoption of representative institutions would lead to a safeguarding of the popular interests, whilst his political system rested upon the broad foundations of civil liberty and religious toleration.

With the Restoration, monarchical sentiment was once more dominant, and it needed the recurrence of danger to civil and religious freedom in the period of Stuart success (1681–8) to elicit a further and more vigorous expression of republican and democratic doctrines. Prominent among the opponents of the court was Algernon Sydney, whose *Discourses concerning Government* defended changes in the superstructure of government

1 It was largely through Montesquieu that the theory of the separation of the functions of government came to exercise profound influence in America.

which left untouched the foundations of society. Kings breaking the law could, without a revolution in society, be deposed for misgovernment. Sydney was an upholder of parliamentary, or representative, democracy, maintaining that parliaments were older than kings, and that practical sovereignty rested with the people's representatives. Direct democracy, in which the people directly shared in the government, he declared to be a chimera.

These sentiments were expressed with more cogency by John Locke. Locke developed the theory of the social contract, which he made an agreement between individuals and no longer a pact between subjects and their rulers. The community could thus retain supreme authority, whilst the government became a trustee ultimately accountable to the sovereign people. Whereas Sydney had manifested a preference for parliamentary supremacy, Locke was more democratic in his bold statement that "there remains in the people a supreme power to remove or alter the legislature". He thus made possible the reconciliation of the supremacy in legislation of Parliament with the liberties of the nation. The subject, he declared, could not divest himself of rights with which man had been endowed by his Creator, and, when these rights were in danger from governmental tyranny, resistance became a duty.

Locke's theories profoundly influenced thought in both Europe and America. On the continent of Europe, attention was chiefly directed to his statement that the people, in order to safeguard liberty, had entrusted the various functions of government to different bodies. This doctrine, which we have noticed in a slightly different form in Harrington's *Oceana*, was accepted in France by Montesquieu, and was destined to exercise a

manifold influence on the constitution-making of the early nineteenth century. The theories of the French philosophers were largely inspired by Locke's insistence that the people retained a right of active participation in government, since no one could be lawfully subjected to authority without his free consent. The people were thus in a real sense the choosers of the form of government.

Locke's work, though intended to be merely a defence of the Revolution of 1688, was in fact a reasoned statement of the democratic conception of government. In America, he stood forth as the champion of the people against governmental injustice. His doctrine of the inalienable rights of man, justifying resistance to parliamentary, as well as royal, oppression, provided a theoretical justification for American repudiation of parliamentary supremacy. His influence may be clearly traced in the Declaration of American Independence, 1776.

In the eighteenth century, this democratic tradition was not altogether stifled, but political writing was powerless to mitigate the evils of absolute government, until it was reinforced by economic and social unrest. Gradually the strength of the monarchical principle was undermined by the deep popular resentment against the existing political and social order in European states. We have seen that, even in England, the government in this period was actually aristocratic. In central Europe, the *Age of Enlightened Despotism* promised a strengthening of monarchy, through association with material prosperity and administrative reforms. Only in America and, to some extent, in Switzerland, was democratic government actually in operation during the latter half of the eighteenth century.

CHAPTER IX

Rousseau and the French Revolution

In central Europe the activities of enlightened monarchs, such as Frederick the Great of Prussia and Joseph II of Austria, did much to promote the prosperity and happiness of the communities under their rule. An ideal of purposeful activity animated the ruler, who was content to regard himself as the representative, if not the servant, of his people. Radical changes, amounting to the overthrow of the political and social system of the *ancien régime*, were, however, necessary before the modern national state, governed in accordance with democratic principles, could be established. The chief obstacle to the ideals of liberty and self-government was, not so much the strength of monarchical authority, as the universal dominance of privilege. Monarchy had now little of the prestige which had surrounded the throne of Louis XIV. We have seen that, from the period of the Middle Ages, weapons had been forged against the authority of the crown, which anticipated the principles of the French Revolution. In the eighteenth century, even in monarchical France, there was a growing antagonism towards unlimited autocracy, and a fruitful development of ideas which underlie constitutional government. But liberty and equality for the individual had to struggle, also, against aristocratic privilege. It remained for the French Revolution to destroy privilege as the basis of the old order, and to erect an equalitarian society on the patriotism of the masses. In this task the revolutionists

were assisted by the widespread acceptance of the doctrine of natural rights, which, inasmuch as it proclaimed the rights of common manhood, was the complete negation of privilege. The assertion that the individual was prior to the state, and consequently possessed rights which were in no sense dependent on the will of any ruler, was the principal contribution to democratic thought made by the great French philosophers of the eighteenth century.[1]

These men wrote at a time when a reaction had begun against the absolute monarchy established by Louis XIV. The growth of material prosperity and of enlightenment had prepared men's minds for a radical criticism of existing society, in the light of reason. Among the great French thinkers of the period, there were many whose political creed was almost entirely negative. Diderot and d'Alembert broke down the respect for tradition and authority by their destructive analysis of French institutions. By calling attention to autocracy in government, intolerance in religion and unjust inequality in society, these writers inspired the middle classes with the "revolutionary spirit". Voltaire was the leader of the assault on the persecuting Church, and on fiscal and juridical privilege. Though not without ideas for positive amelioration, Voltaire spent his energies chiefly on condemnation of existing abuses, and his denunciation may be said to have weakened the resistance of the old privileged society to reform. Others had a positive political creed. Men like Montesquieu advocated gradual and orderly

1 It is not intended to suggest that the French philosophers were the first to express such ideas, but merely that the modern democratic movement derived inspiration directly from their enunciation of these doctrines.

reform, pointing to the excellencies of the English constitution. With Montesquieu the reaction against the absolutist monarchical state, which had been the chief political expression of the Renaissance movement, reached its height. In his *L'Esprit des Lois*, he endeavoured to persuade Frenchmen that undivided sovereignty was pernicious, and that liberty could only be safeguarded by the limitation of the powers of the government. He was a monarchist by conviction, but he sought to restrain the crown through aristocratic institutions, and by means of a constitution modelled on that of England. Montesquieu advocated a restoration of what he considered to be the ancient constitution of France, amended in such a way as to separate clearly the legislative, executive, and judicial functions of government.

There were, however, among the ranks of the philosophers, those who were prepared to reconstruct the fabric of the state on altogether novel lines. New ideas were derived from travel, and from a comparison of European institutions with conditions in North America, and in Asiatic states of ancient civilisation. It was suggested that conditions outside Europe were not only more rational, but, at the same time, primitive, and therefore natural. Discovering few indications of absolute monarchy, supported by a theory of divine right, the philosophers unhesitatingly rejected this system and endeavoured to construct an ideal one, in which simple equality, charity and fraternity would prevail. From a comprehensive, but purely theoretical, study of various societies, they sought to discover, and to express, ideas relating to law and right which should be of universal validity. Men like Turgot and Condorcet thus

came to formulate a cosmopolitan ideal and to find ground for a belief in human progress.

It would be a mistake, however, to regard the philosophers as democrats or revolutionaries. They regarded democracy as suitable only for very small communities, and they deplored revolutionary violence. Nevertheless, they helped to precipitate organic changes through the ferment of new ideas which naturally resulted from perusal of their writings.

Whereas the orthodox school of French philosophers proposed to apply the test of reason to human institutions, Rousseau expresses, to some extent, the reaction against the purely intellectual approach to political philosophy. Inasmuch as the new constitutions of the nineteenth and twentieth centuries have derived inspiration from Rousseau's democratic ideas, a brief survey of his doctrines must be attempted. The fundamental idea is that of human equality. Society rests upon an agreement between equals to establish and maintain the common welfare. Rousseau employs the familiar argument of the social contract,[1] but he reaches thereby a democratic conclusion. Whilst agreeing with Hobbes and Bodin that sovereignty was inalienable and indivisible, he differed from them in investing the people with sovereignty. The social compact is invoked merely in order to bring into existence a society based on equality and brotherhood. The ruler is not a party to any pact. On the contrary, the structure of government is established as a mere agency to perform functions delegated by the sovereign people. Sovereignty remains with the entire

1 The real source of this theory seems to have been the Old Testament, where Jehovah is said, on more than one occasion, to have made a contract or treaty with His people.

body of citizens, and it is expressed in the general will. Rousseau seems to have been aware that his argument was based on audacious assumptions. He did not postulate a social compact as a fact of history. He merely implied that, in any free community, there was a tacit agreement between citizens to surrender their independence of volition to society as a whole, and that this agreement was reiterated whenever citizens took part in public affairs and acknowledged the decision of the majority.

The importance of this doctrine is that it made possible the organic national state. It maintained the common welfare and yet protected the individual rights of the citizen. The latter were subordinate only to the common interests of the community. Abuse of power by the government was carefully guarded against, for no government was legitimate which was not directly dependent on the popular will, whilst every individual citizen was a member of the sovereign body. Moreover, the power of legislation resided in the people, for law is the expression of the general will.[1]

The democratic constitutions of the post-revolutionary era owe much to Rousseau's theory of the general will. The contention that the will of the majority of the sovereign people is always just, because it naturally seeks the common good, has profoundly influenced modern democratic thought. He assumed that the interests of the minority were the same as those of the community as a whole, but he safeguarded liberty by insisting that

1 Mr R. M. MacIver points out that the General Will, at the present day, is the will of any person to be a citizen, whereby he accepts the obligation to obey the enactments of the community, even when he disapproves of them. According to Rousseau, on the other hand, the General Will continuously and directly legislates. *The Modern State* (1926), pp. 11, 154.

law must bind all alike, and that it was incompetent to deal with special interests or to impose obligations on particular persons only. Rousseau's statement of the universality of law was perhaps his most valuable contribution to political doctrine.

Passing to the machinery of government, Rousseau pronounced that the people could not delegate their sovereignty. Consequently every government not subject to ultimate popular control was necessarily a usurpation. A state might, however, be legitimate even if its government were aristocratic, or monarchical. So long as legislation rested with the people, liberty could prevail, for the people, whilst being subject to law, were in reality obeying their own will. On the other hand, the legislative power must belong, directly and continuously, to the people. Representative institutions were incompatible with liberty, for the general will could not be represented.

Rousseau denounced parliamentary government, on the ground that elected legislatures tended to usurp sovereignty, so that the people were only free at the moment of elections. He was, therefore, obliged to fall back on direct democracy in legislation, declaring that the people should assemble together at regular intervals for the expression of the general will. The obvious difficulties attending any such procedure in the case of large states were never adequately met by Rousseau. His ideal was evidently a state small enough for the concentration of popular energies, yet achieving security from external attack through alliance, or federation, with other states.

Though insisting on the popular control of legislation, Rousseau was inclined to reject pure democracy, in so

far as it implied the participation of the citizens in the executive branch of government. He so far believed in the doctrine of the separation of powers as to advocate the entrusting of the function of administration to delegates. Democracy in the structure of the government he regarded as an impossible ideal, except for tiny states. The people could not remain permanently assembled, nor could they master the complicated problems of administration. Moreover, the sovereign body must maintain impartiality, and this was scarcely possible when the law had to be enforced at the expense of individuals. Pure democracy being impracticable, the delegation of power to officials or commissions became unavoidable. In this way, monarchy or aristocracy might come into existence, and there was a danger that the government would endeavour to usurp the sovereignty of the people. It was accordingly essential to make a sharp distinction between the government and the sovereign people. Rousseau advocated the appointment of magistrates by popular election, for election implied a revocable mandate and laid stress on the character of agency. Nevertheless, in all forms of government, precautions were necessary against the tendency of the government to substitute its own will for the will of the people.

The consequences of the widespread adoption of Rousseau's doctrines were not always happy. His theory that the will of the majority cannot err, and that the virtue of the citizen consists in his absolute obedience to the declared will of all, paved the way for democratic despotism. On the other hand, the assertion that government was a function, and that its establishment by the people was an act of sovereignty, and not the outcome of a contract between ruler and subject, was a salutary

pronouncement directed against the prevailing absolutist doctrines of the *ancien régime.*

The influence of Rousseau on the democratic movement of the early nineteenth century must not be exaggerated. That movement derived inspiration rather from England and America than from the philosophy of the *Contrat Social.* The new constitutions of the twentieth century, on the other hand, provided, as will be seen in a later chapter, for the active participation of the people in the work of legislation. Parliamentary sovereignty is repudiated, and supremacy lies with the people. There has been a significant reversion to the ideas propounded by Rousseau.

Another writer, whose influence on the theory and practice of government was perhaps more direct and more profound than that of Rousseau, was Sieyès. The weak point in Rousseau's philosophy had been his repudiation of a representative legislature. He provided no method by which popular sovereignty could be reconciled with the stability and continuity necessary in the government of a large state. Sieyès was no less enthusiastic in his contention that the common will must prevail, but he considered that it was more truly expressed through representatives, chosen on a system of indirect election. Inasmuch as he placed confidence in the leadership of able men, who were to be unfettered by instructions from their constituents, it may be said that Sieyès's system was, in essence, aristocratic. Nevertheless, he proposed to safeguard the ultimate sovereignty of the people by providing that changes in the constitution could only be adopted in an assembly authorised, for that purpose, by direct popular vote. He differed from Rousseau chiefly in his repudiation of

direct legislation by the people, and his faith in representative government set the fashion for liberal thought in the succeeding generation.

In France, with the accession of Louis XVI (1774), dissatisfaction with the social and political arrangements of the old order steadily increased. The king was well-intentioned, and there was little governmental oppression. The condition of the peasantry was no worse than in neighbouring states, and personal freedom had been substantially secured. On the other hand, the long wars, together with royal extravagance, had brought the finances perilously near ruin, whilst the relics of the feudal system were felt to be an affront to men who had imbibed the ideas of equality and fraternity. The unjust and unreasonable burdens on agriculture led to genuine distress in the country districts, which the king, despite his nominal autocracy, seemed powerless to correct. The widespread existence of privilege proved to be an effective barrier against reform, even under a monarch of liberal sentiment. The government was both arbitrary and incapable, and it was realisation of its powerlessness to relieve the misery in the country which provoked the first manifestations of the revolutionary spirit.

The French Revolution was primarily the result of distress. The lower classes were brutalised by poverty, and incensed by the contrast between luxury and want. The determination of the majority of the noblesse and clergy to retain their hereditary privileges, even in the face of national bankruptcy, led to the summoning of the States General for May 1789. Thereafter, the drift towards anarchy and violence was encouraged by the vacillation of the court, and the incompetence of the ministers. The part played by political theory is difficult to estimate.

Political pamphlets gave shape to vague popular aspirations, whilst the ideas of Rousseau found expression in portions of the *Declaration of the Rights of Man*. Generally speaking, however, the doctrines of the philosophers appear to have exercised little influence upon the outbreak and development of the French Revolution.

The Revolution did not establish that direct sovereignty of the people which Rousseau had advocated. The problem which confronted the revolutionary assemblies was that of providing a constitution for a great nation. In France there had been no gradual development of self-governing institutions. The machinery of democratic government had to be created, almost on the spur of the moment, following a period of revolutionary disorder. France had been the home of absolute government, and the method of centralised authority was deeply rooted in her institutions. Consequently, direct democracy, which appeared to be only suitable for the government of city states, was rejected in favour of a constitution which should preserve as the unit the old centralised, monarchical, France. Frenchmen, particularly the early leaders of the Assembly, such as Mirabeau and Mounier, studied the example of the English constitution, and endeavoured to apply English principles of parliamentary government to French conditions. At the same time, there was a powerful school of revolutionary thought which insisted that political guarantees in England were insufficient to maintain liberty and equality. These men held that liberty could only be safeguarded under a system which gave the individual a right to share actively in, and not merely to criticise and check, the government.

During the first few months of its deliberations, the

States General, or National Assembly, was mainly concerned with the overthrow of existing political and economic arrangements. The surrender by the privileged orders of immunity from taxation, the partial suppression of feudal dues and monopolies, and the abolition of the sale of judicial and municipal offices had been accomplished by August 11, 1789. So early as June 23 the king had conceded to the Assembly the right of taxation, and invited its co-operation in the destruction of the arbitrary powers of the executive. It seemed, however, to the deputies to be advisable to defer decision on the constitutional arrangements of the new *régime*, until the general principles which should guide the legislator had been agreed upon. It was accordingly resolved to preface the new constitution with a declaration of the rights of the individual in such a way that the citizen would be guaranteed against governmental oppression.

The *Declaration of the Rights of Man* embodies the principles of the French Revolution. Though general in scope, it was not abstractly theoretical, and it contained many practical and sane proposals. It was intended as a programme of political reform, and was based largely on British and American precedents. Although philosophical clauses of an abstract nature were included, it must be remembered that the Assembly had, through its legislation, already done something to make real its declarations. Thus, the sixth article,[1] which owes much to

1 "Law is the expression of the general will. Every citizen has a right to participate personally, or through his representatives, in its enactment. It must be the same for all, whether it defends or punishes. All citizens, being equal in the eyes of the law, are equally eligible to all dignities and to all public offices and occupations, according to their abilities and without distinction, except that of their virtues and talents" (Article 6).

the philosophy of Rousseau, merely reaffirmed what had been achieved during the previous months. The representative Assembly had vindicated its right in the enactment of laws, and its close attention to the *cahiers*, or electoral instructions, revealed a conscientious desire to give expression to the general will. Moreover, it had already decreed (August 11, 1789) the eligibility of all citizens to office without distinction of birth. The legal clauses, safeguarding the citizen from arbitrary arrest and imprisonment, and establishing a liberal measure of freedom in the expression of opinion, were dictated by the experience of all progressive states. Even the most abstract declarations, for example that which asserted the sovereignty of the people,[1] were significant as condemnations of the practice of the absolute monarchy. The clauses which vindicate for the people, through their representatives, the right to control national taxation and expenditure, and to call to account public officials, pointed towards a constitutional government of the English type. The Declaration, as a whole, vitally influenced the political thought of the nineteenth century.

The new constitution came into force in 1791. It provided for a limited monarchy with the power of appointing ministers and the commanders of the army, and the general direction of foreign affairs. The king was, however, denied the initiative in legislation, and given no more than a suspensive veto. His control over the administration was weakened by the establishment of the elective principle in local government. Eighty-three

1 "The principle of all sovereignty resides essentially in the nation. No body nor individual may exercise any authority which does not proceed directly from the nation" (Article 3).

departments replaced the ancient provinces, and were divided and subdivided, the smallest unit being the commune. In all these divisions, elected councils and officials came into existence, responsible to the local electorate rather than to the central government. The autocratic powers of the monarchical *intendants* were mostly inherited by the municipalities, which assessed and collected the taxes and controlled the military. Even the judges were elected, power thus being dispersed among countless local authorities, subject to no effective supervision. It was hoped by the creation of so many elected officials, appointed for a short term and in many cases ineligible for re-election, to place a check upon official tyranny, and at the same time complete the destruction of privilege.

The legislature was to be unicameral. The members were to be chosen for a period of two years by indirect election. The system of cabinet government, which had grown up in England, was expressly excluded by the provision that the king's ministers could not be chosen from the members of the Assembly. The feeling that the executive was likely to be hostile to the legislature was responsible for the adoption of the principle of the separation of powers, in its most rigid form, under which the Assembly was to meet irrespective of the royal summons, and to be incapable of dissolution by the crown.

The constitution contained provisions of lasting utility. The erection of the departmental system was a great constructive achievement which did much to exclude provincial interests and merely local patriotism. The reform of the criminal law and the introduction of the jury system must be commended. An elaborate system of courts,

systematically graded, brought justice within the reach of all. Even the rejection of universal suffrage could be defended on the ground that the proletariat was illiterate, and that the function of voting demanded a measure of training and experience. Nevertheless, it was inconsistent with the Declaration of the Rights of Man, and it prevented the realisation of democratic government. The right to vote was restricted to *active citizens*, paying taxes equivalent to three days' labour. Higher qualifications were demanded for electors. In the municipalities, real power rested with the *notables*, chosen on a property suffrage, whilst *passive citizens* were excluded from the national guards. Though perhaps two-thirds of the adult male population were entitled to the franchise, these distinctions were incompatible with equality, and involved a significant departure from the principles of the *Contrat Social*. They were abolished in 1792, when the franchise was conferred, with insignificant exceptions, on all adult males.

The constitution was now genuinely democratic, but democracy did not long survive the outbreak of European war. The principal defect in the arrangements of 1791 had been the weakness of the executive power, and the large authority entrusted to the departments and municipalities. In 1793, governmental efficiency was restored by the erection of a Committee of Public Safety as a kind of emergency cabinet, competent to issue directions to ministers and generals. Its power to remove officials in any part of the country, and to despatch commissioners with autocratic authority, made possible the concentration of the national energies for the successful prosecution of the war. At the same time, the replacement of elected by nominated officials in the districts and

communes carried with it the suppression of local self-government. Even in Paris revolutionary committees usurped the functions of elected bodies. Finally, in 1795, democracy was abolished in the central government. The Declaration of the Rights of Man was indeed retained, but manhood suffrage was suppressed, and the franchise based on residence and the payment of taxes to the state. Ownership of real property became the qualification for membership of the legislature, now to be bicameral, as a further precaution against revolutionary democracy. Of the two chambers, the *Conseil des Anciens* was to consist of 250 propertied citizens of not less than 40 years of age, chosen by indirect election, and invested with the power of delaying legislation. To the *Conseil des Cinq-Cents* belonged the right of initiating laws. The principle of the separation of powers was upheld, executive power being entrusted to five directors chosen by the legislature. Steps were taken to ensure the subordination to the directors of the departments and municipalities. Local regulations could be annulled in the national interests, whilst resident commissioners were to be maintained by the central government in all departments. On the other hand, though the directors were to appoint the ministers, they were to have no initiative in legislation, and no power whatever to dissolve or adjourn the chambers. The executive thus continued to be dissociated from the legislature, and governmental stability was menaced by the likelihood of further conflict.

By this time, the principles of the Revolution had outlived their original popularity. Apathy and distaste for politics had succeeded to the earlier enthusiasm for democratic equality. There was a universal desire to bring to an end the period of revolutionary experiment

and to seek refuge in an autocratic government, which should guarantee the more popular achievements of the Revolution. The passionate longing for a settled government affords an explanation for the definite abandonment of democracy 1797–9, and the gradual acceptance of the domination of a single ruler. The assemblies had abolished feudalism and effected a radical redistribution of the land. They had destroyed the privileges of the aristocracy, and brought a measure of prosperity to farmer and peasant. Inasmuch as the Revolution had stimulated self-conscious nationalism, it may be said to have prepared the way for the modern democratic state. On the other hand, governmental stability had not been achieved. Democratic rule appeared to have been a conspicuous failure. Only under Napoleon Bonaparte did the French people seem likely to realise the ideal of orderly progress.

In Europe as a whole, the Revolution gave birth to new conceptions of the problems of politics. It dissociated the people from the government, and revealed the strength of the forces latent in nationalism. Political liberty, which had been conceived as the freedom of the individual from the interference of the state, was now seen to involve the activity of the citizen in its government. It was powerfully reinforced by the principle of equality. Insistence of common humanity as the basis of political rights was the fundamental doctrine of the French Revolution. Its economic and social consequences were witnessed throughout Europe in the generation which followed the fall of the Bastille. The recognition of the principle of individual liberty and equality carried with it the abolition of feudalism and serfdom, and drastic reform in judicial procedure. These achieve-

ments were not incompatible with the continuance of enlightened despotism, under which indeed many states had made some progress towards liberty and common betterment. The revolutionary doctrine of popular sovereignty, on the other hand, involved the discarding of a method of government which placed the destinies of the people under the care of one man, and its replacement by democratic nationalism. The submission to the French people of the constitution of 1793 was a significant acknowledgement of popular supremacy, and the first occasion when a great nation had, by the majority vote of its citizens, accepted a new form of government. Though the experiment was perhaps premature, it was followed in Switzerland, where the unitary constitution of the year 1802 was similarly submitted to a popular vote.[1]

Though the great majority of the revolutionary leaders were convinced individualists, the course of events at Paris gave a certain impetus to socialist thought. So early as 1755 Morelly, in his *Code de la Nature*, had systematically expounded the doctrines of communism. Nature, wrote Morelly, had clearly intended that goods should be held by man in common, and private ownership was the root of discord and vice. More influential were the writings of Mably, who mostly confined his denunciation to private property in land. Mably was, however, prepared to welcome the violent overthrow of such existing institutions as were based on inequality, and he must be reckoned an apostle of revolutionary socialism. These ideas were, indeed, repudiated by the vast majority of the early leaders of the Revolution, who were

1 This is the origin of the Swiss referendum on constitutional legislation.

deeply concerned to defend the sanctity of individual property. On the other hand, the Revolution witnessed the confiscation of the property of the Church and of the aristocracy, and it was inevitable that this should be accompanied by an attempt to expound a theoretical justification. There was no lack of pamphlets pleading for the nationalisation of the land, and for measures which would mitigate existing inequality and guard against its recurrence in the future. With the brief appearance of Babeuf, socialism achieved a comprehensive programme of political and economic reform. Despite the rejection of this programme, it remains true that the Revolution, through its emphasis on human equality, profoundly stimulated socialist thought.

Though Napoleon may be legitimately regarded as the heir of the Revolution, it was no part of his purpose to maintain democratic organs of government. The constitution of 1799, the joint work of Napoleon and Sieyès, was intended to concentrate the powers of government in the executive branch. The legislature was paralysed by the subdivision of legislative powers. One assembly could deliberate but not vote, whilst a second was allowed to vote by secret ballot, without the privilege of discussion. Neither body rested directly upon popular suffrage, whilst the initiative lay with the Council of State, nominated by Napoleon as First Consul. In administration, the principle of nomination replaced that of election. The local prefects, sub-prefects and mayors were all appointed by the executive at Paris. With the First Consul lay the appointment of all ministers, ambassadors, military and naval officers, and even judges.

In the districts and communes, elected councils were still maintained, but with merely advisory functions. With the establishment of the Empire, this constitution was profoundly modified. A simplification of the legislative body was accompanied by the nomination to seats of officials and ex-officials. Imperial decrees usurped the functions of the legislature thus reorganised. Judges ceased to enjoy security of tenure. At the same time, democratic ideals were outraged by restrictions on personal liberty, and especially on freedom of thought. Under these circumstances, the retention of almost universal manhood suffrage and the occasional employment of the popular vote (*plebiscitum*) were meaningless. Acquiescence in Napoleon's rule was due to the conviction that he was indispensable for the preservation of unity and order, and the maintenance of the economic and social achievements of the Revolution.

The revolutionary era brought to the forefront political problems of great complexity. The vindication of the sovereignty of the people left unsolved the problem of harmonising divergent interests. The principle had been proclaimed that common welfare must be paramount over sectional interests, but it remained for the nineteenth and twentieth centuries to discover some method by which the common will could find constitutional expression. In small communities, the method of direct democracy had already been successfully applied, notably in Switzerland. Great nations, on the other hand, could only discharge the functions of sovereignty by some organisation of the electorate. Since 1815 states have tended to fall into two groups. In one the people have been content to support parliamentary

sovereignty. In the other, the principle has been upheld that popular sovereignty cannot be delegated and that the different organs of government hold power only by commission from the people. In this last group, constitutional theory and practice have been largely derived from Rousseau and the principles of the French Revolution.

CHAPTER X

The Democratic Movement of the Nineteenth Century

THOUGH democratic government had been suppressed by Napoleon, the outcome of the Napoleonic *régime* in Europe was a widespread growth of democratic principles. Autocracy was bound up with privilege and inequality. The revolutionary and Napoleonic wars had carried across the European continent something of the ardour for liberty and self-government which had inspired the assemblies at Paris. The consequent detestation of the institutions of the old order made impossible, after 1815, a mere restoration of the legitimist monarchy, and, in the long run, bore fruit in the establishment of constitutions providing for a measure of popular control.

The democratic movement of the early nineteenth century was, at the same time, inspired by political and national unrest. The resentment felt against Napoleon found expression in the determination to establish national unity on a strong popular basis and independent of external influence.

Faith in representative institutions was very strong in the generation which followed the settlement at Vienna. Among the ruling classes, representative democracy was regarded as a safety-valve designed to avert revolution. The masses would be able to employ the vote to gain ends which had hitherto been sought by the method of violence. In the humbler walks of society, admiration of democracy was deeply rooted in the conviction that only

under an elective *régime* could liberty be truly safeguarded. To political theorists of the liberal school, universal suffrage was the panacea for all the ills of society.

Nevertheless, the democracy which men sought to establish was far removed from the revolutionary democracy favoured by Rousseau. The popular will was to be expressed by the decision of elected representatives. There was little or no desire to claim for the people direct legislative or executive power. Supremacy was to lie with parliament. Nor was there any pronounced opposition, in the majority of European states, to the establishment of upper chambers, avowedly as a check on hasty and irresponsible decisions. The early nineteenth century inherited from the French Revolution distrust of a single popular assembly, which, it was feared, would be susceptible to sudden impulse. The same frame of mind which led to deliberate preference for a system under which the parliamentary deputy should be uncontrolled by his electors found expression in the erection of an upper house of the legislature, on which character, experience or special talents might be represented. The almost universal adoption of the bicameral system, in states which enjoyed representative institutions, demonstrated the strength of conservative and aristocratic sentiment.

Parliamentary institutions were by no means common in 1815. They existed in England, Holland and Switzerland, but not in Austria, Prussia or Italy. In France, parliamentary government was in its infancy. A few of the states of southern Germany had taken tentative steps in the direction of representative institutions. In the more progressive states, the object of those who favoured the extension of democratic rule was to secure and maintain

the largest possible measure of personal liberty. The state was to guarantee individual freedom. It was not to interfere with the citizen by endeavouring actively to promote the common welfare. The prevailing individualist thought repudiated the notion that the state existed to further, by active measures, schemes of social betterment.

In England, the control of the landed aristocracy over the electoral machinery was gradually broken down. Extension of the suffrage was granted before there was any popular clamour for political privileges. The movement towards democracy was directed by the upper and middle classes, and was partly the consequence of the normal play of party interests. At the same time, the franchise was regarded as a means of rooting out ancient abuses and securing benefits for the working man.

The operation of economic forces, which had their origin in the great movement known as the Industrial Revolution, tended to promote democracy. The sudden appearance of economic problems of the first magnitude led to a demand for drastic reorganisation of the national life. The concentration of population in towns, the rise of the factory system, irregularity of employment, low wages, and the threat to the health of the nation, brought to the forefront problems of administration, with which the aristocratic government of the pre-reform period was powerless to deal. Economic distress led first to combination among the workers in industrial disputes, and finally to political agitation. The opportunity to unite, which urban and factory life presented, brought with it a new consciousness of power. Moreover, the operation of economic forces was intensified by the Napoleonic wars, which piled up the national debt and burdened agricul-

ture and industry. The high price of the necessaries of life, in conjunction with the uncertainty of employment, focussed attention on political reform as a means of adjusting inequalities and remedying social grievances. It became evident that the new wage-earning classes required the vote as a protection against the working of the capitalist machine. The need for economic and social reform thus became the chief motive power of the new democratic movement.

The Reform Act of 1832 widened the basis of political representation without establishing a democratic government. It effected a redistribution of seats, disfranchising decayed boroughs and bestowing representation on the counties and the larger towns. In the boroughs, the voting qualification became the occupation of land or premises of the annual value of £10. Leaseholders and copyholders were enfranchised in the counties. The working classes were given no share in political power, for less than one million now enjoyed the franchise, out of a total population of some twenty-five millions. Nevertheless, the principle that Parliament should be representative of the nation had been conceded. The crown and the aristocracy had yielded in the face of popular clamour. The fact that aristocratic resistance to reform could be overcome, when there was an insistent demand for constitutional reconstruction, had been revealed. Further changes became both inevitable and easy.

Dissatisfaction with the moderate nature of the 1832 changes and with the Poor Law Act of 1835 was responsible for the so-called *Chartist* movement of 1837–8. So early as 1816, William Cobbett had demanded the annual election of members of the House of Commons, and the extension of the franchise to all who paid taxes to the

state. These two demands reappeared in the famous *six points* of the Charter of 1838. The establishment of equa electoral districts was advocated, as a means of making Parliament more representative of the whole community whilst the payment of members was intended to mak possible the return, to the popular house, of members o the proletariat. Though the agitation was constitutiona and largely based on precedent, it was clearly the intentio of the Chartists to subordinate Parliament to the elec torate, and thus to transfer sovereignty in effect to th people.

These claims received a certain measure of suppor from radical theorists of the time, and especially fron the prevailing school of utilitarian thought. Benthan pronounced democracy to be the only rational form of government, since the majority, if supreme, woul necessarily promote the happiness of the major part o the community. He accordingly advocated the elimina tion of monarchy and of an aristocratic upper chamber and the recognition of the sovereignty of the lowe house, elected by universal suffrage. This chamber wa to be supreme not only in legislation, but also in contro over the administration.

The principle of utility was also upheld by John Stuar Mill, though Mill's enthusiasm for democracy wa moderated by his recognition that, as a method of govern ment, it was liable to grave abuses. He considered tha a democratic suffrage was essential as a security for good government. Whereas Bentham was anxious to place no restrictions on the power of the Commons to enforce the will of the majority, Mill insisted that the legislature could best promote common welfare by interfering as little as possible with individual initiative. The rule o

the majority did not necessarily lead to the best results, though it might be less unjust than any other basis of political power that could be suggested. Mill thus reached a more detached standpoint than that of Bentham. Democracy was still, on the whole, the most desirable form of government, but it was no longer an unquestionable truth.

The middle decades of the nineteenth century produced a reaction against the uncritical faith in popular government, which characterised the writings of the early utilitarianists. It was discovered that representative institutions had certain inherent defects. Mill and his followers did not agree with Carlyle that majority rule must issue in anarchy, but they were not blind to the difficulties involved in elections over a wide area. The fundamental problem was the representation of minorities. How could the rights of minorities be safeguarded under a democratic *régime*? Hare's *The Election of Representatives* (1859) was an attempt to solve this problem by means of *proportional representation.* It was indicative of the conservative tendencies of individualist thinkers that Hare was as much concerned to improve the quality of representation, as he was to remove its manifest anomalies. The existing system tended to produce "collective mediocrity" (Mill). Proportional representation would facilitate the return to Parliament of men of established reputation and intellect.

Though proportional representation was adopted in Denmark, it was not until the twentieth century that the new system made any great headway. However, an important step towards democracy was taken in England in 1867, with the passage of the so-called Second Reform Bill. The changes thus made nearly doubled the elec-

torate, and gave the largest share of political power to the industrial workers in the towns. But, whereas a household franchise was accorded to the boroughs, a £12 occupation franchise, sufficient to exclude the agricultural workers, was retained in the counties. This anomaly was removed in 1884. Both acts were accompanied by a redistribution of seats, the outcome of which was the virtual establishment of the system of equal electoral districts. The whole country was now divided into single member constituencies, bringing the membership of the House of Commons to 670. These vast changes prepared the way for the advent of a genuinely democratic *régime*. In 1884, however, the newly-enfranchised classes were without political experience, and it was not until the opening of a new century that the upper and middle classes were called upon to surrender their control of the administration to the representatives of the manual workers.

This gradual revolution was forwarded by the establishment of national education and the wider diffusion of knowledge. The development of the newspaper press was to some extent a pre-condition of democratic progress. In this connection, the inventions of the steam printing press and of the electric telegraph, the reduction and final removal of the "taxes of knowledge", and the establishment of the Press Association were significant achievements. The enlarged circulation of newspapers made it possible for the poorer classes to take an intelligent interest in public affairs. The cause of national education had been pleaded by F. D. Maurice, but the establishment of public elementary schools was deferred until provision was made in W. E. Forster's Education Act of 1870. Education was regarded as a necessary, and

at the same time, sufficient preparation for the discharge of public duties, and the increase in popular instruction afforded a notable stimulus towards the realisation of the ideals of freedom and self-government.

On the European continent, the movement towards democracy, though influenced by industrial expansion, derived its inspiration mainly from the abstract doctrines of the revolutionary epoch. The liberty and equality of mankind had been propounded as a self-evident truth. This, and other axioms of the Natural Rights school, made a far wider appeal than the utilitarian arguments advanced by English philosophers. At the same time, stronger emphasis was laid on the social, or collective, element in the life of the community. The individual derived his rights from society. At quite an early stage, the tendency of continental democracy was to develop and to employ the powers of the state for the purpose of anticipating social progress.

Nevertheless, English constitutional principles exerted a noteworthy influence on the continental movement. With the publication, in 1835, of de Tocqueville's *Democracy in America*, a reaction set in against the dominance of abstract speculation. Use of the comparative method enabled de Tocqueville to throw light on the working of democratic institutions. His calm analysis of the historical evolution of democracy in America prepared the way for a broad impartial study of governmental forms, in the light of modern conditions.

Meanwhile, self-governing institutions had fared badly in the period of reaction which followed the conclusion of the Napoleonic wars. Though the Hungarian Parliament, or *Diet*, was permitted to resume its sessions in 1828—a concession which stimulated the study of the

liberal institutions of England and France—movements to establish constitutional government were suppressed in Spain, Piedmont, Naples and Poland. In 1830, however, reaction was checked. The Bourbon king Charles X tried, and failed, to overthrow parliamentary institutions in France, and the outcome of the "conservative revolution" which followed was the destruction of the doctrines of legitimacy and divine right. The new Orleanist ruler was content to govern "by the will of the nation", and with the co-operation of a parliament. The fall of the Bourbon monarchy had immediate repercussions throughout Europe. In Belgium, the rising was mainly directed against subordination to the neighbouring state of Holland, but national independence was accompanied by the establishment of a liberal constitution. Greece became a parliamentary monarchy. In Switzerland, important constitutional reforms in the cantons provided for extension of the system of direct popular election of the great councils. Democratic insurrections also broke out in Italy, Germany and Poland.

Constitutional monarchy succeeded in averting revolution in England, Holland, and Belgium, when the great upheaval of 1848 threatened the thrones of reactionary monarchs. Only in France was a constitutional king overthrown by a radical revolution of the proletariat, and this was due, in the main, to a narrow franchise and the consequent failure of the middle classes actively to support the Orleanist dynasty. Louis Philippe's government had been both pacific and oligarchic, whereas Frenchmen desired a brilliant foreign policy and recognition of political equality. The *February Revolution* thus met with little opposition, and the provisional government hastened to decree universal suffrage. The

Constituent Assembly, however, proved to be more conservative than the Parisian socialists, whose leader, Louis Blanc, was omitted from the executive. Street fighting in the capital confirmed the belief of the propertied classes that a strong administration was necessary for the establishment of order and security. The decision of the Assembly to entrust the executive government to a President, elected for four years by manhood suffrage, and thus in some degree independent of the legislature, prepared the way for the establishment of the Second Empire. The provinces, if not Paris, desired above all security and stability. Under such circumstances, it was natural that the country should turn to the eldest representative of the house of Napoleon, and, by a large majority, elect the young and gifted Louis Napoleon to the office of president. The inevitable consequence was the postponement of democracy for another generation. In December 1851, the constitution was modified in a manner which might have been anticipated. The Legislative Assembly was still to be elected by manhood suffrage, but a nominated Senate was established as a check, whilst the preparation of laws was entrusted to the Council of State. The President, who was to hold office for ten years, was now clearly the master of the constitution, and in 1852 the hereditary Empire was formally re-established.

In Germany the revolutionary impulse found support among the liberal bourgeois, who had been the first to resent the repressive system associated with the Austrian minister, Metternich. The German Confederation established in 1815 had been the instrument of Metternich's policy, which sought to frustrate the aspirations of national unity and constitutional government. Only in

Prussia were the people, as a whole, prepared to countenance the continuance of autocracy in politics, owing to the intelligent policy pursued by its government of combining strong executive control with valuable administrative reforms. With the outbreak of revolution at Paris, the governments of the southern German states hastened to extend the parliamentary system, and to demand the election of a German Parliament with a view to realising the ideal of a unified Germany. The outcome of this movement was the assembling at Frankfort, on May 18, of the *German National Assembly*, and the eventual elaboration of a liberal constitution. A hereditary emperor was to share the functions of government with responsible ministers, whilst legislation was to be entrusted to a bicameral legislature, of which the lower chamber was to be elected by universal suffrage, whilst the upper house was to be partly elective and partly hereditary. But the liberal leaders in the Assembly had underrated the powers of resistance of the old order. The ruling houses had not been genuinely converted to the principles of constitutional government. Absolutism finally prevailed at Vienna and Berlin. There was a wholesale suspension of constitutional guarantees. Frederick William IV of Prussia refused the crown offered to him by the Frankfort Assembly, and the particularism of the various states once more operated to frustrate the accomplishment of national unity.

Liberalism, nevertheless, had not sustained a damaging reverse. On the contrary, some permanent successes had been obtained. In Bavaria and Prussia the constitutions were not recalled. Throughout Germany, the policy of repression fell into some disfavour. In Hungary, the February revolution initiated a national and democratic

movement. The March laws of 1848, providing for popular representation and responsible ministries, were indeed repealed, at a later date, by the Austrian crown, but Hungarian separatism, with its parliamentary life inherited from the Middle Ages, were only partially checked. Representative institutions were permanently established in Denmark in 1849. In Italy, Victor Emmanuel, King of Sardinia, maintained the constitution granted by his father in 1848. Whilst the other Italian states relapsed into absolutism, Sardinia upheld democracy with an annual parliament and responsibility of ministers. The constitution, by winning the support of liberals and moderates throughout the peninsula, paved the way for the realisation of a unified Italy.

Though the development in France, since 1815, has been in the main towards democratic republicanism, administrative power has remained strongly centralised. The Revolution of 1789 had swept away the old provincial system, and the new departments, with their subdivisions, could not form the basis of a genuine local life. The arbitrary powers of the central ministry over the localities were maintained by the restored Bourbons and are still a feature of French political life. On the other hand, the sovereignty of the people in legislation and their indirect control over the ministers has been gradually established. This has been accomplished by the concentration of authority in the representative assembly. Louis XVIII had re-established the parliamentary system on the basis of a limited suffrage, but his constitutional charter was an act of concession on the part of the crown, which remained the source of all authority in the state. The Revolution of 1830 overthrew this conception and restored the revolutionary principle of popular sove-

reignty. It repudiated the reservation to the king and his ministers of the initiative in legislation, and substantially set up the system of responsibility of ministers. The electoral basis, however, remained narrow, and the re-establishment of universal suffrage was deferred until 1848. The immediate outcome of this concession was, as we have seen, the election of Louis Napoleon as President of the Second Republic. The conversion of this republic into the Second Empire, however, left untouched the democratic social organisation. France tenaciously preserved the social machinery established in 1789–91, especially civil equality, the equal eligibility of all for public office and peasant proprietorship. Administrative and legal continuity was also, to a large extent, preserved owing to the tradition of centralised government and the popularity of the Napoleonic codes.

In the towns the revolutionary spirit was checked, but not quelled. In 1848, for a brief period, aggressive socialism came to the surface in Paris. The downfall of Napoleon III in the Franco-Prussian war provided the opportunity for further manifestations of the revolutionary ardour. The Third Republic was hastily proclaimed, and, for a few months, Paris was in the hands of the revolutionary commune. Frenchmen as a whole, nevertheless, remained conservative and law-abiding. Universal suffrage returned an assembly with a majority of monarchists. For some years, the republican *régime* was maintained with difficulty, its survival being attributable to dissensions among its opponents.

French parliamentary democracy finally attained a measure of stability under the constitution of 1875. The system adopted was very largely the cabinet government evolved in Great Britain, but modified by distrust of

ministerial authority. In England, the growth of the powers of the cabinet had ensured efficiency and continuity in the government. The French constitution of 1875, on the other hand, endeavoured to concentrate powers in the representative legislature. The President was given little discretionary authority, and prohibited from dissolving the popular chamber without the concurrence of a two-thirds majority of the Senate. The chamber is thus virtually assured a fixed period of office, and ministerial weakness has been a feature of French parliamentary experience.

In Germany, despite the liberal views of a small class of intellectuals, there has been, in the nineteenth century, little desire to develop a governmental system based on popular sovereignty. Parliamentary government appeared to be necessarily weak and inefficient. The functions of German assemblies were accordingly advisory and critical, rather than governmental. Legislatures owed their origin to a spontaneous grant of the king. Ministers were responsible to the crown alone, and had no reason to fear a vote of the popular chamber. The establishment of the Empire (1871) did nothing to develop constitutional forms. Control of military affairs, and of foreign policy, was practically withdrawn from the sphere of the new German Diet. There was not even a national ministry. The Imperial Chancellor was, at the same time, Prime Minister of Prussia and, as such, responsible to the King of Prussia alone. Military appointments rested with the Prussian military cabinet. Behind the civil government, lay the military power in the hands of the Prussian General Staff. The government was military, and in no sense democratic.

On the other hand, the *Reichstag* rested on virtually

universal suffrage, and its criticism was honest and persistent. Moreover, in northern Germany, there survived a measure of administrative autonomy. There was thus a possible basis for constitutional life, at some future date, should militarism and autocracy become discredited.

In Austria and Sweden, during the nineteenth century, the parliamentary system was severely restricted. The Austrian Emperor directed the military and diplomatic affairs of the *Common Monarchy*. In Hungary, he was to some extent dependent on a parliamentary majority, but in Austria the parliamentary sessions were dependent upon the royal pleasure. The King of Sweden continued, throughout the nineteenth century, to choose his ministers on non-party lines, vindicating for the crown a substantial measure of independence. He was unquestioned head of the executive, and could act against the advice of his council of ministers. The claims of the representative *Riksdag*, indeed, revealed the growth of political self-consciousness, and, towards the end of the century, the determination to render effective the political responsibility of ministers. Nevertheless, the independent power of the crown precluded democratic government.

Switzerland achieved a framework of national government in 1848, following an attempt on the part of seven Catholic cantons to secede from the Confederation established in 1815. The country ceased to be a league of cantons, and became a genuine federal state, with a bicameral National Assembly and a small administrative council. The *February Revolution* had given a powerful impulse to the democratic movement. Hitherto, Swiss democracy had been mainly a matter of local govern-

ment. The survival of communal pasture and woodland had served to perpetuate democracy in the rural communes. Whilst the commune remained an important unit of local control, the citizen was now called upon to discharge functions of government on a wider national scale. The power of the people was primarily embodied in the two houses of the legislature, but a direct right of intervention was reserved for the people in the case of all constitutional amendments.

A new system of parliamentary government was elaborated. The novel feature is the election by the legislature of the seven ministers forming the Executive Council, or *Bundesrath*, to hold office during the legislative term. The system is fundamentally democratic. Not only does the legislature select and supervise the ministers, but both organs of government can be overruled by direct popular vote. At the same time, executive weakness is guarded against by the provision that ministers hold office for a fixed term and can speak and propose amendments in either house of parliament.[1] Switzerland has thus largely reconciled executive efficiency with popular control.

The weak point in the 1848 constitution was the insufficiency of the powers conceded to the central government. This was remedied in 1874, but at the same time the danger that the relatively large powers conceded might be abused was guarded against by extension of the provision for direct popular voting. This feature of Swiss public life will be considered in the next chapter. Since 1874 the tendency has been to confer more and

1 This system has been adopted with success in the provinces of the Union of South Africa, where the Executive Council is selected for a fixed term by the Provincial Council.

more jurisdiction on the federal authorities, whilst at the same time developing the method of the referendum and the initiative.

Spain, after a long period of unrest and attempted revolution, finally realised a measure of stability under a constitutional monarchy with universal suffrage (1890).

As the nineteenth century drew towards its close, revolutionary socialism, to which we have already briefly referred, came to exercise a more and more potent influence upon political thought and action. This influence must be shortly stated, as it has modified the trend towards democracy in government. In the early nineteenth century, faith in representative institutions was strong. The franchise was regarded as an end in itself, or, at most, as a means of protection against injustice. With the rise of large scale capitalist industry and the emergence of class consciousness, the vote came to be desired as an instrument for securing not merely political but economic and social equality. The example of the United States of America revealed the truth that a very full realisation of democracy in politics was compatible with the maintenance of wide economic and social distinctions. The abolition of inequality in the distribution of wealth accordingly appeared to many to be the most important reform, which the newly organised democratic state could accomplish. This involved repudiation of the contention of the individualists that the object of the state was merely to secure the largest possible measure of personal liberty, for, under the industrial conditions of the post-revolution period, such liberty was largely illusory. Socialists contended that the state must, in the interests of the general welfare, undertake control

of the conditions of labour, public health and national education. The ultimate aim was the establishment of the socialist, or *collectivist*, state, using its authority to carry out a drastic reconstruction of society.

These ideas were more potent on the Continent than they were in England, where radical thinkers were content to advocate a programme of very gradual reform. The apostle of revolutionary socialism was the German Jew, Karl Marx, whose *Communist Manifesto*, prepared in collaboration with Friedrich Engels, was published early in 1848. Marx was interested in political democracy, only as an essential preliminary to the socialisation of the instruments of production. He considered that the political organisation of the proletariat was necessary before existing economic conditions could be remodelled.

It was largely due to Marx's influence that the socialist movement achieved a measure of international organisation. He was the guiding spirit of the *International Working Mens' Association*, founded in 1864. The programme of the *First International* was mainly directed towards the economic emancipation of the working class, and the achievement of European solidarity. In reaction against this development and under the influence of Ferdinand Lassalle, German socialism was largely a national movement. The German Social Democratic Party dates from 1869. Its programme laid emphasis on democratic measures, such as universal suffrage by ballot, the election of magistrates, and the right of direct popular legislation. Everywhere, socialism, in its more moderate manifestations, laid stress on the emancipation of the individual from the bondage of material cares, in order that he might be free to develop his personal

interests and talents. This is an accordance with democratic ideals. Freedom, however, is to be achieved by elaborate organisation, and the socialist state must rest upon an aristocracy of intellect. Revolutionary socialism has forwarded democracy, but it may be doubted whether democracy can be maintained in a world governed by socialist conceptions.

Even before de Tocqueville drew attention to the merits of the American constitution, the United States of America had attracted the notice of Europe as the type of republican democracy which might be applicable to a large nation. The attachment to self-governing institutions had been strong from the earliest days of colonial settlement. In the seventeenth century, the New England colonies had worked out the principles of autonomy in constitutional practice. The passion for liberty was largely the outcome of colonial conditions, which fostered self-reliance and a spirit of democratic equality. Americans reacted against the authoritarian traditions of Europe, and the successful issue of the War of Independence seemed to mark the victory of the people over arbitrary power. The political and social outlook of the American people was inevitably reflected in the machinery of government devised for the new state. The constitution as completed in 1787 and ratified two years later, rested on the fundamental principle of popular sovereignty. The legislative and executive organs of the state were both to derive their power from popular election. The frequency of elections was intended to be a constant reminder that representatives owed obedience to the will of the people. The liberty of the individual citizen was to be protected against official

usurpation, and civil and political equality substantially secured.

The framework of federal government, as established in 1789, brought into existence a new type of representative government—*presidential*, as compared with *parliamentary*. The essential feature is the security of tenure enjoyed by both legislature and executive, resting on the fact that both depend, directly or indirectly, upon the popular vote. The distribution of legislative, executive and judicial powers of government into separate departments is regarded as a safeguard against executive tyranny, and a guarantee of individual liberty. The limitations imposed on each organ are brought into operation, where necessary, through the intervention of a Supreme Court. In this way, the constitution is itself protected against arbitrary subversion, and modification of its provisions can only come about by a complicated process of legislation and ratification.

Such a constitution is often described as *rigid*. It attempts to mark off, strictly, the functions and powers of the various organs of government, and at the same time to guarantee popular rights. Dating from the *Fundamental Orders of Connecticut* (1639), the North American colonies had adopted written constitutions of this type. In England, on the other hand, apart from the *Instrument of Government* (1653), the framework of government, though modified from time to time by legislative enactment, has never been committed to writing in a single comprehensive document. The English constitution is *flexible*. It is unsystematised, and to some extent indefinite. Constitutional usage is continually in process of change, and there is no limita-

ion on the legal competence of Parliament to alter the onstitution.[1]

The chief provisions of the constitution of the United States may be briefly summarised. The legislature (*Congress*) is bicameral. The House of Representatives is elected for two years according to the franchise laws in he various states, but since 1920 with provision for voman suffrage. Representation is strictly on a basis of population. Members of the Senate were, by the original onstitution, to be chosen for six years by the legislatures f the states. In 1913 the election was transferred to the itizens themselves organised in single state constituencies. No official can be a member of either house. The President, elected for four years by a system amounting to direct popular choice, is head of the executive, vith the power to nominate officials and a limited veto n legislation. He may recommend measures to Congress. On the other hand, his administration is liable to e hampered by unwelcome legislation. The power entrusted to the Senate of confirming nominations to office vas intended to operate as a restriction on the executive. Nevertheless, the cabinet ministers are responsible to the President alone. The only irresponsible and irremovable[2] fficials are the judges of the Supreme Court, who are ppointed for life.

The most significant of these provisions is the sub-

1 The distinction between *rigid* and *flexible* constitutions should ot be overstated. Constitutional elasticity depends upon the emperament of the electorate, rather than upon the formal requirements of the constitution. Moreover, precedent and usage lay a large part in the development of constitutions which are sually described as both *rigid* and *written*, as for example in the Inited States.

2 Except by impeachment.

jection of legislative and executive authority alike to the popular vote. This is emphasised by the short term of office. At the same time, constitutional authority is so carefully balanced and restricted that there is little danger of abuse of power. The federal government is restrained not only by the independent power of Congress, but also by the jurisdiction guaranteed to the states. The legislature is expressly debarred from exercising control over the administration, or the judiciary. This system has had results which may not have been contemplated. The restrictions on the scope of the legislature have brought into necessary operation, in the states, the direct legislation of the people. At the same time, the elaboration of checks and balances has imposed barriers to hasty change, and done much to foster a spirit of legal-mindedness among the American people.

The ten amendments to the constitution adopted in 1791 enumerated the fundamental rights of the citizen. The tendency to consolidate popular rights, at the expense of governmental power, became stronger after the victory, at the elections of 1800, of the Democratic-Republican party. Its leader, Thomas Jefferson, who became President in 1801, inaugurated a policy which upheld the sovereignty of the individual states and supported the principle of universal suffrage.

The successful working of democratic institutions on a large scale exerted an immense influence on Europe and America, and must be regarded as a principal factor in the decision of the Latin communities of South America to vindicate their independence. Their successful revolt from Spain brought into existence a number of constitutional republics, nominally based on the principle of political equality, but in reality resting on military

force. Only in Uruguay and Argentina was the bulk of the population of European origin. Whilst the natives and half-castes were entirely without political experience and capacity, even those of European stock lacked those habits of obedience to constituted authority which are the outcome of self-governing institutions. Latin America was accordingly destined to pass under the sway of military dictators, and it was not until the close of the century that democratic government became anything like a reality in some of the more advanced of these paper republics.

Nevertheless, the struggle of the Spanish colonies for freedom awakened sympathy in England and North America, where the contrast between the provisions of the new constitutions of the revolting states and the prevailing autocracy of continental Europe appeared to be significant. Both countries hastened to acknowledge the independence of the new republics, and in 1823 the *Monroe Doctrine* was announced. In his message to Congress, President Monroe called attention to the fact that the political system of the European Powers was essentially different from that of America, declaring that the attempt to extend that system to any part of the American continent would be dangerous to American peace and safety. The doctrine has since been a guiding principle of American policy.

Between 1820 and 1850 democratic sentiment became increasingly insistent. The federal constitution failed in every respect to satisfy popular aspirations. Suspicion of executive power was deeply rooted, yet administrative officials and judges were nominated, not elected. The aversion to bureaucracy, powerless to secure amendment of the federal system, found expression in the modifica-

tion of the constitutions of the various states. Elective offices were multiplied. Even superior courts of jurisdiction came to be staffed by elected judges, holding office for short terms. The suffrage was widely extended. The democratic movement received a further fillip from the victory of the Federal North in the American Civil War. Under Abraham Lincoln, democracy proved to be the winning cause, and, in the later half of the century, significant steps were taken, in many of the states, to establish the direct and continuous sovereignty of the people. With this attempt we shall deal in the ensuing chapter.

In the colonial sphere, democracy was established in the older colonies of Great Britain towards the middle of the nineteenth century. The principles of self-government had indeed been realised in the New England colonies during the seventeenth century. Prior to the War of Independence, the majority of the colonies possessed elected legislatures, whilst Connecticut and Rhode Island even nominated their own governors. After the disruption of the Empire, however, these liberal principles were replaced by a policy of centralisation. It was not until the conversion of the Whig party by the *Colonial Reformers*, in the forties of the nineteenth century, that democratic institutions were again authorised. Colonial self-government, in the new era, prevailed in a form which guaranteed to colonial communities effective control of their governments, for, under the responsible system, colonial assemblies were permitted to restrain the executive authority. The publication of the *Durham Report* 1839 was a notable landmark in colonial policy, and its substantial adoption by the British Government proclaimed its acceptance of the principle that the

British Empire rested upon a basis of complete local autonomy. The success of the experiment in Canada led to its adoption in all the larger temperate-zone colonies of the Empire.

In the latter half of the nineteenth century the parliamentary system made headway in nearly all the countries of Europe. Even the Balkan states developed a rudimentary form of constitutional government. Nevertheless, the prevailing type of parliamentary rule was not based upon the unreserved adoption of democratic principles. The progress towards democracy was the outcome of the discredit which came to be attached, in many countries, to monarchical or oligarchic institutions. Outside Britain, France and America there existed little genuine enthusiasm for popular government, and no traditions of parliamentary life. The adoption of the democratic system meant, in practice, recognition that the ministry might be overthrown by a hostile vote in the popular chamber. It did not necessarily involve the subordination of the executive to the will of the legislature, for bureaucratic traditions might be strong, and, in many states, the authority of the monarch was sufficient to enable him to retain in office a ministry which had lost the confidence of the representative house. In Holland, Sweden and Spain, despite the adoption of responsible government, the monarch exercised a real control over the machinery of government. The power of the lower house in several countries was limited by the independent powers retained by hereditary, or nominated, upper chambers. Few states had achieved manhood suffrage. Even in the more advanced communities, parliamentary democracy meant in practice the domination of the

middle classes. In countries without experience of self-government, elections were apt to be meaningless, and were in no sense a faithful expression of the national will. Governmental pressure habitually operated in Spain and the Balkan states to deprive the community of the means of self-expression. Only in Britain was the cabinet system of responsible government developed in such a way as to reconcile executive efficiency and concentration of power with recognition of the ultimate supremacy of the electorate.

CHAPTER XI

Direct Democracy in Modern Times

SINCE the opening of the nineteenth century, various attempts have been made to devise new forms of government, which would give more adequate expression to the will of the people. A general feeling of dissatisfaction with representative institutions was the source of many of these experiments. With the advance of political education among the masses, there arose, in many countries, a demand that opportunity should be provided for the direct participation of the people in public affairs. This movement of opinion towards what has been called *pure* democracy has derived support from the doctrines of the French Revolution. Rousseau had argued forcibly that a people which did not directly exercise its sovereign rights was not properly free. The belief that, at any rate in certain spheres of legislation, the final word ought to be said by the citizens themselves, rather than by any representative assembly, exercised a potent influence, even in the period of reaction which followed the Congress of Vienna. These theoretical doctrines were insufficient, in themselves, to set in motion a powerful current of opinion. It was only in the later years of the century that the declining prestige of parliamentary assemblies helped forward the movement to supplement representative democracy by direct appeal to the sovereign people.

The methods adopted represent, in appearance, a reversion to the system of direct democracy which

obtained in the ancient world. In reality, however, they owe little or nothing to the example of the Greek and Italian republics.

Those republics had made possible, through the institution of slavery, the activity of all their citizens in governmental functions. Ancient democracy rested on a basis of inequality and privilege. At Athens, the popular assembly was composed of free-born adult citizens alone. Even so, its size made it unwieldy as an instrument for deliberation. Under modern conditions, assemblies so constituted could only function in small rural areas where the people had been accustomed to communal management and enjoyed a substantial measure of social and economic equality.

The popular assemblies, or *landsgemeinden*, which continue to meet in some of the Swiss cantons, resemble in some respects the Athenian *Ecclesia*. They are primary assemblies, and they deliberate, as well as vote. Their functions, though scarcely as wide as those of the Ecclesia, include the enactment of laws, the supervision of local administration, and the election of the principal officials. There is no reservation of the right of initiative, and no prospect of appeal beyond the decisions of the assembled citizens.

These powers have been somewhat circumscribed in recent years. The establishment of the federal constitution involved certain changes in the constitutions of the cantons, and the general effect of these changes has been to define and slightly to restrict the powers of landsgemeinden. In some cases, proposals are now drafted by the cantonal council. In Appenzell-Ausserrhoden, citizens vote in the landsgemeinde, but may not deliberate. By Article 6 of the constitution of Uri, which

remained in force until 1928, the landsgemeinde was the sovereign legislative authority, with full power (Article 52) to revise the constitution, vote taxes and bestow citizenship. In May 1928, however, this very ancient institution decreed its own permanent dissolution, and Uri is now governed under representative institutions, modified by recourse to the referendum and initiative.

The reluctant abandonment of direct democracy at Uri seems to indicate that primary assemblies can only prove workable in small areas. The landsgemeinde has now disappeared in the majority of the cantons, and survives (1929) only in Glarus, the two Appenzells, and the half cantons of Nidwalden and Obwalden.[1]

It is not clear that the system is doomed to speedy extinction. It is a survival from mediæval conditions, but the example of Glarus indicates that a landsgemeinde, under the presidency of a magistrate of skill and tact, may deal in a progressive spirit with the problems of a modern industrial community. In this canton, despite the fact that its population greatly exceeds that of Uri, the popular assembly has continued to function successfully. Swiss experience reveals the fact that local and party divisions occasion the most serious difficulties, and that the success of primary assemblies depends very largely on the character and ability of their leaders. In federal states, where domestic autonomy can exist in areas of small population, there is much to be said for an institution which associates every adult citizen with the management of public affairs.

There have been other instances of government by primary assemblies in modern times. In South Africa, within the independent Boer communities of the Orange

1 Originally the undivided canton of Unterwalden.

Free State, Transvaal and Natal,[1] sovereignty was deemed to reside in *Het Publiek*. Every burgher was entitled to speak and vote at these gatherings, and every magistrate derived his authority from direct popular election. Though representative institutions existed, inasmuch as an assembly, or *volksraad*, exercised powers of deliberation, laws were seldom applied until the people's opinion had been expressed in their favour. The dispersion of population, however, soon operated to make direct democracy impracticable. After 1860, in both surviving republics, sovereign powers were, in practice, though not in theory, exercised by the elected Volksraad. Only in the election of the President, the Commandant-General, and the Legislature did the people continue to exercise the functions of sovereignty.[2]

In the case of larger communities, the movement to extend direct popular control of public affairs has not sought to abolish representative institutions, though it derived its origin from general dissatisfaction with the representative system. In the early nineteenth century, the democratic movement was inspired by detestation of long-standing oppression, which had come to be associated with hereditary monarchy and aristocratic systems of government. The example of England seemed

1 The Orange Free State enjoyed independent statehood from 1854 to 1902; the Transvaal from 1852 to 1902, with the exception of the brief period 1877–81. The republic of Natal was established by *Boer* farmers from the Cape in 1838, and lasted until 1843, when Natal was annexed by Great Britain.

2 Lord Bryce has called attention to the fact that the establishment of these communities in the interior of South Africa partly realised the ideals of the eighteenth century philosophers, inasmuch as it revealed "free and independent persons uniting in an absolutely new social compact for mutual help and defence" (*Studies in History and Jurisprudence* (1901), I, p. 432).

to indicate that popular rights could be safeguarded under a parliamentary administration. The duties of legislation, and of exercising supervision over the conduct of the executive, were thus confidently entrusted to assemblies elected upon a more or less wide suffrage. These expectations were not, in the long run, fulfilled. Representative government in England and America was based on the party system, and this system, applied to the European continent, failed to work smoothly. Intended as "agencies for carrying on popular government by concentrating opinion",[1] parties in many countries came to be associated closely with racial and religious issues. The presence, within many European communities, of irreconcilable minorities contributed, under the parliamentary system, to create intense bitterness of party feeling. The attention of deputies was directed rather towards the overthrow of a ministry, than the enactment of useful legislation. In France, parliamentary irresponsibility involved ministerial inefficiency and cabinet changes of bewildering frequency. In Germany, on the other hand, the Reichstag appeared to be powerless to safeguard popular rights. Nor was dissatisfaction absent in countries with long traditions of democratic government. In America, maintenance of the veto power of state governors, a universal feature of state constitutions with the unimportant exception of North Carolina, has been due to the feeling that there ought to be some check on the irresponsibility of the legislature. The corruption, as well as the independence, of elected assemblies, has been a ground for adverse criticism. In Great Britain and the British Dominions,

1 A. L. Lowell, *Public Opinion and Popular Government* (1913), p. 66.

upper chambers, differing in composition and, to some extent, in political complexion from the lower house, have found support, as a wholesome restraint on the representative chamber.

This accumulating dissatisfaction has brought to the forefront various remedial proposals. On the one hand, there has been a demand to increase the power of the executive, and even to entrust the functions of sovereignty to a single ruler. This movement is the outcome of respect for official knowledge and experience, and of a general aspiration for stability and security. It has been strongest in Italy and parts of Germany, where parliamentary government has appeared to many to mean the domination of the amateur and the orator. The second group of proposals rest on the assumption that a remedy is to be found in the increase, rather than the decrease, of democratic government. Various forms of direct legislation have been elaborated, in order that the people might be able to exercise directly their sovereign rights.

This tendency to extend the principles of democracy has found support in political philosophy. In the last decade of the nineteenth century, the electoral system was subjected to searching analysis and criticism. It was pointed out that the election of representatives in local constituencies could not be regarded as an expression of the views of the electorate on public policy, inasmuch as the question of the personality of the candidates tended to obscure political issues. It could be demonstrated that, in many cases, the result of an election had been determined by the action of a small minority of the voters. Moreover, important changes in public opinion would naturally occur in the intervals between general elections.

Another argument was that laws would more readily command obedience, if they were directly derived from the sovereign people, for the citizen must be held to know best what was to his own advantage. Even the most conscientious of legislatures must make occasional mistakes in the interpretation of public opinion, and some protection against continual misinterpretation might reasonably be demanded. Finally, the feeling, in many countries, that the legislature was deferential to class interests, and to the influence of business corporations, led to a demand that the individual citizen should have an opportunity to express his will on any suggested enactment, and even to propound alternative proposals of his own.

The referendum is an institution, by means of which the electorate can be called upon to express an opinion upon proposals which have been accepted by the legislature. Its name is apparently derived from the Roman practice *referre ad populum*, in connection with legislative propositions made by the magistrates. The word is occasionally employed, during the deliberations of ambassadors, in the early centuries of the modern era, when a point arose which could only be settled by reference to the governments concerned. An early form of the referendum may thus be distinguished, as a detailed report by a deputy to his constituents on a matter which he was not competent to decide himself.[1] In the Swiss Confederation during the early nineteenth century, the representatives of the cantons in the diet were accustomed to refer proposals, on which they had received no instructions, to the cantonal governments. A nearer

1 W. A. B. Coolidge, in *English Historical Review* (October 1891).

approach to the modern system came into operation after 1830, when the taking of a popular vote began to be the accepted device for eliciting the general will on any proposed amendment to the constitution. The referendum is now primarily a method of restraining representative assemblies. It is no longer exclusively employed in connection with constitutional amendments, and it has come to be virtually an alternative method of legislation. When employed in conjunction with the initiative, under which individual citizens may frame, and submit to the popular vote, schemes of legislation, this system threatens altogether to supersede elected assemblies, substituting for representative machinery the direct action of the people.

These institutions were first utilised in Switzerland. We have already referred[1] to the introduction of the constitutional referendum, in 1802. In 1831, the canton of St Gall led the way in the adoption of the principle of the referendum for ordinary laws. This was originally called the *veto*, and was set in operation when a commune voiced its protest against a law promulgated by the cantonal council. A more significant step was the simultaneous establishment of the referendum and the initiative in the canton of Vaud 1845. Whereas constitutional changes were to be subject to compulsory referendum, eight thousand citizens could place before the people, not merely proposals which had been accepted by the council, but also resolutions which they might frame on their own account. Other cantons soon followed the lead of Vaud, Fribourg being the last to adopt the system of the referendum (1920). All the cantons governed under representative institutions now use

1 *Supra*, p. 157.

the device, whilst the legislative initiative is almost universal.[1]

To what extent have these arrangements been adopted in the federation as a whole? The federal constitution of 1848 laid down that constitutional amendments in the cantons must be submitted to popular vote. In 1874, the legislative referendum made its appearance, authority being given to 30,000 voters to demand the reference of laws, and non-urgent resolutions, to the electorate. The legislative initiative does not exist, so far as the central government is concerned, but changes in the constitution may be demanded and may take the form of specific amendments to be submitted to the people.[2] These arrangements have been criticised on the ground that they do not go far enough. There is no general provision that all laws of a prescribed nature must go to the popular vote. The optional form of the referendum assumes that the people approve, unless steps are taken, involving expenditure of time and money sometimes on a large scale, to challenge a particular proposal. It does not involve that continuous consultation with the people which is the ideal of the more democratic cantons. Moreover, by adopting legislative proposals in the form of resolutions and by declaring them urgent, it has been possible for the federal Assembly to withdraw important matters from the operation of the referendum. These facts have

1 The cantons of Schwyz and Zug abolished their primary assemblies and substituted the referendum and the constitutional initiative in 1848. Where landsgemeinden continue to exist, there is clearly no need for the referendum and the initiative.

2 It should be noted that ordinary legislative enactments are sometimes submitted by the popular initiative under the guise of amendments to the constitution. The same thing has happened in America.

given point to the criticism that the federal government is less democratic than that of the cantons, where the compulsory referendum is the rule. This is partly due to the additional expense and inconvenience involved in recourse to the popular vote over so wide an area. There is the additional difficulty that Switzerland is a federal state. The sovereignty of the cantons, within their proper sphere of jurisdiction, is guaranteed by the constitution. The operation of the compulsory referendum might make it difficult to maintain that sovereignty.

It is not easy to sum up the results of this system of direct popular legislation, in actual working. It has undoubtedly contributed to the education of the people in politics. At the same time, it has not, as was anticipated, diminished the importance of the work done in parliaments. Only a very small percentage of the legislative output of the Swiss federal Assembly has been invalidated by an adverse popular vote. The system has nevertheless compelled the Assembly to take steps to enlighten the people on important issues, and to proceed with due circumspection in the preparation of laws. The cases where laws have been rejected, though not numerous, do reveal the fact that the legislature had incorrectly interpreted public sentiment, whilst the decision of the people has often been justified by later events. Whilst there has been little indication that the referendum has been used to obstruct useful legislation, the application of the popular initiative has not been attended by the disastrous consequences which had been foretold. In many of the cantons very little use has been made of it.[1] In all, the people have evidently

1 In the canton of Vaud, there are only seven instances of its employment between the years 1845 and 1918.

proceeded with the most exemplary caution, and radical proposals have usually emanated from the cantonal councils.

On the other hand, direct democracy in Switzerland has not altogether succeeded in reconciling executive efficiency with the sovereignty of the popular will. Recent experience has shown that a vote is not always given on the merits of a substantive proposal, and that the referendum is used as an opportunity to give expression to indefinite discontent. In some of the cantons, government has been seriously hindered by the rejection of proposals for the raising of taxation. The initiative has not, in fact, encouraged crude and unsound schemes, but its employment involves loss of the valuable stage of debate and criticism in an experienced parliamentary chamber. But, when all allowances of this nature are made, it remains true that the popular vote has proved itself to be the surest way to discover the real wishes of the electorate. It has made possible the avoidance of acute conflicts between government and people, and must accordingly be regarded as an institution making for stability and social pacification.

It is doubtful whether the system could be introduced with an equal measure of success in other European communities. The experiment of the referendum and the initiative has succeeded in Switzerland, owing to the prudence of the Swiss people and their long experience of self-government in commune and canton. In unitary states, the popular vote, save as an occasional expedient, would present the greatest difficulties. Economic and social conditions in Switzerland have also been favourable. The possession of freehold property is almost universal. Though industries are growing, there are several

cantons which are almost entirely agricultural. There is consequently no organisation of militant labour extending throughout the state. Moreover, there is a substantial measure of social equality.

We must now turn to America. In that country, as in Switzerland, the earliest form of the referendum was the submission of constitutional changes in the states to a popular vote. Commencing with that of Massachusetts in 1778, three of the constitutions framed prior to 1800 were adopted only after ratification by the people. The practice of submitting particular constitutional amendments originated in 1818. It is now (1929) the rule in all the states, with the exception of Delaware and New Hampshire.

The use of the referendum for ordinary legislation is a much later development. Only after many attempts at reform of the representative system has the American public, in several of the states, ventured to supplement representative democracy by recourse to direct popular control. The dishonesty and extravagance of state legislatures have been the chief causes of this movement of opinion, rather than the influence of democratic doctrine. In particular, there has been a strong feeling that state legislatures are too deferential to special interests. Thus, in Oregon, resentment has been chiefly due to the failure of the assembly to enact laws controlling business corporations. South Dakota led the way in 1898, when it allowed the submission of any law not declared urgent, on a petition signed by a specified number of citizens. The initiative was introduced at the same time. Since 1898, the system has been widely extended, though chiefly among the newer states of the West and South-West. Of the eastern states, only Ohio, Michigan, Mary-

land, Maine and Massachusetts have made provision for direct legislation. In twenty-six states, the government continues to be purely representative.

It can scarcely be denied that direct democracy in America has not worked so smoothly, or so successfully, as in Switzerland, though it should be remembered that it has been in operation for only a short time. The initiative was not actually employed until 1904 (by Oregon). Statistics show that the initiative is now more frequently used than the referendum, that rather more than half the proposals submitted to popular vote are rejected, and that, in numerous instances, only a small proportion of the electorate record votes. It is clear that, where a large number of laws and proposals are submitted within a short space of time, there is bound to be popular indifference or neglect. Many proposals have been carried after insufficient consideration and by a relatively small minority of the total electorate. This can scarcely be described as the rule of the majority. In fact, results in some of the western states suggest that a popular vote, more often than not, distorts the real views of the electors. A further serious defect has been the confusion and obscurity involved in the addition to the statute book of measures which have never undergone critical debate, and which, through faulty drafting, may have results far different from what had been contemplated. Moreover, the absence of any opportunity for compromise tends needlessly to embitter groups of electors, whose special interests might have been met by small amendments to the original proposition. Under the representative system, the rights of minorities receive a certain measure of protection. But no constitutional guarantees can be effective against the overriding power of the direct popular vote.

These are serious objections. They concern, it is true, the initiative, rather than the referendum, which has done something to check legislative corruption and folly. The application of the initiative to measures which must fall outside the knowledge and experience of the majority of the electorate can only be regarded as a reckless appeal from responsibility to irresponsibility. Nevertheless, the system as a whole has not been conspicuously abused. It has certainly not been employed as an instrument of social revolution. It is significant that the number of states in which the initiative and referendum are in operation is constantly increasing. There can be little doubt that the direct popular vote has enabled the legislature to maintain closer contact with popular sentiment, whilst it has provided a guarantee that no law will come into operation which is opposed to public opinion.

So far we have been concerned with the right of legislation. The democracies of the ancient world sought also to provide for the direct participation of the citizen in the executive and judicial branches of government. Athens made democracy a reality for every citizen by establishing the system of the lot in appointments to administrative and judicial office, whilst insisting on the direct responsibility of the magistrates before the popular courts. Modern democracies seem to be experimenting along similar lines. Appointment by lot has indeed disappeared, though it was maintained in some of the Swiss cantons until the middle of the nineteenth century. But direct popular election of the members of the government is being extended. It exists in the Swiss cantons, where many of the officials and judges are also so chosen. In Geneva, the appointment even of the higher judges

rests with the people. On the other hand, the judges of the Swiss Federal Court are elected by the Federal Assembly. State governors in America hold office by popular vote. State judges are similarly appointed, and usually for a short term. This system, at least so far as the judiciary is concerned, is open to grave objection. In Switzerland, there have been cases of bitter party conflict. In America, justice is said to be expensive, whilst the prestige of the state courts is commonly low.

In both Switzerland and America, popular control over officials and councils has been established since the middle of the nineteenth century. In some of the Swiss cantons, the government can be recalled by popular vote before its term of office has expired. The *abberufung*, under which a specified number of citizens may requisition a vote for the recall of the cantonal council, originated in 1852, in the cantons of Schaffhausen and Aargau. Though it has since been adopted in other cantons, the method has been rarely employed, for the Swiss people are too conservative and level-headed to desire to dispense with the services of experienced deputies and officials, save on the most compelling grounds.

Some of the American states, on the other hand, have extensively employed the method of the *recall*. In America, it amounts to a special election, requisitioned by a required percentage of the voters, to decide whether a particular official shall be dismissed before the close of his legal term of office. It has been designed as a safeguard against a single official, whereas the Swiss system operates in the main against the representative body. Inasmuch as it virtually establishes the rule that the representatives of the people hold office, not for a fixed

period, but only so long as the majority wishes, it may be said to be more democratic even than the Athenian system. At Athens, independence in the officials was guarded against by the multiplication of offices, the short period of tenure and the so-called *audit of magistrates*.[1] It was not possible to remove a man from office and proceed to the election of his successor, except on a definite charge of having broken the law.

The American recall originated in Los Angeles, where it was introduced into the municipal charter in 1903. Oregon led the way in its application to state, rather than municipal, officials (1908), and, in the ensuing twelve years, the example was followed by ten other states. In seven, the system is made applicable to judges, as well as to administrative officers. No higher state judges, however, have yet been recalled. The system is expensive and there has been a strong feeling against its employment to override the law courts. Nevertheless, in actual working the recall has not proved to be dangerous to liberty and good government. Though personal enmity has sometimes entered into campaigns to remove particular officials, there is less abuse than might have been expected. As a substitute for impeachment, the remedy has proved both rapid and efficacious. The most damaging objection to the system is that it tends to weaken executive authority, particularly in moments of public excitement. On the other hand, knowledge that the people have the power to terminate the political activities of their officers has overcome the antipathy to executive authority. The centralisation of powers in the hands of capable men, enjoying an extended period of office, may prove to be realisable, when combined with a system

1 *Supra*, pp. 27, 36–37.

which guarantees their continuous responsibility to the popular will.

The reversal of judicial decisions by popular vote has been attempted in the state of Colorado, but in 1921 this was declared to be unconstitutional by the Supreme Court.

The powers of direct legislation are occasionally exercised in Australia, where amendments to the federal constitution must be approved by a majority of the whole people. The Commonwealth Parliament, moreover, has not hesitated to submit matters of general legislation, such as the enactment, during the Great War, of compulsory military service, to the popular vote. Owing, however, to the frequency of parliamentary elections, which must take place every three years, and to the system of responsible government, there is not the same need for the referendum and initiative, as there is in countries where the deputies are elected for a longer term and the executive is largely independent of the legislature. The same remark applies to New Zealand, where the referendum has only been used in connection with the issue of prohibition. In Canada, the referendum is widely applied in the sphere of local government.

Direct democracy has not found much support in Great Britain, owing to the prestige of the parliamentary system and the comparative purity of party politics. The struggle between the two houses of Parliament (1909–10), indeed, drew attention to the popular vote as a means of settling constitutional deadlocks, but Lord Balfour of Burleigh's bill to establish a form of the referendum met with little support in Parliament or country.

The new constitutions of the twentieth century, on

the other hand, have largely reverted to the doctrine of direct popular sovereignty enunciated by Rousseau. This doctrine has been held to require that provision should be made for frequent exercise by the people of the right of legislation. There has been almost universal agreement that important constitutional changes ought to go to the popular vote. Even the most conservative parties in continental states have been impressed by the argument that the referendum imposes an obstacle to the enactment of proposals which are not supported by the conviction of the majority of the electorate. Accordingly, in Estonia, the compulsory referendum applies to all changes in the constitution. In Austria and Latvia, the rule applies only where the alteration will affect a general, or significant, change. The referendum for ordinary legislation exists, in an optional form, in a majority of the new constitutions, but there are significant deviations from Swiss-American practice. Thus, the right to delay the operation of a law, until it has been submitted to the electorate, is sometimes vested in the President. This provision has been adopted in the new constitution of the German Reich (Article 73). A more general feature is the rule that postponement of a law may be secured by a specified minority, usually one-third, of the Assembly for the purpose of ascertaining the popular will. In Czecho-Slovakia, the framers of the constitution were concerned to protect the interests of the government, rather than a minority of the chamber, from the power of a parliamentary majority, and the referendum is contemplated only in cases where the chamber has rejected a government measure. But a bill can only be so submitted when the government is unanimous.

Many of the new constitutions have also provided for

the popular initiative, applying equally to constitutional and ordinary legislation. Thus, in Latvia and Estonia, a proposition framed by a certain number of citizens must be voted upon by the legislature, and, if amended or rejected, be referred for final decision to the people.

It is too early to comment on the working of this system. The referendum has only once been used in Germany, in connection with a proposal to confiscate the property of the Hohenzollerns and other former ruling families. In Czecho-Slovakia, the popular vote has not been used at all. On the other hand, the initiative has been employed fairly frequently in Estonia and Latvia. In the former state, the absence of any provision that a specified number of voters must record their votes has led to the adoption of many proposals, though they have been supported by no more than a small minority of the electorate. Moreover, the Estonian rule, that a popular vote reversing the decision of the Assembly shall operate automatically to dissolve the representative organ, tends to obscure the issue, since it often converts a vote on a particular measure into one of general confidence, or distrust, in the government. The difficulty of sufficiently interesting the people to secure the attendance of a considerable proportion of the electorate has been a general experience. In recent years, there appears to have been a movement of opinion in favour of representative, rather than direct, democracy. In Latvia, the President has successfully ignored popular votes when less than one-half of the electorate has voted. In the Irish Free State, Articles 47 and 48 of the constitution, which provided for the use of the referendum and initiative, were repealed in 1928, on the motion of the Government. Only in the case of bills to amend the constitution, can

the Senate now enforce a referendum. In Germany and the Baltic states, there has been a noticeable reluctance to submit really important issues of national policy to direct popular vote.

These methods of direct popular participation in the government represent an attempt to give an ultimate application to the theories of democracy. Their complete adoption must involve the abandonment of parliamentary government, and the entrusting of legislative power to the people as a whole. Legislative assemblies may not be altogether superseded, but they will be concerned, in the main, with the mere preparation of laws. Ultimate authority will reside in a popular majority, which must inevitably be temporary and fluctuating. These conceptions, upon which direct democracy rests, had their origin in city, or rural, communities, and it is important that a distinction should be drawn between their application to small political units, and their adoption, on the other hand, for the government of densely-populated national areas. In Switzerland, the merits of popular legislation may be readily admitted. It has placed on the statute book some excellent legislative proposals, and it has prevented the enactment of laws which did not receive general support. It has facilitated the expression of the popular will on specific issues of legislation. In the American states, the system, on the whole, has not been abused. It is significant, however, that pure democracy in politics has been compatible with the retention of industrial autocracy. It is clear that direct democracy gives the best results in a country where the population is homogeneous, and there are traditions of popular government. It will be more difficult and costly in large, unitary states, and more hazardous where there are deep divisions

of race, religion, or economic cleavage. In such communities, the problems of government may perhaps be more advantageously approached through a reform of the representative system, and by means of a greater measure of political education. The primary need is the cultivation of a deeper sense of responsibility, and this may be expected to follow upon educational changes, bringing about a wider interest in politics. Without that interest, democratic government can scarcely be a reality, and the referendum and initiative may be no more than a device to conceal from the people the oligarchical nature of the government. In the creation and concentration of public opinion, and still more in the organisation of the popular vote, there is evidently room for non-democratic influences. Frequent elections are followed by a decline in popular interest. This opens the way for the professional politician. Representative institutions, on the other hand, enable the electorate to exercise a general control over policy. Whilst giving scope for the exercise of special talents, parliamentary government guarantees that no very important changes in constitution, or policy, will be adopted, without an appeal to the nation. At the same time, it is compatible with the occasional use of the method of the direct popular vote for the determination of disputed issues.

CHAPTER XII

Democracy in the Constitutions of the Twentieth Century

THE outcome of the Great War was the discrediting of monarchical government, and the establishment of democratic institutions throughout a great part of continental Europe. The overthrow of militarism and autocracy paved the way for reorganisation, on the basis of parliamentary rule and universal suffrage. The victory of the allied Powers thus lent a great impulse to democracy. In the new states, popular institutions were at once established, whilst the defeated countries hastened to give expression to democratic ideals. The consequence was a more complete realisation of the democratic principle than had yet been achieved in modern Europe.

Nevertheless, the widespread acceptance of parliamentary democracy has not been unaccompanied by criticism, and even by a measure of distrust. We have considered some of the reasons for the decline in prestige and moral authority of elected legislatures. At the same time, there has been a reaction against the liberalism of the early nineteenth century, under the inspiration of which the more progressive states had first embarked on representative government. The recent tendency has been to extend the sphere of activity of the state. The parliamentary system is now valued not so much for its own merits, as for the economic and social reforms which parliamentary rule is expected to realise. The apparent failure, in some countries, to reconcile govern-

mental efficiency with the supremacy of the popular will is the cause of the diminishing respect for representative institutions.

It seems desirable to attempt, in this chapter, no more than a brief comparative survey of the main types of democratic constitutions in existence at the present day. It will not be possible to describe in detail the actual working of constitutions, or even to analyse the framework of government. The writer's object has been to indicate the emergence and operation of new forces which appear to modify the development of political institutions, to point to certain tendencies, and to suggest possible results.

It will usually be found that the practical working of a constitution depends upon the relation which exists between the executive government and the organ in which resides the power of legislation. On the basis of this differentiation, it is possible to distinguish three types of democratic constitutions. These are the *parliamentary or cabinet* type, developed in Great Britain, the American system of a co-ordinate and independent executive under a popularly elected President, and the Swiss form, which combines subordination of the ministers with permanence of tenure.

In Great Britain, the efficiency of parliamentary government depends very largely on the concentration of power in the hands of the cabinet. This body is, in reality, a group of executive leaders, who, at the same time, exercise the chief influence on the process of legislation. All ministers have seats in Parliament, and they are collectively responsible to Parliament, in regard to both policy and administration. Nevertheless, this responsibility is more theoretical than real, and cabinets have

rarely been compelled to resign by a hostile vote in the House of Commons. The fact is that the British system is democratic, not in respect to the measure of control exercised by Parliament, but because the Government is in effect the direct choice of the people. Its supremacy in legislation is the natural result of the fact that its programme has already won the support of the majority of the electorate. It is rendered more certain by the power of the cabinet to dissolve Parliament and appeal for support to the nation. This feature of the British system has not been adopted in the constitutional practice of other parliamentary states, and the consequence has been that, in continental countries, the cabinet is unable to insist on the passage through Parliament of its legislative programme. In Britain, the cabinet is strong, and it has seldom been overthrown, except as a result of electoral reverses.

The American system, on the other hand, rests on the principle of separation of powers. Legislature and executive have co-ordinate authority. Both are directly responsible to the people. The President and his ministers are not directly concerned with law-making, and they may not have seats in the legislature. On the other hand, they are not responsible to Congress, and cannot be compelled to resign by an adverse vote in that body. The system has been commended on the ground (*inter alia*) that the separation of governmental functions ensures the reality of popular control.

The third, or Swiss, type is a modified form of cabinet government. There is, however, no party solidarity. The members of the Federal Council, or cabinet, may hold divergent views on legislative policy. Moreover, they enjoy security of tenure, in this respect resembling the

American executive. On the other hand, they are definitely subordinate to the legislature. They do not resign on an adverse vote in the Assembly, but they change their policy in conformity with the decision of the chambers. Such a system would appear to involve ministerial weakness. The Federal Councillors, however, are, in the main, party leaders, and, as such, they exercise considerable influence on discussions in the legislature. Moreover, personal responsibility is combined with a measure of permanence and continuity. The administration is not conducted on party lines, and statesmen of ability are not forced out of office through the defeat, at the polls, of the party with which they are connected.

We have already noticed that the Swiss system combines representative institutions with direct popular participation in legislative, and to some extent even administrative, functions.

Of these three types of modern democracy, the American has exercised least influence upon the constitutions of the post-War period. One feature alone of the American constitution has been widely copied—the vesting of authority in a popularly elected President. The idea that a President elected by direct popular vote might serve as a check on the power of the representative legislature was responsible for its adoption in the constitution of the German *Reich*. Czecho-Slovakia has imitated America in the provision which empowers a court to pronounce upon the legality of parliamentary enactments. On the other hand, the American doctrine of separation of powers has been rejected, and power has been centralised in the legislature. All the new democratic constitutions of central and northern Europe have adopted the

principle of ministerial responsibility, whilst combining with it recourse to the popular vote, borrowed from Swiss practice. The peculiar form of cabinet government which has been imitated has, however, been that of France rather than of Great Britain.

We have noticed that an essential feature of the British system is the right to dissolve Parliament, which belongs to the cabinet. In France, the ministers do not enjoy this right of appealing from the chamber to the people. A cabinet which fails to retain its parliamentary majority must, in consequence, resign. This underlying weakness is accentuated by the nature of French political parties. The French system is one of small groups. Political issues are not sharply defined, and a ministry must seek support where it can find it. Its programme of legislation cannot be drawn up until the chamber has met. In other words, the electorate has not been called upon to pronounce an opinion on the proposals of the new government. The people may be ultimately sovereign, but in practice the Assembly is supreme. It virtually enjoys fixity of tenure, and its decisions are subject neither to presidential veto nor to popular ratification. The ministry, on the other hand, is relatively weak. It holds office at the caprice of the majority of the legislature. In France, the characteristic feature of parliamentary government has been the irresponsibility of the representative chamber.

In local government, by the way of contrast, the executive is strong. Centralisation of authority was inherited from monarchical and Napoleonic France, and has since maintained its popularity. Charges brought against officials must be heard in administrative courts, under a separate system of *administrative law*. In practice,

the rights of citizens receive adequate recognition and protection from these tribunals. Nevertheless, the existence of special courts for the trial of cases in which officials are involved, is scarcely consistent with democratic ideals.

During the half century which preceded the outbreak of the Great War, the influence of French constitutional practice upon other states was profound. The constitution of 1875 was the model for many countries, whilst France has more recently supplied the theory which has been the inspiration of the constitutions of the post-War epoch. Nevertheless, there has been a conscious reaction against the French system of concentrating the powers of the state in the representative legislature. In the new states, the people do not surrender their authority to the assemblies. They have preferred to establish the authority of the elected head of the state, and to retain the right to control Parliament by means of the direct popular vote. The system contemplated has been one of checks and balances, rather than of legislative omnipotence. In nearly all the states the bicameral form of legislature has been adopted. Proportional representation has been another method of guarding against the tyranny of a parliamentary majority. Its almost universal triumph reveals the strength of the sentiment that the legislature should be representative of the nation as a whole, and should, as far as possible, reflect the aspirations of every section of the electorate. The system has led to the multiplication of small parties, and has greatly increased the difficulty of securing a stable parliamentary majority. It is largely responsible for that ministerial weakness which many of the new states desired to avoid. In the smaller Baltic states, however, it is considered to be desirable and

consistent with democratic ideas that the government should wait upon public opinion, and not take the lead in the determination of national policy.

In Switzerland, ministers, though responsible to the majority in the chambers, are usually re-elected so long as they care to remain in office. Their work is mainly administrative, and they are not expected to shape policy. Their decisions may be overruled by the legislature, over which there is no power of dissolution. In the cantons, there is the same distrust of official authority. The cantonal executive is, in most cases, chosen directly by the people. In the event of any conflict of opinion, the executive authority must give way. The Swiss system has, however, the advantage of securing continuity of policy, whilst removing administration from the often malign influence of party politics.

Continental states have shown little disposition to follow the lead of Switzerland in combining ministerial responsibility with permanence of tenure. The cabinet system, as developed in Great Britain and France, appeared to afford a greater measure of security that the will of the representative legislature would prevail over that of the ministers. The constitution of the Irish Free State, however, establishes a compromise between the two systems. The President of the Executive Council is the leader of the parliamentary majority. Of his colleagues, some hold seats in Parliament and are subject to the British doctrine of ministerial responsibility. Others are appointed by a committee of the Chamber for a fixed term. They may attend, but not sit or vote, in Parliament, and they do not resign office when their proposals are defeated. The system is an attempt to reconcile parliamentary control with a measure of independence, on the

part of those ministers whose duties are mainly concerned with administrative routine.

The possibility of abuse of power by elected assemblies is provided against in Switzerland by the operation of the referendum and the initiative. The people can, in this way, override the decision of their representatives when that decision does not truly reflect the will of the majority. This application of the democratic principle has been widely imitated in the constitutions of post-War Europe. The majority assert that power emanates from the community. It is not sufficient that the legislature should be elected by universal suffrage and by proportional representation. It is also to be controlled by the direct legislation of the people. The idea of popular sovereignty is expressed in its simplest and most direct form.

Though America has been described as the home of democracy, the federal constitution is evidently less democratic than that of Switzerland. In some of the states, the people share in the making of laws. The federal constitution, however, does not provide for direct popular legislation. Moreover, it can only be changed by an elaborate process of revision, which, in effect, confers on a minority the right to veto the decision of the majority.[1] The suffrage has been extended to women (1920), but the franchise varies from state to state, and is not quite universal. The executive veto, which is non-existent or obsolescent in the majority of the parliamentary consti-

1 R. M. MacIver, *The Modern State*, p. 377. The American constitution can only be altered when a two-thirds majority in both houses of Congress has accepted the change, and after ratification by three-quarters of the state legislatures.

tutions of European states, is frequently exercised. The President is, in a very real sense, the head of the government. He selects his own ministers, and is largely in a position to carry out a personal policy. Congress is debarred from interfering with the functions of the executive. Nevertheless, the President cannot move far without the support of public opinion.

The chief defect of this system appears to be the lack of adequate provision for co-operation between executive and legislature. Only in the sphere of foreign policy was provision made for joint action. Moreover, the absence of cabinet leadership has led to a certain amount of confusion and want of direction in the deliberations of Congress. The messages and recommendations of the President do something to avoid this difficulty, but the system does not admit of close association between the two principal organs of government.

It has been said of American politics that the influence of party has frustrated the reality of democratic government. Members of Congress are nominated by the party machine. This has opened the way to corruption on a large scale, though this evil is noticeably less than during the latter half of the nineteenth century. It has also weakened the sense of direct responsibility to the electorate. To some extent it is still doubtless true that Congress reflects the opinion of the party managers, rather than that of the American people.[1]

It will be instructive to observe how far the principles of the American constitution have been imitated in the new constitution (established in August 1919) of the

1 This state of affairs is not, of course, peculiar to the United States of America.

German *Reich*. Both are federal states, and both have adopted the principles of democracy and republicanism. We have already noticed that Germany has instituted the method of direct popular election for the head of the state, and has entrusted to him, on the American model, fairly wide jurisdiction. Both President and Reichstag are representative of the sovereign people, and only by reference to the people can conflicts between them be decided. As in America, the President appoints the ministers, exercises command over the military forces, and shares with the legislature the control of foreign policy. It is intended that he should retain a measure of independent power, in order that he should exercise a check on the Reichstag. Should he consider that the policy of the government is contrary to the will of the people, he is empowered to dismiss the ministry, even if it enjoys the confidence of the legislature. On the other hand, the system is definitely one of ministerial responsibility. The Chancellor must have the confidence of the Reichstag, and every member state must similarly maintain a responsible ministry. There is no right of veto on legislation, though the President may compel the submission of a law to the popular vote. Germany has thus made use of devices borrowed from the constitutional practice of Britain, America and Switzerland. At the same time, the Germans have shown originality in the provisions for the establishment of a federal Economic Council.

This Council is intended to introduce the principle of democracy into the industrial life of the nation. It is, in effect, an economic parliament with advisory powers. Its principal function is to report on any measures relating to social and economic welfare which are sub-

mitted to it by the ministry. It has no power of independent legislation and its advice may be neglected by the Reichstag. On the other hand, it possesses the important right of initiation. The federal constitution lays down that wage-earners are "entitled to co-operate on equal terms with the employers in the regulation of wages and working conditions,. . .(and) to be represented in local workers' councils". The central Economic Council is representative of employers and workers in various fields of productivity, as well as of consumers.[1]

It is too early to comment upon this experiment in industrial democracy. The application of representative machinery for discussion and initiation to the world of industrial employment and management is a significant concession to working class opinion. It amounts to a recognition of the fact that the indirect control involved in the bestowal of the franchise can no longer be regarded as an adequate safeguard for the liberty and self-respect of the working man. In the early nineteenth century, the wage-earners, disunited and unorganised, had accepted the vote as a means of combating economic exploitation, and compelling the propertied classes, entrenched in parliamentary assemblies, to provide remedial legislation. One hundred years later, interest in political democracy had declined. Substantial equality of control of great business undertakings, as between workman and employer, appeared to be unrealisable through the mechanism of the parliamentary system. Industrial, rather than political, democracy had become the goal of the organised workers in western European countries. To many, industrial democracy meant the right to co-

1 An Economic Council was established in Great Britain in January 1930, but not on a basis of representation.

operate on equal terms in all decisions involving conditions of labour. The movement to realise this ambition derived strength from the parallel movement in the political sphere. It was evolutionary, not revolutionary, and it found justification in the growing complexity of capitalist production, and the failure of the capitalist *régime* to provide an adequate safeguard for individual well-being. At the same time, as we shall see later, a not inconsiderable section of working class opinion has come to embrace the principles of revolutionary socialism, or communism, and to repudiate altogether the essential tenets of democracy.

In Germany, as in the majority of the new democratic states of central Europe, the legislature is elected by universal suffrage and proportional representation. In actual working, this system has frustrated the realisation of either *parliamentary*, or *presidential* government. The British system of parliamentary government rests on a strong and united cabinet. In America, the separation of powers involves an independent executive enjoying fixity of tenure. But, in the majority of the new democratic states, the multiplication of small parties which do not uphold important issues of national policy, has made strong government virtually unrealisable. Coalition government has been the rule, and stable parliamentary majorities the exception. Under such circumstances, democratic government cannot work successfully. Cabinet stability is a necessary condition of parliamentary rule, for only through legislation promoted by the cabinet can expression be effectively given to the popular will. Under proportional representation, the tendency is for a change of government to occur during the parlia-

mentary term, and often by a mere reorganisation of the ministry. A Government brought into existence in this fashion can have no direct mandate from the people.

The most striking contrast to this condition of affairs is presented by the Commonwealth of Australia. Here the British system of cabinet government has been worked out to its logical conclusion. The constitution is strikingly democratic, for a general election must occur once in three years, and there are no non-democratic restrictions on the legislative competence of Parliament. Neither in Australia, nor in the sister dominion of New Zealand, does any executive veto exist. On the other hand, the cabinet, though subject to ministerial responsibility, is strong in the support of a well-organised parliamentary majority. Party discipline in Australia is strict. The legislative programme of the Government has been authorised in party caucus, and members of Parliament vote strictly in accordance with party divisions. Discipline has, indeed, been carried to undue lengths in the organisation of the Commonwealth Labour Party. Members of the party are compelled to vote in accordance with the decisions of a secret party meeting. The determination of important issues of national policy is removed in practice from the cognisance of Parliament and entrusted to a body outside the constitution. This is undemocratic, but it is undeniable that it has facilitated the adoption of measures giving protection to the working classes and extending the principle of equality.

In the constitutional development of New Zealand, the notable fact has been the early triumph of democracy. Manhood suffrage was established in 1879, whilst the vote was conceded to women fourteen years later.

There can be no doubt that the first quarter of the twentieth century has witnessed the broadening of the basis of government in European states. Frequent extension of the suffrage has taken place until in many countries the goal of adult suffrage has been reached. In Great Britain, the suffrage was equalised as between men and women in 1928. Austria, Belgium, Denmark, Finland, Germany, Holland, Norway, Poland, and Sweden had already conceded the franchise to women on equal terms. Italy in 1926 established manhood suffrage, abolishing the literacy test. The fall of monarchical government in Austria and Prussia was accompanied by the disappearance in those countries of the system which gave unequal voting strength to different classes. Many attempts have been made to revise the electoral machine, with a view to ensuring that the representative legislature shall truly reflect the will of the people. Whilst the trend has been towards parliamentary government with ministerial responsibility, many of the new constitutions have not hesitated to give direct control to the people.

Parliamentary government has continued to work efficiently in Great Britain, but ministerial instability has been the evident outcome of its introduction in countries without inherited traditions of self-government. It is too early to refer to the failure of representative democracy. Many new forms of democratic government will doubtless be devised, but continental experience has pointed the lesson that governmental efficiency, under the parliamentary system, requires the concentration of power in the cabinet. Only where the government is supported by a direct mandate from the electorate can stable administration be reconciled with the supremacy of the popular will.

CHAPTER XIII

Non-Democratic Systems of Government in the Twentieth Century

THE discontent aroused on the European Continent by the comparative failure of the democratic system has led, in many quarters, to the conviction that the forms of government are less important than the extent of the services which a government can perform for the advantage of the community. Democratic doctrines, in the twentieth century, have lost much of their earlier attraction. Governments nowadays are judged by their achievements, rather than by their conformity to democratic principles. There is a growing disposition to rate capacity and efficiency, in the representatives of the people, above mere readiness to give effect to popular aspirations. Democracy is no longer considered to be necessarily the best form of government for a civilised people. Its failure to throw off subservience to party, and to transcend local and sectional loyalties, has produced a distrust of representative institutions, and a reaction in favour of non-democratic systems of government.

We have noticed that the declining repute of legislatures has led, notably in Switzerland, to the transference of governmental functions to the people as a whole. It remains true, however, that the majority of the states of central Europe have made little use of the machinery of direct legislation. Moreover, the adoption of such democratic devices, in the constitutions of some European

states, may be said to be balanced by the retention of non-democratic features elsewhere. In many states, for instance, second chambers of the legislature exist which are not based upon direct popular election. The hereditary upper chambers of Prussia and Hungary have disappeared, but the British House of Lords continues to function, though with drastically restricted powers. In Austria, the upper house is chosen by the provincial, or state, legislatures; in Roumania, it is partly official and nominated. The new German *Reichstat* is composed of ministerial delegates from the component states. The Danish *Landsting* is chosen for a term of eight years by indirect election.

Full ministerial responsibility of the British type was not established under the new constitution of Jugo-Slavia, and does not yet exist in Sweden, or, presumably, in Finland. In Jugo-Slavia the king shared with the Assembly the control of legislation, and retained the power of absolute veto. The king of Sweden, as head of the executive department, still exercises a degree of discretionary authority. Constitutional practice does not bind him to accept as his ministers the leaders of the majority in the *Riksdag*, though he has recently done so, and will doubtless tend in the future to rely on ministries so formed. The counter-signature of a minister is necessary to validate the king's acts, but the constitution does not contemplate the possibility of ministerial refusal, save in the case of proposals which are illegal or unconstitutional. In Finland, the President's veto on legislation can only be overcome, provided a subsequent general election reveals that his action was not in accordance with the wishes of the people.

Though universal suffrage is now the rule, woman

suffrage has not been adopted in France, Italy, Greece, Portugal, Roumania or Switzerland. Of the new democratic states of Central Europe, Jugo-Slavia alone has made no provision for equality of rights as between the sexes.

Apart from the survival of institutions and practices from an earlier and less liberal age, there are significant instances of the abandonment of democratic institutions after a more or less extended trial. Even in countries where the greatest confidence is placed in popular government, there has been a disposition to grant discretionary powers to the President, or executive head of the state. The desire for leadership has fortified, in some countries, the impatience with parliamentary rule, for government through representative assemblies is perhaps unfavourable to the emergence of great men. In Italy and Spain, the people, alienated from parliamentary institutions by the corruption and irresponsibility of their legislatures, have taken refuge in semi-military dictatorship. The problem, in these countries, has been to establish an effective form of government. The parliamentary system had conspicuously failed to deal with the tremendous problems of post-War reconstruction. Moreover, it had not succeeded in inspiring loyalty and devotion. In states without traditions of parliamentary government, the cabinet system was a mere abstraction. On the other hand, the ascendancy in Italy of Mussolini held out the promise of personal leadership, and the possibility of a forceful national policy.

These considerations were reinforced by the evident success of bureaucracy in great business organisations. Capitalist business has increasingly tended to eliminate the democratic element of discussion and voting, and to

rely on specialisation and discipline. The comparative futility of the stockholders' meeting, as an organ for deliberation, has its origin in the fact that industrial companies have to deal with matters far beyond the knowledge of the individual member. Capitalist business has been a success only where expert direction and bureaucratic organisation have been employed. Whilst a strong body of socialist opinion now insists that the internal constitution of business must be made more democratic and, at the same time, responsible to the democratic state, opponents of socialism have not been slow to suggest that what has succeeded in commerce might prove equally applicable to the needs of the political community. The anti-democratic argument insists on the need for specialisation in government, on the ground that the individual citizen is no more likely to be informed in the complex issues of modern politics than in the conduct of the technical affairs of great industries. On the one hand, the demand has arisen that equality of control should replace despotism in the management of business. On the other hand, an objection has been raised to the retention of democracy in the political sphere, mainly on the ground that the work which the state must now perform needs expert and technical knowledge. In Italy at an early date, but to a lesser degree in all European countries, there has been an increasing desire that the state should emulate the efficiency of business administration.

Though *Fascism* can scarcely be regarded as a democratic system of government, it has devised new machinery which may be employed to remove some of the objections to representative institutions. We have noticed that, on the Continent of Europe, the tendency of the

electoral system has been to return to the popular chamber a large number of small party groups, with the result that ministries are seldom supported by stable parliamentary majorities. This difficulty has been met in Italy by bold reform of the whole system of representation. In 1923, a new law was adopted under which the party which received, at an election, the largest number of votes, though not necessarily a majority of the total votes polled, was to be awarded two-thirds of the contested seats. The system has two merits. It eliminates the personal factor, for the people vote for lists, and not for individual candidates. At the same time, it ensures to the new government substantial control of the Chamber of Deputies. The ability of the government to carry into operation its legislative programme involves the consequence that its responsibility for the fulfilment of election pledges can be made effective. On the other hand, the new system is evidently undemocratic, for it gives supreme power to a ministry which might have no genuine mandate from the people. In Italy, it failed to avert the necessity for coalition governments, and it has been superseded in the general constitutional reorganisation of the Fascist state.

That reorganisation came into force in 1928. Parliament was no longer to represent constituencies, but rather the productive elements in Italian national life. Under the new law, only "producers" are entitled to take part in the primary selection of candidates. From a list of one thousand names presented, in this way, by corporations of producers and other authorised bodies, a single list of four hundred parliamentary candidates is selected by the central organisation of the Fascist party. The electorate do no more than vote for acceptance, or

rejection, of this list as a whole. These arrangements are, however, overshadowed in importance by the constitutional revolution involved in the establishment of the Fascist Grand Council as the sovereign power in the state. Whilst the duty of this council is stated to be primarily the co-ordination of the various activities of the Fascist state, it is clearly intended that it should be supreme in all the departments of the government. It is laid down that the Council shall be consulted on all constitutional questions, and it is expressly empowered to submit nominations for the filling of vacancies in the Council of ministers. It also acts as final court of appeal on all questions of the interpretation of the law. It has virtual control both of the constitution of the government and of legislation.

Democracy has also been discarded in the sphere of local government. Administrative bodies have largely replaced the former provincial councils. The new *régime* is one of nomination from above.

The overthrow of constitutional government in Spain has not yet been accompanied by any far-reaching changes in the structure of government. Acquiescence in the suppression of the parliamentary system may be explained by the comparative indifference of the people to purely political questions. Moreover, Parliament had been corrupt. Under the new constitution now under discussion, the system of ministerial responsibility is rejected. Parliament, which is to consist of a single chamber, has no power to adopt decisions implying confidence, or distrust, in the government. Universal suffrage is retained for the election of one-half of the deputies, and also in connection with the new Council of the Realm, one-sixth of which is to be appointed by

direct popular election. The new arrangements are thus less anti-democratic than the Fascist system in Italy, though it is evidently intended that the decision, in the case of all important political and constitutional questions, should rest with a body which is, for the most part, aristocratic in its composition, and irresponsible in the discharge of its functions.[1]

In Jugo-Slavia, racial antagonism finally produced political deadlock. The monarchy had retained a measure of independent authority as against ministers and Parliament, and in 1929 the King suspended the operation of the constitution, and fell back on personal rule, through non-party cabinets responsible to the crown. Impatience with parliamentary intrigue and inefficiency has ensured a fair trial for this experiment in "enlightened despotism".

Some mention must be made of the Soviet system of government now firmly established in Russia. Here, parliamentary government was an innovation of the twentieth century. The experiment of the first *Duma* (1906) demonstrated the incompatibility of autocracy and free institutions. The Czar refused the demand that ministers should be responsible to the legislature, and it was not until the overthrow of Imperial institutions had been accomplished in 1917, that a more popular system of government became feasible. Under the *Bolsheviks*, the revolution became an economic, rather than a political, movement. The Constituent Assembly, elected by universal suffrage, showed a lack of sympathy with

1 These arrangements were abandoned in January 1930 with the fall of the Spanish Dictator. It was announced that the Cortes would be again elected by universal suffrage, aud constitutional government restored.

communist aspirations, and its dissolution, in January 1918, marked the abandonment by the extreme socialists of democratic principles. The constitution of 1918, which is still substantially in force, was neither drawn up by a representative body, nor submitted for ratification to the people. Its principles represent an approach to that perverted form of popular rule which Aristotle described as "democracy". There is a declaration of rights, but these rights belong not to the whole people but only to the labouring class. The majority of those who followed professions, or were engaged in commerce, were expressly debarred from the exercise of political functions. If, as Aristotle taught, democracy is the government of the many in their own interests, then the constitution of 1918 may truly be described as democratic. In accordance with modern notions, it must be grouped with autocratic systems, for it established in effect the dictatorship of a class.

We are not here concerned with the framework of Soviet government. Nevertheless, a brief description will throw light on the working of a system which has been designedly constructed to give supremacy to a single, though numerous, class. In Russia proper, as opposed to the Union of Soviet Socialist Republics, the supreme legislative body is the All-Russian Congress—a single chamber composed of delegates from provincial and urban Soviets. As, however, this is a very large assembly, its legislative powers are mostly exercised by an executive committee. The functions of administration are entrusted to the Council of People's Commissars, which is strictly responsible to the legislature. It should be remembered, however, that the legislature is far from being directly representative of the people, that representation

is not in proportion to population, and that several intermediate Soviets are interposed between the primary groups of electors and the All-Russian Congress. The urban voter is deliberately favoured, at the expense of the agricultural worker. Again, the basis of representation is vocational, not geographical. Voters exercise the franchise in vocational groups, and their representatives are primarily to serve the interests of those groups. The welfare of the nation as a whole is, at best, a secondary consideration.

Nevertheless, there are certain features in this scheme of government which are in conformity with modern democratic practice. It should be noted that a considerable degree of autonomy is allowed to the local Soviets, that executive as well as legislative functions are exercised in these bodies, and that, since 1922, there has been a regular judicial process for all offences, with courts made up of elective judges. But for the moment this complicated mechanism of government is in the hands of a single dominant class, and the ideals of liberty and equality are unrealisable, because everything is sacrificed to the maintenance of that supremacy.

In recent years, revolutionary socialism of the type dominant in Russia has come to be the principal rival to democracy. We have already (pp. 177–9) briefly traced the origin of the socialist movement. Its growth has been the outcome of the increasing importance, in modern society, of purely economic issues. Since the Industrial Revolution, the energies of the people have been directed more and more along the channel of industrial competition. The concession of voting power to the masses was at first welcomed as a means to accomplish changes of an economic and social nature. Even

in the nineteenth century, however, there was a powerful current of working class opinion which disdained political action and advocated reliance on *direct* industrial methods. It was argued that true democratic freedom was unattainable under a capitalist *régime*. The worker, oppressed by want and poverty, was denied opportunities for self-realisation as surely as the domestic slave had been in ancient Athens. The pressure of economic cares and of degrading social environment debarred the greater part of the population from participation in the public life of the community. Marx, Engels and their followers, thus regarded democracy, in a capitalist society, as little more than the exploitation of the many by the privileged few. Universal suffrage was a device for buttressing capitalism, and was incapable of expressing the genuine needs and aspirations of the labouring masses. Representative democracy was merely the machinery through which the rich, indirectly but no less effectively, used their power.

It is important to realise that revolutionary socialism, as it has developed on the European Continent, is definitely hostile to the continuance of democracy. The revolutionary socialist has repudiated parliamentary government and he looks to what is known as *direct action* to bring about the destruction of the state as at present organised. His ultimate ideal is a state of society under which everyone will have grown accustomed to a social existence based on the elimination of every form of private interest and individual exploitation. His claim is that, in such a society, there will be no systematic use of violence directed towards the subjection of a fraction of the community, whereas democracy does involve the employment of force for the coercion of minorities. The

revolutionary socialist is, however, prepared to admit the necessity for the retention of the method of violence during the transition stage from democracy to communism. He insists indeed on the necessity during this stage, for the dictatorship of the masses. In Russia, communism has succeeded to autocracy, but the introduction of the communist *régime* into western Europe must involve the destruction not only of the state but also of democracy.

Among Eastern peoples, constitutionalism made some progress in the first quarter of the twentieth century. Abdul Hamid granted a parliament to Turkey in 1908.[1] The Constantinople Parliament was a bi-cameral legislature, the chamber of deputies being elected by indirect election and on a restricted suffrage, whilst the Senate was nominated by the Sultan. In 1920, Mustapha Kemal established a national assembly at Angora, which has done something to "westernise" the country, without introducing genuine constitutionalism.

Popular discontent led, in Persia, to the grant of a constitution and the establishment of a representative assembly (1906). Parliamentary institutions, however, proved to be a ludicrous failure, and the government of Persia may be described as a weak despotism.

Since 1871 Japan has steadily remodelled her national life on the basis of European and American ideas. In 1890, she began to place legal limitations on the will of the monarch. In the twentieth century, the principle of ministerial responsibility began to be acted upon. An electoral law of 1927 went far towards establishing manhood suffrage. On the other hand, the vote has not yet

1 The constitution granted in 1876 had long been in abeyance.

been extended to women, whilst the upper house of the legislature is not subject to direct popular election. The Emperor has retained influence and prestige which makes him something more than a constitutional monarch.

The fall of the Manchu dynasty in China opened the way for the establishment of the Chinese Republic (1911), but this revolution has made little difference in the government of the country. China is not a country of rigid class barriers. Democratic ideals found expression in the substantial equality of opportunity involved in the system of appointment and promotion to public offices, through competitive examination. A beginning has been made in the establishment of local self-government, through popularly-elected councils. Nevertheless, the Chinese government is not a democracy. A Parliament has been established, but the suffrage is restricted and aristocratic. Despite the fact that the appointment of ministers is nominally subject to confirmation by Parliament, parliamentary government is not really in operation.

It remains to consider the case of colonial and protected territory. The tendency to grant responsible government to colonies, and even to peoples devoid of political experience, has been strongly marked in the recent policy of the British Government. India, by the Act of 1919, received self-government in certain defined subjects, though the executive retained emergency powers to meet cases of deadlock. The system of ministerial responsibility thus applies to certain departments of government, but not to others. The Indian legislature has a substantial majority of elected members, but the suffrage rests upon a property qualification. In Malta

and Southern Rhodesia, self-government is almost, but not quite, complete. Representative institutions, without cabinet responsibility, exist in other portions of the British dominions. The tendency of this system to reach political deadlock has led, in the case of Ceylon, to significant suggestions for reform which extend the principles of democratic government, without quite realising the ideal of autonomy. In 1928, Lord Donoughmore's Commission reported in favour of a compromise between cabinet responsibility and the committee system of the League of Nations. A state council of eighty members, sixty-five elective, possessing both legislative and executive powers, was to be substituted for the existing legislature. Seven executive committees of the state council were, each under an elected chairman, to deal with the different departments of government. The chairmen were to be practically cabinet ministers, responsible to the state council but not compelled to retire on the defeat of their proposals. They were to be associated with three other ministers not so responsible. Nevertheless, the ten ministers would be collectively responsible for the budget, and would resign, as a cabinet, in the event of its rejection. These suggestions bear a resemblance to the provisions of the Irish Free State constitution. They are also derived from Swiss practice.

In some of the scattered territories under the British crown, self-government does not exist. There is no legislative council at all in St Helena, Gibraltar and Ashanti. In other colonies, a legislature exists, but the majority of its members are appointed.

France has granted representation in the home Parliament to some of her colonies. The franchise is nominally wide, but in practice is seldom taken advantage of by

native voters. There is no system of representation, according to population, or to standard of civilisation. At the same time, self-government has been denied to French colonies, even in domestic affairs, though some of the larger colonial federations maintain representative councils to advise the governor-general. Elective councils, with powers of deliberation, also exist, but there is no approach to the system of cabinet government, nor has any French colony a constitution which can be changed without reference to Paris.

In the American dependencies of Porto Rico and the Philippines, autocratic control, until recently, has been maintained. These territories were not represented in Congress, and they were virtually administered at the discretion of the American President. In the twentieth century, however, self-government has been partially established, whilst the United States has allowed both dependencies to send commissioners to the House of Representatives at Washington.

This brief survey has been sufficient to establish the fact that, despite the extension of democratic government among European communities in the period immediately following the conclusion of the Great War, there are still areas where democracy has never been adopted, whilst in other countries, it has been, even more significantly, repudiated.

CHAPTER XIV

Conclusions: The Future of Democracy

THE fundamental problem of politics is the reconciliation of government with liberty. This brief concluding survey will take the form of an enquiry into the success, or failure, of democracy to achieve such a reconciliation. What is the real value of democratic government? Does it guarantee to the ordinary man freedom to assert and develop his individuality? Has democracy succeeded in producing in the individual citizen an adequate ideal of duty? The actual form of political constitution may be regarded as largely immaterial. It will be democratic, in its underlying principles, if it rests on the fullest possible recognition of human rights. In ancient times, democratic government was maintained within a privileged body of citizens, whilst the basis of ancient polity was slavery. Modern democracy, on the other hand, is opposed to conceptions of privilege. Its fundamental ideal is the self-determination of the community, rather than any particular form of government. The justification of democracy is that it rests upon certain wholesome and progressive ideas, and that it can guarantee the fullest measure of liberty, without necessarily impairing the efficiency of the government.

The history of democratic government affords some insight into the conditions necessary for its successful working. We may perhaps reject theories based on suppositions of race or geographical position. It is perilous to assume a capacity for self-government in "northern

stocks", whilst denying that capacity in descendants of the original *Mediterranean* race. On the other hand, it is proper to call attention to the fact that particular forms of government, evolved in certain countries, may not suit the genius and needs of other peoples. Thus the parliamentary, or cabinet, system is largely the outcome of the character and historical development of Englishmen, and it is likely that it will not prove equally applicable to states where the population does not display the same talents for, or interest in, the management of public affairs. Theories derived from geography must be regarded with initial distrust. It is often said that seafaring peoples, and the inhabitants of mountainous areas, are prone to democracy. But, in ancient times, Corinth, Rhodes and the maritime cities of the Phoenicians, all preferred oligarchical systems, whilst the mountainous Tyrol has only in the most recent times achieved a measure of self-government. Certain forms of constitution may, indeed, only prove to be workable in territories possessing particular geographical features. The direct government of a popular assembly, composed of all the citizens, can only succeed in small areas which have attained a certain unity of interest and outlook. Aristotle believed that an agricultural population formed the best material for democracy, and, in both Athens and Rome, the decline of agriculture was largely responsible for the ultimate collapse of democratic republicanism. On the other hand, it is impossible to isolate the geographical factor. It will be preferable, therefore, to consider the question in its broader aspects: are there any considerable obstacles to the successful introduction of democratic forms of government? and what are the conditions under which democracy can maintain itself?

It is an essential condition that the population should agree on the fundamental principles of government. Without a determination to pursue the common welfare of the community, and to maintain the existing fabric of the state, there can be no common will and hence no genuine self-government. The presence, within the state, of racial minorities with distinct characteristics and political objects may render democracy unworkable. Even in Switzerland, internal schisms have wrecked government by popular assembly in at least one of the cantons.[1] The conclusion seems to be that differences of opinion must not concern the structure of the body politic, and that, to deal successfully with less fundamental conflicts, democracy requires both leadership and a certain standard of popular education. Where democracy is of the direct type, that leadership will be no less essential than under representative institutions, though it will take the form of impartial and tactful guidance, rather than direct supervision. Swiss practice, especially in the canton of Glarus, reveals the extent to which the successful working of popular assemblies depends upon a high degree of political skill in the elected leader. Under the parliamentary system, men are needed to inspire the loyalty of political parties, to frame a programme which will afford consistency and continuity of policy, and to guide public opinion in support of schemes of social betterment. Parliamentary skill is developed in the institutions of local government, and representative democracy has been most successful, where it has rested on a broad foundation of provincial and municipal autonomy. It may be conjectured, however, that the

1 Schwyz, where the disappearance of the landsgemeinde is attributable to intense party strife.

maintenance of democracy in the future will depend upon the standard of intelligence among the people as a whole. Something more than instruction in civic problems is required. Nor is the habit of constant and active participation in public affairs sufficient. The chief need is to foster, to the utmost extent, real independence of thought. Under democratic government, the great danger is mediocrity based on indifference. Men are naturally reluctant to express a judgment different from that of the majority. The moral oppression of numbers renders it extraordinarily difficult for the individual citizen to practise independence of thought. Hence, democratic rule issues so frequently in the domination of the minority who feel strongly. This tendency is magnified by the increasing complexity of modern problems, about which the average man can know little. Where there is room for endless difference of opinion, the solution of governmental problems is apt to be left to the energetic few.

We have traced the stages by which the institutions of direct democracy, originally applicable only to city states and small rural districts, have come to be established in some of the largest political communities of the modern world. It may, however, be doubted whether these devices for eliciting a direct expression of the popular will are really compatible with governmental responsibility and efficiency. They spring from the notion that, sooner or later, all representative legislatures end in a measure of disagreement with the people, and that no electoral system can be devised which will truly reflect the popular will on specific issues of policy. This may be true, but the ideals of democracy do not require that the people should do more than determine the direction of policy,

and, in so doing, the character and composition of the government. Representative democracy assumes that knowledge of the problems of government, and the ability to make a wise choice of measures appropriate for giving expression to the popular decision, are confined to persons of capacity and experience. The continual use of the referendum and initiative must destroy the element of responsibility in government. It discredits the representative assembly, without suppressing it. The Swiss people, indeed, have competently discharged the functions of legislation, but this experience does no more than point the lesson that democratic government is likely to give the best results among an intelligent and united people with long traditions of popular government.

The participation of the people in the executive and judicial branches of government rests on an extreme interpretation of the doctrine of popular sovereignty. Governmental institutions must be judged by their working in practice, and the theory that everyone has an indefeasible right to share, irrespective of fitness, in the government of the community, has borne fruit in incompetent administration and lack of continuity in policy. Popular election of executive and judicial functionaries ignores the need for special qualities which the general public is manifestly incompetent to estimate.

In modern communities, the most difficult problem of government has been the faithful representation of the will of the people. The case for direct democracy largely rests upon the proposition that the popular will cannot receive expression in the election of parliamentary candidates. The people, it is said, are more interested in the selection of men than in the choice of party pro-

grammes. Proportional representation is a device for obtaining a parliamentary chamber which shall be, as far as possible, an accurate reflection of the opinions of every section of the electorate. It is assumed that members are mere delegates of their respective constituencies. On the other hand, the British system consists in placing before the electorate the choice of broad principles of policy, and inviting the people to elect as their representatives men who will exercise some degree of individual judgment. Is this system compatible with the theory of popular sovereignty, and does it amount to a successful reconciliation of government with liberty? An objection is that it affords no security for the rights of the minority, which, in each individual constituency, is entirely without representation. Is this absence of security compatible with the ideal of liberty? On the other hand, it may be argued that the British practice is truly democratic, because, at a general election, the people directly choose the government, and sanction the programme which it has submitted.

Nevertheless, there are abundant signs of dissatisfaction. On the European Continent, proportional representation has produced an anarchy of conflicting groups and the chronic evil of ministerial instability. In countries which have adopted the British system of majority representation, distortion of the popular will has been not infrequent. It has even happened that a minority of the electorate has returned a majority to the elected chamber. At the same time, the pressure of parliamentary business has strengthened the control of the cabinet. Its responsibility to the nation is, in theory, complete, but how are the people to express their desire in a way which cannot be either ignored or mistaken by ministers?

The existing system of representative government reveals further defects which cannot be cured or mitigated by the machinery of proportional representation. It opens the door to mass suggestion and to the undue influence of the newspaper press.[1] It places the choice of the candidates effectively in the hands of the party organisation. It adopts as the unit a local geographical area which, in the Middle Ages and until the period of the Industrial Revolution, had a genuine organic life, but to-day has no sort of natural homogeneity. Finally, it assumes that one person can adequately represent the complex life and interests of a whole community.

We have noticed the experiment in vocational representation introduced under the Fascist *régime* in Italy. The advisory Economic Council established in Germany, is intended to meet a different need, that of a specialised body representative of the interests and problems of industrial groups, and does not involve the supersession of the functions of a political parliament. Nevertheless, even in Britain, there has been a strong current of opinion in favour of substituting a legislature representative of guilds and professional unions for the existing Parliament. This is plainly opposed to democratic conceptions under which the sovereign people elect representatives to express the will of the nation as a whole. The suggestion of the *Guild-Socialists*, however, is that a political parliament, elected on a geographical basis, should be retained to give expression to the general will, on matters of common national interest, such as defence. At the same time, social and economic regulation would, for the most part, be entrusted to various

1 G. Wallas, *The Great Society*, *passim*.

councils representative of industrial and professional interests.

These suggestions carry some weight. The proposition that a person can only adequately represent a group of purposes which he and his fellows have in common is, at least, plausible. It is more doubtful whether such a system would combine governmental efficiency with a due regard for liberty. The merit of the parliamentary system is that it tends to promote compromise. Functional representation, on the other hand, would be likely to lead to deadlock. It would produce a network of representative bodies, and a difficult, if not insoluble, problem of apportioning weight of representation to particular interests. Agreement and compromise would be less likely than under the prevailing system.

It is a common charge against democracy that it involves a low level of governmental efficiency. The ordinary voter is incompetent to judge complex issues of legislation. Nor does the elective system normally produce efficient legislative bodies. These limitations are still more apparent in the domain of administration. The people can scarcely be expected to discern the qualities which go to make the conscientious and successful administrator. Where the principles of democracy have received the widest application, there has been a tendency to disregard, and even to discredit, special qualifications for office, based on experience and technical knowledge. The Athenians assumed that every citizen was equally competent to discharge public duties. In modern democracy, the drift is towards multiplication of elective offices. The danger here is twofold. Elective officials cannot always be relied upon to employ discretion and resolution in the maintenance of order, during

strikes and public tumults.[1] And, the more numerous the occasions when the ordinary voter is called upon to exercise his judgment, the less likely he is to perform his duties with conscientious attention. In America, where nearly all official posts are elective, it is notorious that democracy has failed to enlist in the public service the highest talent in the community. Indeed, it is generally admitted that the finest type of American citizen is employed in business. Disregard of the necessity for fitness in state officials is no necessary consequence of the democratic *régime*, for democracy is not opposed to an aristocracy of intellect. Nor is it universally experienced. In some countries, notably republican Germany, the fact is appreciated that the great increase in the complexity of human affairs calls for a higher degree of political capacity in legislators and rulers. Democracy in Germany has brought to the forefront men of character and intellect who would have had little, or no, chance of attaining an eminent position under the former Imperial government.[2] The truth seems to be that clarity of vision is not incompatible with absence of learning, and that the people may be depended upon to choose wisely, provided elections are not held too frequently.

Under parliamentary democracy, uncertainty of tenure may operate to delay useful legislation and also to produce a certain discontinuity of policy. In Great Britain, the strength of the cabinet has been such that the ministers have normally been able to carry through their legislative programme. In France, ministerial

1 Where the device of the *recall* is in operation, magistrates are less likely to venture to incur popular disapproval by stern measures for the preservation of order.

2 E. Jackh, *The New Germany* (1927), p. 63.

instability has not meant a weak administration, for the executive is armed with discretionary powers to override, where necessary, individual rights. Nevertheless, opinion seems now to be setting strongly in support of the principle of permanence of tenure. This system, native in Switzerland, has already been extended to the Irish Free State and the provinces of the Union of South Africa. To a large extent, it may be said to have solved the problem of how to ensure responsibility and obedience to the popular will, without unnecessarily disturbing the continuity of administration.

Democratic governments have shown little capacity in the management of foreign affairs. The Greeks failed signally to transcend the ethic of individual self-interest. The Athenian *Ecclesia* showed patience and persistence, but seldom wise forethought in its decisions on external policy. At Rome, the foreign relations of the Republic were prudently entrusted to the management of the experienced senators. Modern democracies have established a compromise, under which the ministry, sometimes in co-operation with councils or senates, has taken charge, subject to responsibility to the representative legislature. This has worked well, but it amounts to a tacit recognition of the fact that the people are not qualified to deal with this department of government. Thus in Great Britain, the progressive democratisation of the machinery of government has left untouched, in the hands of the ministry and expert civil service, the conduct of diplomatic relations. In continental democracies, the parliamentary majority has usually been content to accept the decisions of the cabinet. Nevertheless, in recent years, the pressure of public opinion has become more insistent, and there has been a tendency to make

the conduct by a ministry of foreign affairs a principal issue at general elections. With the growth of popular enlightenment, it seems inevitable that there should be an increasing measure of democratic control. In the United States of America, public opinion on matters of inter-state relationship has been noticeably sane and well-informed. At the same time, democratic government has been more successful than monarchical or aristocratic systems in the management of colonial territories. French colonial administration has been conspicuously more liberal and beneficent since the establishment of the Third Republic.

It has been suggested that "democracy as such cannot face a crisis".[1] That a popular assembly is unlikely to show the knowledge, restraint and capacity for resolute action which is demanded in grave national emergencies may perhaps be admitted, though the record of the Athenian *Ecclesia*, in this respect, during the Peloponnesian war was by no means contemptible. The success, or failure, of democracies in crises seems to depend upon the degree of confidence which is reposed in the working of cabinet or presidential government. Where the ministry is continually hampered by enquiry and supervision, a firm and consistent policy can scarcely be realised. On the other hand, the executive in Great Britain and France is usually supported by public opinion in whatever energetic measures may be required, for the preservation of national safety or tranquillity. The Great War revealed the reserves of strength which a democratic community can command, when the national interests are gravely imperilled.

The fear that democratic rule would involve the

1 A. E. Duchesne, *Democracy and Empire* (1917), p. 21.

tyranny of the numerical majority has not, generally speaking, been justified. Theoretically, the sovereignty of the general will must lead to despotism. By democratic doctrine, the individual citizen has agreed to surrender to the community his formal rights, and no protest can hold good against the supremacy of the will of the majority. Indeed, with the growing complexity of political organisms, there would seem to be a pressing danger that self-conscious communities within the state may be unable, under majority rule, to achieve their urgent needs. For this latter contingency, however, federalism has provided a remedy. Moreover, majorities are constantly fluctuating. Tyranny is rendered unlikely by the fact that a majority will seek to avoid such extremes as may alienate the body of moderate opinion, without the support of which it would find itself in a minority. The fact is that individual liberty is not necessarily secured, or menaced, by the establishment of democratic government. In France, the victory of republicanism has made no difference to the fact that the French citizen cannot obtain redress for wrongful official arrest in the ordinary courts. On the other hand, in the majority of continental democracies, liberty of the subject has been least secure where parliamentary government is weak. The conclusion appears to be that democratic government can only guarantee the maintenance of popular rights where the executive is strong in the confidence of public support.

Nevertheless, it may be admitted that there is a sense in which the democratisation of the government has weakened the self-reliance, and consequently the capacity for true freedom, of the individual citizen. The enormous extension of the functions of government has inevitably

involved some invasion of personal liberty. To many, this tendency has seemed to necessitate the formulation of constitutional guarantees, whereby the sovereignty of the state may be limited. Such guarantees have been a prominent feature of the constitution of the United States of America. On the other hand, it may be remarked that public opinion, in democratic communities, has not in fact shown itself intolerant of individual dissent, and that only under a democratic government is genuine independence of outlook likely to be fostered.

At Athens, the supremacy of the popular will was extended to the judicial sphere, and the citizens themselves participated in the administration of justice. Modern democracies have so far gone no further than the application of the elective principle to judicial office. The results have not been altogether satisfactory. In America grave doubts have been entertained as to the competence, and even the honesty, of the courts. On the other hand, the good sense of the Swiss people has deterred them from seeking to interfere with judicial duties.

The great merit of democratic rule appears to lie in the stability which follows from recognition of the principle that government is no longer the function of a class. Domestic dissension has always, in greater or lesser degree, attended the exclusion from political rights of sections of the community. The achievement of self-government has been the condition of organic progress in western Europe. The sharing of common responsibility for the management of public affairs bestows on the community a greater potential strength, for the government can feel that it has at its disposal the energy and resources of all sections of the population.

This virtue of democracy leads directly to a second conspicuous merit. The citizen who carries responsibility for the welfare of the whole nation must, in the discharge of his political duties, acquire wide knowledge and developed faculties of vision and judgment. Democracy is a stimulus towards intellectual effort, for only a highly educated people can hope to deal judiciously with the complex problems of modern life. Recent experience goes to show that it is good for citizens to feel that, broadly speaking, policy will be guided in accordance with their judgment. Democratic government thus tends to foster desirable personal qualities, especially the capacity for unprejudiced judgment. It is to some extent a consequence of this process that the duties of government are now discharged with greater efficiency than they were at the commencement of the previous century.

In earlier chapters, we have considered at some length the origin and justification of that spirit of dissatisfaction with the results of democratic government which is an undeniable feature of the present age. In Europe and America, the influence of party organisation has been at the root of many of the observed defects, tending, as it has done, to distort the working of popular representation, and to concentrate authority in the hands of extra-constitutional bodies. Inasmuch as this has been a general development in modern times, the party system may be regarded as a cardinal fault in representative democracy of the parliamentary type.[1]

1 At the same time, modern democracies owe a great debt to the party system, which transformed the rough mechanism of governmental coercion, derived from autocratic times, into the smooth-working machinery of the parliamentary state. Mr R. M. MacIver points out that no alternative method of securing a change of

Democratic institutions have not been employed, as might have been expected, to subserve the anti-social interests of a single class. Parliamentary leaders have usually refrained from incorporating in their programmes of legislation proposals calculated to appeal to the selfish interests of newly enfranchised voters. In some democratic states administration has been extravagant, but this is less conspicuous in countries which have adopted the machinery of the popular referendum. Democracy in Australia has incurred some criticism on the ground that it has not been disposed to welcome the immigration of wage-earners seeking employment on the favourable conditions which obtain in the Commonwealth. Nevertheless, it would be a mistake to conclude that altruistic and humanitarian proposals are less likely to find acceptance under a democratic *régime* than where the government is comparatively immune from the pressure of public opinion.

As regards the future of democracy, the writer does not propose to venture beyond a few cautious generalisations. One will be that parliamentary government, of the nineteenth century type, will sooner or later disappear. There are abundant signs that the masses are already discontented with a system which grants a wide discretion to parliamentary deputies, whilst limiting the force of popular sovereignty to a mere right, at occasional elections, to render a general verdict on the conduct of the ministry. The tendency has been to impose on the

government exists, other than that of unconstitutional violence. "Without the party system, the state has no elasticity, no true self-determination. Without it, government is rigid and irresponsive" (*The Modern State*, p. 399).

member of Parliament the discipline of party. This is not necessarily either disastrous or undemocratic. Recent history has pointed the lesson that democratic ideals can only be effectively realised when the government can rely upon a majority in the legislature. The organisation and discipline of large parties afford the only known constitutional means of giving stable parliamentary support to the cabinet. Without the assurance of such support, statesmen cannot give steady and consistent attention to the public welfare, but are obliged to devote time and thought to the maintenance of a parliamentary majority. Under the British system, the cabinet is in effect the direct choice of the people. There is consequently little need for elaborate machinery designed to ensure the subordination of members of the popular chamber. Democracy needs to protect itself from external, rather than internal, dangers. Insurrection is threatened from those who repudiate the fundamental social unity of the modern commonwealth and proclaim the doctrines of the class war. These doctrines menace the very existence of the democratic state, for democracy can only exist where there is a sense of mutual trust, and a tacit agreement to sustain the general will over against all conflicting interests and prejudices. Where there is no such agreement, there can be no permanent public opinion, and self-government must give place to some kind of authoritarian control. Racial and class antagonism are, in the long run, inconsistent with popular institutions. Democracy will only take firm root, where the people are conscious of forming a moral and spiritual unity.

Will democracy be overcome by bureaucracy? Can popular control be maintained in view of the complexity of modern economic and social problems? Under the

machinery of representative government, a strong parliamentary cabinet is associated with the heads of the permanent civil service, affording a safeguard against official tyranny. In Great Britain and America, the operation of the *rule of law* is a further guarantee of individual liberty.[1] On the other hand, direct democracy is likely, in the opinion of the writer, to prove less effective, in averting the dangers of bureaucracy. The details of administration must continue to lie outside the knowledge and judgment of the average citizen. To lay upon him the task of continually electing and supervising officials, and of exercising a judgment on complex issues of legislation, is to invite disillusionment and failure. Democracy is clearly the form of government which demands most of men, and it will be reckless to dispense with the machinery of representative government until education has made more significant advances. The real value of democratic government lies in the fact that it respects the sanctity of individual personality. It is through the co-operation in public affairs of every section of the community that ultimate social harmony may be reached.

1 A. V. Dicey, *The Law of the Constitution*, chap. iv.

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Many of the books listed in the previous section will also be found useful for the post-war period.

GENERAL WORKS

*May, Sir T. E., *Democracy in Europe*, 2 vols., 1877, is now a little out of date. It is mainly concerned with democracy in modern times. *Hearnshaw, F. J. C., *Democracy at the Crossways*, 1918, gives an admirably clear account of democratic theory, but does not attempt to give a historical narrative.

The following works are mainly concerned with the nature of democracy, and its application to modern conditions: Borgeaud, C., *Rise of Modern Democracy*, 1894; Brown, W. J., *The New Democracy*, 1899; *Godkin, E. L., *Unforeseen Tendencies of Democracy*; Hobhouse, L. T., *Democracy and Reaction*, 1904; *Mallock, W. H., *The Limits*

of Pure Democracy, 1918; Penman, J. S., *The Irresistible Movement of Democracy*, 1923.

The student is advised to read some of the great classics on the subject of popular government, notably: Acton, Lord, *History of Freedom*, 1907; Lecky, W. E. H., *Democracy and Liberty*, 1896; Maine, Sir H. S., *Popular Government*, 1885; Mill, J. S., *On Representative Government*, 1861.

The following brief selection of modern books dealing, in some measure, with modern democratic theory may also be of service: Brown, W. J., *The New Democracy*, 1899; *Burns, C. D., *Political Ideals*, 1926; Duchesne, A. E., *Democracy and Empire*, 1917; Inge, W., *Outspoken Essays*, 1922; Joad, C. E. M., *Introduction to Modern Political Theory*, 1924; Laski, H. J., *The Foundations of Sovereignty*, 1921; *MacIver, R. M., *The Modern State*, 1926; Wallas, G., *Human Nature in Politics*, 1908; Wallas, G., *The Great Society*, 1914; Webb, S. and B., *Industrial Democracy*, 1902.

For the principles of democracy, see Burns, C. D., *Democracy*, 1929; and Lindsay, A. D., *The Essentials of Democracy*, 1929.

	Legislation
Early Tribal Society.	Not strictly a province of government, but people play some part in the declaration of tribal custom.
Ancient Athens.	The *Ecclesia* a primary assembly. Could initiate laws and adopt administrative decrees. Was effectively, but not technically, a legislative body, with supreme powers. But citizens could be indicted for bringing forward unconstitutional proposals.
Roman Republic.	The *Comitia*, in its various forms, a primary assembly. Technically the sole legislative authority, but with no right of initiative or deliberation, and subject to official veto. Powers of discussion and initiation, in practice, belonged to Senate, the members of which had, at some earlier time, received the votes of the people.
Mediæval Europe.	Legislation inconsiderable in most states prior to 1150. Representative assemblies originate in 13th century, but are not primarily concerned with legislation, and do not substantially limit royal autocracy. The people are learning habits of co-operation in assemblies of the town and gild, though the popular element in civic government declines, after the 13th century. In some of Swiss cantons, the primary assembly makes its appearance.

Executive Government	*Administration of Justice*
Mostly in the hands of kings, chiefs or elders, but seldom arbitrary, owing to force of custom.	Largely a private affair. People sometimes associated with king, or chief, in pronouncing of dooms.
All higher magistrates, except generals, chosen by lot. Popular election in the case of generals. Policy belonged to the *Ecclesia*, and supervision of administration largely to the democratic *Boulé*, appointed by lot. All officials strictly responsible and subject to popular *audit*.	Membership of popular jury courts, *dikasteries*, determined by lot. No presiding judge, and no appeal. Officials subject to jurisdiction of ordinary courts.
Shared between Senate and popularly-elected magistrates. Officials accountable after term of office, but strong during term. Re-election common, and no system of popular supervision, as at Athens.	Appeal lay to the people in capital cases. Otherwise judicial decisions rested with magistrates, who, though popularly elected, had a somewhat wide discretion.
Theory survives that Emperors and Kings are representative of the people. Coronation oaths and charters promise observance of laws. Rulers also promote a humble class of administrator, drawn from the people. But there is no genuine measure of constitutional control over the executive government, vested in any representative body, during the Middle Ages. The nearest approach to this is in 15th-century England, where the king's officers were occasionally impeached. Feudalism, however, imposes an aristocratic restraint on the ruler, which is the germ of constitutional government.	In most parts of W. Europe the people were associated, to some extent, as jurors. Feudalism insists that a *freeman* should be tried by his peers.

	Legislation
The Sixteenth Century.	The period of the New Monarchy. Decline of parliamentary legislatures, except in England, where Tudor Parliament, in co-operation with the crown, carries through important legislation. On European continent, law is the command of the Prince, whose authority now extends over the church. But a new state—the United Netherlands—is formed, which is governed by representative machinery: whilst in Switzerland direct popular legislation is an occasional feature.
The Seventeenth Century.	The Age of Absolutism. Absolute Government of Louis XIV the pattern for neighbouring states. Representative assemblies either not convoked, or confined to advisory functions. The Netherlands and England, however, maintain representative government. England, for a brief period, attains government by a reformed unicameral legislature, under a written constitution. English Parliament vindicates its sole competence in legislation and taxation. Similar institutions are established in her North American Colonies.
The Eighteenth Century (to 1789).	On European Continent, system still mainly autocratic. In Britain, Parliament is supreme in legislation and taxation, but is not really representative of the nation. Oligarchical influences prevail. Representative Assemblies exercise powers of domestic legislation in North American Colonies of Britain.

Executive Government	*Administration of Justice*
The Prince is largely autocratic in executive government. The ministers are responsible to him alone. Centralisation of authority becomes possible, and government by councils is general. There is, however, no bureaucracy in England, where the local officials are largely unpaid.	Mostly on an autocratic basis. In England, the Courts administering common law are characterised by some degree of independence, but judges hold office subject to royal pleasure. In France, the strength of the privileged lawyers involves some *de facto* limitation on the crown.
General extension of bureaucratic rule, under nominated officials responsible to crown. In England, Netherlands and Switzerland, representative assemblies exercise some control, but this in practice means aristocratic, rather than democratic, influence. In England, ministers are appointed by the crown, but the crown fails to maintain in office, and even to protect from punishment, ministers obnoxious to Parliament.	No significant changes on European Continent. In England, judges and juries show increasing independence, whilst the Revolution frees the courts from executive interference.
Autocratic on European Continent. In Britain, Hanoverian kings (George III excepted) largely abdicate political functions. Cabinet system develops—one-party government responsible to Parliament. In North American Colonies of Great Britain, executive is largely controlled by the legislature.	Illiberal and undemocratic in most countries. In Britain, common law administered in courts independent of executive. Affords protection to liberties of subject.

	Legislation
1789–1815.	Manhood suffrage established for a brief period in France, otherwise on property qualification. Legislation, except under Napoleon, entrusted to representative legislature, which also has power of taxation. Elective local *régime* established (nominated under Napoleon). In other countries, parliamentary institutions are established. Spain, by constitution of 1812, declared for manhood suffrage and a single chamber. These experiments mostly premature. Constitution of United States extends legislation to Congress.
1815–1918.	Representative legislatures control legislation and taxation almost universally. Steady extension of suffrage and disappearance of veto power. In Switzerland, some of American States, and Australia, popular legislation by the referendum and (except in Australia) initiative introduced. Legislation by direct popular assembly in a few Swiss cantons.
Post-1918.	Representative Legislatures almost universal, and, on Continent, usually elected by proportional representation. Suffrage now universal in Britain, Germany and most of new states. Tendency to guard against independence of legislature, by entrusting powers to elected President, and by use of referendum. Provision for popular legislation extended in nearly all new constitutions, but does not exist in Britain and France. Parliamentary institutions now replaced, or restricted, in Spain, Italy, Jugo-Slavia and Russia.

Executive Government	*Administration of Justice*
In France the Revolution made the Executive strictly subordinate to the legislature, but this was reversed by Napoleon. Administrative centralisation retained. System of ministerial responsibility unknown outside Britain. In United States, under separation of powers, Executive is independent of Congress, but under a popularly elected head.	Revolution introduced into France, an elected judiciary and trial by jury. In most states, including France under Napoleon, executive control is still great, but not in Britain and America.
System of Cabinet responsibility in Britain, France, Italy, Belgium, etc. Ministers responsible to crown in Germany, Austria, Russia, Sweden, Holland, Balkan states, etc., where crown retained considerable authority. But this latter system was maintained with increasing difficulty, as against claims of representative legislature. In Switzerland and America, most offices made elective, and some use made of power to recall.	Doctrine of separation of powers has kept judiciary apart and independent. But in Switzerland and some American states, judges elected. Recall of judges operated in a few American states.
Many Central European Powers became republics under elected presidents. System of ministerial responsibility widely introduced, but, owing to large number of political parties, has often led to cabinet instability. Executive not responsible to legislature in America, and, though responsible do not resign, when defeated, in Switzerland or (partly) in Irish Free State.	No marked tendency to introduce further the elective system. Guarantees for liberty often incorporated in new constitutions.

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