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THE FOUNDATIONS OF SOCIAL SCIENCE

An Analysis of their Psychological Aspects

BY
JAMES MICKEL WILLIAMS, B.D., Ph.D.



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TO

MY FATHER, MOTHER, AND SISTER,

WITH WHOM THESE STUDIES OF SOCIAL PSYCHOLOGY
WERE BEGUN AND CARRIED ON FOR YEARS,
THIS BOOK IS DEDICATED

PREFACE

The increasing dissatisfaction with the traditional formulations of the facts of history and social science has stimulated a search for causes in the human motives that make history and determine the phenomena of social science. How far causes of this fundamental kind can, with strict scientific accuracy, be ascertained, is becoming evident from an increasing volume of research. The results suggest the possibility of an underlying science of social relations, less objective than the other social sciences, but having a field and method of its own. The cultivation of this science, it is maintained, will not only co-ordinate the work of social scientists in different fields but will yield a distinct body of scientific knowledge and principles. Social psychology will justify its claim to be recognized as an accredited science if it can be shown (1) that it has a distinct field which can be dealt with scientifically, and (2) that the other sciences which have to do with human relations assume a little known psychological field from which are drawn explanations of phenomena in their own fields. Our task is, therefore, (1) to indicate what is the relation of the science of this little known field to the other sciences of social relations; (2) to offer an analysis of this little known field.

"The Foundations of Social Science" treats of the relations of the science of this new field to the other social sciences. If it can be shown that the analyses of unsolved problems of the other social sciences, as pressed by the more earnest scientists, converge toward this new field, if certain conceptions about the little known field have formed in the minds of scientists in other fields, then we may assume that it demands our study. The obstacles encountered will not all be intellectual. Every advance in science has encountered conservatism in high places, and the opposition of interests which thought their position and prestige jeopardized thereby.

In addition to this volume on the psychological aspects of social science, I have five others which will be published as business conditions permit. The second book carries out the purpose of the

first and explains the relation of social psychology to another field of knowledge, the criticism of literature and art. The third book begins the analysis of the processes of social psychology. It offers an analysis of the conflicts of types of behaviour throughout social organization,— in family relations, economic relations, political relations, professional relations, ecclesiastical relations, artistic standards and educational relations. This book treats one distinct branch of social psychology — the conflict of interests in social relations, and the suppression of instinctive impulses and its social effects. The fourth book treats another branch — the processes of feeling and thought through which instinctive interests are adjusted; the fifth another branch — the processes of personality that must be facilitated for social adjustment; the sixth another branch — the processes of social control. Each of these six books, as written, is entirely distinct from the others. Doubtless it would have increased their scientific value had it been possible to publish them as originally intended — as separate volumes of one work — but business conditions made this impossible. They have a logical connection, but they are so written that each treats a distinct branch of the subject and is complete in itself.

It goes without saying that the author's work can be fairly judged only by going through the series. A part of an entirely new science can be understood only by understanding the whole. More than one of my critics said that they made notes as they went along but eventually destroyed most of them, for they found that the points in question were later dealt with. The critics will, therefore, want to go on through the series before passing final judgment on any one book. Nevertheless, for the general reader, and for class-room use, each book is intelligible without the others.

Social psychology has distinct branches, as has economics — consumption, production, distribution, value and exchange, the relation of the state to industry. And as there is no exact agreement among economists on the main divisions, after a century of cultivation of the science, so there is no agreement among social psychologists. It has seemed to me that what the science needs first is a treatise on each of the main divisions. Having thus developed all branches of the science, it will be possible to formulate in one volume a more or less abstract statement of the elementary principles of the science. But to attempt to do so without having previously cultivated all its branches would be to make the mistake

made by the deductive formulation of economic principles from hedonistic premises before the branches of that science had been intensively cultivated. A logically compact body of principles is so seductive that it may obsess the mind long after the principles have become palpably untrue. Still further to emphasize the need of inductive studies instead of abstract statements, I have in preparation a series of volumes on " Inductive Social Psychology " which are studies of the psychological processes of various groups.

In writing these books I have written not merely as a student for students, but for that increasing number of men and women who have a desire for some understanding of the society in which we live. Consequently I have taken pains to be clear, to avoid abstraction, to follow closely and concretely the processes which seem to me essential in human society. Inasmuch as this is the first attempt at an extended exposition of social psychology, the treatment must be more concrete than would otherwise be necessary. The nature of the subject, therefore, has encouraged the writer to ignore the distinction unusually made between the serious student and the general reader and to write more concretely than is usual for the serious student, and with more numerous citations and references than is usual for the general reader.

These books were not written under the influence of the war period. They were begun long before and most of them were ready for publication in 1917, but business conditions were then unfavorable for their publication. Accordingly I have had an opportunity to make such additions as were suggested by the great epoch through which we have passed, and by the books and articles which appeared during that period, so that the work may be assumed to be up to date, so far as it has been in my power to make it so. But the underlying processes of human nature were not changed by the war, though the full significance of the great events and their underlying currents cannot be discerned at present. The science of social psychology is not *completed.* Long ago the Greeks were working at it, so are some of us, and so will those who follow us to the end of time.

Parts of the manuscript were submitted to specialists in those fields a knowledge of which is necessary for the social psychologist, and the author has had the benefit of their criticisms. These specialists are: Dr. Charles A. Beard, Dr. Wesley C. Mitchell, Dr. James H. Robinson, and Dr. Leo Wolman, lecturers in the New

School for Social Research, Dr. Henry R. Mussey, managing editor of the *Searchlight,* Mr. Henry T. Noyes, a manufacturer and civic leader of Rochester, and Professors Franklin H. Giddings and Edward L. Thorndike of Columbia University. While the suggestions of these critics have been carefully followed out, all but two read only a very small part of the work, and no one of them read it all so that the author must take the sole responsibility for the ideas expressed. I think my critics agree that social psychology has an intimate relation to their particular fields, whether or not they agree with my analysis of the relation, which constitutes the first volume; and that social psychology, of which the succeeding volumes offer a formulation, is a science that has great possibilities and is a challenge to intellectual work that is eminently worth while.

To my colleague, Professor Walter S. Gamertsfelder, I am indebted for invaluable assistance in the proof-reading.

JAMES MICKEL WILLIAMS.

Geneva, N. Y., August 10, 1920.

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INTRODUCTION

The history of the social sciences shows, in each science, an attempt to reach fundamental psychological assumptions. As one compares the work of the more strictly legal political scientists of recent years with that of "progressive" scientists one might draw a distinction between legal and psychological political science; and this distinction might be traced back even to the Greek political philosophers. In jurisprudence, also, we have the more strictly legal jurists as compared with the psychological trend of the thought of some of them, for instance, of Justice Oliver Wendell Holmes, who says: "I think that the judges themselves have failed adequately to recognize their duty of weighing considerations of social advantage. The duty is inevitable, and the result of the often proclaimed judicial aversion to deal with such considerations is simply to leave the very ground and foundation of judgments inarticulate and often unconscious." [1] In economics one may compare the extreme emphasis placed by some economists on the deductive aspect of the science with the emphasis of others on its psychological aspects. In sociology one may make a similar comparison between sociologists who emphasize the comparative study of social rules and customs and institutions on the one hand and psychological sociology on the other. From this psychological aspect of each social science social psychology is to be clearly distinguished. The trend of thought of the psychological social scientists signifies an aim to arrive at truer assumptions, and to keep an open mind toward the psychological, as well as the other aspects of those assumptions. Obviously it is the function of social psychology to assist the political scientist, the jurist, the economist, the sociologist, and others in the psychological aspect of this their search for truer assumptions. While the social psychologist, in the course of his own work, analyses the psychological aspect of the assumptions of the various social sciences, it is not his task to formulate for any social science its particular assumptions. But true assumptions require a knowl-

[1] Holmes, "The Path of the Law," *Harvard Law Review*, X: 457, 467.

edge of that particular field which it is the task of the social psychologist to investigate and, so far as he may, "set in the order of reason."

Social scientists also need the aid of the social psychologist if they are to make interpretations that begin to realize the possibilities of interpretation in their particular fields. Prediction in social science cannot pretend to the exactness of prediction in natural science, because the principles of social science must change as reason reacts upon instinctive processes. But let us not, for that reason, accept the view of those who would limit the task of the social scientist to merely showing an orderly development in past and present, through use of the formulas of biological evolution. Predictions in the mathematical sense can be made in economics, for instance, of the yield and price of products. And prediction in the larger sense of recommendations of changes in institutions that are required for social progress can be made in all the social sciences. These recommendations are not made by a scientific man merely as something desirable, but as changes that appear sure to come, owing to observed changes in social-psychological processes, and other conditions, that call for corresponding changes in institutions. Therefore the truest predictions, the wisest recommendations, are those based not on assumptions as to human nature derived from traditional social relations, but on assumptions to which social psychology has contributed adequate conceptions.

The tendency in all science is to pay too little attention to assumptions, to regard them as verified truths instead of hypothetical formulations. This is a natural tendency of the intellect because the intellect instinctively seeks clearness, even at the expense of thoroughness. This tendency of all science has been pronounced in the social sciences for these reasons: (1) Though the social sciences have to do, in the last analysis, with human nature, its processes have been little understood, and the effect of the mystery of this hinterland of social science has been to give a fixity to the assumptions of the contiguous sciences. (2) The social pressure, which is felt more by social scientists than others, has given fixity to assumptions that were in harmony with the impulses and beliefs of the powers that be, for instance, the assumption of the absolutism of the state, of freedom of contract, of free competition for profits, of the social control of propertied classes. Social scientists have tended, therefore, to accept as final the view of human nature im-

plied in the traditional social relations assumed in their premises, and have failed to discriminate between a motive that is essential *in traditional political relations,* or *in traditional economic relations* and one that is essential *in human nature.* This is not mentioned by way of criticism of social scientists, but to emphasize the vital relation of social psychology to the other social sciences, and to point out that the advancement of the latter has been impeded by the backward development of social psychology.

Assumptions derived from the historical view, and from mass phenomena, have obscured the individual. The group outlines of conceptions thus derived must not blind us to the fact that we are dealing with groups of *individuals;* that it is only through the operation of certain instinctive dispositions of individuals that they act as groups; that through the action of dispositions the individuals of a group may resist discipline as well as submit to it; may create a conscious ideal of development of personality which, with the increase of intelligence, disengages itself from ideals imposed by seemingly inevitable group rivalry, and by the coercion of dominant classes to whose interest it is to make group rivalry seem inevitable. Wherefore, the essential assumptions of social psychology are certain instinctive dispositions,— for instance, the dispositions of acquisition, rivalry, domination, submission, sympathy, intellect,— which are the elementary processes of social relations. In " The Foundations of Social Science " these dispositions will be used as assumptions in the analysis of the psychological aspects of assumptions of the social sciences. This use of assumptions may call forth objections, for instance, in analyses of the " rivalry " of, or " domination " by, or the " submission " of, certain classes. But the analysis has to begin somewhere, and the assumed dispositions are later analysed. By this progressive treatment of assumptions, these are finally reduced to their lowest terms.

The theory that there are essential conceptions of human nature which will serve all social sciences is not new, and, indeed, seems inevitable when we consider that every social science and branch of culture has a human nature basis. History and philosophy have to do with idea-systems that depend on human nature, wherefore, these branches of culture require adequate assumptions as to human nature. Language has long been known to depend for its development on changes in human nature, hence the study of language requires a knowledge of social psychology. Literature has

long been regarded as an expression of human nature, and literary criticism as a mere mechanical procedure without use of social-psychological principles of criticism. Religion and art are recognized as revelations of human nature, and their study as requiring social-psychological principles. All the social sciences start with certain assumptions as to human nature. It follows that the study of these different branches — history, philosophy, language, literary and other art criticism, religion, political science, jurisprudence, economics, sociology — may be unified by relating it to essential principles of the science of human nature. To the end that we may give a scientific trend to the present movement toward a more profound interpretation of human life and problems, without which the movement will take an affective trend and end in nothing, I have attempted to bring to a focus the human nature basis of the different fields of knowledge, in the hope that scholars in their different fields might take a renewed interest in that aspect of their subject, and that colleges might attempt still further to unify their instruction through relating it to the science of human nature.

BOOK I

SOCIAL PSYCHOLOGY AND POLITICAL SCIENCE

CHAPTER I

PSYCHOLOGICAL IMPLICATIONS OF POLITICAL THEORY

OUR survey of the relation of social psychology to other fields of knowledge requires, as a point of departure, a provisional definition of social psychology. Without attempting to frame a complete definition or one that will generally satisfy students of the subject, we may say that it is the science of the motives of the behaviour of men living in social relations. As such it is one of the sciences of society, society being a general term for mankind living in social relations. Social psychology does not cover the entire field of social relations but merely the *motives* of the behaviour of men living in social relations. The behaviour studied includes all social reactions, whether reflex or conscious, that enter into motives.[1] By a motive is meant any mental state which either assists or hinders an act. Social psychology deals, then, with a particular aspect of social relations, the motives of human behaviour. Other social sciences deal with other aspects. Thus jurisprudence is the science of social relations in their fundamental legal aspects. Political science is the science of the relations of a people organized politically.[2] Economics is a science of social relations in their material welfare aspects in so far as welfare can be quantitatively determined in terms of money.[3] These sciences deal primarily with social relations that have become customary, the more prominent and authenticated aspects of which are termed in-

[1] See the chapters entitled, *The Field of Social Psychology,* and *The Methods of Social Psychology.*

[2] Political science is a science not merely of legal maxims, but of social relations. "A statute may be on the books for an age, but unless, under its provisions, a determinate arrangement of human relations is brought about or maintained, it exists only in the imagination. Separated from the social and economic fabric by which it is, in part, conditioned and which, in turn, it helps to condition, it has no reality." (Beard, "An Economic Interpretation of the Constitution of the United States," 12.)

[3] Mitchell, "The Rôle of Money in Economic Theory," *Amer. Econ. Rev.,* Supplement, VI: 159.

stitutions. Thus we speak of juristic institutions, political institutions, economic institutions.[4] Social psychology deals with the motives of the individuals who participate in these institutional relations. Because of the fundamental as well as illusive nature of its data, social psychology has developed last of all the social sciences.

The first social science to be cultivated was political science because the state was all important in the eyes of the ancient thinkers. The nearest approach to social psychology was ethics, which, as cultivated, was closely allied with political science. Economics was long a branch of political science and was called political economy. Consequently we shall begin our survey of the psychological foundations of social science with political science.

Since the era of the Greek philosophers, the state has been assumed to be a consequence of human nature. Plato found the state to be a necessary result of the diversity of human impulses and the necessity of mutual aid in satisfying them;[5] Aristotle found it to be the result of a political instinct of man and the need of associated life for self-realization,[6] and he studied the adaptation of different forms of government to the needs of different peoples and classes.[7] With the conquest by the Romans of various peoples and their subjection to the will of a distant ruler, interest in the human nature basis of the state waned, except as it was appealed to in the attempt to rationalize autocratic rule. The rise of democracy, in which government depends on public opinion, has stimulated the interest of students in the motives of political behaviour. These students refer to an unknown psychological field for explanations of phenomena in their own fields. President Lowell, writing in 1908, said, "Social psychology has also come into view, and attempts have been made to explain the psychology of national traits, . . . But the normal forces that govern the ordinary conduct of men in their public relations have scarcely received any scientific treatment at all."[8] Professor Jenks, writing in 1909, attempted some analysis of the motives of political behaviour but explicitly limited his analysis to the motives of leaders in politics,[9] while Professor Wallas, in

[4] Hamilton, "The Institutional Approach to Economic Theory," *Amer. Econ. Rev.*, Supplement, IX: 313.

[5] Republic, II: 368–369.

[6] Aristotle, "Politics," trans. by Welldon, Bk. I, Chs. I and II; Dunning, "Political Theories, Ancient and Mediaeval," 28, 55–56, 83.

[7] Aristotle, Politics, Bk. II, Chs. IX–XII, Bk. III, Chs. I–V.

[8] Lowell, "The Government of England," I: 435; II: 104.

[9] Jenks, "Principles of Politics," 24.

the same year, attempted a more comprehensive analysis.[10] These attempts served to show the need of a science of social psychology for an understanding of politics. From these fragmentary beginnings the problem has broadened out and developed new and fruitful lines of inquiry. It is no longer confined to political behaviour in the present but has given a new point of view for historical research, as we see in Dr. Charles A. Beard's analysis of the motives under which the American Constitution was devised, adopted and applied in the development of American government and politics.[11]

Political science, therefore, assumes a psychological field distinct from but closely related to its own. Political scientists have distinguished between the nation and the state and have confined their analysis to the state.[12] The state is the people organized politically, while the nation designates a people united by "ethnic and other factors largely sentimental or psychological in character."[13] It is assumed that the national character of a people is the determining influence in shaping the form of government.

Political science not only assumes a psychological field distinct from and closely related to its own but also implies certain political attitudes in its assumptions. In the concept of sovereignty it assumes an attitude of obedience of subjects to sovereign and of authority of sovereign over subjects.[14] The limitation of this authority, whether self-limited[15] or socially-limited,[16] as worked out by political scientists is a logical problem of political science, but the social-psychological processes of the relation of authority-obedience that is assumed are not analysed. These processes are, in the last analysis, "in the individual mind."[17] What are the motives of subjects in recognizing authority? Theories of the mo-

[10] Wallas, "Human Nature in Politics."

[11] Beard, "An Economic Interpretation of the Constitution of the United States"; "Economic Origins of Jeffersonian Democracy."

[12] Giddings, "Principles of Sociology, 37.

[13] Willoughby, "The Nature of the State," 11.

[14] Willoughby, "The Juristic Conception of the State," *Amer. Pol. Sc. Rev.*, XII: 196–197.

[15] Hastie, "Kant's Philosophy of Law," 174–178, 256–258; Dyde, "Hegel's Philosophy of Right," 329; Ihering, "Law as a Means to an End," trans. by Husik, 267. Jellinek, "Die Lehre von den Staatenverbindungen," 29–34.

[16] Gerber, "Grundzüge des deutschen Staatsrechts," 1880, 31–37; Gierke, "Die Grundbegriffe des Staatsrechts und die neuesten Staatstheorien," *Zeitschrift für die gesammte Staatswissenschafte*, 1874, 179; Duguit, "L'État, le Droit objectif et le loi positive," 366, 423–424, 502; Duguit, "Le Droit social, le Droit individuel et la Transformation de l'État,' 58.

[17] Laski, "Authority in the Modern State," 30.

tives of subjects have varied all the way from that of Hobbes, who asserted that men obey because they are afraid not to, to the theory that men obey because the authority of government relieves from fear of violence, and the theory that obedience not only relieves from fear but also enables men to organize for self-development. Obviously where the truth lies, within these broad limits, is a question of social-psychological fact. Its answer requires social-psychological investigations, and no amount of learned theorizing will avoid that necessity.

This psychological field adjacent to political science has been recognized both by the self-limited and the socially-limited sovereignty theorists. Of the former Ihering suggested an inductive study of this field by his inquiry into the ethical basis of law; [18] and Jellinek sought to establish what he called a social-psychological guaranty of the effectiveness of law and a social-psychological foundation for the subordination of the state to law.[19] Theories of this type maintain that the underlying fact in sovereignty is a belief or conscious attitude of men with regard to law; that this attitude causes laws to be respected and obeyed not as particular reasonable statutes but as law with social force behind it; that even if law be regarded as a compromise between conflicting interests, the compromise reached depends on the relative social force behind the different interests; [20] and that legal recognition in turn strengthens the interests recognized.[21] This attitude to law characterizes all men, including the ruler; thus there is no absolutely unlimited authority to compel obedience. Authority is limited by law. Theorists who stand for socially-limited sovereignty do not stop with the attitude of respect for law with social force behind it but carry further the analysis of that social force as the ultimate field for investigation. They, therefore, make a still more extensive use of social-psychological assumptions than do the self-limited sovereignty theorists. The most conservative of them assume not merely a generally prevalent attitude of respect for law because of the force behind it but also a general exercise of conscience and common sense with reference to the rightness or wrongness of a law, which, therefore, limits the power of enforcing obedience to the law. Thus Gierke declared that the state is not " the ultimate source of law.

[18] Ihering, " Law as a Means to and End," trans. by Husik, Chs. I, III–VIII.
[19] Jellinek, " Allgemeine Staatslehre," 334–360, 164–166, 180–182.
[20] *Ibid.*, 341.
[21] Ihering, " The Struggle for Law," trans. by Lalor, 49–50.

. . . The ultimate source of law resides rather in the common consciousness of a social being. The common consciousness that something is right needs, for its external realization, materialization by a social expression, as, for instance, in a rule of law." [22] Later theorists make a still more extensive use of social-psychological assumptions, as will be shown in a succeeding chapter.[23]

Not only have political scientists recognized a psychological field contiguous to their own and included in their premises social-psychological assumptions; the direction of the thinking of those political scientists whose work became most influential in their nation was determined by the political attitude prevailing in their own state. Their thought in turn reacted upon the attitude, making it more satisfying to thoughtful people by removing doubts as to its wisdom [24] as compared with the different political attitudes of rival states. The prevailing political attitude functioned as the associative principle of the premises, subconscious so far as its psychological nature and action were concerned. That is, theories of sovereignty have been logical rather than psychological. Subconsciously they have been a functioning of the political attitude of the particular state, the conscious processes being those of the logical arrangement of the ideas suggested by the attitude; analysis of attitude does not, therefore, come within the scope of the logical theory of sovereignty.

The political attitude, then, essentially determines the course of thought out of which develops the theory of sovereignty. Thus, in the Middle Ages, when feudalism with its submission of lesser to greater lords on promise of protection had developed, and when the Roman Catholic Church was interested in weakening the growing power of the state, Thomas Aquinas taught that, while the authority of the Pope came directly from God, that of the rulers of states came from the consent of the people and the co-operation of the church.[25] The Church controlled the people, wherefore the consent of the people depended on the consent of the Church. The theory was calculated to establish the supremacy of the Church and to make the power of the state dependent on the endorsement of the ruler

[22] Gierke, *op. cit.*, 179.

[23] See the chapter entitled, *Psychological Implications of the Theory of Natural Rights.*

[24] Hocking, "Sovereignty and Moral Obligation," *Intern. Jour. Ethics,* Apr., 1918, 314; Small, "The Present Outlook of Social Science," *Amer Jour. Sociol.,* Jan., 1913, 435.

[25] Dunning, "Political Theories, Ancient and Mediaeval," 198–201.

and his policies by the Church.[26] The ideas were a functioning of the attitude of popular submission to ecclesiastical domination. Later, when the nationalistic state had developed and used its sovereignty to limit religious freedom and, in England, to deprive Roman Catholics of political power, the Roman ecclesiastics in England declared the state to be supreme in civil matters and that they would not recognize the temporal power of the Pope in England, nor would they acknowledge the power of the state to interfere in the ecclesiastical affairs of the Roman Church in England.[27] The people of England were no longer submissive to the Roman Church, wherefore the political attitude of the Roman Church in England had changed from one of domination to one of resistance of domination by the state, and the theory of sovereignty was altered in accordance with the change of attitude.

Bodin, the first systematic writer on sovereignty, was an adherent of the Nationalist party in France. He lived when his country was passing out of the last stages of feudalism and expressed the attitude of submission of subjects to the domination of a centralized government in his description of sovereignty as the " supreme power over citizens and subjects, unrestrained by the laws." [28] Bodin's opponents, who stood for resistance of a political absolutism, on behalf of ecclesiastical control, developed a theory of resistance, that the justification of government lay in the consent of the governed.[29] If a ruler ruled contrary to the religious beliefs of subjects, it was their right and duty to resist. But neither Bodin nor his opponents attempted any analysis of the political attitude of which their thought was a functioning and a justification. These attitudes were subconsciously assumed and given the impressiveness of learning and logic. The aim was not psychological analysis but to enhance the control of the power to which each writer or group of writers acknowledged allegiance.

Subsequent writers were no more analytical. Some tried to reconcile opposing theories.[30] Others reasserted the one or the other with variations in the ideas as suggested by the changed political conditions of their time. Each side used the impressive economic analogy of contract to render more plausible the arguments.[31] The

[26] *Ibid.*, 205.
[27] Laski, " Studies in the Problem of Sovereignty," 121–137.
[28] Bodin, " Six Books concerning the State," translated by Knolles, Bk. I. Ch. VIII.
[29] Dunning, *op. cit.*, 144–145.
[30] Merriam, " History of the Theory of Sovereignty Since Rousseau," 22, 23, 28.
[31] *Ibid.*, 36.

influence of changing political conditions is seen in the theory of Hobbes who, to justify the absolutism of Charles I, stated the sovereignty of absolutism more extremely than Bodin; [32] in the theory of Locke which was advanced to justify the English revolution of 1688, and which was invoked by the American revolutionists; [33] in the theory of Kant who, alarmed by the French revolution, denounced the right of revolution.[34] All these theories were derived not from an analysis of the relation between sovereign and subjects but from the political attitude which was implicitly accepted in the premises of the argument and which determined the course of thought.

The political theory of thinkers in each state developed along the line of the political attitude of the state. Kant's theory of the authority of the state as limited only by self-imposed laws was further worked out in the public law doctrine of Ihering and Jellinek, who were influenced by the autocratic political systems of Germany and Austria. The social limitation theories of Gerber and Gierke had little influence as compared with the theories of Ihering and Jellinek, which logically satisfied thoughtful people of those states with the political attitude of their state. In France, on the other hand, from 1789 to the present time, the effort has been to work out a theory of sovereignty in harmony with the attitude of resistance to autocracy, and the most influential theories have been those which assigned to the individual certain natural rights and placed the law which bestows these rights above the will of the sovereign and above public law.[35] Later, when the fiction of natural law had passed, the most influential theories were those which asserted for the individual certain personal rights with which he was endowed because of the nature of his personality; [36] or were those which asserted a "law of social solidarity" [37] which is above, and limits the authority of, the sovereign. In England arbitrary rule was limited by the rise of new propertied classes which jealously defended their economic freedom from autocratic interference and from the repression of older propertied classes. This individualistic

[32] Hobbes, "Leviathan," Ch. XVIII.

[33] Locke, "Two Treatises of Government," Chs. XIII and XIX.

[34] Kant, "Principles of Political Right," trans. by Hastie, "Kant's Principles of Politics," 50.

[35] Rousseau, "The Social Contract," Bk. I.

[36] Michel, "L'Idée de L'État," 60, 644–645.

[37] Duguit, "L'État, le Droit objectif et le loi positive," 366, 423–424, 502; Duguit, "Le Droit social, le Droit individual et la Transformation de l'État," 58.

political attitude determined the political theory of Bentham,[38] whose theory is logical and not psychological, except for its pleasure-pain premise and its assumption of the end of law as the greatest general happiness, and except for occasional remarks as to political attitudes, for instance that subjects obey only because they find submission favourable to their interests.[39] Bentham's theory was influential in England not because of his hedonism but because it was congenial to the resistance of a rising propertied class.[40] Bentham's work was admired by Ihering who, however, rejected Bentham's individualism, because he was animated by the German attitude of respect for political authority and by a predilection for political authority of wide scope.[41] The theories of Bentham and Spencer,[42] which endorsed the individualistic attitude, have been influential in England, especially among the rising propertied classes.[43]

Political scientists, like other thinkers, have done their thinking under the influence of the attitudes of their time and place; hence the traditional emphasis on obedience-compelling power, surviving from a time when sovereignty was vested in a dynasty or class that did compel obedience. The United States is the only great state of the world which, from the beginning, was founded on the principle of popular sovereignty,[44] though this was, at first, imperfectly realized.[45] There lingered, in the political consciousness of the people, on the one hand an apprehensive fear of tendencies to autocracy, and on the other hand a distrust, among certain classes, of popular sovereignty. These attitudes influenced the thinking of American political scientists.[46] Political thinkers are influenced in their thinking by the powers that be, or the powers that are passing, or the powers that appear to be coming to be; distinguished from this attitudinally-directed thinking,[47] logical in its methods, is that of the scientific thinker who either plays the part of critic of logical

[38] Pound, "The End of Law as Developed in Juristic Thought," *Harvard Law Review*, XXX: 207.

[39] Bentham, "A Fragment on Government," Ch. I.

[40] Ihering, "Law as a Means to an End," trans. by Husik, Introduction by Geldart, xlvii.

[41] *Ibid.*, xlvi–l.

[42] Spencer, "Social Statics," 121–136.

[43] Pound, *op. cit.*, 207–209.

[44] Goodnow, "Principles of Constitutional Government," 86.

[45] See the history of property suffrage tests in Porter, "A History of Suffrage in the United States," Chs. I–IV.

[46] See the chapter entitled, *Psychological Implications of the Theory of Natural Rights.*

[47] However much the practising lawyer might affect to despise philosophical theories

theories or makes a contribution to the science,[48] perhaps little appreciated at the time.

An opening toward the social-psychological point of view in analyses of sovereignty was made by the attempt to modify Austin's theory of absolute sovereignty. In order to understand the significance of this attempt it is necessary first to recall the main points in Austin's theory. Austin derived his theory of sovereignty from his conception of law. He defined law as a command given by a person of superior might to an inferior,[49] and sovereignty as the law-enforcing or obedience-compelling power exercised by a group which is independent and not itself subject to a like exercise of power.[50] Austin wrote with the primacy of the legislature in mind and declared that law becomes positive law only when endorsed by the legislature as a command of the sovereign power.[51] Though Austin recognized benevolence in authority,[52] he laid an extreme emphasis on obedience-compelling power, which "would as a fact breed simple servility were it capable of practical application."[53] As to the psychological nature of the obedience-compelling power, he ventured only so far as to say that it lay in the "might" of the sovereign,[54] and that "The *bulk* of the given society are in a *habit* of obedience or submission to a *determinate* and *common* superior."[55] He admitted that every government continues only through the "consent" of the people, and interpreted consent as follows: "That, in every society, political and independent, the people are determined by motives of some description or another, to obey their government habitually: and that, if the bulk of the community ceased to obey it habitually, the government would cease to exist."[56] The motive of obedience may be approbation of the

of law, he could but be content with a theory that put plausible reasons behind his traditional habits of thought. (Pound, *op. cit.*, 208.)

[48] Beard, "An Economic Interpretation of the Constitution of the United States."

[49] Austin, "Lectures on Jurisprudence," I: 98–99.

[50] "If a *determinate* human superior, *not* in a habit of obedience to a like superior, receive *habitual* obedience from the *bulk* of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent." (*Ibid.*, I: 226.) "Every positive law (or every law simply and strictly so called) is set, directly or circuitously, by a sovereign individual or body, to a member or members of the independent political society wherein its author is supreme." (*Ibid.*, I: 339.)

[51] *Ibid.*, I: 100; II: 555.

[52] *Ibid.*, I: 169–170.

[53] Laski, "Studies in the Problem of Sovereignty," 273.

[54] Austin, *op. cit.*, I: 99.

[55] *Ibid.*, I: 226.

[56] *Ibid.*, I: 305.

government, but this is often not the case, " the habitual obedience of the people in most or many communities, arising wholly or partly from their fear of the probable evils which they might suffer by resistance." [57] Austin dismissed questions of motives with scant attention, because the task he had set for himself was logical and not psychological and because in his time very little was known about motives. For instance, we find remarks like this: " For the terms ' instinctive ' and ' instinct ' are merely *negative* expressions. They merely denote our own ignorance. They mean that the phenomena of which we happen to be talking are *not* preceded by causes which man is able to perceive." [58] Since this was written much progress has been made in the psychology of the instincts.

Austin regarded sovereignty in England as vested in the king, lords and the electors of the House of Commons.[59] His theory of sovereignty as obedience-compelling power was satisfying to the propertied classes which alone had political rights and alone were represented in the law-making body. In the latter part of the nineteenth century, when the masses had been enfranchised and were beginning to exert an influence on legislation, there developed a tendency in English political thought " to recognize the forces which produce sovereignty." [60] This led to the drawing of a distinction between legal and political sovereignty. The legal sovereign is the final and determining authority in the legal order; the political sovereign is that body in the state, " the will of which is ultimately obeyed by the citizens of the State." [61] Dicey located this sovereignty in the " body of electors." [62] Ritchie went further and declared that it lay in the forces of public opinion — that " the ultimate political sovereign is not the determinate number of persons now existing in the nation, but the opinions and feeling of these persons. . . ." [63] Political sovereignty is thus located " in the body of public sentiment or opinion to which the legal sovereign itself must ultimately render obedience." [64] While public opinion " legally possesses no power," and " cannot be enforced in the courts

[57] *Ibid.*, I: 305.
[58] *Ibid.*, I: 149.
[59] *Ibid.*, I: 253.
[60] Merriam, *op. cit.*, 154.
[61] Dicey, " Law of the Constitution," 66–67.
[62] *Ibid.*, 67.
[63] Ritchie, " On the Conception of Sovereignty," *An. Amer. Acad. Pol. and Soc. Sc.*, I: 407.
[64] Merriam, *op. cit.*, 156.

of law," "politically . . . it is supreme, it is the source of the legal sovereign, it must ultimately be obeyed. . . .

"In this theory, then, the Austinian notion is recognized in the legal sovereign, the authority behind which the lawyer as lawyer need not go," [65] while the political sovereignty is the ultimate sovereignty. To understand it there is required a social-psychological analysis of the relations of conflicting parties and classes,[66] the outcome of which at any particular time is the effective public opinion.[67] The political scientist studies those aspects of the class struggle that have to be understood in order to understand party government, while the social psychologist analyses the rivalry of classes for control of the electorate and the processes which enter into that control.

Austin's juristic conception of sovereignty eventually gained wide acceptance and is today the orthodox theory of sovereignty. This is not a psychological, but a purely logical theory, starting "with certain primary assumptions or definitions from which, by deductive reasoning, it determines those principles which give a systematic and logical character to constitutional and international jurisprudence." [68] As to the assumptions of this legal conception of sovereignty, it is said: "The point from which the analytical political philosopher starts is that a politically organized group of individuals may be conceived of as constituting an essential unity, and that the entity thus created may be regarded as a person in the legal sense of the word; that is, as a being, existing in idea, possessing legal rights and obligations as distinguished from those of the individuals who, concretely viewed, make up its body politic, and that, as such a personality, it is, through organs of its own creation, capable of formulating and uttering a legal will with reference to matters within the jurisdiction conceded to it.

"Regarded as a legal person the prime characteristic of the state is that there is posited of it a will that is legally supreme. By its express command, or by its tacit acquiescence, it is thus viewed as the ultimate source of legality for every act committed by its own agents or by any persons whomsoever over whom it claims author-

[65] *Ibid.*, 156.

[66] Commons, "A Sociological View of Sovereignty," *Amer. Jour. Sociol.*, V: 1–15, 155–171, 347–366, 544–552, 683–695, 814–825; VI: 67–89.

[67] Croly, "Progressive Democracy," 228–229.

[68] Willoughby, "The Juristic Conception of the State," *Amer. Pol. Sc. Rev.*, XII: 193.

ity. This supreme legally legitimizing will is termed sovereignty." [69]

The legal theory of sovereignty does not, therefore, require any analysis of the assumed relations. Though disavowing a psychological basis and affirming a purely deductive method, it does implicitly assume a psychological relation. The "whole structure rests upon the assumption that a law is a command to subjects." [70] That is, it implies a relation of habitual exercise of authority of the sovereign and habitual obedience of subjects. Like that type of economic theory which disavows psychological assumptions, it does not escape them but, in the process of attempting to escape them, rests satisfied with traditional and unanalysed assumptions. This is justified on the ground that, while a science of social relations has to do with facts of social relations, when "we turn to the purely juristic inquiry as to the legal relations which unite the state and the individual, we start with the state. . . ." [71] The state is imagined to be a unity, a personality, in order to give a logical emphasis to the assumed obedience-compelling power of the state. But the political scientist cannot get away from the necessity of psychological analysis by a mere assumption of such unity and personality. Whether or not it exists is a question of fact that cannot be glossed over by logical constructions.

The legal theory assumes that the people of the state are a unit whose will is represented by the law. Laws that forbid serious crimes undoubtedly represent the will of the whole people. But there is a body of law which represents only the will of a class, not the will of the people as a whole. Law as such cannot, therefore, be regarded as the will of the people as a whole. As will be explained in succeeding chapters, the people of a state, in their economic relations, are becoming organized into self-conscious, conflicting classes, so that we must deny that the state is, as a matter of social-psychological fact, a unity and that law represents the will of the people as a whole.[72]

It is maintained that phenomena of class struggle, if their significance is rightly understood, are not contrary to the juristic conception of sovereignty. It is said that the classes struggle for

[69] *Ibid.*, 194.
[70] Crane, "Discussion of Willoughby's Paper," *Amer. Pol. Sc. Rev.*, XII:212.
[71] Willoughby, *op. cit.*, 195.
[72] Laski, "Authority in the Modern State, 81, 65.

possession of the thing which the old theory maintained to be essential in the state, namely, the power to enforce obedience independently of any restraining power. It is said that the thing exists independently of the class which may use it for the time being. "But," reply the protagonists of the class-struggle theory of the state, "if the thing is exercised by a class as far as possible in its own interests, what is the thing but the will of a dominant class?" Still further driving their wedge they ask, "If the state is an independent personality with a legally absolute will, why does not it enforce this will impartially on all classes? The contrary is notoriously the case. The law-enforcing organs are inclined to condone the crimes of an upper class, members of which often escape the penalties of the law, while members of a lower class, especially if they have incurred the odium of an upper, may suffer severe penalties for crimes of which they are innocent." Conspicuous examples of condoned crimes of members of an upper class and of unjust punishments of members of a lower class who have incurred the hatred of an upper are adduced,[78] and the conclusion is drawn that there is a class control of government, that the ultimate fact in sovereignty is the exercise of the will of a dominant class, tempered more or less by the requirements for enlisting the support of the people in the maintenance of control over other classes. To this the defender of the legal theory replies that sovereignty is not the will of a class because laws at least represent a compromise between classes, a compromise worked out with a view to acquiescence in the law by all classes. Furthermore, there are laws passed in accordance with the advice of expert commissions and there are rulings of commissions that have the force of law, which the masses do not understand but assent to as law, which capitalistic interests have to obey though unwillingly, and which assume, therefore, an obedience-compelling power of the sovereign people. The argument is evidently drifting into fields little investigated as yet; the problem requires social-psychological analysis.

The increasing comprehension of the inevitableness of class struggle and of its significance for the legal conception of sover-

[78] Lindsey and O'Higgins, "The Beast," Ch. XII; West, "The Colorado Strike" (Special Report prepared for the United States Commission on Industrial Relations), Ch. I; President Wilson's Mediation Commission, Report on the Mooney Dynamite Cases in San Francisco, U. S. Dept. of Labor, Official Bulletin, Jan. 28, 1918, 14–15; Report of President Wilson's Mediation Commission, on the Bisbee, Arizona, Deportations, November 6, 1917, U. S. Dept. of Labor.

eignty has stimulated the ingenuity of the legal theorists in their attempts to represent the state as essentially one unified whole. An examination of the origin and development of the state proves, it is said, that "The State is an organism,"[74] and "Sovereignty is the supremacy of the State over all its parts."[75] This organismic theory and the theory of sovereignty it supports, on the contrary, is asserted by other political scientists to be untrue. What we actually find, says the brilliant French political scientist, Duguit, is "the man or the group of men who in fact in a given society are materially stronger than the others," and impose their will. The state is simply a "manifestation of force."[76] It is "the simple fact of the differentiation between the governors and the governed."[77] The government is controlled by the class or body which monopolizes the force in a given society.[78] This, says Duguit, may be done contrary to the welfare of the society; and a command of a government that is contrary to welfare is not a true law and should be disregarded.[79]. He bases this deduction on his theory of a law of social solidarity which is above law that is a command of a sovereign, a theory that will be explained more at length in the chapter on natural rights. The essential fact in the consciousness of a group, he says, is a consciousness of social solidarity, a phenomenon that antedates any development of the state. This consciousness determines the nature and functioning of law and, therefore, the will of a sovereign is not essential to society and social progress. Such a will is contrary to social progress except as it wills in conformity with the law and requirements of social solidarity. Duguit therefore denies that the essential characteristic of the state is a legally absolute will of the state as a political organism.[80] He declares that this notion of sovereignty "leads fatally to the absolutism of the state."[81]

Protagonists of the organismic theory have presented a psychological theory of the nature of the personality of the state; and, opposed to it, are psychological theories denying this personality.

[74] Ford, "The Natural History of the State," 174.
[75] *Ibid.*, 176.
[76] Duguit, "Études de droit public." Tome I: L'Études de droit objectif et la loi positive, 5, 19.
[77] *Ibid.*, 261, 242, 350.
[78] *Ibid.*, 411.
[79] *Ibid.*, 424.
[80] *Ibid.*, "Law in the Modern State," trans. by Laski, Ch. I.
[81] *Ibid.*, "L'État, le droit objectif et la loi positive," 614.

As an example of theories of state personality, Gierke maintained that each person possesses two capacities, the one individual and the other universal; that, in virtue of the universal in human nature, individuals form a state; that law [82] and contractual relations [83] assume this state personality. This theory was elaborated by his successors who made exhaustive historical studies to demonstrate their fanciful conception.[84] On the other hand, it is maintained that there is no such thing as a state personality; [85] that law does not assume a state personality; and that the assumption of a juridical personality of constituent groups as the basis of contractual relations is a " purely metaphysical " abstraction.[86]

Political scientists are thus driven, by their controversies over the nature of sovereignty, to admit the psychological nature of the problem, or at least to admit that it cannot be solved without the aid of the social psychologist. Political science is thus brought into close relation with social psychology. It is for lack of an inductive method and of accurate and adequate psychological assumptions that interpretations of the state have been developed deductively, with analogical, organismic assumptions which have thrown no light on the nature of political relations.[87]

[82] Gierke, " Das deutsche Genossenschaftsrecht," II: 36 ff.

[83] *Ibid.*, " Die Genossenschaftstheorie," 135.

[84] Coker, " Organismic Theories of the State," 76–79.

[85] Duguit, " L'État, les Gouvernants et les Agents," 65; Duguit, " L'État, le droit objectif et la loi positive," 27, 40, 65.

[86] Duguit, " Collective Acts as Distinguished from Contracts," *Yale Law Journal,* XXVII: 762.

[87] Coker, *op. cit.,* Ch. V.

CHAPTER II

THE PSYCHOLOGICAL APPROACH TO THE PROBLEM OF SOVEREIGNTY

ACCORDING to the juristic theory of sovereignty the obedience-compelling power, in a representative government, is possessed by the voters who delegate it to their representatives.[1] In addition to this purely juristic meaning of sovereignty there is another meaning, called "ethical." "Finally, it may be said that the term 'sovereignty of the people' very often connotes a principle that is not juristic at all, but rather, an ethical doctrine that every group of individuals has a continuing inherent moral right themselves to determine, by whatever means they think appropriate for the purpose, the form of government under which they are to live, what it shall do and the persons into whose hands its operations shall be entrusted."[2] The authority of the state depends, then, on the assent of moral personality.[3] The interaction between the exercise of authority and the claims of moral personality constitutes the social-psychological problem of sovereignty.

The exercise of extra-legal sovereignty is seen not only on the rare occasions of revolutionary change of government, but also continually in determining what laws and ordinances it is expedient to enforce at a given time and what laws and ordinances shall be ignored. This is determined not by those who exercise the delegated sovereignty but, in the last analysis, by public opinion, to which those who exercise the delegated sovereignty are consciously or subconsciously susceptible. The unorganized, unconscious influence of public opinion on representatives is a constant phenomenon as contrasted with the more rare occasions of a deliberate bringing of pressure to bear. We are brought, therefore, to an analysis of public opinion — of the attitudes, impulses and ideas of the voting masses, and of rival parties, classes, interests. The problem of

[1] Willoughby, "The Juristic Conception of the State," *Amer. Pol. Sc. Rev.*, XII: 205.
[2] *Ibid.*, 205.
[3] Laski, "Authority in the Modern State," 28, 32–65.

sovereignty is, therefore, essentially a social-psychological problem.

In a political democracy sovereignty is in the last analysis vested in the people.[4] The masses are for the most part not clearly conscious of the real significance of their political action — that their choice between political parties is increasingly a choice between class interests. One of the functions of government is to enable conflicting classes to contest one with another for political control according to rules that eliminate the use of force.[5] What they contest for is control over the masses; sovereignty is, in the last analysis, vested in the masses and not in a class. The social psychologist is interested, therefore, in an analysis of the political impulses and attitudes of the masses. What impulses and attitudes move them in the acceptance or rejection of candidates for political control? What distinguishes members of the masses from members of the classes that are rivals for control of the masses? Men who vote from partisanship year after year, regardless of the personnel of the candidates, regardless of issues, assuredly are not moved in their political behaviour by class consciousness. Nor are men who change their party only when dissatisfied because of "slack times," or because they happen to dislike some personal trait of a candidate. Class consciousness is rapidly developing among farmers and workingmen in the United States but it is still in the incipient stage. Even among business men economic considerations are not so invariably the only considerations in political allegiance as we suppose, if we may judge from the frequent injunctions to employers, in the publications of employers' associations, to consider their economic interests more exclusively in their political activity and, from that point of view, to be more active in

[4] Veblen, "Imperial Germany and the Industrial Revolution," 243–244.

[5] This function of government was emphatically stated by former Justice Charles E. Hughes in a letter condemning the action of the New York Assembly in suspending five members of the Socialist party who had been elected to the Assembly: "If there was anything against these men as individuals, if they were deemed to be guilty of criminal offences, they should have been charged accordingly. But I understand that the action is not directed against these five elected members as individuals but that the proceeding is virtually an attempt to indict a political party and to deny it representation in the Legislature. This is not, in my judgment, American Government.

"Are Socialists, unconvicted of crime, to be denied the ballot? If Socialists are permitted to vote, are they not permitted to vote for their own candidates? If their candidates are elected and are men against whom, as individuals charges of disqualifying offences cannot be laid, are they not entitled to their seats? . . . If the Socialists were denied recourse through their duly elected representatives to the orderly processes of government, what resort is there left to them? Is it proposed to drive the Socialists to revolution by denying them participation in the means we have provided for orderly discussion of proposed changes in our laws?" (Associated Press, Jan. 9, 1920.)

politics. There is a great conventional mass of voters who ordinarily vote according to habit, and, when they do not, follow some impulse that involves little intelligence and does not ally them with any class. Wherefore, classes that seek political control usually aim not too violently to disturb the beliefs of the conventionalized masses.

The political phases recently assumed by the labour movement require social-psychological investigation because that movement is essentially a social-psychological phenomenon. Organized resistance of the workmen of an industry or of a nation is not a mere instinctive movement, though doubtless many workmen have little consciousness of an intelligent purpose. But labour leaders, and the intelligent opinion that directs a labour movement, have certain well-defined ideas that make it more than a mere instinctive resistance. The labour movement is not a resistance of all authority, for the more intelligent workmen realize the necessity of subordination to authority that directs production. They realize the necessity of leadership but insist that it shall be real leadership, leadership that wins loyalty because of ability to lead. Nor is the labour movement essentially a movement for higher wages. It does not spring fundamentally from dire need, nor from rivalry with employing classes for more of the satisfactions of life, though need and rivalry are essential in it. Those who regard the labour movement as merely for more of the things of sense have not begun to understand it. Nor is it as yet a movement for the fuller development of personality. Doubtless, when the economic basis has been made more certain, it will become a movement for a positive self-development along those lines that are to an extent pre-determined by the original nature of man. But today it is a movement to escape the vicissitudinous aspect of industrial life.[6] Before self-development can be thought of, workmen must be in a position of greater certainty with regard to their future. Today they are subject not only to the economic conditions that make industry uncertain for manufacturers, farmers and other employers, as well as for workmen, but to the uncertainty that is due to being under

[6] Tead, "Instincts in Industry," 48; Webb, "Restoration of Trade Union Conditions," 77; Filene, "The Key to Successful Industrial Management," in a report of the *Amer. Acad. Pol. and Soc. Sc.* entitled, "Modern Manufacturing," 1919, 9; Ross, "A Legal Dismissal Wage," *Amer. Econ. Rev.*, IX (supplement): 133–134; Commons, "Industrial Goodwill," 71–72; Tannenbaum, "Labor Movement Psychology," *New Republic,* July 7, 1920, 169–170.

a boss or under a management on whose will, often on whose mere liking or dislike, depends the opportunity to earn a living.[7] Workmen generally may be discharged at the will of the employer. Employers often foster a feeling of uncertainty as to jobs in order to make workmen more submissive. Their wages are not sufficient to enable them, with strictest economy, to make adequate provision for a long period of unemployment; or for a long period of illness, to which industrial workers are more liable than others owing to the occupational diseases;[8] or for injury due to accidents; or for their families in case of death of the bread-winner; or for old age. In cases where wages are sufficiently high to meet the ordinary contingencies there is the chance that they may be lowered at any time, inasmuch as, where workmen are unorganized for collective bargaining, they have no voice in determining their wages. "They are often free to change their employer, but a new employer is only a new master."[9] The workman is not in control of his fate. His life and that of his family from day to day are in the highest degree uncertain, and the only way he can see to make it certain is to exercise control in the management of industry. This movement for control gains added impulsion from the workman's aversion to monotonous work intensified by the driving of a boss, his "instinctive resistance against suppression of the freedom for play, for interest, for creativeness."[10]

If this movement is not to continue a mere class movement, a phenomenon of resistance to class domination breeding class antagonism and general disorder, it must appeal to the people of the state, and, we might add, to the members of the Christian churches to which many of the people belong, as a moral movement. Here again we must consider its social-psychological basis and the social-psychological basis of morality. The subject requires extended treatment but the writer believes it can be proved that an essential condition of moral and therefore of political progress is the introduction of increasing certainty in economic relations and of an increasing sense of responsibility of labour. For, first, the instincts stirred by uncertainty, for instance, fear, are contrary to moral

[7] Croly, "Progressive Democracy," 383.

[8] U. S. Bureau Labor Statistics, "Preventable Death in Cotton Manufacturing Industry," Bulletin, No. 251.

[9] Croly, *op. cit.*, 383.

[10] Tannenbaum, "Labor Movement Psychology," *New Republic*, July 7, 1920, 171.

progress. A certain type of traditional morality rests on fearful self-restraint, as does a certain type of traditional theology. But moral progress requires that impulses of self-restraint, the duty of which has been so long preached by the political and ecclesiastical representatives of a dominant class,[11] shall give way to impulses for the attainment of the positively good life.[12] But the position of workmen impedes this development inasmuch as many employers maintain that workmen must be kept in uncertainty and fear of losing their jobs in order to stimulate them to work. Second, an uncertain life begets an impulsiveness that is contrary to moral progress, as distinguished from the forethought, foresight, and careful planning made possible by a reasonable certainty and stability of economic life. The vicissitudinous aspect of man's working life from the beginning, his necessary appeal to chance in gaining a livelihood, has resulted in appeal to chance in recreation, for instance, in gambling, and in a predilection for pleasures that extremely excite strong instincts. Traditional morality merely preaches the necessity of self-restraint and the duty of repressing these forms of immorality with social disapproval or ostracism, and traditional religion offers a theology sanctioning this program. Morality depends on communal approval and disapproval, but moral progress requires also the removal of the causes of these immoral pleasures, including the evil economic conditions; and it requires a public education that will make communal approval and disapproval intelligent. Third, the unsettled state of the working classes as a result of their economic uncertainty makes very difficult or impossible the application of moral sanctions to individual conduct. The constant movement of peoples through the great centres of population prevents that acquaintanceship and communal life which is necessary if the individual is to care anything about the opinions of his neighbours. And the church finds it difficult to form out of such a population a parish which can be made amenable to the religious sanctions of morality. Fourth, the uncertain and unsettled state of the working classes also makes impossible political efficiency. Municipal government to be effective requires that the people of a district live together long enough to be well enough acquainted to co-operate in political action.[13] Finally, the unsettled

[11] Croly, *op. cit.*, 409–423.
[12] *Ibid.*, "Disordered Christianity," *The New Republic*, Dec. 31, 1919, 137.
[13] Goodnow, "City Government in the United States," 18–21.

state of the working classes makes impossible educational efficiency. Children get well started in one school and then have to move on to another, where often they fail to get adjusted and lose interest. Teachers just begin to understand their pupils and to be able to give them individual attention when they disappear. From the point of view, then, of the development of moral personality, and of efficient communal, ecclesiastical, political, and educational procedure, the labour movement to reduce the vicissitudinous aspect of the life of the working masses is a moral movement. As such it deserves the support of all the people of the state, and the sanction of the church. If the church withholds its sanction, it will lose what influence over the masses it still retains; and if the people of the state who are not immediately involved withhold their sanction the movement will inevitably develop more of the aspects of a class conflict for the control of governments.[14]

The conception of social class, also, is a social-psychological conception. Professor Hoxie states the case in his lucid and incisive style. "There are two current tests or modes of definition of classes — the objective or mechanical, and the subjective or psychological. From the objective or mechanical standpoint, classes are defined in terms of wealth or social position, occupation, . . . etc. Thus we commonly speak of the rich, the middle class, and the poor, . . . From the subjective or psychological standpoint, classes are defined in terms of viewpoint, i.e., in terms of motive, belief, attitude, . . .

". . . Thus, from a psychological standpoint, all those, whatever the source of their income, who feel that their interests are identical with those of the employers, . . . belong to the employing class, while those who feel that their interests are with the wage-workers, or whose motives, . . . social attitudes and sympathies are in harmony with the mass of the workers, belong to the labouring class.

"But now there are those who say that this is a distinction without a difference; that at bottom these two standpoints are identical, since one's view of his own interests or one's motives, . . . social attitudes and sympathies are determined by his economic interests or his objective environment. . . .

"There are, however, two reasons for the failure of coincidence of the objective . . . and the psychological social groups. It is

[14] Croly, "Progressive Democracy," 388–390.

not a *part* of the environment of the individual, the economic part, that makes him what he is spiritually, but the *total* social environment. . . . Secondly, men are not wholly determined in their attitudes, habits of thought and sympathies by the immediate environment, but also by personal and social heredity and tradition. . . .

"There is, then, a real distinction between these standpoints or tests for judging of the existence or non-existence of social classes, and it will make a difference which of these tests or standpoints we adopt, for the existence of classes is apparently much more easily proved from the objective and mechanical standpoint than from the subjective or psychological standpoint.

"Which of these tests shall we then apply? The answer seems clear. The important test for us is the subjective or the psychological, because we are making a study of labour conditions and problems not merely to discover what conditions and problems exist, but primarily to determine what *can* and *ought* to be done to better conditions and to solve problems . . . we need to know what causes these classes to exist, how they stand related to one another in interest and motive, and what their quality, organization and strength are." [15]

What we are interested in is the essential or psychological nature of classes and class relations, for on this depends what combination of classes for political action will take place. For instance, if farmers and workmen are alike animated by an attitude of resistance against reactionary capitalistic interests,[16] a combination of the two classes to win political control [17] is more likely than is a combination of capitalists and farmers or of capitalists and workmen. To be sure the instinctive resistance of farmers and work-

[15] Hoxie, "Trade Unionism in the United States," 350–353.

[16] Methodist Federation for Social Service, "The Revolt of the Farmers," bulletin for July, 1919; King, "The Prosecution of Mr. Townley," *The Nation,* Aug. 2, 1919, 143.

[17] "Labor-Farmer Politics," *Survey,* Feb. 22, 1919, 733; Sandburg, "The Farmer-Labor Congress," *Survey,* Feb. 21, 1920, 604–605; Gillette, "The North Dakota Harvest of the Nonpartisan League," *Survey,* March 1, 1919, 753–760; Johnson, "Minnesota and the Nonpartisan League," *The New Republic,* Oct. 8, 1919, 291; Colcord, "Labor and the Farmers," *The Nation,* Jan. 3, 1920. The political co-operation of farmers and workmen has spread to Canada. Up to 1919 the farmers and labourers of Ontario had supported the regular parties on the strength of fair promises. In October, 1919, by co-operation, they elected forty-five Farmers and eleven Labourites to the Ontario House, thus getting a majority over the other parties combined. See *Social Welfare* (Organ of Social Service Council of Canada), Toronto, Dec. 1, 1919, p. 60.

men will have to become very intense to overcome the marked difference in their political attitudes.[18] But, when instinctive impulses are sufficiently aroused they tend to prevail over attitudes that have been formed under other economic conditions, so that, when the instinctive impulses suggest a common purpose, this is apt eventually to prevail. Instinctive impulses in the last analysis determine what combinations of classes will take place in the rivalry for political control. The farming class is instinctively moved in two directions: against the domination of reactionary capitalistic interests, and against a non-propertied class if the latter seems to seek a too radical regulation of prices, or a sweeping away of property rights. Whether the farming class will ultimately co-operate with the capitalistic class or with a non-propertied class will depend on the degree of domination exercised over the farming class by the capitalistic class and the resentment stirred thereby, as compared with the degree of fear inspired by the attitude of the non-propertied class against all property.

The class struggle for the control of governments has not yet enlisted the mass of voters in the United States. Voters generally resent the idea of a class openly trying to control the government; at the same time they acquiesce in the traditional political control exercised by propertied classes. The conventional rank and file of voters tend, therefore, to oppose a labour party as being an open and avowed effort of the working classes to control the government. Voters oppose a mass movement to influence the government, which they can see, as against reactionary capitalistic class control of government, which they cannot see. Furthermore, the law as it has developed, is mainly for the protection of private property,[19] wherefore the propertied classes appear as the classes to be protected and respected. The propertied classes are not only the legally protected and respected classes but also the popularly admired classes, while the working classes are the contemned classes; wherefore the rank and file of voters will support a political party that represents, primarily, propertied classes when they would not support a labour party. This attitude of the public is a more serious obstacle to a labour party in the United States than in England and Germany where a larger proportion of the population are

[18] Bernard, "A Theory of Rural Attitudes," *Amer. Jour. Sociol.*, XXII: 637–647.

[19] See the chapter entitled, *Psychological Processes in the Development of Private Property (concluded)*.

wage-earners. Until the wage-earners in the United States constitute a considerable majority of the voting population, as they eventually will,[20] a labour party will suffer the same heavy handicap that a labour union suffers in time of strike, when the public tends to sympathize with employers, just because they belong to the admired social class, rather than with the workmen, because they belong to the contemned social class.

However, the increasing apprehension of a reactionary capitalistic control of government has tended to increase the number of independent voters. The "independent voter" is one who is breaking away from the conventionalized mass of voters. He votes against a party which appears to have become a party committed to class interests, as in the independent support of Mr. Wilson for tariff revision downward in 1912. When they thus vote against a class independent voters do not think of themselves as thereby constituting an opposing class but as voting on behalf of the people against a privileged class. The independent vote is numerically weak and in most cases politically ineffective against a privileged class, owing to the limited education of the independent voters and to the fact that they do not come into direct contact with the national and international situations that require political action. They become acquainted with those situations through the press, which, because it controls the sources of information, is able, through social suggestion, to incline the independent voters to the propaganda that suits the reactionary capitalistic interests that exercise so marked a control over the press. The "independent vote" is, therefore, not the vote of those who really think independently and adequately on political problems, but of non-partisan minds that are more or less subject to the social control exercised through the press. He is a rare man who understands sufficiently the arts of newspaper control to escape their influence.

A politically dominant class that does not too violently disturb the conventional masses can go a long way in the use, in its own interest, of the sovereignty vested in the masses. The "will of the people" is a vague acquiescence [21] which a dominant class turns in the direction of its own interests. This acquiescence is reinforced by the survival, among the masses, of attitudes that charac-

[20] Croly, "Progressive Democracy," 380.

[21] "Europe's Misery and America's Complacency," *New Republic*, Nov. 12, 1919, 307.

terized them before they were sovereign, for instance, the attitude of subservience to a ruling class.[22] Furthermore, citizens still have much respect for "law as such," and for law as having behind it the strong arm of the state. In the same way, people have respect for moral law as such and because God is believed to stand behind it.[23] As one man expressed it, "my religion is not my conscience but what lies back of my conscience." God back of moral law, especially if God is represented by a vigorous ecclesiastical organization, causes respect for moral law, and the sovereign back of civil law causes respect for civil law.

The attitude of unthinking deference to law as such has been much disturbed of late years by the critical attitude that has developed owing to law invading the sphere of personal liberty more and more. If law is the body of rules necessary for a collective life, then the increasing complexity of that life will require an increasing invasion of personal liberty. Some of these laws are, on their face, foolish, because carelessly drawn by ignorant legislators, or because passed to placate public sentiment that could be placated by the mere passage of a law. For the same reason some of the rules and regulations issued by governmental commissions and applying to public utilities, factories, stores, banks or the farm are foolish, and because they are, sometimes, undoubtedly foolish their wisdom often is doubted and they are ridiculed when they are not foolish but appear to be so because the situation is not understood. All this implies an increasingly critical attitude to law, for we are living in an age when the inefficient law-making and administrative branches can hardly keep pace with the rapidly changing situations that demand legislation.[24] The attitude to law is, therefore, coming to be less an attitude of blind deference than heretofore. It is not an attitude of disrespect for all law but for laws that are thought to be foolish. So much for the changing attitude to law as such.

There is also an increasingly critical attitude toward the law enforcing power. Respect for the strong arm of the state weakens when it comes to be understood that that strong arm is often moved by reactionary capitalistic interests. Instances when reactionary

[22] Pillsbury, "The Psychology of Nationality and Internationalism," 193–194.

[23] For the time when this attitude was all but universal see Green, "Town Life in the Fifteenth Century," II: 8.

[24] Laski, "Authority in the Modern State," 379.

capitalistic interests systematically forced governmental agencies to act contrary to law, and secured the repeal of laws that stood in the way of the exercise of their will create a profound impression,[25] because the strong arm of the state, in those instances, is seen to obey the will of a class, not the will of the whole people. This growing distrust of the power of the state is apparent even among the most conservative part of the population, the farmers, who are ceasing to be a part of a conventional mass of voters and to realize that they are a distinct class which must federate with other classes of like interests and seek to control the voters against classes the interests of which are opposed to its own. Law thus ceases to be something to be assented to as having behind it the strong arm of the state; for each class comes to think of itself as the possible mover of that strong arm and of law as the expression of its own will, which, however, never can act entirely independently because of the necessity of not violating too far the beliefs of the still conventional masses, and because of the necessity, if control is to be maintained, of not impressing the masses as unjust to other classes. These problems as to the relations of class and mass — as to the ultimate nature of sovereignty — are, as already indicated, termed "ethical" by the political scientist, who says that the studies broaden out "into an examination of the premises of a final political philosophy."[26] This examination involves social-psychological investigations.

These investigations have an historical aspect. In the early American rural community law had a twofold psychological basis. First, it was an expression of what was felt to be necessary for the collective life of the community;[27] enforcement of law was an impulsive reaction of communal resentment against the law-breaker. Second, the law was that whereby the self-reliant farmer got his rights in a dispute over property.[28] Both these functions are violated in so far as there is control by a dominant class. First, instead of law being an expression of what is necessary for the col-

[25] Lindsey and O'Higgins, "The Beast." See also, "Final Report of the United States Commission on Industrial Relations," 1915, 53–80, 139–160; West, "The Colorado Strike," Special Report of U. S. Com. on Ind. Rel., 1915; Shaw, "Closed Towns," *Survey,* Nov. 8, 1919, 38; Hard, "What the Miners are Thinking," *New Republic,* Nov. 12, 1919, 324; Hard, "A Class Policy in Coal," *New Republic,* Nov. 19, 352–355.

[26] Willoughby, "The Individual and the State," *Amer. Pol. Sc. Rev.,* VIII: 2.

[27] Williams, "An American Town," Pt. II, Ch. XI.

[28] *Ibid.,* Pt. I, Ch. IV.

lective life of the community, it becomes an expression of what serves the interests of a dominant class. Second, instead of law being that whereby a man maintains himself against a "grasping" man, it is that by which the grasping corporation prevails over the citizens. The functioning of the law in defence of the self-reliant citizen has been impeded by the development of the laws' delays,[29] and by the increase of court costs and fees and of the expense of counsel.[30] The wealthy and well-to-do classes still have the means to get legal justice while the working masses have not, so that they are at a disadvantage with, often at the mercy of, the propertied classes whenever the law must be invoked to get justice.[31] The increasing disrespect for law is not a disrespect for law functioning properly but for law when it functions on behalf of propertied classes and contrary to the interests of non-propertied classes and individuals.

The functioning of a constitutional government depends in the last analysis on respect for law as the instrument of justice, for the essential fact in constitutional government is that it is a government under law. President Goodnow makes this very explicit: "What is it now that we mean by constitutional government? How does it differ from the other forms of government which the history of the world exhibits? . . . By constitutional government is meant, in the first place, a government which, as opposed to what may be called personal government, is based not on the temporary caprice and whim of those who possess political power, but which, on the contrary, is carried out in accordance with rules so clearly defined and so generally accepted as effectively to control the actions of public officers. Constitutional government is then, in the first place, a government of laws and not a government of men."[32] What are the social-psychological facts implied in this distinction? A government of laws implies an attitude of subjects to law which the subjects of a government of men do not possess.[33] In a government of men the authority of a ruler depends more on his personality than in a government of laws, particularly on his domi-

[29] Smith, "Justice and the Poor," Ch. IV.
[30] *Ibid.*, Chs. V–VI.
[31] *Ibid.*, 33.
[32] Goodnow, "Principles of Constitutional Government," 1–2.
[33] See the analysis of the difference between the German and the Anglo-Saxon attitudes to law in the chapter entitled, *The Conflict of Political Attitudes and Ideals.*

nating power, and that of the men he controls, in the interest of his domination. If the state originated in conquest and despotic control by a conquering group,[34] domination was assuredly the essential fact in the formation of the state. In the ancient despotisms, the power of the despot depended on his personal dominating power. If he was strong and commanding, his power was absolute. Thus it is said of the Egyptian Pharaoh, Amenemhet I, 2000–1970 B. C.: "He ruled in absolute power; there was none to offer a breath of opposition; there was not a whisper of that modern monitor of kings, public opinion, an inconvenience with which rulers in the Orient are rarely obliged to reckon, even at the present day. With a man of strong powers on the throne, all were at his feet, but let him betray a single evidence of weakness, and he was quickly made the puppet of court coteries."[35] Consequently kings exaggerated their dominating powers by assuming an extreme expression of domination and were pleased by exaggerated expressions of submission in others. A Roman emperor assumed a ferocious expression and ordered a menacing and terrifying expression to be given to his statues. The Egyptian Pharaohs had themselves sculptured with the impassive calm of the mighty man who is far above the necessity of seriously considering any opposition to his will.[36] At the present day, under any form of government, an official with a personality of dominating power is able to carry through financial, industrial or political plans where a man lacking such power would encounter formidable opposition. In the ancient despotisms, the people were kept in fearful submission by the fear-inspiring beliefs of a theology and ritual in charge of a priesthood allied with the despot; by arbitrary and fearful punishments meted out to resisters, causing constant apprehension among those tempted to voice their resentment; and by a habit of submission fostered by keeping the people in a condition of poverty and ignorance and servitude.

A government of laws shows a similar far-reaching social-psychological basis. A government of laws is due essentially to an attitude of subjects to law which makes such a government possible. It is an attitude that insists on all, high as well as low, obeying the

[34] Oppenheimer, "The State," 52–78.
[35] Breasted, "A History of Egypt," 235.
[36] *Ibid.*, 120, 306, 321, 354.

law of the land. In England the Constitution developed as the result of efforts to curtail the autocratic power of the ruler, and compel him to obey the law of the land. Consequently the English form of government is a limited monarchy; the Crown is regarded as having all powers not expressly withheld in the Constitution.[37] This form of government differs essentially from that of the United States, the Constitution of which was "based squarely on the idea of popular sovereignty."[38] The Constitution was made by a people who had renounced their ruler. It was regarded as an expression of the popular will, and provided that the organs of government should exercise only the powers given them in the Constitution.[39] However, propertied classes were influential in the constitutional convention, which framed certain provisions of the Constitution in a way that made the judiciary a bulwark of propertied classes against possible control of the legislature by a non-propertied majority;[40] and this role of the judiciary has involved it in questions foreign to its proper function.[41]

A government of laws, as contrasted with a government of men, diminishes apprehension as to the behaviour of the governing body by defining the conditions under which subjects may exercise freedom of speech and action without fear of despotic interference, though in the leading constitutional governments this legal definition of freedom is not explicit.[42] A dominant class may repress it in the interest of its dominance. A government of laws also diminishes the need of the exercise of dominating power on the part of officials in order to maintain their position, because their tenure and duties are defined by laws which are generally respected. The more impulsive aspects of political behaviour are thus eliminated by the legally established routine. As a matter of fact there were customary regulations of the behaviour of rulers long before legal regulations; but these customs were strengthened by explicit legal endorsement. Thus it was that the English judiciary developed the English common law out of custom, by affirming custom often in opposition to the royal wish, which made the judiciary the

[37] Goodnow, *op. cit.*, 85.
[38] *Ibid.*, 85.
[39] *Ibid.*, 89.
[40] Beard, "An Economic Interpretation of the Constitution of the United States," 157–161; Beard, "The Supreme Court and the Constitution," Chs. II–IV.
[41] Goodnow, *op. cit.*, 267–268.
[42] *Ibid.*, 225.

traditional bulwark of a government of laws.[43] A government of laws also facilitates the adjustments necessitated by the class conflict, for the class rivalry may take the form of a rivalry of political parties, under laws that provide for the free action of such parties.

In a democracy with majority rule, the sanction of law depends in the last analysis on the might of the majority. This might is not necessarily intelligent; it means, in the last analysis, superior force. The general sentiment for majority rule is due: (1) to the long struggle against minority rule and the ultimate replacing of the force of the propertied minority by the force of the majority; (2) to the general belief that while the action of the majority is not necessarily wise, yet in a government of the people and for the people, it is more to be trusted than a minority, no matter how wise; (3) to the common man's sense of the power of the majority and his willingness to abide by its decisions.[44] Majority rule is conducive to social order, wherefore a propertied minority accepts it as, from the point of view of its class interests, having some merit, and aims to maintain control of the situation by controlling the majority. Because the majority of voters are non-propertied, the propertied minority feels an apprehension for the security of its property rights in a government chosen by the majority, and justifies the measures taken to maintain its traditional control of government on the ground of their necessity in a state where the majority rules. It regards these measures as necessary for its protection against an "overbearing majority," as James Madison called it.[45] The non-propertied masses in the United States have not yet awakened to the significance for their interests of the rule of the majority. For the most part they acquiesce in the traditional political control of propertied classes.

In a state with universal suffrage and majority rule, and in which the majority is non-propertied, the propertied classes cannot, even from the standpoint of class interests, safely assume their power permanently to control the non-propertied. Business men of the progressive type realize that the non-propertied majority must no longer be left in ignorance of its responsibilities as the final reposi-

[43] See the chapter entitled, *Psychological Implications of Interpretations of Private Rights.*

[44] De Tocqueville, "The Republic of the United States of America," II:269, 275–283; Bryce, "The American Commonwealth," II:322.

[45] *The Federalist,* No. X. Beard, "An Economic Interpretation of the Constitution of the United States," 157.

tory of political power. One of these business men, Edward A. Filene, Director of the Chamber of Commerce of the United States, writes: "The formation of the American Labour Party, and the platform adopted by it in New York and Chicago, cannot be denied their significance. They aim to assert labour's authority in the political field, as in the economic, and to make it prevail there. In view of the heavy majority by which employés outnumber employers, the sweeping accession of power this party would win, if the rank and file gave it support at the polls, is quite obvious.

"Even if the American Labor Party should appear but feeble in votes, one must remember that all it needs to acquire is a balance of power, in order to make itself strong in our national Congress. . . .

"Plainly there is danger in sight if the control of legislation shall come to labor with a feeling still extant of wrongs endured and of grievances undischarged, and yet with no new factors of responsibility admitted to the equation. . . .

"How shall we set about to inspire in labor a larger sense of responsibility? I know of but one way, and that is to give labor a larger actuality of responsibility, to let employees feel and know that they are not merely being 'managed' but are also sharing in the tasks of management. The power that wrings by force a concession from an employer is seldom followed by any manifestation on the employees' part that they hold themselves accountable for the success of that concession in actual practice. On the contrary, the power that leads to a sense of responsibility is the power that . . . by being possessed of reasonable rights of initiation, acquires by unavoidable sequence a human interest in, and a responsibility for, the success or failure of its conclusions." [46]

Contrasted with this progressive attitude is the reactionary business attitude. From discussions and arguments with men of reactionary views the attitude appears something like this: In the first place, on the economic side the long absorption in the effort to make money in a certain business results in a mesh of habits and attitudes that determine the business behaviour. Students are apt to make the mistake of thinking that the business man is always consciously reasoning, in his business and political behaviour, from the point of view of his own business interests. This is untrue.

[46] Filene, "The Shop Committee," *Current Affairs*, Mar. 17, 1919, 6.

It is difficult to get many business men to talk seriously on business or political problems because it is difficult to get them to *think*. In his own business he has fallen into the habit of acting without reasoning, according to habit (he calls it a "second sight"), and he is apt so to act in politics. Now in business when an intellectually-in-earnest young employé proposes any change in the business, the conservative business man, because of this averseness to thinking, because of his addiction to habit, is not apt to take the proposal seriously, and the same is true of his attitude to a political reform. But in his business he is boss and the proposal of the young fellow goes no further. Without any effort on the part of the manager to dominate the situation the matter is simply dropped. It is dropped in virtue of his recognized position of authority, owing to which it is not usually necessary for him to exercise domination. It is dropped without any particular discussion as to its merits. But in politics he does not occupy the same position of authority. And, unless he is indifferent to the issue, he is forced to become reactionary and to join in an attempt to dominate the political situation.

What is his motive when he thus becomes reactionary? It is something like this. He realizes that, in a political democracy with nominal majority rule, the propertied minority has controlled the political situation up to the present time. He also realizes that the non-propertied majority has become more intelligent as to the fact of this minority rule and as to what constitutes its own interests, in spite of the efforts of the propertied minority to control its political thinking and action. If he is a man of any intelligence he realizes further that, in the long run, the non-propertied majority is going to try to get, through political action, the reforms that it wants in economic relations and gradually will succeed. But his impulse is to dominate the situation and retard the success of this movement. Reactionaries differ in their attitudes. The most conservative and dominating will retard the movement just as far as possible and "will fight to the last ditch," all the time planning, if the reform appears to be inevitable, to "beat the other side to it" and make it as innocuous as possible. This attitude justifies itself with the secondary explanation that "Progress is an evolution. We have been going too fast. We must put the brakes on now and you ought to help us." The prestige of the idea of evolution

is invoked as a *secondary explanation* of a reaction that is essentially an instinctive impulse of domination. The idea follows the reaction merely as an excuse and is not a vital part of the motive, and for this reason is called a secondary explanation. But it may serve to impress others that the motive is justified. Those who are not keen enough, or who lack the social-psychological training that is necessary to detect the real motive of the reactionary behaviour may let the explanation cover up the real motive, and may assent to the behaviour because of the prestige of the explanation.

The less conservative and more intelligent reactionary type is less instinctive in its behaviour. In addition to the instinctive impulse to dominate the situation, which does not carry this type so far as to fight to the last ditch, there is the theory that "if the majority is to rule let it show its power to rule, and let it show that it is intelligent enough." The contention is that a particular act of social legislation ought not to come until the majority intelligently wants it. "We ought not to let a few reformers put this thing over." This type will support a deceiving propaganda on the ground that if the more intelligent of the public who are the victims of such a propaganda have not the intelligence not to be deceived, they lack the intelligence that is necessary to make the law, if passed, effective for the public welfare. If they can be deceived by propaganda, they can be deceived by politicians in administering the law. This type of reactionary at least is more intelligent than the other type; the justifications of the attitude are more than mere secondary explanations. Unlike mere excuses, they raise a question as to the necessary social-psychological basis of social legislation. But the reactionary of this type is distinguished from the progressive by the fact that, though the reactionary urges the necessity of popular intelligence as a basis of effective legislation, he is *opposed* both to the *perfectly free education* which is necessary in order to increase popular intelligence, and also to those reforms in industrial relations advocated by a progressive like Mr. Filene that look to the creation of popular intelligence in the course of industrial relations. That is, he is essentially reactionary in that he is opposed to measures that are necessary in order to make men intelligently progressive.

Reactionaries generally assume, though they may not publicly admit it, that property-owners should "run the country" and that

the way for wage-earners to get political power is by becoming property-owners.[47] At the same time, they are conscious of the fact that men do not become property owners as easily as formerly. They are less and less able to escape the argument that the wages of labour generally are such that workmen could not, even with ideal economy and self-restraint, accumulate any considerable savings. Only the extraordinary workman who rises to a superior position can become a property owner. Wherefore the assumption that wage-earners may become property-owners is contrary to the actual conditions, and employers are coming to realize that workmen are awakening to this fact, and are seeking political power by organizing. And workmen realize that their *political* strength, as far as this depends on numbers, is rapidly on the increase. Employers who candidly face these facts of the working class consciousness are uneasy with respect to the permanency of their political control.

The progressive political attitude of employers favours governmental measures that facilitate co-operation of classes for the public welfare. The reactionary political attitude seeks the maintenance by force of the control over the non-propertied majority by the propertied minority; and this is one motive for the hearty support given by many employers in the United States to organizations of former soldiers, and for their support of compulsory military training. The military class always has been the ready servant of dominating propertied classes. The alternatives of the co-operation of classes for the public welfare (which co-operation probably would eventually so equalize the distribution of property as to do away with the distinction between the classes as we now have it) are the development of a militarism [48] for the repression of non-propertied class, or, if this is nipped in the bud, an increasingly bitter class struggle.

The first effect of a realization on the part of the small-propertied and non-propertied classes of a class control of government that is against their interests is a distrust of government as such.

[47] Croly, "Progressive Democracy," 381–382.

[48] Those who are incredulous as to the ease with which a militarism may develop in a "free country" are evidently unacquainted with the arbitrary, illegal and often brutal repression of legal meetings of resisting workmen by city and state police and soldiers, in the United States, in 1919, reference to which will herein-after be made. Instances of similar ruthless military domination occurred in the British Empire. See "The Peril of the Military Mind," in the London *Nation*, Dec. 20, 1919, 412.

The distrusting population does not immediately constitute itself a distinct class seeking to wrest control of the government from the controlling class. The first tendency is not a tendency to a vigorous class conflict under governmental forms, with acquiescence in the control of the victorious class for the legal period, followed by another conflict under legal forms, but is a tendency to a disintegration of government. The awakened population, inert and without leaders as a distinct class, comes to distrust government altogether. It is this psychological condition that is an essential cause of that individualistic attitude toward governmental regulation of industry, of organized labour and other awakened sections of the population in the United States at the present time,[49] which reformers find to be an obstacle to the improvement of industrial conditions by governmental action.[50] Before we can discuss the question as to what functions the democratic state ought to assume, we must know what is the political attitude of the people in order to know whether there are psychological guarantees that laws in furtherance of desirable functions can be enacted and enforced.[51]

The individualistic attitude of organized labour in the United

[49] Another cause is the traditional individualistic attitude of the propertied and controlling classes in the United States, surviving from England (Pound, "The End of Law as Developed in Juristic Thought," *Harvard Law Review,* XXX:207), and confirmed by the economic freedom of the new world.

[50] Professor W. F. Willoughby writes: "It has now been a matter of something over twenty-five years that I have been earnestly interested in the great movement for the improvement of industrial conditions and the betterment of the conditions of labour. . . . I believe that progress has been achieved and that a further advance is inevitable. . . . It is when, however, I look back on the tremendous efforts that have been put forth to bring about these few and isolated achievements . . . that I am impressed with the fact that something must be radically wrong. . . ." He believes what is wrong is that "Back in their mind the American people are still dominated by the dogmas of laissez-faire and individualism as preached by the Manchesterian and utilitarian schools of the middle nineteenth century. They still are influenced, though often unconsciously, by the doctrine that all resort to the state is to be deprecated." (Willoughby, "The Philosophy of Labor Legislation," *Amer. Pol. Sc. Rev.,* VIII:15–16.) As far as I have studied this individualism, however, many men who oppose labour legislation know nothing about laissez-faire, and those who do, use it merely as a justification of an attitude that is more fundamental than the idea used to justify it. Most men know nothing about economic doctrines and care less. From impressions they have received they believe that the state and national governments are extravagant and inefficient, that officials are, for the most part, creatures of political organizations dominated by "politicians" who "are in it for what they can get out of it," who care nothing for the masses, and are only too eager to serve corporate interests. Believing as they do, they distrust the government's efficiency and disinterestedness. The individualistic attitude is based, therefore, not on doctrine but on impression and belief.

[51] See the chapter entitled, *Psychological Implications of the Theory of Natural Rights.*

States has been confirmed by certain conditions which made the progress of labour through governmental action extremely difficult. "American trade unions are unique in that, of the labour movements in the whole world, with the sole exception of the French Confederation Generale du Travail, they make the least demand upon the government along the line of legal protection to labour. Owing to the constitutional separation of powers between the executive, the legislature, and the judiciary, and especially owing to the existence of four dozen different state governments, each a law unto itself, American labour leaders have for the most part become convinced, after long and discouraging experience with unconstitutional and unenforceable labour laws, that only through trade unions can the wage-earner secure protection worthy of the name. . . . It is for this reason that it (the American Federation of Labor) desires to have trade union members in all the public offices dealing with labour, and, on the whole, remains indifferent to the consideration of efficiency in the administration of labour laws. . . .

"When employers discovered that they could not place complete reliance upon the executive officers of the democratically controlled state, they turned to the courts for protection. The latter responded by developing a code of trade union law, which, having for its cornerstone a resurrected doctrine of malicious conspiracy as applied to labour combinations and, for its weapon, the injunction, proceeded to outlaw the boycott, to materially circumscribe the right to strike, and even to turn against labour the Federal statutes which had been originally directed against railway and industrial monopoly.

"The height of this development, which had begun in the eighties and continued during the nineties, was reached in the well-known Danbury Hatters' case, passed upon by the United States Supreme Court early in 1908.[52] The Sherman anti-trust law, of 1890, had been applied in labour cases in the past, notably in the Pullman boycott case, but never in a civil suit for damages against the individual members of a trade union. In this case the significant thing was not that a few union leaders were to be punished with short terms of imprisonment, but that the life savings of several hundreds of the members were attached to satisfy the stagger-

[52] For the several stages of this case, see Loewe v. Lawlor, 208 U. S. 274 (1908); Lawlor v. Loewe, 209 Fed. 721 (1913), 235 U. S. 522 (1914).

ing triple damages awarded the employer under the anti-trust law. Close upon the outlawing of the boycott in the Danbury hatters' case, came the Adair decision,[53] which in effect legalized 'blacklisting' of employés by employers. A few months later, the courts dealt another blow to the boycott in the Buck's Stove and Range case, when Gompers, Morrison, and Mitchell were sentenced to imprisonment, ranging from six months to one year, for disregarding the court's injunction against the boycott of the St. Louis firm." [54] [55]

The most direct action taken by the courts in the protection of employers against their employés is the use of the injunction against trade unionists.[56] Consequently organized labour has sought to limit the enjoining power of the courts, while employers' associations have vigorously defended it; [57] and these conflicts have developed bitter feeling between capital and labour in different states.[58] The struggle between organized capital and organized labour also has centred around the question whether the Sherman Anti-Trust law should be applied to labour unions; and the Clayton Anti-Trust Act, which explicitly exempted labour organizations from the category of illegal combinations in restraint of trade, was hailed by labour as giving labour a new vantage point in its struggle against capital.[59]

Labour's distrust of the government and the averseness of the American Federation of Labor in the past to governmental regulation of industry is due to the fact that the government has been largely in the control of propertied classes and the law therefore favours those classes. However, the various groups into which labour is differentiated by distinct interests are beginning to realize that they have a common purpose,— the securing of control of gov-

[53] Adair v. U. S., 208 U. S., 161 (1908).

[54] For the several stages of this case see 35 Wash. L. Rep. 747 (1908); 36 Wash. L. Rep. 828 (1908); 37 Wash. L. Rep. 706 (1909); 221 U. S. 418 (1911); 233 U. S. 604 (1914).

[55] Commons and Associates, "History of Labour in the United States," II: 529–531.

[56] Reports of the United States Industrial Commission, 1901–1902, IV: 28, 145–147; V: 5, 136; VII: 118, 611; XII: 38–40, 96, 143, 250, 351, 352; XVII: Ch. IX; XIX: 885–890; Commons and Associates, *op. cit.*, II: 503–509.

[57] See, for instance, the resolutions passed by the National Association of Manufacturers of the United States at their Eighteenth Annual Convention, Detroit, May, 1913.

[58] For instance, see an account of such a conflict over an injunction bill in Illinois in an article entitled, "Plutes see Tools Beat Labor's Bill," *The New Majority,* April 19, 1919, 1.

[59] Gompers, "The Charter of Industrial Freedom," *American Federationist,* XXI: 962–972.

ernments in order to remove the common obstacles to the advancement of their distinct interests. This growing sense of a common purpose was accentuated by the decision of the United States Supreme Court in *Hitchman Coal and Coke Company v. Mitchell and others,* which enjoined labour leaders from organizing the employés of an employer against his will.[60] This decision gave an impetus to the trend toward a political labour movement, much as did the Taff-Vale decision in England — which held a union liable for damages to property during a strike by any person who can be deemed to be acting as the agent of the union.[61] This decision "led to the formation of the British Labour Party, the election of labour representatives to Parliament and the passage of the trades disputes act, which protected the unions from attack in the courts."[62]

An inquiry into the reasons for the adverse attitude of the courts to labour in its struggle with capital takes one into problems of judicial attitudes, of the nature of law and of sovereignty, and of the relation of law and sovereignty to the class struggle. What is said on these points in the remainder of the present chapter is introductory to what follows in the succeeding chapters.

The sources of law, as the judge receives and interprets it, are statutes, positive rules of law, analogous decisions, and principles of public policy.[63] Statutes are enacted by the legislature, which is more or less responsive to the various phases of public opinion, including the class struggle. Positive rules of law and analogous decisions are less immediately affected by the class struggle than are statutes. It is through its effect on principles of public policy that the class struggle immediately affects judge-made law. For, in making his decisions, the judge follows closely the letter of the law where this is possible; only where it is impossible does he finally consider principles of public policy, and feel the influence of public opinion and the class struggle. Of the method of judicial thinking it is said: "When a judge has before him the task of making a decision upon particular facts, the first question to be determined is whether there is some statute, positive rule of law, or previous

[60] For a discussion of this decision see the chapter entitled, *The Conflict of Judicial Attitudes.*

[61] Webb, "Industrial Democracy," xxiv–xxvii.

[62] Fitch, "Labor and Politics," *Survey,* June 8, 1918, 289.

[63] Lincoln, "The Relation of Judicial Decisions to the Law," *Harv. L. Rev.,* XXI: 122.

authoritative decision which is exactly applicable. If so, he goes no further, except in the rare cases where a decision is overruled because it is itself founded on clear error or is opposed to certain principles of public policy. If, however, no statute or positive rule of law is exactly applicable and previous decisions can be distinguished, there remain two sources which may influence the judge in his decision. These are analogous decisions and public policy. Where the analogy with a previous decision is close, a judge will be guided more by the analogy and less by an independent consideration of principles of public policy. Where, however, there is no close analogy, and especially where two more or less remote analogies lead to opposite results, a judge is driven to a consideration of those principles, since he must on some ground render a decision.

" It is, therefore, not surprising that there should be differences in the decisions of the courts of various jurisdictions not due to legislative enactment. Wide differences are to be found in the sources of law aside from those created by statute." [64]

When a case arises that requires consideration of principles of public policy, whether a judge will permit himself such consideration or will endeavour by superficial analogy to reason deductively from positive rules of law or previous decisions will depend on his attitude.[65] Conservative judges regard the common law as a complete body of law, and, therefore, emphasize deductive reasoning and profess a distrust of considerations of public policy. This attitude implies a conception of sovereignty as mere obedience-compelling power and of the judicial function as one of " laying down the law." Hence the emphasis on the common law as a perfect law and the tendency to belittle statute law and the effect of public opinion on law. This view of the common law is thus stated: " The commonly accepted view of . . . the common law, as an abstract ideal, is that it is a complete body, existing from time immemorial, and therefore the same in every jurisdiction except in so far as it is altered by statute. This law is known or discovered by the judges. They interpret the law, and the reports of their decisions are authoritative evidence of it." [66] The adverse attitude of the courts to labour described in preceding paragraphs is

[64] *Ibid.*, 124–125.

[65] See the chapters entitled, *The Conflict of Judicial Attitudes,* and *Judicial Attitudes and the Nature of Law.*

[66] Lincoln, *op. cit.*, 120.

due to the prevalence among judges of the conservative judicial attitude. Conservative judges refuse to recognize that, whereas a dominant class has had unquestioned political control in the past, and law has expressed the will of that class, and sovereignty has been the power of that class to compel obedience, resisting classes have arisen, and a class struggle has developed, so that a dominant class can no longer absolutely enforce its will; wherefore law has become an obedience-invoking compromise, so that judges must give legislatures authority to work out compromises, and must accord first importance to statutes, and must themselves adopt the inductive attitude in interpretations of law.

The inductive attitude, that of the progressive judge, is that sovereignty is not mere obedience-compelling power, that there is a class struggle and the law must invoke obedience, that the law is incomplete and practical, "everywhere in process of growth, and continually affected and altered both by legislative enactments and by the making of judicial decisions." [67] This progressive attitude to law is seen, for instance, in Judge Hand's attitude in the interpretation of the Fourteenth Amendment, in connection with statutes limiting the length of the working day. The interpretation, he holds, is not a matter of deduction from a universally recognized legal principle, nor even from a universally held economic principle. "In short, the whole matter is yet to such an extent experimental that no one can with justice apply to the concrete problems the yardstick of abstract economic theory." [68] Therefore, the attitude of the judge should not be deductive but inductive and, in accordance with this attitude, he should give legislatures a free hand in experimentation with labour laws. "He would be as rash a theorist who should assert with certainty their beneficence, as he who would sweep them all aside by virtue of some pragmatical theory of 'natural rights.' The only way in which the right, or the wrong, of the matter may be shown, is by experiment; and the legislature with its paraphernalia of committee and commission, is the only public representative really fitted to experiment. That the legislature may be moved by faction, and without justice, is very true, but so may even the court. There is an inevitable bias upon such vital questions in all men. . . .

"It is, therefore, in no sense as patrons or opponents of the wis-

[67] *Ibid.*, 121.

[68] Hand, "Due Process of Law and the Eight-Hour Day," *Harv. L. Rev.*, XXI: 507.

dom of such efforts, that the courts may approach such laws. . . . Before the court the question is political, not economic; it is the question of where the power to pass upon such subjects should rest, . . . If the subject be one already fairly within the field of rational discussion and interest, it would seem to be for the legislature." [69] According to this view the class struggle and the measures suggested for adjustment of class conflicts become the subject of " rational discussion and interest " and thereby become proper legislative projects, and the courts should interfere as little as possible. That is, the people are conceived as possessing the power intelligently to direct, through their representatives, the class conflict, and to adjust conflicting interests for the public welfare, and this intelligent directing power is the sovereignty of the state. Wise laws for the direction of industry and for the health and prosperity of all classes are the outcome of its exercise.

Nevertheless, the preference for legal tradition, that is, for the common law, prevails among the bench and the bar, with a contempt for statute law. Dean Pound points out that the courts are inclined " to ignore important legislation; not merely deciding it to be declaratory, but sometimes assuming silently that it is declaratory without adducing any reasons, citing prior judicial decisions and making no mention of the statute. In the same way, lawyers in the legislature often conceive it more expedient to make of a statute the barest outline, leaving details of the most vital importance to be filled in by judicial law-making. . . . It may be well, however, for judges and lawyers to remember that there is coming to be a science of legislation and that modern statutes are not to be disposed of lightly as off-hand products of a crude desire to do something, but represent long and patient study by experts, careful consideration by conferences or congresses or associations, press discussions in which public opinion is focussed upon all important details, and hearings before legislative committees. It may be well to remember also that while bench and bar are never weary of pointing out the deficiencies of legislation, to others the deficiencies of judge-made law are no less apparent. To economists and sociologists, judicial attempts to force Benthamite conceptions of freedom of contract and common law conceptions of individualism upon the public of today are no less amusing — or even irritating — than legislative attempts to do away with or get away from

[69] *Ibid.*, 507–508.

these conceptions are to bench and bar. The nullifying of these legislative attempts is not regarded by lay scholars with the complacent satisfaction with which lawyers are wont to speak of it. They do not hesitate to say that 'the judicial mind has not kept pace with the strides of industrial development.' They express the opinion that 'belated and anti-social' decisions have been a fruitful cause of strikes, industrial discord, and consequent lawlessness. They charge that 'the attitude of the courts has been responsible for much of our political immorality.'" [70] It is evident that the point at issue is not merely a question of the nature of law but of sovereignty. Is the sovereignty really vested in the people and exercised through their representatives, or is it vested in a bench of judges and exercised, regardless of the class struggle and other processes determining public opinion, as an obedience-compelling power of a legal tradition of past ages? [71]

Law as command, and sovereignty as obedience-compelling power continue alongside the new aspect of sovereignty as an intelligently directive power. The former is seen in the older function of law as a means of settlement of disputes between property owners. But that functioning of law also has a social-psychological basis requiring investigation. It is seen in a new country the inhabitants of which do not recognize a dominant class, and in which a class struggle has not developed, where disputes that require legal settlement are largely between property owners among whom a high degree of economic equality prevails, and where the law is within the reach of all. For instance, in the early American rural community there was constant litigation between farmers.[72] The decisions in these litigations, if made in a court presided over by a learned judge, might be made strictly according to precedent; otherwise the jury was charged to exercise common sense. "Thus a tree growing on a boundary line raised a dispute as to its proper owner," [73] which was decided according to "common sense," or according to tradition, if the judge was learned in legal tradition; and the man who won a lawsuit exclaimed, as he left the court-room, "I tell you the law is a great thing." The court decision settled it;

[70] Pound, "Common Law and Legislation," *Harv. L. Rev.*, XXI: 383–384 (quoted without the footnotes).

[71] *Ibid.*, 406.

[72] Williams, "An American Town," 57.

[73] *Ibid.*, 27.

sovereignty was obedience-compelling power, and the litigant who won the help of the invincible arm of the state felt the law to be "a great thing." Dean Pound uses this same illustration of the law deciding between disputants as to the ownership of a tree to illustrate a functioning of law not connected with class struggle, and adds that, even when the class struggle began to develop, so that "a new economic order was behind the liberalizing of law throughout Europe . . . for the most part this liberalizing movement did no more than make thoughtful lawyers restive under the arbitrary rules of the strict law. Judges did not dream of finding law otherwise than through authority or through legal reason." [74] In the same way the law of the period of the individualistic property owner in the United States has survived into this present period of increasing struggle against a dominant class, and, as we shall see in a succeeding chapter,[75] has been used on behalf of that class in its struggle to maintain its dominating position over non-propertied classes, with the assumption that the non-propertied classes are in a position of equality before the law with the propertied, so that the law which decided disputes between property owners in the early days is still adequate justly to decide disputes between propertied and non-propertied classes.

Where there is a high degree of equality of opportunity for acquiring property, either among a population that is exploiting the resources of a new country, or among a class of property owners that has long exploited the labour of conventional, submissive working masses, law is restricted as far as possible to the elemental law of community defence — law against assault, theft, etc.,— and to law protecting property rights. As regards property, law becomes the watch-dog of a man's property. He wants it to guard his property but to interfere as little as possible with his acquisition of more property. Wherefore, the attitude to law of the early Americans who were exploiting the natural resources of the country was not so very different from that of English business men who were at the same time exploiting the labour of the working masses of England. In both cases the extreme reverence for law was equalled only by the lack of self-restraint and conscience in the exploitation practised beyond the reach of the law.[76] The reign of

[74] Pound, "Juristic Science and Law," *Harvard Law Review*, XXXI: 1052.
[75] See the chapter entitled, *The Conflict of Judicial Attitudes*.
[76] Croly, "Progressive Democracy," 72, 157–158.

law was so narrowly limited to the protection of property that the national resources, material and human, were left unprotected. It was assumed that it was to the property-owner's interest to conserve material resources and protect human life. But this was one of the justifications that emanated from the dominant class to protect its unrestrained acquisition from the criticism of men who, because not obsessed by instinctive impulses to make money, could discern the actual situation. Thus developed the conflict between those who reverenced law as that which protected property and maintained the existing social order, and those who would use law as a means of collective self-development.[77] The latter were long in gaining an effective hearing. But with the increasing value to nations of their natural resources, and with the increasing intelligence of the human resources and their rising purpose to look after their own self-development, the second function of law is gathering force. Law is ceasing to be conceived as merely a means of maintaining social order, *the* social order, and is coming to be conceived as the means of attaining social justice. For "while social justice depends upon order, order also depends upon the reign of social justice." [78]

[77] *Ibid.*, 426.
[78] *Ibid.*, 226.

CHAPTER III

SOVEREIGNTY AND THE CLASS STRUGGLE

POLITICAL rivalry is essentially a rivalry of economic classes and interests which support political parties for the sake of protecting or advancing their interests, and of party organizations the essential aim of which is to defeat the other party and "keep in power" or "get back to power." Party organizations appeal for popular support by declarations of policies that appear to seek the public welfare.[1] The political control exercised by reactionary capitalistic interests over a party organization may be defied by the "progressive" section of a party leadership, which would use the party for public welfare interests. There sometimes results a division in the party and a struggle between the progressive and reactionary factions for control. If the reactionary faction appears to be hopelessly in control, a new party may form to resist the influence of reactionary propertied interests over the government. If ever a complete history of American politics is written, it will show how a variety of propertied interests — the "slave power," railroads[2] and other public utilities,[3] manufacturing interests,[4] mining interests,[5]— either directly or, if forbidden by law, indirectly gave political parties their financial support in order "to establish a claim on the gratitude of the future administration";[6] in what way these interests were rewarded; and the effect of this mortgaging of the party organization on the for-

[1] The party platform is called "honey to catch flies." (Reed, "The Form and Functions of American Government," 231, 252.) See also Foulke, "Fighting the Spoilsmen," 295–305.

[2] Bryce, "The American Commonwealth," II: 515–516; Stickney, "The Railroad Problem," 14.

[3] Ostrogorski, "Democracy and the Organization of Political Parties," II: 171; Lindsey and O'Higgins, "The Beast," Chs. II–IV, VII–XII.

[4] Hearings before a Subcommittee of the Committee on the Judiciary on Maintenance of a Lobby to Influence Legislation. 63rd Congress, 1st Session, 1913; Beard, "Readings in American Government and Politics," 572–577; Tarbell, "History of the Standard Oil Company," I: 169; II: 146–148; Fitch, "The Steel Workers," 229–231.

[5] West, "Report on the Colorado Strike"; Final Report of the United States Commission on Industrial Relations, 116–150, 307–401.

[6] Ostrogorski, *op. cit.*, II: 353.

tunes of the party. Much of the political influence exerted by propertied interests is secret and never recorded and, therefore, will not be told by the historians except in a general way in the form of inferences from recorded data.[7] Still more entirely secret are the financial and other inducements received and the services rendered propertied interests by individual office-holders. Only very rarely is a public investigation forced which throws light on these secret political processes; and then the investigation is rarely conducted by men who purpose to go to the bottom of the situation,[8] but usually by men whose questions are directed by political motives and not by an honest intent to ascertain the facts.

Legislators in a democracy are elected by the majority or plurality of voters, but, once in office, may fall under the influence of a small minority. This is due to the surpassing influence of reactionary capitalistic interests over legislation and public opinion. As an instance of the influence that may be brought to bear by capitalistic interests, Senator Kenyon, speaking with reference to his bill to regulate the meat-packing industry (a group of monopolistic corporations, which, according to a report of the Federal Trade Commission, had extended their monopolistic control over a great variety of food products, and "have preyed upon the people unconscionably"[9]) declared that the meat-packers had started a propaganda against his bill "the like of which has never been seen in this country."[10] The various corporations that would be affected by the bill had sent letters to their stockholders, in the case of one corporation to 25,000 stockholders, urging them to write their congressmen against the bill.[11] The influence of allied industries and of banking interests was enlisted against the bill.[12] The

[7] California Commission of Immigration and Housing, "A Report on Large Landholdings in Southern California," 1919, 30–31.

[8] As an illustration of the work of one of these rare investigators see *Testimony taken before the Joint Committee of the Senate and Assembly of the State of New York to investigate the affairs of Life Insurance Companies,* 1905.

[9] "Their manipulations of the market embrace every device that is useful to them without regard to law. Their reward, expressed in terms of profit, reveals that four of these concerns have pocketed in 1915, 1916, 1917, $140,000,000. However delicate a definition is framed for 'profiteering' these packers have preyed upon the people unconscionably." (Federal Trade Commission, Report to the President of the United States Senate on Profiteering, June 28, 1918, 3–4; Federal Trade Commission, Report on the Meat-Packing Industry 1918, Chs. I–IV; Federal Trade Commission, Report on the Meat-Packing Industry, 1919, Pt. I: 74, Pt. II: 197, Pt. III: 138; Federal Trade Commission, Report on Leather and Shoe Industries, 1919, 156–164.)

[10] *Congressional Record,* Vol. 58, No. 52, July 23, 1919, p. 3205.

[11] *Ibid.,* 3206.

[12] *Ibid.,* 3206.

meat-packers also aimed to control public opinion by "advertisements running into enormous sums" carried in many newspapers throughout the country.[13] As another instance of the political activity of capitalistic interests, here is an extract from a speech made by Senator LaFollette, showing the pressure that would be brought to bear on the Interstate Commerce Commission by the railroads if the roads were restored to their private owners: "Let me remind Senators that only three or four years ago the Interstate Commerce Commission was besieged for an increase in rates. Upon the hearing held they decided that the increase was not warranted; that the rates were already reasonable. Then what happened? There was turned upon the Interstate Commerce Commission, a quasi-judicial body, such a campaign of assault and contumely as was never before witnessed in the United States.

"Think, Sir, of the chairman of the Interstate Commerce Commission being called out of his bed at midnight and presented with a demand to grant the increases that the railroads wanted! That commission was literally swamped with demands that they grant the increase or resign. I introduced a resolution on the floor asking that communications improperly sent to the commission demanding that they decide in favour of the railroad companies without any adjudication be transmitted to the Senate. . . . On the day they came my desk, and the adjoining desks here were piled full to overflowing. . . . Stock exchanges, commercial organizations, bankers' organizations, real estate associations, had sent these demands. . . . I put these infamous documents . . . into the *Congressional Record.* . . . It took 175 pages to print the demands. . . . One of them was a full-page advertisement by the Illinois Manufacturers' Association. . . . What did that advertisement say? It said substantially this: 'Write your members, wire your members and your Senators, and demand of the Interstate Commerce Commission that they decide the pending application in favour of the railroads.'"[14] In these efforts to control the government in their own interest and contrary to the public welfare, capitalistic interests may not be immediately successful or always successful, but their resources make it possible for them to exert a surprising influence over all classes of officials and to persist in

[13] *Ibid.*, 3206.

[14] Speech of Senator La Follette in U. S. Senate, Dec. 20, 1919, in *Congressional Record,* Sixty-sixth Congress, 2nd Sess., Jan. 26, 1920, 2204.

their efforts until the opposition weakens [15] and they have their will.[16]

This study of a propaganda to influence legislation is a social-psychological study. Not only capitalistic interests but all organizations that seek to influence legislation write letters to men of influence urging them to bring their influence to bear on congressmen for or against legislation, and also seek to influence public opinion. But capitalistic interests have a surpassing influence over legislators because of their wealth power and their masterful leadership, and also over public opinion through their influence over the press. Thus it is that legislators and other officials may be elected by a majority but fall under the influence of a small minority.[17]

The influence of propertied classes over legislation in the United States is not a phenomenon of recent years. It was encouraged by the attitude assumed by the United States Supreme Court early in our history and continued under the protection of the decision in the Dartmouth College case. "It is under the protection of the decision in the Dartmouth College case," wrote Judge Cooley, "that the most enormous and threatening powers in our country have been created; some of the great and wealthy corporations actually having greater influence in the country at large, and upon the legislation of the country than the states to which they owe their corporate existence." [18] Professor Smith comments on the attitude of the Supreme Court that developed under the Dartmouth College decision as follows: "Any government framed and set up to guard and promote the interests of the people generally ought to have full power to modify or revoke all rights or privileges granted in disregard of the public welfare. But the Supreme Court, while permitting the creation or extension of property rights, has prevented the subsequent abridgment of such rights, even when the interests of the general public demanded it. The effect of this has been to make the corporations take an active part

[15] Pound, "Juristic Problems of National Progress," *Amer. Jour. Sociol.*, May, 1917, 731.

[16] As the railroads finally had their will through the enactment of the law passed in February, 1920, requiring the Interstate Commerce Commission to allow them to increase their rates.

[17] For instance, see the Report of the Joint Committee of the Senate and Assembly of the State of New York appointed to investigate the affairs of Life Insurance Companies, 1906, 398–400.

[18] Cooley, "Constitutional Limitations," 6th ed., 335–336, n.

in corrupting state politics. Special legislation was not prohibited. In fact, it was a common way of creating property rights. If a bank, an insurance company, or a railway corporation was organized, it was necessary to obtain a charter from the legislature which defined its powers and privileges. . . . The legislature might refuse to grant a charter, but having granted it, it became a vested right which could not be revoked. The charter thus granted by the legislature was a special privilege. In many instances it was secured as a reward for political services by favourites of the party machine, or through the corrupt expenditure of money or the equally corrupt distribution of stock in the proposed corporation among those who controlled legislation. Not only did this system invite corruption in the granting of such charters, but it also created a motive for the further use of corrupt means to keep possible competitors from securing like privileges. It was worth the while to spend money to secure a valuable privilege if when once obtained the legislature could not revoke it. And it was also worth the while to spend more money to keep dangerous competitors out of the field if by so doing it could enjoy some of the benefits of monopoly. By thus holding that a privilege granted to an individual or a private corporation by special act of the legislature was a contract which could not be revoked by that body, the courts in their effort to protect property rights opened the door which allowed corporation funds to be brought into our state legislatures early in our history for purposes of corruption.

. . . . . .

"The power which the legislatures thus acquired to grant charters which could not be amended or repealed made it necessary for the people to devise some new method of protecting themselves against this abuse of legislative authority. The outcome of this movement to re-establish some effective popular check on the legislature has taken the form in a majority of the states of a constitutional amendment by which the right is reserved to amend or repeal all laws conferring corporate powers. Such constitutional changes provide no remedy, however, for the evils resulting from legislative grants made previous to their adoption. The granting of special charters is now also prohibited in many states, the constitution requiring that all corporations shall be formed under general laws. . . . But even our general corporation laws have been enacted too largely in the interest of those who control our business undertak-

ings and without due regard to the rights of the general public." [19]

A great variety of aggressive special interests are constantly active in politics. This is true not only in the United States but in all capitalistic nations. These interests constitute the vanguard of the dominant political class. This class exercises a dominant influence in the state, legally and also extra-legally, and sometimes illegally. Illegal action is occasionally exposed and the guilty business prosecuted but these occasional set-backs have comparatively little effect on the influence of the dominant class. Its influence is seen in the enactment of statutes that advance its interests,[20] and still more in the prevention of enactment of statutes that are required to protect the public interest where this conflicts with the interest of the dominant class. The fact that special interests have not prevented the passage of a law that is unfavourable to their purposes does not disprove the existence of a dominant class. Said Justice Harlan of the attitude of combinations to the Anti-Trust law of 1890, as interpreted by the United States Supreme Court in 1896: [21] "But those who were in combinations that were illegal did not despair. They at once set up the baseless claim that the decision of 1896 disturbed the 'business interests of the country,' and let it be known that they would never be content until the rule was established that would permit interstate commerce to be subjected to reasonable restraints." [22] And the ultimate result of the opposition of business interests to the law has been its practical abrogation. The opposition was by a dominant class primarily in its own interest, that is, for the sake of private profits; [23] and the result of the growth of monopolistic corporations has been to enrich the few, to diminish the numbers of the middle class,[24] and to swell the ranks of the non-propertied.

[19] Smith, "The Spirit of American Government," 325–329.

[20] Pound, "Juristic Problems of National Progress," *Amer. Jour. Sociol.*, May, 1917, 730.

[21] United States v. Missouri Freight Association, 166 U. S., 290–344.

[22] Standard Oil Company of New Jersey v. United States, 31 Sup. Ct. Reptr., 528.

[23] Federal Trade Commission, Report to the President of the United States on Profiteering, June 28, 1918, 3–4; Federal Trade Commision, Report on the Meat-Packing Industry, 1918, Chs. I, II, IV; King, "The Wealth and Income of the People of the United States," 218; Report of the Commissioner of Corporations on the Petroleum Industry, 1907, Pt. II: 535–542; United States of America vs. Standard Oil Company of New Jersey, Brief of Facts and Argument for Petitioner, I: 165–498; Tarbell, "The History of the Standard Oil Company," I: Chs. One-Eight; II: Chs. Nine-Sixteen; Report of the Commissioner of Corporations on the Steel Industry, 1911, Pt. I: 342–347.

[24] King, *op. cit.*, 231.

The hypothesis of a dominant class was enunciated long ago by Harrington [25] in the dictum that power goes with ownership. In his time it was land ownership, today it is not usually land ownership and not strictly ownership but control of capital. The financial power of a dominant class is maintained not merely through ownership but much more through control of other peoples' money.[26] The "social order of the modern state is not a labour order but a capitalist, and upon the broad truth of Harrington's hypothesis it must follow that the main power is capitalist also." [27] This capitalistic order is one in which the funds of a great mass of depositors and investors are controlled and used by a comparatively few men. The stock-holders and bond-holders of a corporation have no voice in its management.[28] They are scattered throughout the length and breadth of the land and votes for directors are as formal as votes for candidates for minor state offices. The mass of security-holders and depositors never see the businesses they own, or which have borrowed their money from banks. They never see the conditions under which men are employed in those businesses.[29] They have no interest in the businesses except to receive their dividends or interest. If there is an increase in dividends, they do not know how it was earned and it does not occur to them to inquire. Under these conditions it is as easy for large stock-holders and for banks to get control of directorates,[30] as it is for politicians to get control of a party organization. Practically self-perpetuating directorates thus become the inner capitalistic organization of society. Furthermore, many directors have a great variety of interests so that they cannot give close attention to any one business, and others are directors merely because of

[25] Harrington, "The Commonwealth of Oceana" (first published in 1656), with an Introduction by Morley, 15–20.

[26] Brandeis, "Other Peoples' Money and How the Bankers Use It."

[27] Laski, "Authority in the Modern State," 88, 38.

[28] Brandeis, *op. cit.*, 59–60.

[29] Burgess, "The Function of Socialization and Social Evolution," 137–174; Dewey and Tufts, "Ethics," 497–503; Page, "Trade Morals, Their Origin, Growth and Province," 128–130; Fite, "Moral Valuations and Economic Laws," *Jour. Phil. Psy. Sc. M.*, XIV:10–16; Veblen, "The Modern Point of View and the New Order," *The Dial*, December 14, 1918, 543–547.

[30] Brandeis, *op. cit.*, Chs. II–V; Moulton, "Principles of Money and Banking," 455; Mitchell, "Business Cycles," 33–35; Davenport, "Economics of Enterprise," 399–400; Veblen, "The Industrial System and the Captains of Industry," *The Dial*, May 31, 1919, 557; Report of the Committee to Investigate the Concentration of Control of Money and Credit, 1913, House of Rep., 62nd Congr., 3rd Sess., Report No. 1593.

large holdings they have inherited, without any personal force. The result is a tendency to shift the power and responsibility in a corporation to some active head, usually a man of dominating personality, whose aggressiveness is stimulated by the responsibility vested in him, and who regards considerations of the welfare of the public, and humanitarian considerations of workmen as "idealistic" and impracticable. He knows that the stock-holders and directors are interested solely in dividends and in the sound condition and development of the business. And because they are the ones to whom he is responsible, his main interest is to run the business in a way satisfactory to those who have property interests therein.

The management of a business, from the masterful heads down to the foremen, tend to accept the attitude of the masterful heads. I say *tend to* because this process of social suggestion is always subject to deflection owing to differences in personal disposition. And these deflections or variations are of importance, as will be shown in a succeeding volume. But the prevailing aspect of the system is one of the acceptance by subordinates of the attitudes of those above them in authority. Now the mass of workmen come into contact with this hierarchy of officials and with the hinterland of stock-holders and bond-holders only through the foremen. That is, their contact ends there. If organized, the officials of the labour organization may on certain occasions come in contact with officials of the business; and some businesses have transferred the "hiring and firing" function to employment managers. But the majority of workmen are unorganized, and the main contact of workmen with a management remains through the foremen. The attitude of workmen to a corporation, and to the capitalistic organization of society is determined, then, more by the attitude of foremen to them than by any other one thing.[31] That is the *contact* that determines what instinctive impulses are to be repeatedly stirred in them in the course of their relations with the corporation and what attitude is to be developed is the daily contact with the foremen. But, as a rival of this influence of the masterful head that acts through subordinates and finally through foremen on the mass of workmen and tends to develop in them an attitude of submission to the management, there is the influence of labour leaders,

[31] Tead, "The Importance of Being a Foreman," *Industrial Management*, June, 1917, 354.

and all those other influences of the labour movement that awaken in workmen impulses of their original nature that are suppressed in the course of their contact with and submission to foremen.[82] The labour movement thus becomes the workman's means of satisfaction of suppressed instinctive impulses, outside the economic order.

We have, then, this capitalistic organization: A great mass of bank depositors and another great mass of security-holders provide the capital for employing a great mass of workmen whom they never saw and in whom they have no interest. The interest of depositors and security-holders is in their interest and dividends, hence they readily acquiesce in the type of management which, without unfavourable publicity, insures the most satisfying returns on their capital. The mass of workmen are used for producing property income, without an effective voice in the management of business and, therefore, without power to protect themselves from evil working conditions or to order their lives for self-development. Managements are in a position, because of the ignorance and powerlessness of bank depositors and security-holders, to manage business in a way often to bring large profits, sometimes enormous profits, to those on the inside, at the expense of workmen and consumers and, often, of investors; to exert an immense influence in politics because of the wealth power they represent; and to make themselves the controlling class in industry and the state.

From the preceding description it is possible to gain some conception of the main lines of cleavage in the economic organization. In the forefront is the industrial and financial leadership, with its reactionary, masterful figures and its progressive, more thoughtful figures, its clash of economic interests, which, however, unite under the menace of a non-propertied resistance, or unite, when occasion arises, to control the government and to enact legislation that furthers their common purposes. Behind this vanguard is the great mass of depositors and investors. Here also is a clash of interests. There are those who by disposition and environmental influence think only of interest and dividends and support a reactionary leadership; others who, more sympathetic and intellectual, or more favourably situated for learning the truth, oppose a reactionary leadership. In addition to these depositors and investors that constitute the main body of the propertied classes, there are others

[82] Tannenbaum, "Labor Movement Psychology," 172.

whose sympathies lie with the non-propertied classes and who, therefore, act with those classes politically.[33] Furthermore, the agrarian class, a small-propertied class, always has had a distrust of aggressive capitalistic interests, but, in its political action in recent years, has usually confined itself to choosing between candidates which represented, from its point of view, the lesser of the evils of capitalistic control. What happens when an agrarian class really determines to wrest political control from party organizations that represent aggressive capitalistic interests is shown by the history of the Nonpartisan League in the West.[34] The tendency of an aggressive movement of an agrarian class against capitalistic control is to affiliate the agrarian class for political action with the non-propertied classes.

Propertied classes are differentiated into reactionary and progressive sections, wherefore the problem of a dominant class is, in the last analysis, a social-psychological problem. One of the most neglected parts of the problem is that of the attitude of the mass of depositors and security-holders to the capitalistic system of which they are a part. Evidently any progress in the economic system must depend, not altogether but in part, on the attitude of the ultimate owners to proposed changes. Yet appeals are issued to these ultimate owners with little knowledge of what their actual attitudes are. Consequently appeals are aimed at their ultimate impulses, as human beings with an instinctive capacity for sympathy and intelligence,[35] but lack the definiteness and cogency which a knowledge of the actual attitudes of the ultimate owners would make possible. We know somewhat more about the attitudes of industrial and financial management. But no part of the great

[33] For instance, Warren S. Stone, Grand Chief of the Brotherhood of Locomotive Engineers, said in an address before the All-American Farmer-Labor Co-operative Congress: "The railroad brotherhoods have $42,000,000 now on deposit in banks. And the interest on those funds is being used by the banks to fight the group who deposited the money. We're going to put in a system of people's banks and they'll be run in the interest of the people." (Sandburg, "The Farmer-Labor Congress," *Survey*, Feb. 21, 1920, 606.) See also Mussey, "Co-operation at Chicago," *The Nation*, March 6, 1920, 290.

[34] In addition to the references cited in a preceding chapter, read the account of the efforts of politicians to wreck the banks of the Nonpartisan League, in "North Dakota Leaders Come Back," *Nonpartisan Leader*, November 3, 1919, and "Farmers' Bank at Fargo Reopened," *Nonpartisan Leader*, November 10, 1919. See also Gaston, "The Nonpartisan League," 306–309.

[35] For instance, see "A Challenge to Stock-holders," in *The World Tomorrow*, Feb., 1920, 48.

field of the motives of propertied classes has yet been subjected to the scientific scrutiny that its importance demands.

The investigation should trace the historical development, as far as possible. In the chapter on *Psychological Aspects of Intra-national Relations* are indicated some aspects of the historical inquiry. Capitalistic industry in the United States at first had many of the aspects of agricultural industry.[36] Just as farmers may be classified psychologically as speculative and conservative,[37] so business men are by nature speculative or inclined to cautious shrewdness in their dealings. Among conservative farmers, the farmer's essential aim was to pay for his farm and make for himself a comfortable home. The farm he acquired represented his life's work. He had little inclination to seek governmental aid as compared with the speculative farmer, "who sought above all to capitalize the future possibilities of his acreage," [38] and, in so doing, was not averse to enlisting the help of the state. Consequently it was this type of farmer that came into closest relation with the politicians. "They were quite willing to exhaust the credit of their state governments in the effort to provide highways, canals, railroads, and the other necessities of local economic development." [39] The first manufacturers and merchants often were farmers' sons and the aim of the conservative type was to build up a business and pay for it, that is, pay back the borrowed money. The business represented the founder's life work. Now the psychology of this business building differed from the modern psychology of business in important respects. In the course of his work, the business man might make profits but to "get rich" was not his main purpose any more than it was that of the conservative farmer. He might think he would be satisfied if eventually he was worth twenty or thirty thousand dollars because this was the sum which would give him an ample property income in his declining years. His essential aim was not to amass a fortune but to build up a business and eventually retire on a property income that was ample for his needs. In the course of his work his business became precious to him because it was that for which he had given his life, just as children are precious to the mother as that for which she has given her life,

[36] Croly, "Progressive Democracy," 51.
[37] Williams, "An American Town," 199–209.
[38] Croly, *op. cit.*, 72.
[39] *Ibid.*, 73.

and the book to the author as that for which he has given his life. Life is precious and whatever one gives it for becomes precious. To be sure the business may not turn out to be as successful as desired, but neither may the children or the book. Nevertheless, whatever one sacrifices life for is precious, wherefore the business man will fight to defend his business from despoilers, the mother to defend her children from those who disparage them and the author to defend his book from malicious critics. The early development of business was one which enlisted all the instincts not only for the acquisition of property, but also for its defence both by the accumulator and on his behalf by the community, as later developments have not.[40] What the conservative business man accumulated appeared more nearly *his creation* in this period than later. Furthermore, a large proportion of the population were similarly engaged, as farmers, in the individualistic acquisition of wealth. Consequently public sentiment acted more instinctively and intensely on behalf of the right of the business man to his profits in this period than it has since. For conditions have so changed that it is difficult readily to discern particular instances of fortunes made solely or largely by creative effort. And a smaller proportion of the population than formerly are now in a position to appreciate and sympathize with individualistic creative effort.

The early development of business was keenly competitive. The speculative type of business man was inclined to seek the aid of the state in his operations, or to enlist the influence of politicians against rivals seeking state aid,[41] and thus there early appeared a dominant class;[42] but the more conservative rank and file asked mainly to be protected from the competition of more highly developed foreign industries. The public acquiesced in this program of free and unregulated competition because it was told that keen competition protected the consumer by keeping prices down, and the workman by stimulating competition of employers for efficient labour and so keeping wages up. Therefore, since the state did not intervene to the extent that it did later, business men made less effort to control governments in order to protect themselves from interference than later. Then came gradually the movement

[40] See the chapter entitled, *Psychological Processes in the Development of Private Property (concluded)*.

[41] See the chapter entitled, *Psychological Aspects of Intra-national Relations*.

[42] Croly, *op. cit.*, 50, 63, 64.

for consolidation to eliminate competition, a more aggressive seeking of high protective tariffs to eliminate foreign competition, and price agreements. "Manufacturers drew up the tariff schedules to suit themselves. Corporation laws and railroad rates were made chiefly by their beneficiaries. . . ."[43] It was argued that the business leaders of the nation were the natural leaders, that their prosperity meant national prosperity and that, therefore, rule by this dominant class was the natural, inevitable and desirable rule.[44] These were secondary explanations that were advanced to justify the instinctive profit-seeking impulses of the dominant class, and they developed into a philosophy that was widely accredited and that the business men themselves more or less sincerely believed. Their instinctive impulses for profits were less clearly conscious than the justifications thereof, though the former were essential in the profit-seeking behaviour, which under other conditions would have found other justifications. In fact it did find other justifications in the local economy that preceded the period of a national economy, and in the international economy of the succeeding period. The justifications given by a dominant class for its dominance are popularly accredited not because of their truth but because of the prestige and social control of the class that advances them. This is not saying that, under critical investigation, they might not show more or less of truth.[45]

The result of the movement for consolidation in industry was an increasing control over business, and an increasing influence in politics, by the speculative type of business man, and an increasing fearfulness of conservative business men to compete with the great businesses that developed. The monopolistic tendencies threatened also consumers and workmen; governmental regulation developed, and with it developed the aggressive special interests that aimed to control governments against the interests of consumers, workmen and the small investor. Business-building has become less the work of men who develop individual business, and more the work of promoters and banking houses which assemble the funds of thousands of depositors and investors and finance corporations managed by hierarchies of officials. This development has caused the individual business builder to recede into the background and has con-

[43] *Ibid.*, 87.
[44] *Ibid.*, 84–88.
[45] *Ibid.*, 87–90.

centrated power in the hands of aggressive special interests, so that the conception of a dominant class is acquiring an increasing definiteness.

The present and the succeeding chapters aim to present some of the psychological aspects of an inquiry into the political functioning of a dominant class, in connection with the conception of sovereignty. The political significance of a dominant class is due to the fact that governments always have been under the control of propertied classes. This stimulates aggressiveness in the leadership, especially the reactionary leadership, of a dominant class whenever non-propertied resistance challenges its political control. Such occasions reveal the potential power of a dominant class. Its potential power is evident, also, when a nation faces a crisis, for instance, a war. During the recent World War governments were forced to grant employers extraordinary opportunities for making money in order to stimulate production, which governmental policy in many cases resulted in enormous profits.[46] Having learned their power in the war experience, they continued the profiteering in time of peace.[47] The social psychologist must analyse this political control that is exercised by a dominant class. He must seek to understand how a majority of voters are controlled by a propertied minority through the great party organizations.[48] His researches will take him into a study of the work of a party organization handling large campaign contributions,[49] and of the motives that determine an election,[50] which often are very obscure.[51] He must study particularly the influence of the "bosses" of a party organization.[52] Clues may be gained from testimony of bosses,[53] but a

[46] Newsome, "Reconstruction in Britain," *The Dial*, July 12, 1919, 9; Hobson, "Taxation in the New State," 178–179. It is estimated that 16,696 large fortunes were amassed in the United States in the last ten years, most of them in the last four. (*Reconstruction*, June, 1919, 164.)

[47] "The Golden Fleece," *The Nation*, Jan. 24, 1920, 558.

[48] Myers, "The History of Tammany Hall."

[49] Ford, "The Rise and Growth of American Politics," Ch. XXIV.

[50] Ogburn and Peterson, "Political Thought of Social Classes," *Pol. Sc. Quart.*, June, 1916, 300–317.

[51] Lowell, "Public Opinion and Popular Government," 72.

[52] *Ibid.*, 102–104; Beard, "Readings in American Government and Politics," 567–572, 125–131.

[53] For instance, it is said of the personality of George B. Cox, Republican boss of Cincinnati for twenty-seven years, who "made and unmade representatives, mayors, judges and even governors": He "was big and strong and forceful. Often he knocked out his man . . . in the turbulent district of the city his reputation grew." Of his sympathy it is said, his "headquarters were in the saloon he opened . . . called

thorough understanding of the situation can be had only by working as a bona fide member of a political organization.[54]

Large propertied groups have various forms of influence over office-holders not possessed by small propertied and non-propertied groups. First, there are the positive inducements that wealth can offer: the influence of financial interests on party organizations through their campaign contributions, so that a legislator's political future may seem to him to depend on their favour; the financial rewards that may be received in a great variety of ways, these rewards often bestowed indirectly, thus seeming not to be rewards for political service. Secondly, there is the subconscious influence exerted on office-holders by wealthy individuals as the persons of prestige in their constituencies — the apprehension, expectation and other suggestive states of mind which may be awakened in an office-holder by the suggestions received directly or indirectly from property-owning interests of his constituency. And above all there is the influence of these interests on the press, which so controls the public that it may manufacture sentiment for or against an office-holder. These problems of class influence over government are not susceptible of historical treatment but are problems for social psychology.

In addition to their influence over party organizations and government officials, propertied interests also exert a subconscious social control over the voting masses. We have to analyse the partisan zeal[55] that causes voters to refuse to believe the plain facts as to the influence over their party organization of propertied interests — the instinctive impulses that enter into the loyalty of voters to their party regardless of its leadership and controlling interests. We have to analyse, also, the motives that make voters suggestible to a dominant class. Even where voters vote in secret they may still be influenced in their voting by fear of a dominant

'The Power House.' Here the down and outer could always find a friend, a drink and a dime for a meal." (Associated Press, May 20, 1916.) Another clue to the nature of the boss' organization is the effect on his organization of a defeat. As mere victory gives great prestige so mere defeat, regardless of the circumstances, is a serious blow, especially if administered by a young and inexperienced candidate, which explains the bitterness with which a boss fights an insurgent movement in the party organization. His hold depends on the confidence of his organization in his personal power, and as insurgency challenges this, defeat seriously weakens him.

[54] When political bosses write accounts of their work (see, for instance, the "Autobiography of Thomas Collier Platt"), their accounts are too biassed to be trustworthy sources, but are suggestive.

[55] Ostrogorski, *op. cit.*, II: 353–360.

class, that is, fear that "if the election did not go to suit the capitalists they would give us hard times." It is a problem in how far this fear — justified or not — which is often professed by workingmen, is an essential motive for supporting the party of a dominant class, and in how far it is merely an excuse given for continuing the habit of voting the old party ticket. Voters are moved also by admiration and regard for an upper class. A labouring man who is a candidate for public office is not apt to win the support of labouring men because he is a labouring man;[56] he lacks the prestige of the candidate who has the capitalistic backing. Labouring men, as well as other men, admire those who have achieved success in what everybody is seeking success in — making money. Thus while railway corporations were long known to exercise a strong influence in legislative halls, and were disliked and suspected on that account, the great railway builders and financiers were objects of profound popular admiration;[57] — their exploits were made known through the press, which represented them as admirable, even wonderful men.[58] On the other hand the American people have little or no pride in their great literary men. "The American public has not yet learned to regard such men as objects of national pride. . . . The real influence and standing of a man of letters in any American community . . . is negligible. Most Americans are less proud, at heart, of the world-wide fame of Edgar Allan Poe than of the world-wide ubiquity of a certain kind of car."[59] Popular admiration is felt above all for the man who is successful in the popular venture of making money;[60] wherefore the dominant class of successful money-makers has wielded a powerful political influence in the United States.

Popular admiration has nothing contemptible in it that weakens it in the long run, as submission is weakened by its contemptible aspect, for instance, when striking workmen, humiliated, return to work after losing the strike. Radical organs of the working classes

[56] Addams, "Democracy and Social Ethics," 257, 263.

[57] Bryce, "The American Commonwealth," II: 515.

[58] This type of financier is, however, rapidly becoming a thing of the past. See Veblen, "The Industrial System and the Captains of Industry," *The Dial,* May 31, 1919, 555.

[59] Perry, "The Written Word — How University Organizations Can Help Toward a Better Day," Proceedings of the Fifty-Second Convocation of the University of the State of New York, 83.

[60] Lindsay, "The Principle of Private Property," in Gore, "Property, Its Rights, and Duties," 73–77.

often refer to the workers as "wage slaves" in order to stir in workmen a contempt for themselves as submissive and arouse them to revolt.[61] Submission is contemptible but not admiration, except as it shows lack of intelligence and then only to those who are intelligent, not to the impulsively admiring masses. Under what conditions does this admiration finally cease and leave large sections of a population resentful of reactionary capitalistic control, distrustful of a controlled government, and in a condition to develop a class consciousness? Obviously this is a social-psychological problem.

A dominant class does not rely entirely or largely on its dominating power. Its political representatives, in their solicitude to preserve their social control as against the political representatives of other classes,[62] have secured the enactment by governments of measures that give them control of susceptibilities of the masses other than their impulse to submit to domination — of their capacity to admire efficiency, and to be devoted to those who, they believe, are trying to help them. While a dominant class originally controlled by power to dominate, the maintenance of control has come to require, more and more, the possession of other qualities of social control which, in turn, have determined the enlargement of governmental functions. Thus social control has become inextricably bound up with political control until political control has extended itself over the whole range of social control. Thus the real rulers of society are undiscoverable without social-psychological investigation.

The sovereignty of a democratic state is much more complex psychologically than a mere obedience-compelling power. It relies on its obedience-compelling power only as a last resort.[63] In the United States, for instance, though the government did not fail to use its coercive power, while at war, against those who opposed the war and openly attempted to obstruct the war program of the government, yet, in securing the loyalty of the people, it relied

[61] "Every worker is either a submissive slave or a class conscious rebel." (*The Labor Defender*, Feb. 1, 1919.)

[62] Litman, "Revolutionary Russia," *Amer. Pol. Sc. Rev.*, XII: 188–189.

[63] "All government must have force at its disposal, but no government can last which has merely force at its disposal, even the force of a veteran army of professional soldiers. All government implies *consent* as well as *force*." (Ritchie, "On the Conception of Sovereignty," *Amer. Acad. Pol. and Soc. Sc.*, I: 407.) See also Bryce, "The American Commonwealth," II: 218–220.

much more on its power to impress the people with its efficiency in the prosecution of the war; and there is little doubt that, if it had proved very inefficient, no exercise of coercion would have prevented an uprising of the people and an interference with the war program of the government in the direction of greater efficiency. It also relied much on impressing the people with its beneficence. For instance, during the period of scarcity of coal, the people were assured that householders would have their necessary supply at a reasonable price, even before business establishments and transportation. It relied also on the appeal of the war as a just war, as presented by the administration leaders and those they associated with themselves. It cannot be said that these lines of control were less effective in enlisting the loyal support of the people than coercion or threat of coercion or popular apprehension thereof. In time of peace, coercion is still less exclusively relied on.

In a democracy, where the executive and legislative officials are elected by popular vote, their behaviour is inevitably determined by the motive to make their party and themselves popular. Wherefore, as officials they appeal to much the same instincts to which they appealed as candidates for office. A candidate for elective office gets his position, in the first place, through the admiration his personality excites. How much of the popularity of Mr. Roosevelt, once the idol of the American people, was due to his superior energy, his physical courage and love of adventure, and his relentless resistance of the growing power of monopoly! The same instinct is seen in the admiration of the energy and courage that works material achievement,— for instance, in the popular admiration of the railway magnate whose achievements the papers glorify. The qualities which enable the candidate for political office to win an election enable him, as a governmental official, to swing public sentiment against his opponents and to get the measures of his party enacted into law. Some of these measures may not enlist enthusiastic popular support, some of the politicians of his party may not be popular, but the people are for them because of their admiration for him. Wherefore, legislators and others, who also depend on popularity, and risk unpopularity by opposing him, are constrained to do his will. In like manner the popular admiration for the railway or other magnate enables the capitalistic interests with which he is connected, though the

people may fear the power of those interests and resent their monopolistic tendencies, to control the people in spite of their fear and resentment. Again if, in the intervals between the political exploits of the great executive, stories of the generosity and compassion of the mighty man reach the ears of the people, his control is increased thereby. In like manner the astounding philanthropies of magnates, which are heralded in the press, cause the public to warm towards corporate wealth in general, and particularly toward the corporations with which the public benefactors are connected.

In a democracy the superiority that stirs popular admiration and the generosity and compassion that stir popular devotion are essential in political control, and this influence is exercised by officials who are representatives of a dominant class, in the interest of the political control of that class. High-handed measures by a dominant class stir resentment, but secret control through the admired and loved bailiffs of propertied interests is readily acquiesced in. Hence the loyalty of the masses to the boss and his political organization and candidates, though these are rumoured to be more or less favourable to the behests of propertied interests. Through this social control a dominant class maintains a political control which does not ordinarily require the use of force, but which is supplemented by force whenever force is required. This exercise of political control by a dominant class, peaceably or by force, is beginning to be realized by the more thoughtful among the public, as we may infer from the increasing directness with which it is asserted by publicists and editors of progressive magazines of opinion. As these assertions become more direct and open, the magazines that speak for the dominant class counsel caution in its exercise of its will. As an instance of direct assertion of the control of a dominant class: "While constitutionalism and democracy have ameliorated some of the evils of the arbitrament of force in politics, they have left it in ultimate command. The state, as now organized, is essentially the embodiment of power rather than justice. Its worshippers, when they proclaim and glorify its sovereign irresponsibility, admit this indictment. It must demand above everything else obedience to its own commands, no matter whether those commands are or are not justifiable. It must insist fanatically on law and order — meaning by law and order, not the triumph of moral knowledge, but the ability of the police to enforce

obedience. And the commands which the state must insist all citizens shall obey are commands which are intended in nine cases out of ten to secure to the property-owner not only the undisturbed but usually the exclusive and irresponsible enjoyment of his property. It is of the very essence of the prevailing conceptions both of the state and of property that neither politicians nor property-owners are obliged to recognize any except the mildest obligations in the exercise of their power.

"The possessors of this power and their interest in its perpetuation dominate the standards of reputable individual and collective conduct. There was a time when the Christian Church, as the spokesman of the moral and religious interests of mankind, claimed to embody standards of behaviour which the state and the property-owner ought to observe in actual practice. It did not, to be sure, have much success in enforcing the claim." [64]

The two great historical rivals for social control have been the state and the church. The state was an institution for social control by a fear-inspiring dominant propertied class; the Christian Church was in origin an institution for social control by those who preached a love-inspiring deity. But the dominant class acquired an influence in the Church, and the Church became a state Church, and a theology of a fear-inspiring deity overshadowed the other, and the Church ultimately became the servant of the "constituted authorities." Today the social control exercised by a dominant class and its political control, as one phase of its social control, is, for the most part, undisputed by the church, though there are clergymen who have taken a stand against it, individually [65] and collectively.[66] Other clergymen have as positively taken a stand for the dominant class and against resisting clergymen.[67] The organization of the idealists of the community, inside the church and out, to develop a social control that will effectuate a moral political control is a problem which is engaging the minds of progressive leaders.

A government weakens its influence by appearing to be subservient to any one class; wherefore officials are apt to refuse, out-

[64] Croly, "Disordered Christianity," *New Republic*, Dec. 31, 1919, 137.

[65] Read a typical experience of a minister's relation to members of this class in his church, in Jackson, "A Community Church," Chs. I–II.

[66] "Freedom of Opinion and the Clergy," *New Republic*, Feb. 11, 1920, 303–305.

[67] "The Way to Unconstitute Authority," *New Republic*, Feb. 19, 1920, 306–308.

wardly at least, to act for a class.[68] The great parties are not openly and avowedly representative of classes but aim to convey the impression that they are "the party of the whole people." Party leaders look at proposed measures from the point of view of "politics," that is, of what their attitude to this and that measure may do to impress the people with the importance of the party as the representative of the people, and to discredit a rival party as such, as well as from the point of view of the economic interests which the party leaders aim to serve. On great occasions this conception of the public welfare may transcend even the exigencies of party rivalry, and the leader may become a protagonist for the welfare of the whole people. President Wilson, in his opening address on the League of Nations at the Peace Conference, said: "I may say without straining the point that we are not the representatives of governments, but representatives of peoples. . . . Gentlemen, the select classes of mankind are no longer the governors of mankind. The fortunes of mankind are now in the hands of the plain people of the world."[69] A rational social purpose for a whole people or for humanity invariably brings its protagonist into conflict with a dominant class, which is apt to make its paramount influence felt when it comes to working out the rational social purpose.

An obvious class control of government weakens the authority of the state, and weakens the state in its rivalry with other states. Where an employing class obviously controls, well organized labour groups grudgingly render a forced obedience and an inefficient service. Where a working class obviously controls, the employing class is defiant, or deliberately inefficient. For instance, in the United States, during the first year of the World War, "the attempt was made for nearly a year to bring together employers and employés for production of munitions of war, under the direction

[68] For instance, when formal protest was made by manufacturing interests against the confirmation by the New York State Senate of one of the nominees to the State Industrial Commission, and when opposition to the nominee was voiced also by organized labour, Governor Smith replied: "I do not believe in splitting the Industrial Commission into groups representing various interests. If it is to have representatives of manufacturers, why not have representatives of merchants, or of some other branch of business? I do not believe that you must have the different interests represented when it comes to doing business for the state. Every industrial commissioner ought to represent all of the ten million persons in the state and not any group of persons." (Associated Press (R. D. C.), Jan. 15, 1919.)

[69] Associated Press (R. D. C.), Jan. 29, 1919.

of a trade unionist as Secretary of Labor. Notwithstanding his great ability and unquestioned fairness it was impossible to secure the co-operation of employers. He represented but one of the opposing interests, and his staff lacked the business experience and record of impartiality needed to obtain their confidence. Finally, the President directed the Secretary of Labor to select as his advisers representative employers and employés. He went to the one great organization of employers, the National Industrial Conference Board, and to the great organization of employés, the American Federation of Labor. Each side appointed five representatives and they in turn each selected the most representative professional men in the country, ex-President Taft, to lead the employers, and Frank P. Walsh to lead the workingmen.

"Forthwith this representative body formulated a national labor program which the Secretary adopted, 'to maintain maximum production by settling obstructive controversies between employers and workers.'[70]

"Somewhat similar arrangements were made to cover all of the vital activities of the Department, including employment offices, housing, et cetera. . . .

"So, in the stress of national peril American democracy called to its aid, not only distinguished individuals, but the organized opposing class interests of the nation. The organizations themselves were incorporated in the framework of government. . . . Only through organization can the modern industrial worker, whether capitalist or laborer, have an effective voice either in industry or government. His liberty is bound to be limited anyhow by the liberties and powers of opponents or competitors. In his individual weakness he gains greater power and liberty through organization. And representative democracy is . . . the class partnership of organized capital and organized labor, in the public interest."[71]

The employing class has generally opposed this project of representative industry because it destroys the traditional position of authority of that class. It threatens a change in the nature of sovereignty, which has been an obedience-compelling power exercised largely in the interest of propertied classes. Against these

[70] Official Bulletin, April 1, 1918, p. 7.
[71] Commons, "Industrial Goodwill," 41–43.

and other objections to representative control of industry, and to the demand of employers that they be not interfered with in their exercise of their traditional exclusive control Mr. Ordway Tead declares that the project of representative industry "is dictated by a far more fundamental demand, the universal demand of human nature to express itself with maximum effect and to the best advantage. Today if we know anything we know this, that human nature does not express itself with maximum effect and to the best advantage unless it concentrates its energies under conditions where it is asked to assume responsibility and where it has some guaranty that in so doing it is not endangering its whole position.

. . . . . .

". . . Democracy, if it means anything, in its application not only to industry but to all human activity, means two things: A spiritual change and an institutional change. It means that we are going to treat people as an end in themselves, something to be worked for, and something to develop as individuals, as personalities. And it means that our institutions in politics and industry must be adjusted and reorganized to make possible that participation of individuals in affairs, which constitutes real democratic government, which makes real development of personality possible." [72]

The development of democracy depends, therefore, on the capacity of the different economic groups of a nation to think of their interests from the point of view of the public welfare in this new sense of equality of opportunity for development of personality, and to organize and vigorously press the different policies that this view of the public welfare seems, to them, from their different angles, to demand. No economic group could successfully issue a political appeal to the mass of voters by simply emphasizing its own interests. The nearest approach to such a political appeal is that of a dominant class which, because it controls a great political party, relies on the habitual party allegiance of a large mass of voters to enable it to dictate policies that seek primarily its own class interests. When a new party arises its leaders are "too aware of their obligations" [73] to make the purpose of the party

[72] Tead, "Outline of a National Labor Policy," Proceedings of the Employment Managers' Conference, U. S. Bur. Labor Statistics, *Bulletin* No. 247, May, 1918, 152–154.

[73] For instance, the leaders of the new Labor party "were too aware of their obligations" to adopt a platform confined to labour interests. (Merz, "Enter: The Labor Party," *The New Republic,* Dec. 10, 1919, 54.)

the realization of the interests of a distinct class. For the new party must appeal to diverse economic groups if it is to make headway against the old entrenched parties. And in appealing to the interests of these diverse groups, the platform necessarily becomes one that seeks to adjust conflicting interests in a way to make a reasonable appeal to the public.

A people that has this capacity to organize in diverse economic groups and vigorously to press the policies that its views of public welfare suggest, insists, in the first place, on freedom to organize, and on freedom of speech and of assemblage. With freedom of speech it becomes possible for the conflicting groups freely to rival each other in appeals for popular support. Among a people which excels in this capacity for organization of groups for vigorous conflict under legal forms the coercive aspect of government is reduced to a minimum, as compared with the government of a people which has weak capacity for voluntary organization. For instance, the French are individualistic and outspoken enough in criticism of their government, but they have lacked capacity for voluntary organization and a vigorous pressing of organized interests. At the same time that they criticize the government, they are looking to it to protect their individuality, instead of seeking to use it for the adjustment of conflicting group interests. Hence the government in France assumes bureaucratic authority that it does not have in Anglo-Saxon countries, where, to be sure, a dominant class may for a time maintain a subtle control and, on occasion, exercise a ruthless coercion, but where organized resistance of such domination is apt to develop. In Anglo-Saxon nations, however, the control of dominant classes has been more largely acquiesced in in the past than it will be in the future. The claim of the state to an absolute sovereignty is more and more questioned. "Indeed, it is not too much to say that organized workers the world over, have come to fear the state to the extent that the state means not common action for the common good, but rather action enforced upon the people by a dominant governing group. . . ."[74]

[74] Tead, "The People's Part in Peace," 22–23.

CHAPTER IV

SOVEREIGNTY AND THE CLASS STRUGGLE (*concluded*)

WE have indicated some of the psychological aspects of sovereignty, and it is the purpose of this chapter to carry a step further the analysis of the change that has been taking place in sovereignty, in so far as it involves psychological processes. When only one class had political rights that class could enforce its will on other classes. Sovereignty was obedience-compelling power. When all classes have political rights, if one class that controls the government for the time being tries to enforce its entire will, it is sooner or later thrown out of power, or there is unrest and revolution. Sovereignty is no longer merely obedience-compelling power. The class dominant for the time being finds that the government officials which it supported as candidates for office, as government officials find themselves in a position in which different shades of opinion of different classes play upon them. They are ambitious to retain their power and to rise in political life. They try to induce representatives of the dominant class to be satisfied with less than their whole will. They try to give the will of other classes some expression, to make them think their will has more influence than it really has, in order to secure their support of a party that serves primarily a dominant class. Sovereignty then becomes an obedience-invoking, instead of an obedience-compelling, power. To the degree in which officials are rational, they will seek to bring out of this class conflict for political control measures that advance the public welfare. Their power to do this will depend on the degree in which the leaders of conflicting classes happen to be intelligent and progressive. If they are so in a high degree sovereignty will cease to be the power of a dominant class to invoke, and, when necessary, to compel, obedience and will become a power of supreme direction of intelligently co-operating classes. No modern state has yet achieved this fully rational exercise of sovereignty.

The beginnings of a co-operation of classes are apt to be forced

beginnings. Just as international co-operation was forced on the allied nations by the World War — though this beginning proved of none effect by reason of the recurrence of national rivalries at the termination of the War,— so in each nation classes were forced to co-operate. Each class shared the common impulsive purpose to defeat the enemy and frowned on behaviour of its own members, as well as of another class, that was not in furtherance of the national purpose. But with the return of peace the class struggle was resumed in each nation. However, during the war period the working classes came to realize as never before that the national strength depended on them, inasmuch as they constituted the armies of the nations and produced the supplies for the armies. The repeated appeals issued to them to stand firm in the field and in the workshops, inasmuch as the outcome of the war depended on their valour, caused them to feel that they were *in fact* the dominant class of the nation. The contradiction between this fact and the actual condition of political control by a propertied minority has impressed the working hosts in all nations. With the return of peace, therefore, the class struggle was revived, with a determination on the part of the working classes and a desperation and arbitrariness on the part of the dominant classes not felt before. The working classes are no longer content to acquiesce in the control of governments by propertied classes. This, it is said, has given the labour movement in the great nations a "larger purpose," as seen in a "new morale" on the part of labour, which is seen, among other evidences, in the increased care of unions to keep order during a strike;[1] in a new sense of solidarity of heretofore distinct labour groups, a solidarity of all those "who are willing to contribute by labour of brain or hand to the social welfare";[2] in the rise of political labour parties; and, finally, in the proposal of labour to undertake co-operative stores,[3] building contracts,[4] and the operation of great industries like the mines[5] and the railroads.[6]

[1] Ward, "Social Unrest in the United States," Bulletin of Methodist Federation for Social Service, 3–4; Methodist Federation for Social Service, "Two Recent Strikes of Special Significance," *Bulletin*, May, 1919, 3.

[2] Ward, "Social Unrest in the United States," 4.

[3] Warbasse, "Co-operation in an American Feudal Fife," *The World Tomorrow*, February, 1920, 56.

[4] Cole, "A Building Guild for Great Britain, *New Republic*, March 3, 1920, 25–27.

[5] See the *Reports of the Coal Industry Commission of Great Britain*, published by The Nation Press, 1919, 3–27.

[6] Plumb, "Plan of Organized Employes for Railroad Organization," *The Public*,

These political movements of the working hosts are in their infancy. There are still unawakened, conventionalized masses of labour in the various nations.

The new attitude of labour, whereby awakened sections of the working masses are willing to assume responsibility in the management of industry and in political administration, implies a new conception of the nature of sovereignty. It means that sovereignty is coming to be conceived as not merely an obedience-compelling power, but as a power of intelligent administration of the resources and industries of the nation for the public welfare.[7] The old attitude of labour to the government was that of "hands off, let us run our strikes and don't interfere." Sovereignty was subconsciously assumed as a mere obedience-compelling power, which unions did not wish to interfere with their efforts to improve their condition. On the employers' side sovereignty was regarded as obedience-compelling power which traditionally had been exercised in their favour so that, under the law, they had the advantage, and wanted no action by the government except to enforce the existing law and, by "government by injunction," [8] to lend the force of the government to the employers as desired. This still continues the expressed attitude of reactionary employers' associations; but there are evidences of the new conception of sovereignty among progressive employers in the United States, for instance, in the introduction by employers, under governmental direction, of shop committees,[9] which as developed in England call for a new governmental supervision of industry. Employers' associations in England and the United States that oppose shop committees oppose them, among other reasons, because they oppose the governmental regulation of industry which they necessitate.[10] The new conception of sovereignty as an intelligent directive force depends for its development on the future of the class struggle. If employers in sufficient numbers rise to the new conception, and if labour organi-

April 26, 1919, 427–429. See also Marot, "Responsible Unionism," *The Dial,* Aug. 23, 1919, 131–133; "A Railroad Symposium," *The Nation,* Aug. 16, 1919; "The Plumb Plan," *The New Republic,* Aug. 20, 1919.

[7] See the platform of the new Labor party, Merz, "Enter: The Labor Party," *New Republic,* Dec. 10, 1919, 54.

[8] "The Folly of Government by Injunction," *The New Republic,* Dec. 10, 1919, 43–44.

[9] Stoddard, "The Shop Committee," Chs. II–IV.

[10] Wolfe, "Works Committees and Joint Industrial Councils," a report by the Industrial Relations Division of the United States Shipping Board, 1919, 57–58.

zations rise to it,[11] a progressive development of industry under governmental direction and a new democratic conception of sovereignty is assured. If, on the other hand, the traditional conception of sovereignty as mere obedience-compelling power continues to prevail, the old, exclusive control of the government by a dominant class is, nevertheless, passing because labour, unorganized and organized, will persist in the struggle to possess itself of the obedience-compelling power. The propertied classes also will struggle to maintain possession of that power in order not to be deprived of the privileges which law and government have secured to them. A class struggle of increasing intensity seems, therefore, the inevitable alternative.

The alternative presents itself not only for private but also for public business. The denial to public employés of the right to strike is deduced from the traditional conception of sovereignty as obedience-compelling power. On the other hand there is a growing sentiment among public employés for the adoption of the methods of organized labour.[12] Of this movement Dr. Beard says: "It is of course easy for an excited patriot to declare flatly that public employees should never have the right to strike. It is certainly shocking to think of the post-office employees laying down their mail bags and walking out, and it might be easy in the present state of our political development to forbid such action under drastic penalties. Nevertheless, with the growth in the number of public employees, their increasing organization and their tendency to affiliate with other labour organizations, it is hardly to be doubted that we shall have to face in the field of public employment something more formidable than the ordinary association that annually beseeches Congress for an improvement in the conditions of employment." [13] Public opinion against strikes of public employés is strong when they are doing vitally necessary work. There is the same public reaction against a strike of private employés doing vitally necessary work, for instance, a coal strike at the beginning of winter. The reaction in the case of the public employés is

[11] Stoddard, "The Shop Committee — Some Implications," *The Dial*, July 12, 1919, 8.

[12] "Legislative Program of the Federal Employes," *Good Government*, XXXVI: 24–25.

[13] Beard, "A Modern Employment Policy for the Government," *Good Government*, January, 1919, 16–17.

justified by invoking the conception of sovereignty as obedience-compelling power, and asserting that, therefore, public employés have no right to strike. But the real motive of objection to the strike is the same in both cases. The people are impatient with the severe inconveniences caused by these strikes.[14] If the public have to choose between the right to strike and the right of the employer to dominate, they are apt to choose the latter because "the obstinate employer's power always seems to be asserted in favour of the tranquillity of the state." [15] But workmen will not give up their right to resist arbitrary domination because of this preference of the public for the employer's attitude. The alternative, for public and private enterprises alike, is a legal arrangement giving employés an essential part in the management of the enterprise.[16] Sovereignty then ceases to be a power to compel public employés to submit to the domination of politicians and office-holders, and a power that a dominant class uses against the striking workmen of private employers, and becomes a supreme directing power in which all parties participate through their representatives.

We need to inquire into the social-psychological processes through which sovereignty may come to be a supreme power of direction of co-operating classes. This is a problem for the political scientist as well as for the social psychologist and, at this point, the fields of the two sciences are very closely allied. From the social-psychological viewpoint we note that, as in the individual mind there may be one dominant impulse and no choice, or conflicting impulses and choice, so in a state sovereignty may be the exercise of the impulsive will of a dominant class, or there may be a conflict of class impulses and rational adjustment. Where a dominant class is strong enough through its control of the government to repress free public discussion of the propaganda of a resisting class that is organized as a political party, in that instance we have an exercise of the will of a dominant class. Nothing is then left for the resisting class but extra-legal action.[17] The exer-

[14] Lippmann, "Can the Strike Be Abandoned?" *The New Republic,* Jan. 21, 1920, 226.

[15] *Ibid.,* 226.

[16] *Ibid.,* 226, 227.

[17] As former Justice Charles E. Hughes wrote in his letter of protest against the action of the Republican members of the New York legislature in suspending the five members of the Socialist party of that body: "Nothing in my judgment is a more

cise of the will of a dominant class is facilitated by the fact that only a small minority of voters are capable of taking the impulsive attitudes of conflicting classes intellectively. Wherefore, they accept the attitude of the classes to which they are instinctively suggestible — the propertied classes. The development of sovereignty as an intelligent directing force waits upon a development of a public education which will enable citizens to take intellectively the impulsive attitudes of different classes. Such an education will enable citizens fairly to judge as to the reasonable compromise, and to influence public opinion in the support of the supreme directing power that decides the compromises.[18] It is suggested that this educated citizenship be represented by a body whose purpose is to direct the movement for law reform.[19] However, until a considerable body of the citizens of the state have been so trained that they can think and act independently of the influence of a dominant class, the mass of citizens will continue to be subject to the attitudes of the controlling classes, with the secondary explanations with which those attitudes are conventionally justified.

Essential in the processes which have determined political action in the past have been the impulsive control maintained by dominant classes and, more recently, resisting movements and class struggle. Political progress never has been a matter of foresight and planning on the part of an intelligent body politic but of instinctive movements, unrest, conflict and compromise. Progress for centuries took place only when rival political groups that were dominated by despots and aristocracies came into conflict as a result of the movements of peoples, and the shock of conflict broke the traditional systems of beliefs in which the members of groups had been

serious mistake . . . than to deprive Socialists or radicals of their opportunities for peaceful discussion, and thus to convince them that the Reds are right and that violence and revolution are the only available means at their command." (Associated Press (N. Y. T.), Jan. 10, 1920.) A protest, signed by twenty-two clergymen representing the Federal Council of Churches in America, against "the deportation of men without judicial trial; the proposed repressive legislation now before Congress threatening the primary rights of free speech, free press and peaceable assembly," declared that "Constitutional changes can be affected without violence in America, because of our right to free expression of opinion by voice and ballot. We cannot now deny this American substitute for violence without directly encouraging resort to revolution." (Associated Press (N. Y. T.), Jan. 29, 1920.)

[18] Higgins, "A New Province for Law and Order, II," *Harvard Law Review*, XXXII: 191–217.

[19] Pound, "Juristic Problems of National Progress," *Amer. Jour. Sociol.*, May, 1917, 730–731.

trained.[20] Only thus was progress possible, because the masses were dominated and kept in ignorance. This has continued to be the condition even in civilized nations, until recently; and the essential process of progress has continued to be the shock of international conflict. Says Professor Mitchell, speaking of the effect of the World War in promoting scientific administration: "The episode in statistical organization which I have sketched, the effect of the war upon our attitude toward the use of facts for the guidance of policy, links the present stage of civilization with man's savage past. . . . The savage and the barbarian are such conservative creatures that nothing short of a catastrophe can shake them out of their settled habits. . . . In physical science and in industrial technique, it is true, we have emancipated ourselves largely from the savage dependence upon catastrophes for progress. . . . But in matters of social organization we retain a large part of the conservatism characteristic of the savage mind." [21]

Essential in the political situation has been the control of ignorant, subservient and conventionalized masses by propertied classes, and this continues, though less absolute, in spite of the formal political freedom of the "advanced nations." The formal political freedom originated as a result of conflicts between propertied classes for the control of governments. "Step by step from Runnymede to the present the conflicts of interests of different classes have worked for the development of the enfranchisement of the people. . . . In England it was on one side a party working for the franchise for the agricultural workers because it was to their advantage to do so, and on the other hand the other checkmated this move by extending the franchise to the inhabitants of towns." [22] Thus having acquired the franchise the working hosts, long used to political subjection, have until recently used it in support of the rule of the propertied classes. They have not learned to use their political power to free themselves from their economic subjection. The political class conflict is just beginning.[23]

[20] Teggart, "The Processes of History," 151.

[21] Mitchell, "Statistics and Government," *Quart. Pub. Amer. Statist. Ass'n.* Reprint, 228.

[22] Gillin, "The Origin of Democracy," *Amer. Jour. Sociol.*, May, 1919, 710.

[23] The American Federation of Labor up to 1920 officially followed the policy of supporting that one of the great parties — both of which are committed to the capitalistic régime — which gave most satisfactory promises of supporting the measures for which the Federation stood. At the same time it sought to "educate the public

The development of the political phase of the class conflict is, in the nature of the case, inevitable. As Ihering pointed out, as long as an individual of a lower class alone has a sensitive feeling of humiliation because of his social inferiority, he can do little to improve his position. "Only when such a way of feeling becomes general is there any prospect for the individual, instead of wasting his strength in a useless struggle, to turn it to account, in union with those who think as he does, to raise the level of the honor of his class; and I mean here, not simply the subjective feeling of honor, but its objective recognition by other classes of society and by legislation." [24] The acquisition of political rights by the working hosts has been followed by a very slow passing of the attitude of submission to propertied classes that had long had exclusive political rights. With the passing of this attitude, the instinct of rivalry will cease to animate merely the sensitive member of a lower class who feels humiliation because of inferiority, and will succeed the instinct of submission generally among the working classes. This instinct of rivalry has been awakened by the acquisition of political rights, and the more ambitious among the enfranchised masses are beginning to be dissatisfied with a non-propertied condition that means social inferiority and political impotence. Not that they are envious of, or greedy for, large property. They seek merely the "manly feeling" of the ownership of some property,[25] and a voice in the management of the industry of which they are a part.

In his emphasis on rivalry for ownership and the sense of independence and relief from subservience to domination realized by

mind" and appeal to the public "conscience" on behalf of the legislation it desired. (See the American Federation of Labor's "Reconstruction Program," *American Federationist,* Feb., 1919, 133–134.) Within the Federation there were powerful labour organizations opposed to the non-political policy of the Federation. (West, "Will Labor Lead?" *The Nation,* April 19, 1919, 600–601.) The radical labour groups outside the Federation bitterly opposed this policy of the Federation but differed in their own policies. (Brissenden, "The I. W. W.," Ch. III, pp. 237–241, 277–279.) The bitterness of the feeling of the different political labour groups against non-politically organized federations of labour unions and the psychology of this attitude can be understood only by comparing the files of the *American Federationalist,* for instance, the issue of July, 1919, p. 602, with the files of a socialist magazine, *The Liberator,* for instance, the issue of August, 1919, pp. 12–20, and files of an I. W. W. paper, the *Rebel Worker* or *The One Big Union Monthly.* See President Gompers' criticism of the policy of a political labour party, *American Federationist,* Jan., 1919, 41.

[24] Ihering, "The Struggle for Law," trans. by Lalor, 49–50.

[25] *Ibid.,* 50.

ownership, Ihering had in mind the peasant seeking to acquire ownership of some land. Among workmen in manufacturing industry, as pointed out in a previous chapter, the labour movement is for a voice in the management of industry. It has a larger motive than mere instinctive rivalry. It is a movement to do away with industrial autocracy, to escape the vicissitudinous element in the workingman's life, and to form an economic basis for positive self-development. This movement has forced a class struggle that is projecting itself into politics. The beginnings of this political struggle have already caused the reactionary section of the dominant class in the United States to attempt to deny to the non-propertied classes political and legal rights they have acquired; and this has stirred a resentment in proportion to, or rather out of proportion to the sense of honour that was gained by gaining those rights, for, in the long interval since they were gained, the attitude of the non-propertied masses has been changing from submission to the sense of free rivalry engendered by the free action encouraged under those rights. The class struggle will, therefore, be intensified by the struggle of the masses to maintain political rights as "hard-bought acquisitions in the fight for freedom."

As long as the masses remained without political rights and subservient, the sovereign class had a benevolent attitude to the subject masses, an attitude of satisfied domination and of satisfaction at being relieved from the hardships of life through its enjoyment of the fruits of the exertions of the dominated classes. This benevolent attitude characterized the slave-holders of the South, and caused kindliness for the slave and the graciousness of manner of the southern gentleman.[26] It characterized the ruling classes of old. But let the under classes become restive, let them cease their habitual obedience, and the dominating attitude of the slaveholder and of the lord of serfs revealed itself.[27] The same attitude was seen in Russia up to the time of the Revolution. And when under classes possessed themselves of the sovereignty, members of the upper class of Russians regretted that the peasants had not been kept in serfdom,[28] and preferred that Russia should be conquered by Germany rather than to be ruled by a long contemned class.[29]

[26] Trowbridge, "My Own Story," 293.
[27] *Ibid.*, 292; Ashley, "Economic History," I: 37–40.
[28] Hapgood, "The Storm Cellar," *New Republic*, Jan. 28, 1920, 255.
[29] Bryant, "Six Red Months in Russia," 171–172.

We find a similar bitterness of class feeling in countries that have long been "democratic." There contests between different sections of a political party, one standing for the traditional capitalistic domination, the other for measures that look to industrial democracy, often are more bitter than are contests between rival parties. This is because the struggle against industrial autocracy has become a political struggle. The achievement of political freedom has suggested an achievement of industrial freedom by political means. "It is a matter for solemn reflection, after a view of the origin and evolution of the state, that up to the present time the work of democracy has been to conquer and control institutions already made by the superior classes. . . .

"Having conquered political institutions of royal and aristocratic origin, democracy is now at work on economic institutions. . . . Democracy is at work to subject to public purposes the magnificent economic structures erected by . . . mighty organizers of men, money and materials." [30]

Until recently the progress of the working masses has been an incidental result of conflicts between propertied interests. Labour has been unorganized, mute, distrustful of its own leaders, without adequate political leadership, contemned by property-owning classes and their beneficiary groups, and self-contemned. The conflict between propertied classes and non-propertied masses did not become a perceptible force in the development of the state until the decades preceding the rise of popular sovereignty; and it did not become a continuing and disruptive phenomenon until recently. Until the rise of popular sovereignty and the subsequent awakening of the conventionalized masses to the opportunities afforded by democratic government, law was essentially the command of a dominant class. Law functioned to protect the political right of upper classes to dominate under classes, and to protect the property rights of the former. Even with the rise of popular sovereignty there was no immediate development of a class struggle between propertied and non-propertied classes. The struggle was between capitalistic and agrarian propertied classes.[31] As long as

[30] Beard's essay in Cleveland, and Schafer, "Democracy in Reconstruction," 490–491.

[31] Beard, "Economic Origins of Jeffersonian Democracy." One of the important phases of the struggle has been the resistance of the agrarian classes against unjust taxation. The agrarian interests always have paid more, often very much more

workmen in the United States could leave their jobs and take up cheap land, or could save money and hope to become employers, or could save and hope eventually to become "independent," that is, able to live on a property income, they had no clear-cut class consciousness. But when it was no longer possible, except for extraordinary workmen, to hope ever to become an employer or to be able to live on property income,[32] when a man once a workman was always a workman, then began to develop a consciousness of common ends for which labour should work — of reforms which should guarantee to the working masses the comforts of life, a comfortable and secure old age, the determination of working conditions, and a share in the management of industry. This struggle for life, for common ends which all workmen desire, has developed a class consciousness in England that marks the end of the undisputed rule of dominant propertied classes,[33] and the same development is beginning in the United States. It is retarded here by the still vital individualistic traditions surviving from the period of cheap land and freedom of opportunity for winning economic independence. As the class struggle develops those of the conventional mass of voters who have heretofore accepted uncritically and subconsciously the attitudes of the class that possessed greatest suggestive power have to find "reasons" for their attitudes. These may be merely secondary explanations for a subconscious prejudice, or the attitudes of the different classes may be taken intellectually, analyzed and evaluated in the light of a rational theory of social progress. The period of the class struggle thus appears as a transition period between the sovereignty of the past, which was an undisputed obedience-compelling power of the dominant classes, and the sovereignty of the future, which is a power of intelligent direction by the state of the activities of co-operating economic groups.

The developing differentiation of the population of each nation along economic lines has resulted in conflicting interests of increas-

than their just share of the taxes. (Levine, "The Taxation of Mines in Montana," Ch. I.) Capitalists holding enormous areas of unimproved land, on the contrary, have paid and continue to pay "in many instances a positively ridiculous, low tax." (California Commission of Immigration and Housing, "A Report of Large Landholdings in Southern California," 1919, 5.)

[32] Croly, "Progressive Democracy," 384.

[33] Angell, "The British Revolution and the American Democracy," Pt. II, Chs. I–IV.

ing complexity; and the increasing economic interdependence of the antagonistic interests serves to intensify the tension. There are conflicts between mining and manufacturing interests; between transportation and manufacturing interests; between financial and agrarian interests; between financial interests and the small investor; between financial interests and industrial engineers; between industrial and financial interests and the mass of consumers; between capital and labour. Of these the conflict that is most portentous for the development of democracy is that between capital and labour. With the growth of intelligence the jealousies and conflicts between different labour groups tend to give way before a widening sense of solidarity of labour, though this development is impeded by the rise of new labour groups out of the conventionalized mass of labour, which groups are long actuated by the distinct interests and ideas that prompted their formation and by jealousies and other causes of conflict that arise in the course of their adjustment with other groups. For some time, therefore, the tendency towards conflicts between labour groups may keep pace with the tendency toward solidarity. But, in the long run, the growth of intelligence results in a widening sense of solidarity of labour, in virtue of which it will present an increasingly solid front against capital politically.[34]

This conflict between capital and labour is due in the first instance to reactionary capitalistic interests. Reactionary employers' associations aim to keep labour submissive to the domination of employers. This domination exercised by employers stirs the resistance of labour groups far and wide, which are bound together by this emotional attitude of resistance. Employers also feel common cause because of their emotional determination to perpetuate their domination. This is the state of the class struggle, and it necessarily projects itself into politics.[35] It is a conflict in which the

[34] This effect of the growth of intelligence is seen not only among white but also among Negro workmen. Booker T. Washington simply aimed to make Negroes more intelligent and reliable workmen. The result of their increasing intelligence and efficiency has been to cause the development of organizd resistance by Negroes of the domination of employers, under the leadership of the American Federation of Labor. ("The Negro and the American Federation of Labor," in *The Messenger,* August, 1919, 10; "The Negro Mass Movement," *The Messenger,* May–June, 1919, 8.) See also Sandburg, "The Chicago Race Riots," Chs. V, XI.

[35] For instance, the president of the National Founders' Association, in his address to the members of the association, November, 1918, warned them that "failure to take active political interest in your home district adds to the influence of unionism

employed are apt to feel a grievance not only against their particular employers but also indiscriminately against capitalistic interests; and those interests to feel indiscriminately that all labour movements are a menace to property ownership. The resisting masses are, therefore, ready to listen to proposals for a "dictatorship of the proletariat," while the reactionary capitalistic interests stand for a continuance of their dictatorship.[36]

This conflict makes for inefficiency in industry. The attention of workmen is unconsciously diverted from their work by their dissatisfied state of mind; and deliberate inefficiency in work becomes a widespread practice.[37] Furthermore, in the periods of violent resistance no work is done, and the effect of such a period is long felt. "The attitude of the employing class has forced trade unions to become for the most part fighting organizations. Workers have been obliged to fight primarily for an increased share of the necessaries of life and for the recognition of their unions."[38] Men cannot work and fight too — hence the class struggle causes industrial inefficiency. It causes also political inefficiency. The more intense the struggle, the more do legislatures and courts become partisans of the dominant class and unable to keep the public welfare in view in the performance of their functions.

Inasmuch as labour includes the great mass of consumers the

and to the crushing power of governmental interference in industry." (Quoted from address printed in *The Open Shop Review,* Dec., 1918, 473.) And he pointed the warning by quoting James O'Connell, Vice-President of the American Federation of Labor, in the *Boilermakers' Journal* of October, 1917: "It is not a mere question of being behind President Wilson. That is a catch phrase and sounds nice. The question is, are you behind yourself? No movement can be successful in this country unless the trade union movement says so. Otherwise, the President of the United States would not have sent for the President of the American Federation of Labor — if he did not believe that behind all this struggle for democracy organized labor must be *at the head* of it." The National Founders' Association "has joined the National Association of Manufacturers, The National Council for Industrial Defence, and The Anti-Boycott Association in fighting anti-injunction laws" and other laws sought by organized labour, and "has itself at times retained a representative in Washington to watch proposed legislation of possible interest to the Association and to direct attempts to quash such as is undesirable." (Stecker, "The National Founders' Association," *Quart. Jour. Econ.,* XXX: Reprint, 33–34. The National Association of Manufacturers also is pledged "to oppose any and all legislation not in accord" with its interests. (*American Industries,* March, 1919, 45.) The members of the Association are urged to be less partisan and more active politically against organized labour. (Emery, "Class Legislation for Industry," an address delivered before National Association of Manufacturers, 1908, Reprint, 28.)

[36] Croly, "Progressive Democracy," 387.

[37] Brissenden, "The I. W. W.," 277.

[38] Croly, *op. cit.,* 386–387.

conflict of labour with capital tends to become psychologically associated with the conflict between consumers and capitalistic interests.[39] That is, the resentment of labour, as workmen, against capital is increased by its resentment, as consumers, against profiteering corporations;[40] labour thus comes to feel that it has a double cause against capital. As to the conflict between the small investor and great financial interests, this, with the increase of income of the working masses, also will tend to accentuate the feeling against capital. The conflict between controlling financial interests and the best type of industrial engineer also is a phase of the conflict between capital and labour, for the engineers oppose the capitalistic domination that stirs the resentment of labour because this interferes with their task which is to increase production. Production is increased by stimulating the creative intelligence of labour, which is impossible as long as labour is resentful of capitalistic domination.[41]

Labour's resistance of reactionary capitalistic interests may, for lack of intelligent leadership, assume as instinctive a form as the domination exercised by the reactionary interests; or, under intelli-

[39] Babson, "The Creative Urge," *Current Affairs*, March 17, 1919, 5.

[40] For instance, the chief of the Brotherhood of Locomotive Engineers said in an address to the Committee on Interstate Commerce of the House of Representatives in support of the Sims bill for the public ownership and private operation of the railroads: "At the request of these organizations (the railroad brotherhoods), the Sims bill is now before you. I speak as the voice of these 2,000,000 men, delegated by them to announce to this committee and to the people of this country that they are supporting this measure with all the strength and all the unity of purpose that can move so large a body of citizens.

"Joined with us and represented by Mr. Morrison is the American Federation of Labor, adding three million and a half of men to that body of railway employes, who instituted this movement.

"The full force of capitalistic organizations has been set against labor to hold and to keep all the profit of industry. The strength of the labor unions has been exerted to wrest from capital some share of the profits for the wage earners.

"This has been a perpetual struggle by the workers to maintain a tolerable standard of existence; on the part of capital to amass greater profits. At times both sides could ignore the needs of the public. But now the very growth of the labor organizations has brought into their ranks a great mass of the consumers. . . .

"For whatever the worker receives in wages he must spend for the necessaries of life. . . . The hope of a finer life is never realized. So long as consumers are forced to pay extortionate profits . . . there is no solution of the industrial problem." (Reported in the Utica *Observer*, Aug. 6, 1919.)

[41] Wolf, "Securing the Initiative of the Workman," *Amer. Econ Rev.*, IX (Supplement): 120–121; Wolf, "Individuality in Industry," Proceedings of Employment Managers' Conference, 1917, U. S. Bur. Lab. Statistics, *Bulletin* No. 227, 201–204; Veblen, "The Captains of Finance and the Engineers," *The Dial*, June 14, 1919, 596–606; Smyth, "Is the 'Art of Efficiency' Efficient?" *Industrial Management*, Nov., 1917, 203–207; Gantt, "Organizing for Work."

gent leadership, for instance, the leadership of progressive industrial engineers, progressive employers, progressive labour leaders and progressive political leaders, it may take an intelligent form. With the development of an intelligent leadership, and with the increasing secession of workmen from the conventional mass of voters, sovereignty as a mere obedience-compelling power will be no longer possible. As the masses cease conventionally to accept law as a command to be obeyed, the state can continue to exist only if the economic groups which have long acted as units in economic adjustments become units for political adjustment in economic matters.[42]

When an industrial group has long acted as an economic unit, it begins to become conscious of the larger aspects of its group purpose, the political aspects; and, when a number of these groups have developed this political consciousness, the economic basis is beginning to form for a new type of state. Political scientists who predict this change in the form of the state maintain that the national parliaments that represent geographical areas should deliberate and decide only questions that concern the people as a whole, for instance, questions affecting the people as consumers, and questions of the regulation of banking, while there should be parliaments representing the different occupational groups to decide questions of the management of industry. It is maintained that "jurisdiction must be coextensive with knowledge and competence in action, . . . that . . . government should be based on a realistic analysis of the different functions to be performed."[43] With representative government thus based on functional divisions, we should "have done with this confusion where legislatures also contend with 'the railroad vote,' 'the packers' vote,' 'the steel interests,' 'the oil group,' 'the insurance clique,' and so on. It is not so much that these special interests are corrupt as that they are misplaced and hence inefficient. The place for industrial interests to be voiced and decisions made is in a body representative of all industrial interests avowedly meeting together for purposes of

[42] The ideal of an industrial democracy is opposed by reactionary employers' associations which hold that the United States is "a republic, not a democracy," that "extreme democracy is Bolshevism," and that "democratizing industrial institutions means Russianizing them." (See the *Open Shop Review,* May, 1919, 194–206.) For a contrary view see Ward, "The New Social Order," 239–240.

[43] Tead, "The Meaning of National Guilds," *The Dial,* Vol. LXVII, Aug. 23, 1919, 150.

democratic control and operation in the public interest." [44] Under this organization labour would cease to be used as a commodity, with raw materials, in profit-seeking, and the whole body of workmen, unskilled workers as well as skilled, and also managers, technicians and office workers, would compose the voting body of an industry, which would choose, not only its representatives in the political body, but also the industrial managers from the foremen up.[45]

This proposition for the reorganization of the state obviously is not a purely legal one but involves social-psychological problems.[46] Indeed the arguments on which its protagonists most rely are social-psychological arguments. They insist " that the guild state implies a new motive dominant in industry. Industry is to be a public service conducted in close relation to known demands and needs. No one by virtue of ownership is to have the power to say what land or material resources shall be used, or the power to exact a perennial tribute for their use. . . .

" Regarding the problem of individual motive for work and productiveness, the guild analysis is guilty of no over-generous assumptions about human nature. It of course denies the proposition that the central driving motive in industry has to be private profit. But it jumps to no communist proposal of equal pay or labor tickets or any other unusual device. It contends rather that the industries shall be reasonably autonomous as regards determination of rewards to be paid for work; and that, with profit to all, an industry's superior efficiency in reducing costs might become a factor in this determination." [47]

The more strictly political aspects of the proposed reorganization also involve social-psychological considerations. For instance, it is said that the interest of most men in politics is slight if they look at political problems as individual citizens living in a certain geographical area, but strong from the point of view of their occupational interests; that not only issues but also candidates would arouse a more intelligent interest if they were representatives of the voters' occupational group, instead of merely their district,

[44] *Ibid.*, 151.

[45] Cole, " The National Guilds Movement in Great Britain," U. S. Dept. of Labor, Bureau of Labor Statistics, *Monthly Labor Review*, July, 1919, 24–32.

[46] Follett, " The New State," Pts. I, III.

[47] Tead, *op. cit.*, 151. See also Cole, " Self-Government in Industry," 272–274.

and that their conduct as representatives of such groups could be more intelligently judged than if they represented a geographical district with its chaos of interests. Undoubtedly political progress lies in so reforming political arrangements as to supplement the inevitable tendency of people to follow personal leadership [48] with a stimulus to a critical following of such leadership; and intimacy of knowledge of the leader and a vital and understanding interest in the issues is indispensable to this critical relation. Wherefore, it is contended that representation based on occupational groups would increase the citizen's effective interest in politics. Again, by accepting this basis of representation, it is said, the intense class conflict would be allayed because the adjustment of group interests would be facilitated by a parliament in which all groups were fairly represented.

Certain social-psychological processes would be as fundamental in the proposed new form of state as in the old. With an occupational basis the final alignment would be psychological because each occupational group would be divided into progressive and conservative factions. Again, the political influence of a group would not necessarily be in proportion to its numbers. The influence of the representatives of a numerically unimportant group would not necessarily be negligible, because the average intelligence of that group might be high and its leadership very influential over the leadership of other groups. Personal influence would be as dominant a factor in the new form of government as in the old. Hence the proposed new form raises social-psychological problems. It is because we have regarded problems of the state as problems of cut and dried legal forms that we have failed to realize their social-psychological basis.

The problem of an occupational basis of representation raises the question of the effect of such a change on political freedom.[49] Freedom of thought and speech tends to be narrowly restricted where a reactionary class is struggling to maintain its suggestive control of ignorant masses, or a resisting class is struggling to maintain its newly acquired control. Where a reactionary class is still in control,[50] it represses freedom of thought and speech and the

[48] Croly, "Progressive Democracy," 313.

[49] Reckitt and Bechhofer, "The Meaning of National Guilds," 22.

[50] During the great steel strike of 1919, the "business men" of the steel mill towns of Pennsylvania exercised an autocratic repression of freedom of speech and assem-

resisting class declares loudly for freedom. But when the resisting class wins control it may become as repressive as the dominating class, through fear of that class regaining control. Suppose, now, instead of intensely conflicting and, therefore, intolerant classes, which are rivalling one another to control the masses, there were a number of politically organized occupational groups. Instead of an ignorant, conventionalized mass of voters blocked off into districts and wards, the voters would be organized, for the settlement of certain issues, according to occupation, each group alive, or gradually awakening to a vital political purpose, conscious of other live groups with similarly vital purposes, jealous of its political freedom, and aware of the necessity of allowing other groups a like freedom. Under such an arrangement the masses would, it seems, be less subject than at present to the control of extremely intolerant conflicting classes, each, when in control, interfering with political freedom in order to maintain its control. To repress freedom seems easy and is the instinctive impulse in a period of keen class conflict, where the voters are a conglomerate mass of varying shades of ignorance and indifference, and are subject to the control of newspapers and demonstrations. But such repression would seem, it is said, less easy if even the weakest groups, numerically, were in a position to raise a strong protest against repression of their propaganda. Evidently, therefore, it is impossible to understand the bearing of the proposed change in representation on the problem of political freedom without understanding the psychology of social suggestion, especially the processes of social suggestion that are involved in the rivalry of classes to control the masses of a body politic.

The conflict of classes makes for social progress in the highest degree only if the problem presented by any particular conflict is regarded from the viewpoint of the public welfare, not the welfare

blage in the towns either through the city officials, or where these were not pliable, by meeting at the train speakers who were to address the strikers and notifying them to leave town. (Shaw, "Closed Towns," *Survey*, Nov. 8, 1919, 38–64.) The action of the United States government against the miners in the coal strike of 1919 was similarly autocratic in that the government had declared the war at an end and had ceased months ago to check the coal operators in raising their charges, and then enjoined the coal miners not only from striking but also from saying anything that would encourage a strike on the ground that the war was not at an end. (Hard, "What the Miners are Thinking," *New Republic*, Nov. 12, 1919, 324.) The repression of freedom of speech during this period of great strikes shows the hand of a dominant class on the government, both city, and state, and national. (Hard, "A Class Policy in Coal," *New Republic*, Nov. 19, 1919, 352–355.)

of a class.[51] But the welfare of a class is a part of the public welfare. The public welfare can be rightly conceived only by considering primarily not the legal status of each class but its human status. The law, having developed primarily for the protection of propertied interests, emphasizes the welfare of propertied classes at the expense of non-propertied. While legal status emphasizes the welfare of propertied classes, human status emphasizes the welfare of non-propertied, because these constitute the vast majority of the population and do the large part of the work of the world.[52] Human status means status as a being with a human personality which has its own laws of development.[53] As a human being in society man has an aspiration for development that forbids his acquiescing in economic conditions which make that development impossible. The material basis of satisfactions is limited and this economic scarcity requires sacrifice on the part of all those whose superior personal force or talent enable them to appropriate more than their needs require. Hence the necessity of the state; it subordinates the competitive interests of man to the common requirements for the development of personality.[54] The form of the state and its laws and institutions will change in order that it may exercise more fully this function.[55] The most ideal form of state requires the exercise of force in the regulation of competitive interests and the suppression of selfish, reactionary interests.[56] Up to the present time the state has placed property rights above the right of the non-propertied majority to conditions that make possible the maximum development of personality under the inevitable economic scarcity. At these various points, therefore,— development of personality in society, reaction of personality on society, adjustment of competitive interests in the state, changes in form of state for more satisfactory adjustment, class domination of state — social psychology is in close touch with political science.

Our analysis of political relations has revealed a change in recent years in those psychological relations which have been collectively

[51] Commons, "Labor and Administration," Chs. V–VI.

[52] The conflict between legal and human status recurred again and again in the hearings before the British Coal Commission (Gleason, "The British Coal Commission — Robert Smillie," *The Survey*, July 5, 1919, 521).

[53] Hocking, "Human Nature and Its Remaking," Pts. I–II.

[54] *Ibid.*, Ch. XXVIII.

[55] *Ibid.*, Ch. XXIX.

[56] Dewey, "The Discrediting of Idealism," *The New Republic*, Oct. 8, 1919, 284–286.

termed sovereignty. To understand the nature of sovereignty requires more careful inductive studies of the psychological processes than have yet been made. The opportunities for psychological studies of sovereignty in times past are limited, because an analysis of political attitudes in the past is impossible except through documentary sources. Thinkers who lay great emphasis on induction will, therefore, appreciate the value of analysis of political attitudes in the present. Confusion in the discussion of the nature of sovereignty can be avoided by recognizing that theories must change not only as conditions change but also as methods of thinking change. A survival of the deductive attitude with an absorption in history causes an over-emphasis on obedience-compelling power. The first great thinker to emphasize the social-psychological point of view, Montesquieu,[57] made the mistake of too much emphasis on ancient history and too little study of the governments of his own time,[58] with the result of transmitting at least one misconception as to government and sovereignty in his own time.[59] The proper emphasis on induction will result in an appreciation of the largeness of the social-psychological aspect of the problem, an emphasis on intensive study of the nature of sovereignty in the present, and in a cautious approach to theory. It is evident that, for the future development of political science, exhaustive studies of the nature of sovereignty in the present, and the accumulation of such studies year after year, will eventually furnish valuable sources for the historical study of sovereignty.

[57] Ehrlich, "Montesquieu and Sociological Jurisprudence," *Harvard Law Review,* XXIX: 583.

[58] *Ibid.,* 597.

[59] His doctrine of the separation of powers. See Montesquieu, "The Spirit of the Laws," trans. by Nugent and Pritchard, Bk. XI, Ch. 6. See also Goodnow, "Principles of Constitutional Government," 84–85, 153.

CHAPTER V

THE PSYCHOLOGY OF NATIONALITY

WHEN the struggle of classes for the obedience-compelling power of the state becomes intense, when, in a capitalistic state, a resisting under class is forbidden to hold meetings in public buildings and other public places, in order to prevent the dissemination of their ideas, when, in a socialistic state, a capitalistic class is likewise subjected to repression by the strong arm of the state, it may appear that class consciousness is more intense than consciousness of national unity. This view is emphasized when it is seen that the dominant class of the capitalistic nation warms toward capitalistic classes in other nations and through its control of the press expresses its detestation of resisting under classes in other nations, and when it is seen that the dominant class of the socialistic nation warms toward the "proletariat" in other nations and expresses its hostility to capitalistic classes of other nations. The increasing intensity of the class struggle does indeed develop a class internationalism which weakens nationalistic feeling. Nevertheless, the sense of nationality is by no means obliterated.[1] It is a phenomenon more largely of deep-seated social attitudes [2] than is class consciousness, in which clearly conscious ideas and impulses are more conspicuous elements. But in a time of extreme hostility between nations it becomes a phenomenon of impulse and idea — a clearly conscious purpose to remain distinct and independent and to resist influences contrary thereto.[3] Because a state of mind is the essential thing in nationality,[4] social psychology is, in the sense of nationality, closely related to political science. The purpose of the present chapter is not to offer a psychological analysis of the sense of nationality, which would require a volume, but

[1] At the outbreak of the war the socialistic parties of various nations abandoned their conception of the international brotherhood of all workers to support the national purpose of their several nations.

[2] Perry, "The Present Conflict of Ideals," 387–388.

[3] Pillsbury, "The Psychology of Nationality and Internationalism," Ch. IV.

[4] Perry, *op. cit.*, 381; Pillsbury, *op. cit.*, 246–247.

to indicate the relation of social psychology to political science in this connection.

With the increasing tendency to the migration of peoples and to intermarriage, likeness of race has become less important in the sense of nationality and the mere fact of association more important. A people, more closely associated with each other than with outsiders, inevitably becomes group-conscious [5] and shares the impulse to extend the group territory and otherwise to seek superiority as a group. This sense of nationality is much weakened unless the people speak the same language.[6] In addition to this superficial sense of nationality due to contiguity and communication, there is a deeper sense when a people have certain traditions in common, certain like fundamental attitudes, as the same religious or political attitudes. From this fundamental likeness of attitudes, other forms of likeness — like impulses, like ideas — result. Essential in the unity of a people is their political attitude. A common consciousness of the same country of birth,[7] the same language,[8] the same religion,[9] and a similar physiognomy enhance national feeling; [10] with the growth of empire a common political attitude has become more and more essential.[11] It is at this point that political science is closely connected with social psychology in the conception of nationality. For the political attitude essentially determines the nature of the political institutions, and these are subject matter of political science.[12]

The political attitude of different nations varies according to the degree of submission with which the masses acquiesce in the projects for self-aggrandizement of a ruling dynasty or a dominant class.[13] The submission is less extreme among the Anglo-Saxons

[5] Pillsbury, *op. cit.*, Ch. II.

[6] *Ibid.*, 144.

[7] Zimmern, "Nationality and Government," 96.

[8] Buck, "Language and the Sentiment of Nationality," *Amer. Pol. Sc. Rev.*, X:44–70; Margoliouth, "Language as a Consolidating and Separating Influence," in Papers on Inter-Racial Problems, First Universal Races Congress, University of London, 1911, 57–61.

[9] Davids, "Religion as a Consolidating and Separating Influence," in Papers on Inter-Racial Problems, First Universal Races Congress, University of London, 1911, 62–66; Thomas, "The Prussian-Polish Situation: An Experiment in Assimilation," *Amer. Jour. Sociol.*, XIX:627.

[10] Ruyssen, "What is a Nationality?" *Intern. Concil*, No. 112, 8–22.

[11] Veblen, "The Nature of Peace," 85–103.

[12] Pillsbury, *op. cit.*, Ch. IX.

[13] Veblen, *op. cit.*, 26.

than among the Germans [14] before the revolution. At one extreme is the attitude of the nation which observes unquestioning obedience to the commands of an autocracy, at the other extreme the conditioned acquiescence of the masses of a democracy; but one must avoid a hard and fast distinction in thought, as there is none in psychological fact, in spite of the patent constitutional distinction between autocracy and democracy.[15]

The autocratic attitude is one of a set purpose to compel acquiescence of subjects in projects for national aggrandizement. This purpose is " the result of a peculiar moral attitude or bent, habitual to such statesmen, and in its degree also habitual to their compatriots, and is indispensably involved in the Imperial frame of mind. . . . In short, the dynastic statesman is under the governance of a higher morality, binding him to the service of his nation's ambition — or in point of fact, to the personal service of his dynastic master — to which it is his dutiful privilege loyally to devote all his powers of force and fraud.

" Democratically-minded persons, who are not moved by the call of loyalty to a gratuitous personal master, may have some difficulty in appreciating the force and the moral austerity of this spirit of devotion to an ideal of dynastic aggrandizement, and in seeing how its paramount exigence will set aside all meticulous scruples of personal rectitude and veracity, as being a shabby with-holding of service due." [16]

The masses of a nation acquiesce in the prevailing political attitude, if not because it is congenial, then because of response to social suggestion. It needs to be congenial in order to evoke a spontaneous, enthusiastic patriotism. Thus Bismarck writes of German patriotism: " In order that German patriotism should be active and effective, it needs as a rule the middle term of dependence on a dynasty; independent of dynasty it rarely comes to the rising point, though in theory it daily does so, in parliament, in the press, in public meeting; in practice the German needs either attachment to a dynasty or the goad of anger, hurrying him into action: the latter phenomenon, however, by its own nature is not permanent. It is as a Prussian, a Hanoverian, a Wurtemberger, a Bavarian or a

[14] *Ibid.*, 104–108.

[15] Laski, " The Responsibility of the State in England," *Harv. L. Rev.*, March, 1919, 466.

[16] Veblen, *op. cit.*, 84–86.

Hessian, rather than as a German, that he is disposed to give unequivocal proof of patriotism; and in the lower orders and the parliamentary groups it will be long before it is otherwise. . . .

". . . The preponderance of dynastic attachment, and the use of a dynasty as the indispensable cement to hold together a definite portion of the nation calling itself by the name of the dynasty is a specific peculiarity of the German Empire. . . .

" Whatever may be the origin of this factitious union of particularist elements, its result is that the individual German readily obeys the command of a dynasty to harry with fire and sword, and with his own hands to slaughter his German neighbours and kinsfolk as a result of quarrels unintelligible to himself. To examine whether this characteristic be capable of rational justification is not the problem of a German statesman, so long as it is strongly enough pronounced for him to reckon upon it." [17] Contrast this spontaneous subservience to a dynasty with the traditional independence and individualism of the English and American people. Their patriotism is spontaneous when it is a question of asserting independence against a German dynastic ambition for world supremacy.

Consciousness of a distinguishing political attitude becomes particularly strong in the sense of nationality when a nation is conscious of an essential difference between the attitude which has determined its political institutions in the past and the attitude which has determined the institutions of a rival nation — for instance, the American consciousness of the difference between the ideal of liberty, enunciated in the Declaration of Independence, and the German ideal of authority emphasized by Bismarck.[18] This consciousness of a distinct political attitude is important in the sense of nationality of a great empire which contains people of different nativities, languages, religions, and physical aspects. It is also essential in determining the inclination of one nation to co-operate with another against a third; this was illustrated in the incentive given the United States by the overthrow of autocracy in Russia to join the Entente allies in the war against the Teutonic allies.

It takes a conflict between nations to bring out vividly, in the consciousness of each nation, its essential political attitude. Just as the Englishman's conception of private rights is ordinarily sub-

[17] Butler (editor), " Bismarck, The Man and the Statesman," I: 320–324.
[18] *Ibid.*, I: 314–315.

conscious, and he becomes conscious of his rights only by fighting for them,[19] so a nation becomes conscious of its political attitude by fighting for it. Fighting against Germany not only called attention to the democratic political attitude as the thing fought for, but also called attention to the German attitude of domination-submission as the thing fought against. The attention of the people of the democratic nation was called not only to their own democratic attitude of freedom but also to the defects in their political freedom, to the attitude of domination-submission in their political party organizations, and in their denial to women of the right to vote. Their attention was further called to the contradiction between a democratic political attitude and the attitude of domination-submission in industrial relations; and there arose a demand for industrial democracy.[20] Attention was called, also, to the fact that the autocratic attitude determined ecclesiastical [21] and academic relations,[22] and also the editing of the press.[23] The hitherto unconscious psychological basis of the various sections of social organization was scrutinized and compared with the attitude which the conflict had made an ideal; and the wisdom of the domination-submission relation, where it continued to exist in a nation professedly democratic, became a matter of discussion.

This prominence acquired by the democratic attitude was displeasing to those classes in France, England and the United States whose attitude to democracy was the reactionary capitalistic attitude of distrust of popular rule and the aristocratic attitude of contempt for the masses.[24] The outbreak of the war found them acclaiming democracy, but, with its progress, they were sobered with a sense of the significance of a real democratic movement, and what it would mean for their privileged position. "When the war broke out, all the reactionaries in England and France began to speak of the danger to democracy, although until that moment they had opposed democracy with all their strength. They were

[19] See the chapter entitled, *Psychological Implications of Interpretations of Private Rights.*

[20] Angell, "The British Revolution and the American Democracy," Pt. II, Chs. I–IV, Appendix I; Kellogg and Gleason, "British Labor and the War."

[21] Croly, "The Future of the State," *New Republic,* Sept. 15, 1917, 179–181.

[22] Veblen, "The Higher Learning in America"; Dewey, "The Case of the Professor and the Public Interest," *The Dial,* Nov. 8, 1917, 435.

[23] Lippmann, "Liberty and the News."

[24] Kallen, "The Structure of Lasting Peace," vii–ix.

not sincere in so speaking; the impulse of resistance to Germany made them value whatever was endangered by the German attack. They loved democracy because they hated Germany; but they thought they hated Germany because they loved democracy." [25]

In addition to the attitudes that constitute the sense of nationality, there are certain instinctive impulses, which operate along the lines of the essential attitudes. People have an instinctive fear of standing alone, an instinct to draw together for security,[26] to feel a gratifying sense of solidarity — of " each for all and all for each." It is when people are in this mood of apprehension and drawing together that the guide posts of past experience — the symbols of a common language and a traditional political allegiance — are influential in determining with whom they shall draw together, and from whom they shall draw apart.[27] National ambition, also, stimulates a sense of nationality,[28] which operates in the direction particularly of the political attitude that distinguishes the nation.[29] Under the incentive that is imparted by this national ambition, other attitudes, as the consciousness of a common country, language, religion, fall in abeyance in comparison with the political attitude. Or these other attitudes may continue active, and may work at cross purposes with the national ambition for increased economic opportunities as a means of extension of the influence of the political attitude.

In time of war or other intense international rivalry the sense of nationality involves a vivid collective consciousness,[30] which includes a consciousness not only of the national political attitude but also of the immediate group purpose and of the many things which everybody is saying and doing toward realizing that purpose. An individual does not share in the collective consciousness unless he ceases to feel personal impulses which conflict therewith [31] and comes to feel the common impulses with reference to national symbols and the national ideas which are being held before the people. For instance, during the nation-wide campaign of 1917, in the

[25] Russell, " Why Men Fight," 15–16.
[26] Pillsbury, *op. cit.*, 53.
[27] Kallen, " The Structure of Lasting Peace," 19–20.
[28] Pillsbury, *op. cit.*, 215.
[29] Veblen, *op. cit.*, 31 ff.
[30] Veblen, *op. cit.*, 89; Pillsbury, *op. cit.*, Ch. VI, 202–205.
[31] McDougall, " The Will of the People," *Sociological Review*, 1912, V: 89–104.

United States, to sell "liberty bonds," the idea of buying liberty bonds was held before the people throughout the nation by advertising and by the press; and that man did not share in the collective consciousness who, in investing his money, thought only of the interest to be gained from the investment and did not share the impulse to invest in liberty bonds for the sake of helping the government to win the war. This impulse to help the government against the enemies of the nation was the essential impulse of the collective consciousness. "If you can't fight, your money can," was the slogan. The essential impulse was to "fight" on behalf of the country,[32] and those who exercised the social control throughout the nation connected this impulse to fight with the idea of buying liberty bonds, with contributions to the Red Cross, and so on. People who invested for personal gain, who made work for themselves or their families instead of for the Red Cross and other national agencies their first thought, did not share fully in the collective consciousness. A collective consciousness does not necessarily involve any intellectual agreement among the people as to the wisdom of the national purpose, nor even any intelligent idea as to what the national purpose may mean. It involves merely a common impulse to advance the national purpose, whatever it may mean, whether it be wise or unwise, in the ways suggested by the government, the press, and the other agencies of social control.[33]

In time of peace also there may be a vivid national consciousness, if a nation is in a state of resistance to the political and economic domination and exploitation which is being practised against it by another. Instance the vivid national consciousness of Poland since the attempt to Germanize Poland was begun in 1873.[34] The leaders who were killed in this struggle against tyranny became symbols of the national resistance, and these symbols united the nation by intensifying the common consciousness of the prevailing attitude of resistance. This sense of solidarity was further stimulated by making of the symbols of resistance a ritual for the group. "In order to see itself, the Polish people has to look at the past, and there is scarcely a house where one will not find memorial pictures of the national martyrdom. The martyrology, which no

[32] Russell, *op. cit.*, 14–15.

[33] Pillsbury, *op. cit.*, 198.

[34] Thomas, "The Prussian-Polish Situation: An Experiment in Assimilation," *Amer. Jour. Sociol.*, March, 1914, 625–640.

other people possesses in so developed a form, is the political rosary of the Poles, which is prayed over unceasingly, and whose cruel beads each one has often fingered. In such wise for years sentimental men are ever anew raising their voices and warning the Polish people that they ought not entirely to give themselves up to the fashionable industrial organizations; for the trade union and peasant association have no Polish divisions and for them the rosary has no prayer." [35] In the same way religious persecution in the past developed a vivid sectarian consciousness and a martyrology for the resisting sects, which strengthened their resistance. Sometimes a national resistance is stimulated by a sectarian resistance, as in Poland, which resisted Germany not only as a nation but also as Roman Catholic in religion.[36]

In a period of intense international rivalry the political attitude is either given added fixity or, if the nation proves unsuccessful in the rivalry, is weakened. Does any one doubt that a victory for the Teutonic Allies in the World War would not have weakened our democratic attitude and strengthened the militaristic attitude? [37] Is it not evident that the victory for the Entente Allies, in spite of the reactionary Treaty of Peace and in spite of the surviving intolerant and coercive spirit of the war period, has stimulated the democratic attitude throughout the world? That is the cause of the increasing unrest and resistance among the workers of the world — it is an impulsive movement toward industrial democracy. The attempted repression of it is the impulsive reaction of reactionary capitalistic interests allied with a military class against democracy.

But there are other psychological effects of the victory which are formidably interfering with its favourable effect on democracy. To explain what these are would require several chapters, but the

[35] Bernard, "Die Polenfrage," 197.

[36] "Ask a Pole his nationality and he will not improbably reply: 'Catholic.'" (Thomas, *op. cit.*, 67.)

[37] In Japan, even while the World War was in progress, the success of Germany against superior forces caused an active German propaganda to be carried on by Japanese officials. "I learned that in the army the conscript recruits had been systematically got together and taught the superiority of German institutions to those of the Allies, and especially the superiority of German militarism and the fact that it could not be defeated." (Dewey, "Liberalism in Japan," *The Dial*, Oct. 4, 1919, 284.) When Germany was defeated a wave of democratic sentiment spread throughout Japan, which, however, receded because of "the lesson of the failure at Paris of the fine words which President Wilson flourished when he took the United States into the war." (*Ibid.*, 284.)

situation in the United States may be stated more briefly. The opinion of the great English and French observers of American life, that we are a people of a somewhat provincial self-esteem,[38] is, we must admit, not without some degree of truth. It had a basis in our sense of our vast, undeveloped natural resources, in the economic freedom of the settlers of the country, and in our benevolent attitude in offering a home to the oppressed of the nations of the world. The coming of millions of foreigners, from every nation of the world, caused us to feel our superiority. Then, too, the freedom of opportunity that determined the development, for a time, of our economic and political institutions caused these to be thought superior to those of other nations. This sense of superiority was still further increased by our rapid rise to a world power, which was not devoid of spectacular incidents that stirred the pride of the whole nation to a high pitch. Finally, the fact that we entered the World War just in time to save Europe from the domination of the German militarists, and that, after thus dramatically ending the war, we were asked to save Europe economically, did not tend to weaken the national self-esteem. This psychological trait, or state, is unfavourable to the development of democracy for several reasons. It means that, as a nation, we are satisfied with things as they are, for our very greatness makes it unnecessary to change anything. This means that the national self-esteem is particularly favourable to those classes in the nation to whose interest it is to maintain things as they are, and is unfavourable to those classes to whose interests the prevailing conditions are contrary. Because of the national complacency, the former classes are more repressive where movements for progress occur than they would otherwise dare to be. This psychological condition showed itself especially in the coercion of labour in the years following the World War, which was more extreme than before, and in the weak reaction against that coercion of a public that was particularly complacent at that time because of the happy outcome of the war.

Another cause of the national complacency that furthered capitalistic repression in this period was the attitude of the returned soldiers. Many people had believed that the soldiers would return

[38] De Tocqueville, "Democracy in America," II: 183–184, 238–241; Bryce, "The American Commonwealth," II: 322.

enthused for democracy, with a zest for independent thinking, and for reform movements that looked toward those developments in political and economic freedom to which our traditions committed us. Many of them did return in this frame of mind, but the influence of others was thrown for reaction instead of progress. The aggressive reactionaries had brought back with them the repressive spirit of military discipline, instead of an enthusiasm for democracy, and the public, because of its complacency as a victorious nation, and because of its pride in the soldiers who wrought for the great victory, acquiesced in the repressive and inquisitorial behaviour. The fact is that the intense political rivalry had produced political fanatics, as intense sectarian rivalry once produced, and still does produce religious fanatics. Intense rivalry makes the beliefs of the rivalrous groups obsessions before which opposition is to be crushed out by force. This fanaticism, which once animated religious sects the world over, among many of the returned soldiers came to attach itself to the nation. They thereby became an unofficial military class; and the fanaticism of this class was intensified by the fact that it was highly pleasing to economic and political powers that be, and, therefore, was favourably noticed in the press. Hence the social control of the military class was enhanced by its flattering associations and favourable newspaper publicity. The same fanaticism characterized the German military class, and the influence of this class was similarly out of all proportion to its numbers. The extraordinary influence of a military class is due to the fact that it is the visible symbol of the national superiority. Its prestige as such causes the people subconsciously to accept the military attitudes in civil life.

The militaristic attitude of authority-obedience develops in a nation as a result of certain relations between classes in a nation or between nations. Intensifying economic rivalry between nations causes the reactionary economic interests of a nation to desire an assurance of the support of a strong army and navy, and intensifying rivalry between capital and labour causes reactionary capitalistic interests to desire the assurance of military support against labour. Changing international and intra-national relations might conceivably result in compulsory military training in the United States, which development of a military class would accentuate the

evils of the military mind that are already pronounced among us. The military mind accepts the purpose laid on from above. Freedom of thought and speech is limited to ideas that are in harmony with that purpose. Wherever the influence of a military class reaches, freedom of speech is done away and all the attitudes of character developed by free speech are weakened. And, as institutions are the effect rather than the cause of psychological processes, any considerable development of a military class in the United States would result in a change in institutions in the direction of the autocratic form.

A reversion to autocratic institutions seems incredible when we consider our traditions. But it is not so incredible when we consider that the essential process in political evolution has been the conflict of peoples and the changes in their idea-systems occasioned thereby.[39] If the masses of the different nations continue subservient to rivalrous capitalistic interests, and the rivalry of these becomes keener, militarisms may develop instead of pass away. During a war, under the impelling force of instinctive fear and rivalry, the rank and file of a nation are united in the one impulsive national purpose and alter their habits as directed by their leaders for the realization of that purpose. When peace follows war the life interests of the rank and file return again to the community, the job and the family life. But, by appealing to fear and rivalry in time of peace, as the militarists in all nations are constantly doing, it is possible for interests that control governments to secure popular acquiescence in measures that imperceptibly change institutions in the direction of the autocratic. The habits of the people may be changed gradually in time of peace, as they are more suddenly in time of war, by enlisting in time of peace, imperceptibly, the instinctive impulses violently stirred in time of war, and this change in habitual instinctive impulses works the desired change in institutions. During the decade preceding the World War the people of Germany were united in a great national rivalrous purpose under the instigation of the military, political and economic powers, and were stimulated in this purpose by fear of England. The same change, with the same inevitable result, might conceivably take place in the United States in the not distant

[39] Teggart, "The Processes of History," 150–151.

future, because of increasingly hostile rivalry with other nations.

We have to admit that, thus far, the impulsive purpose of a nation to maintain or improve its international position — to seek national superiority — has been essential in the sense of national unity of the great nations; and aggressive economic and military rivalry has, therefore, seemed inevitable. Such a sense of unity has united nations, not only in war but in peace. In our own sense of national unity, perhaps the essential factor has been our sense of our national superiority. In our isolation this did not seriously interfere with liberty. But as we come into more intense rivalry with other nations, aggressive economic and military rivalry will more and more seem inevitable, with its coercion. We have to choose between this rivalrous nationalism with coercion, on the one hand, and an ideal of international co-operation, on the other. The latter ideal is one in which sympathetic and intellectual impulses, not fearful, rivalrous and dominating impulses, determine the purposes of the national leadership and the ideals of the thoughtful public opinion of the nation. This psychological basis of class co-operation within the nation, of national unity, and of international co-operation, never has been attained in any nation.

If the relation within a nation and between nations is ever to become a relation of intelligent co-operation, this development requires, above everything else, not merely the breaking up of the traditional national attitudes,[40] but also the weakening of the overmastering tendency of human nature to react unthinkingly according to habits and attitudes. It requires also that the impulsive force through which this overmastering tendency to habit is weakened shall be, not the force of rivalrous, but of sympathetic and intellectual impulses. These, if stimulated by the agencies of social suggestion, will formulate a new ideal. "As nationality is largely dependent upon the development of ideals and a new ideal, when developed, has the force of instinct, it is always possible to make progress."[41] But progress in the past has depended on the shock of group conflict, which has accomplished the "mental release" from tradition of the members of a group.[42] The masses, instead of being educated, have been kept in ignorance and subjection by

[40] Orth, "Law and Force in International Affairs," *Intern. Jour. Ethics*, Apr. 1, 1916, 341–344.

[41] Pillsbury, *op. cit.*, 279.

[42] Teggart, *op. cit.*, 151.

ruling classes for the sake of the preservation of the "rights" of the latter and the satisfaction of their ambitions.

The upper classes have held the social power, and therefore, the responsibility of enlightening the masses or keeping them in ignorance. In some nations the upper classes have determined that the masses should have no education, on the ground that a people can be more easily kept in subjection by keeping them in ignorance. When the people have had some education the upper classes have controlled the boards that determined what education they should have and what education they should not have. A people may be more effectually kept in ignorance by giving them education than by denying it, because they may be given what is represented to be vital education, and thereby made to believe they have education, when it fails to touch the vital problems of their lives. They are practically as ignorant as before and are more effectually kept in ignorance, because the appearance of so doing is avoided, as it is not by denying them education altogether.

As long as the masses of a nation are ignorant and, therefore, are predominantly creatures of instinctive impulse and habit, the political leaders can enlist the unintelligent patriotic support of the masses in any project in the interest of a dominant class which can be brought into line with popular impulses and attitudes by cleverly suggested explanations. This condition of the masses whereby they are subject to the suggestive control of the interests that happen to exercise a predominant influence over the government at the time is not a desirable condition in that it makes impossible a steadily progressive public policy and one that shall invariably command the confidence of other nations. Only with an intelligent and critical citizenship is a progressive public policy possible. In how far a citizenship is intelligent and able to discriminate merely plausible justifications of unwise public policy from the requirements of wise policy is a question of social-psychological fact. Because the facts are so difficult to observe and analyse on a large scale, there is a difference of opinion among students of society as to the motives of statesmen in giving justifications for their political action, and as to the functioning of those justifications in the minds of the rank and file.[48]

Not until recently has the necessity of an intelligent citizenry

[48] Compare Veblen, "The Nature of Peace," 35–36, with Perry, "The Present Conflict of Ideals," 14–15.

been realized. The result is the Americanization movement. There are two opposite and conflicting tendencies in this movement. In order to understand these tendencies it is necessary to recall the essential elements in the American sense of nationality from the beginning. While the country was first settled by those who sought political and religious liberty, the essential lure of immigration since the independence of the nation was established has been the superior economic opportunities offered by cheap land and high wages. The American of the nineteenth century felt that his country was superior to any other and the basis of his belief was economic. At the outbreak of the Civil War, President Lincoln relied for support not on compassion for the slave and an impulse to free him but on the American's sense of national greatness, which required a united nation and the preservation of the union. A sense of national greatness — a satisfaction of the rivalrous disposition,— not sympathy or intelligence, has been essential in our sense of nationality.

The economic basis of this sense of nationality lay in the unrivalled opportunities for accumlation of wealth offered by the new country, which stimulated the property-getting impulses and moral qualities. These are set forth in "Poor Richard's Almanac." The teachings of Benjamin Franklin in Poor Richard "moulded our great-grandparents and their children; they have formed our popular traditions; they still influence our actions, guide our ways of thinking, and establish our points of view. . . ." [44] This is because they expressed the property-getting attitude of the people. Poor Richard was a personification of the self-reliant industriousness, thrift and frugality of the rank and file of the people.[45] In those first decades no boy could grow up in expectation of being able to live without working. "Father's got money, why should I work?" had not yet become the inner thought of tens of thousands of boys and young men who expect to inherit money, and who are supported in ease by their parents. Because every man had an opportunity to work and save, there was approximate freedom of economic opportunity —"land of freedom, land of fortune"; — and because these conditions were not found in the old world there was an easy sense of the superiority of the country.

[44] Morse, "Benjamin Franklin," 22.
[45] Williams, "An American Town," Ch. IV.

With the development of private property, a large part of the property of the United States passed into the hands of a small minority of the citizens.[46] This happened not because the small minority had superior industriousness, thrift and frugality but by a development of transportation, of industrial and financial organization that was fostered in their own interest by those who controlled the invested earnings of the industrious and thrifty, and who controlled the governments.

There are, therefore, two opposite tendencies in the present Americanization movement. One is to restore the original freedom of economic opportunity, without, of course, restoring the original conditions of cheap land and small industries, which is impossible. The other is to maintain economic relations as they are. "'Americanization'! cry the employers of labour. 'That is all very simple. Teach the men to stay on their jobs — that's Americanization!'"[47] To others Americanization means to teach unquestioning submission to political authority;[48] to others it means "the preservation of the status quo,"[49] that is, the maintenance of the social control of the propertied classes; to others it means teaching English to foreigners;[50] to the hangers-on of political parties it means another opening for political jobs;[51] to many others it means an opportunity to win favourable public attention. All these interested parties are mainly intent on a propaganda which aims to teach foreigners the English language, to inculcate certain platitudes about liberty and property and thus to prepare the masses to accept through social-suggestion the attitudes that determine the editing of a capitalistic press, essential among which attitudes is deference to the propertied interests as they have developed in the United States. On the other hand, the program of those who aim to restore freedom of opportunity is the gradual democratization of industry. This requires, primarily, a development of intelligence and sympathy throughout the nation.[52] This is to be accomplished through fostering intelligence and co-operation in industry,

[46] King, "The Wealth and Income of the People of the United States," Chs. IV, IX.

[47] Lubin and Krysto, "The Menace of Americanization," *The Survey*, Feb. 21, 1920, 611.

[48] *Ibid.*, 611.

[49] *Ibid.*, 611.

[50] *Ibid.*, 611.

[51] *Ibid.*, 610.

[52] *Ibid.*, 612.

and through emphasis on the inculcation of sympathetic and intellectual attitudes in public education.

As to the development of intelligence and co-operation in industry, Mr. Robert B. Wolf, the distinguished industrial engineer, says:

"Until we have changed the autocratic character of our industries (which really dominate the political situation), it will be impossible to have a democratic society.

"By a democratic society I mean that form of social structure which encourages and aids the growth of the creative spirit in man, expressing itself through the trades and professions and the organized industries.

"This I do not believe can be accomplished until the executive, legislative and judicial functions of the government cooperate with the trades and professional associations and industrial organizations to give greater opportunity for the free expression of individuality. When this is done we shall have an organization of society based upon respect for the individual, which is the only true democracy.

. . . . . .

"What right have we then to expect a high development of productive (creative) effort when we limit the intelligent handling of materials and forces to the few who autocratically claim it as their right to dominate the wills of others, especially when their contact with the actual work, because of the increasing size of our industrial organizations, is becoming constantly more remote? Of course, we must have leaders; otherwise there can be no organization, but leading is vastly different from driving. 'Teach, don't boss,' is a sign we see posted in industrial plants quite frequently these days, and it is one of the healthy 'signs' of the times." [53] Mr. Wolf declares that the dominating attitude of employers is the essential cause of labour unrest. He asserts: "The short-sighted employer may prevent his employees from using their brains at their work, and because of this, hold their compensation down to a low

[53] Wolf, "Securing the Initiative of the Workman," *Amer. Econ. Rev.*, IX (Supplement): 120–121. See also Mr. Wolf's description of the methods by which he developed the creative impulse of workmen in the pulp and paper industry (Wolf, "Individuality in Industry," Proceedings of the Employment Managers' Conference, 1917, U. S. Bur. Labor Statistics, Bulletin 227, pp. 201–204. In a letter to the author in June, 1919, Mr. Wolf wrote: "I am doing some work for several industries outside of the pulp and paper field, and I find the principles worked out in our own line applicable in such diversified industries as steel and iron and the soda industry."

level. There is no advantage in so doing, however, for the result of the attempt to repress individual initiative is simply to deflect creative power into destructive channels.

"This autocratic domination of the wills of the workmen, by preventing free self-expression, is the cause of practically all the destructive forces, exhibiting themselves in certain phases of Bolsheviki and I. W. W. movements. The creative process in the individual cannot be suppressed — it can only be deflected (perverted) into useless or, worse still, destructive channels." [54]

Mr. Wolf calls for co-operation between the government and industry as a means of stimulating the intellectual or creative impulses throughout industry. He conceives of the nation as an economic unit, and of the sense of nationality as a joyful sense of the excellent opportunities afforded by the nation for self-realization through the work of life. He makes clear that his conception is of what ought to be and what might be, not of what is. But he points out that the government's industrial policy during the war afforded the beginnings of what ought to be and that the main features of that policy should be continued in time of peace: "1. They called upon the practical men, the representatives of the workmen, the engineers and the scientists to tell them *what* to do and *how* to do it. They asked those men to build up organizations to direct the industrial operations of the country. Gradually this group of men, whose training had made them masters of the material forces, began to accumulate information which enabled them to know what the nation's resources actually were. They encouraged the producers to organize into associations to aid them in making a complete survey of the field of resources and requirements, and in this way were able to determine which organizations had the greatest capacity to render service. The legislative branch of the government was acting under the direction of these bureaus of industrial leaders for the simple reason that it could not act intelligently without them.

"How can we expect to get intelligent legislation in peace times without the same cooperation between nationally organized industry and the national legislative body?

"2. The second thing the government did was to administer the finances of the country in such a way that credit was extended

[54] Wolf, *op. cit.*, 121–122.

to those who were estimated to have the greatest capacity to render service. Without this executive power to administer credit where needed, little could be accomplished for it had to be administered for the good of the whole country. Why then isn't this a necessary peace-time executive function also?

"With the governmental administration of credit for the benefit of society, the interest charges would naturally be made as light as possible in order to reduce the burden, and thereby stimulate creative enterprise." [55]

This co-operation of all governmental agencies with industry not only for industrial progress merely but for human progress, for the development of the individual personality, will, says Mr. Wolf, develop a collective efficiency, a sense of national unity, and a distinct national consciousness. The final international relation is not one of rivalry for supremacy but of co-operation. Each nation, he says, must "become finally a conscious *unity* for expressing itself in constructive service for advancing the welfare of the world.

"Surely an association of nations based upon this conception of rendering service need not think of a type of internationalism which does away with national characteristics. Those groups which logically and naturally should work together must form themselves into individual societies or governments; otherwise, the progress of the human race will not be individual or generic. The individuality of the nation must be just as carefully and conscientiously developed as the individuality of the plant in the larger corporations, or the individuality of the department within the plant or the man within the department. When each nation realizes that its growth in creative power depends upon its cooperation with other nations for the welfare of the whole world, the attitude of exploitation which has dominated national life in the past will disappear. . . ." [56]

In order to appreciate the significance of Mr. Wolf's theory it is necessary to recall what was said in the *Introduction* about the fundamental nature of assumptions as to human nature in interpreting the facts of the social sciences. If social scientists merely accept the human nature implied in the habitual political and economic relations, their interpretations of their facts will, obviously, differ much from what it would be from the viewpoint of an ade-

[55] *Ibid.*, 129. See also Fisher, "Economists in Public Service," *Amer. Econ. Rev.*, IX (Supplement): 15.

[56] Wolf, *op. cit.*, 130.

quate conception of human nature. At this point, therefore, there is the closest possible relation between social psychology and political science. The political scientist does not carry his analysis beyond the attitudes implied in the political relations with which he is at the time concerned but, in the interpretation of the possible lines of political progress, he must consult with the social psychologist as to the capacity for progress that is afforded by the instinctive dispositions of human nature as a whole.

The second line of effort for the stimulation and training of the creative impulses lies through public education. The working masses must not have to wait until they are adult workers before these impulses are stirred. They must be trained intellectually while children through a system of public education developed with that end in view. In educational policy, the emphasis should be on the stimulus and training of the intellect, because the strongest tendencies in human nature are to react according to instinct and habit. The most intellectual men, in spite of themselves, constantly find that they are developing attitudes that weaken their efficiency and that of the groups to which they belong. Thus the managers of industrial enterprises find themselves falling into certain attitudes to their subordinates, judging whether or not subordinates have made good according to their attitudes toward them rather than according to the objective results of their work. The subordinates in turn find themselves reacting in this way to their subordinates, and so on down to the rank and file of the employés, among whom the favouritism and inefficiency of their superiors is common talk; so that esprit de corps disappears from the organization, and each enjoys the thought of what he is getting out of the enterprise instead of what he is putting into it. This is true not only in industry but also throughout social organization. In education itself, this deadening tendency creeps in. Curriculums become rigid, methods become pedantic, the minds of teachers become inflexible, their relations to their students become attitudinal. For instance, teachers often mark students according to their " estimate " of their ability, that is, according to their attitudes to students instead of from a critical analysis of the students' work. Reaction from habit and attitude is the easy reaction and this tendency is increased by the lack of emphasis on the training of the intellect. This condition affects the national consciousness. As

will be shown in a succeeding chapter, patriotism is largely a phenomenon of instinctive impulse and attitude; there is very little in it that is intelligent.

Public education must reach not only the youth of the land but also adults. The public education of adults, which is beginning to be attempted in this country and in Europe, will amount to little if the work of the masses makes little or no appeal to their intelligence. A man cannot go through the day's work like an automaton and then, at the close, suddenly become conscious that he has intellectual faculties that ought to be developed.[57] Unless there is some call for intelligence in the course of the work, studies to develop intelligence after work hours will hardly seem worth while. It is for this reason that intelligent citizenship requires that the work of the masses be such as not to deaden intelligence. But, in addition to the work appealing to intelligence, there must be pay and leisure adequate to encourage workmen to feel impulses for positive self-development. The political representatives of a social order which "has in the past required the sacrifice of the many to the few"[58] constantly preach self-restraint.[59] Under the cloak of a hypocritical regard for the many they seek to perpetuate the sacrifice of the many to the few. The ideal of social education is self-development of the many; and it assumes that, while there is an economic scarcity which fixes a limit to the material means of self-development, education will inevitably result in such a re-distribution of wealth as shall permit the widest possible self-development.

That the sense of nationality from now on may be not a reactionary but a progressive force, the citizens of the different nations must be trained for progressive citizenship. Such an education should include an analysis of group conflicts and of the conflicts of instinctive interests within groups. The group conflicts include family, class, sectarian and other forms of group rivalry within the nation, as well as international rivalry. Education for progressive citizenship is impossible when rival groups use public education in their own interest. Families are apt to favour such education as shall not be subversive of conformity to beliefs that the children

[57] "Relation of Industrial and Social Conditions to Adult Education," U. S. Bureau of Labor Statistics, *Monthly Labor Review*, Nov., 1918, 65, 66, 69.

[58] Croly, "Progressive Democracy," 414.

[59] *Ibid.*, 412–423.

of the family must profess if the family is to retain its "standing" in the community. Families also favour such education as will enable their children to gain recognition from an upper class, or to prove their superiority to other children, especially those of an upper class. The interest of the family in education is apt to spring, therefore, from impulses of family rivalry rather than from a public welfare ideal; hence family influence over the educational system is contrary to education for progressive citizenship.[60] Again, sectarian groups demand that public education shall not call in question the sectarian beliefs.[61] Students of the history of education know the baneful effects on education of the struggle of sects to control it; and sects have by no means ceased efforts for this control. With education under sectarian control, education for progressive citizenship would be impossible. Again, capitalistic interests oppose teaching that is not in line with their ambitions; property-owning interests oppose teaching that makes them apprehensive about the security of property or the certainty of dividends; and these interests exercise no inconsiderable influence over public education in the United States.[62] Such influence is contrary to education for progressive citizenship. Again, the nation opposes teaching that is not in line with instinctive patriotism.[63] While programs of reform must be developed with an eye to the exigencies of international rivalry, education is not reform, and it should be entirely free and unconnected with nationalistic impulses.[64]

Family, class, sectarian and national rivalries constitute impulsive conflicts, which make impossible an educational ideal of free intellectual development. The conflicting groups strive to control public education in the interest of the satisfaction of the group impulses. The degree of intellectual freedom actually enjoyed by the teacher is always a result of compromise between these conflicting interests. On the one hand is the social pressure exerted as a result of the various group rivalries, and of beliefs that have become traditional. On the other hand is the necessity that teachers have unbiassed minds if educational institutions are to render

[60] Russell, "Why Men Fight," 174.
[61] *Ibid.*, 162–163.
[62] Veblen, "The Higher Education in America," Ch. II.
[63] Russell, *op. cit.*, 161–162.
[64] Beard, "Propaganda in Schools," *The Dial*, June 14, 1919, 598–599.

efficient service. Thinking is unreliable if the thinking proceeds from a family, class, sectarian or even strictly national point of view.

It may seem an impossible task — this of training the rank and file of a nation to judge impartially as between their nation and another. The best preparation for such judgment is an education that teaches impartial judgment in the more frequently recurring class conflicts within the nation. For, as the individual is a member of some nation, so he is a member of some class — that one with which he habitually sympathizes. For impartial judgments between classes it is essential to make a special effort to understand the class to which one does not, in sympathy, belong. Paradoxical as it may seem, this is usually the working class; for, though the majority of people are workers, their prevailing attitude is one of admiration of an upper class. One may often hear workmen, when reading of a strike, express a contempt for the striking workmen. Especially is this true of classes whom we are accustomed to think of as "educated"— they instinctively sympathize with employers rather than with workmen. Yet the presumption is favourable to, rather than against strikers. For, in conflicts between employers and workmen, the former invariably have the advantage, and workmen know it and strike only as a last resort. Employers have the advantage in that labour is a perishable commodity — if not used today, that day's labour is lost,— and workmen cannot afford to lose their labour because they have no financial resources. Employers are backed by immense financial resources in addition to their own, for banking interests, as well as other corporations in the same industry and in other industries, stand ready to support a corporation involved in an industrial struggle. Consequently workmen are apt to feel, "What can labour do against capital?" The only support which striking workmen can hope for is the sympathy of other bodies of workmen similarly situated and of that uncertain force termed public opinion. But, except in rare cases when much publicity has been given the causes of a strike, so that the public understands the situation and is in a position intelligently to support the party on whose side justice lies, the public is apt impulsively to sympathize with employers. The reasons are, first, that newspapers, being capitalistic enterprises, are more apt to print the employers' side, which they get from the employers' pub-

licity agents, than the workmen's side; second, that people in general impulsively respect the man of wealth power and the class of wealth power, so that they readily credit what the newspapers print of the employers' side, and, in a situation in which they must impulsively sympathize with one party and condemn another, they sympathize with employers and condemn workmen.[65] As long as the public thus reacts impulsively instead of intelligently toward labour problems — as will be the case as long as public education avoids these problems,— labour, organized and unorganized, will have to encounter this great obstacle of an impulsively adverse public opinion. Because of their unfavourable position both as regards resources and public opinion, workmen are naturally submissive, and employers are naturally dominating because of their favourable position. Workmen do not like to strike. The strike is a last resort. The result is that long before a strike occurs the resentment of workmen has become a cumulative phenomenon. And the strike, when it comes, stirs the indignation of employers as a defiance of their authority and an interference with their right to manage their own business. The result of this clash of resentment of workmen and indignation of employers is that industrial conflicts are inevitably explosions of impulse instead of occasions for the constructive development of industrial relations, and this still further inclines the public against the strikers who seem to have caused the disorder.

If now we view this impulsive conflict impartially we see that

[65] This attitude was seen in the great steel strike of 1919 which was caused by the refusal of the president of the United States Steel Corporation to confer with representatives of organized labour of which his workmen were a part. The press and public opinion did not condemn his action as would have been the case if it had been the leader of the strikers who had refused to confer with the president of the Steel Corporation. "Had Mr. Fitzpatrick declined to confer with Mr. Gary he would have been denounced from one end of the country to the other as a firebrand. But Mr. Gary can decline to confer with the representative of a very large section of his men; he can refuse to arbitrate, to consult, to mediate, even to discuss; he can bluntly repudiate all the known methods of peaceful adjustment, and so far as one can judge by the press, few voices are raised against such behavior on *his* part." ("The Steel Strike," *The New Republic,* Oct. 1, 1919, 245.) This attitude of the public is the more significant of its impulsive suggestibility to the industrial and financial powers in view of the fact that the intolerable conditions in the Steel Corporation were made public by Dr. Fitch in 1911, in his book, "The Steel Workers," and, at the time of the strike, in magazine articles. For instance see Fitch, "A Strike for Freedom," *The Survey,* Sept. 27, 1919, 891. But the public remained largely in ignorance of the conditions, and in the absence of knowledge, accepted the attitude of the employers against the workmen.

workmen no more have a right to submit to the domination of employers than have employers a right to dominate workmen and compel them to work under conditions or for a wage that makes impossible their realization of maximum vitality and efficiency. We see that, in case of a strike that cannot be allowed to go on because of the public disaster it will occasion, the government is just as much under obligation to compel employers to yield to the just demands of workmen, as to compel workmen to relinquish unjust demands against employers. It is as much under obligation, in its conception of the justice of a case, to consider the rights of workmen as human beings with capacity for self-realization, as to consider the rights of employers as property-owners. A rational social purpose requires of workmen that they insist on the working conditions and the wage that is necessary for maximum vitality and efficiency and self-realization; it requires of employers the provision of working conditions and a wage that make possible maximum vitality and efficiency, and an increasing self-realization of the working masses. A rational social purpose therefore requires of the public that they regard industrial relations from the point of view of the national industrial efficiency and the development of the personality of workmen, not from the point of view of an impulsive respect for the employing class and an acceptance of the attitude of that class because it is the class of prestige in the nation.

In so far, then, as public opinion is operative in the regulation of the conflict between capital and labour, the rising generation, which is to become the employing class and the working class and the public, must be subjected, when of school age, to a training in the analysis of industrial conditions and relations, to the end that the public in its reaction to industrial disputes may be capable of impartial judgment. In addition to such a training given in the course of public education, another condition that facilitates intelligent instead of impulsive behaviour in industrial disputes is a balance of power between the conflicting industrial interests. The more intelligent the public becomes on industrial matters, the less impulsively will it support employers in a dispute, and the less blindly will it support the political dominance of the employing class. Thus will a development of public intelligence ultimately have the effect of equalizing the power of the conflicting classes.

This training for impartial judgment in class conflict is at the

same time a training in the intellectual attitudes that are required for any impartial judgment whatever, whether between classes or nations.[66] Public education must be so thoroughly intellectual as to eliminate prejudice — family, class, sectarian, national. The central fact in education for citizenship is "thinking";[67] and no thinking is possible without freedom from external restraint,[68] and from the control of impulses other than the intellectual. Freedom in this wide sense is essential for the development of personality, which is the end of the state. The thinking that is essential in the development of personality is openminded, often with a feeling of reverence before great problems that baffle the intellect; is straightforward, without fear or hesitancy; is singleminded, with no thought of the bearing of the solution of the problem on public approval or disapproval, promotion or demotion; and finally is responsible in that the significance of the solution for the conduct of the individual is thought through to conviction, on which the individual is ready to act.[69] Education must lead to the formation of convictions for civic and political action, to the end that every citizen may become, within the limits of his capacity, an effective agent for progress.

[66] This education is impossible without certain reforms that will give the masses the necessary incentive to, and leisure hours for, thought and study. These reforms include shortening the hours of labour, doing away with overtime except where it is absolutely necessary, doing away with the evil effects of monotonous labour by alternating kinds of work, creating opportunities for the exercise of initiative and for giving workmen a share in the management of industry, guaranteeing the worker a reasonable security of livelihood, and other reforms. See the report of the *Committee on Adult Education: Interim Report on Industrial Conditions in Relation to Adult Education — Ministry of Reconstruction,* London, 1918.

[67] Dewey, "Democracy and Education," Ch. XII.

[68] Laski, "Authority in the Modern State," 56, 90, 121, 231, 268, 275.

[69] Dewey, *op. cit.,* 204–210.

CHAPTER VI

THE CONFLICT OF POLITICAL ATTITUDES AND IDEALS

THE political attitude of a people determines its political behaviour and affects its entire social organization. To illustrate this functioning of political attitudes let us compare the attitude of the German people during the autocratic period of German history with that of " democratic " nations.

Essential in the political relations of the German people in the autocratic period was the habitual instinctive relation of domination-submission. This relation, which is the essential one in military relations, we find running through all aspects of their social organization. It determined the framework of the German government, as seen in the dominating power of the executive,[1] in the subordination thereto of the legislative [2] and judicial [3] branches of the government, and in the predominance of the emperor as the chief executive authority.[4] Emperor William II is reported to have said in a public address: " There is only one master of the nation: and that is I, and I will not abide any other." [5] He conceived of his mastership as similar to that of a commander-in-chief of an army. In the same year as that of the above utterance he said: " I need Christian soldiers, soldiers who say their *Pater Noster*. The soldier should not have a will of his own but you should all have but one will and that is my will; there is but one law for you and that is mine." [6]

With this is to be contrasted the English attitude of resistance to autocracy, which gave rise to a system of government in which the exercise of the executive power " is always subject to the con-

[1] Kruger, " Government and Politics of the German Empire," Ch. VII.
[2] *Ibid.*, Chs. V–VI; Lowell, " The Governments of France, Italy and Germany," 188–212.
[3] Kruger, *op. cit.*, 197; Veblen, " Imperial Germany and the Industrial Revolution," 208.
[4] " Bismarck, The Man and the Statesman," I: 151–152, 307; Kruger, *op. cit.*, Ch. VIII.
[5] Collier, " Germany and the Germans," 136–137.
[6] *Ibid.*, 137.

trol of Parliament. The members of the Cabinet, who exercise it in the name of the Crown, are in reality a committee of the Parliament." [7] With the German system of the autocratic period is to be contrasted also the system of the United States which was "based squarely on the idea of popular sovereignty." [8] The constitution was regarded as an expression of the popular will, and it was provided that the organs of government should exercise only the powers given them by the constitution [9]— not, as the Crown in England, all power not expressly withheld.[10] But neither in England nor in the United States is the political attitude essentially different from that of Germany. The absolutism of the state in all cases results in an irresponsibility of the state. Have the victims of the excitement of the United States courts in interpreting the Espionage Act, in 1919–1920, any more redress against the government of the United States than a subject of Germany during the autocracy would have had in a similar situation against the government of Germany? The United States government is no more responsible than others for the weakness and ignorance of its officials. "The fact is that here, as elsewhere, the democratic state bears upon itself the marks of its imperial origin. The essence of American sovereignty hardly differs, under this aspect, from the attributes of sovereignty as Bodin distinguished them three centuries ago. What emerges, whether in England or in the United States, is the fact that an Austinian state is incompatible with the substance of democracy. For the latter implies responsibility by its very definition; and the Austinian system is, at bottom, simply a method by which the fallibility of men is concealed imposingly from the public view." [11]

The German attitude of domination-submission was conspicuous also in the German attitude to law. The lesser respect of the Germans for law as such, and their greater subservience to the word of a superior, is to be contrasted with the English and American respect for law as such and insistence on the observance of the law by superiors. A militaristic system of necessity emphasizes

[7] Goodnow, "Principles of Constitutional Government," 107; Lowell, "The Government of England," I: 31, 63.

[8] Goodnow, *op. cit.*, 86.

[9] *Ibid.*, 89.

[10] *Ibid.*, 85.

[11] Laski, "The Responsibility of the State in England," *Harv. L. Rev.*, March, 1919, 466.

the army attitude of command and obey. To be sure, "when . . . we refer to the 'will' of the commanding general, we refer to regulated and not to arbitrary action, so that even in the theatre of war, where the military commander is supreme, the idea of law does not disappear." [12] But it fades into the background as compared with its prominence in civil life. The emphasis is on obedience to the word of the superior officer, not to the law under which he commands and subordinates obey. And because the idea of law falls into the background and the will of the commanding officer occupies the foreground, long habituation to a militaristic régime results in a national character different from that in which men, living in a relatively secure environment, devote themselves to the individualistic acquisition of property and jealously defend their property, and cultivate respect for the law which protects them therein. In a nation of this latter kind, there will be a more or less determined resistance of domination which interferes with the acquisition of wealth. Domination-resistance becomes a conspicuous attitude in the national character. In both types of nations there is admiration for superiority; but in the one admiration for the personality of superior dominating power predominates, in the other admiration for the property owner or the class of large property owners.[13] The arbitrary will of the ruler is curbed by the insistence of property owners on his observance of laws that guarantee to them what they claim as their rights, and thus originates and develops public law. Again, an absorption in property-getting conduces to respect for law as the bulwark of the security of property owners; and the jealousies and conflicts among property owners beget a respect for law as the means of repressing human wilfulness, and for interpreters of law as arbiters in controversies over property. Thus develops private law. Finally, as the instruments of production pass into comparatively fewer hands, law becomes an agency for the regulation of industry on behalf of the public welfare and for the protection of the working masses against exploitation by those who own the instruments of production. Thus develops the law of commerce and labour.

A people like the English, among whom the property attitudes

[12] Moore, "Law and Organization," *Amer. Pol. Sc. Rev.*, IX: No. 3.
[13] Veblen, "Imperial Germany and the Industrial Revolution," 165–166.

have predominated, are individualistic, self-reliant, reserved, practical and sagacious in thinking, self-controlled and therefore conservative in their morality; [14] while the Germans, among whom the militaristic attitudes have predominated, are characterized by an aptitude for organization,[15] and a psychological differentiation, which, in the case of those animated by intellectual impulses results in a profundity and thoroughness in thinking and in carrying out ideas; [16] in the case of those animated by dominating impulses in an extreme egoism; [17] in the case of those animated by submissive impulses in an extreme servility. On account of the suppression of instinctive impulses that results from this psychological differentiation, a wide range of subconscious impulses is fostered in the Germans, resulting in an emotional life with a realm of its own,[18] which conduces to a less conservative morality than that of the English.

Essential in the political attitude of Germany was the militaristic attitude of admiration for personal dominating power,[19] and submission to domination, with a sense of security under this protection; as contrasted with the attitude of England, essential in which is rivalry for property, admiration for the property owner, and insistence on free action in acquisition, under the law, with a comparatively weak instinct for other protection. Commenting on this difference of attitude, Veblen says: "With this feudalistic loyalty (of the Germans) goes an enthusiastic sense of national solidarity and a self-complacent conviction of the superior merits of the views and usages current in the Fatherland. . . . The dynastic state, of course, is a large element in the 'Culture' of this people; very much as its repudiation is an integral feature of a cultural scheme accepted among English-speaking peoples. Indeed, there is little, if substantially anything, else in the way of incurable difference between the German and the English scheme of things than this discrepancy between this ideal of the dynastic state on the one hand and the preconception of popular autonomy on the other. The

[14] Perry, "The Present Conflict of Ideals," Ch. XXXI.
[15] *Ibid.*, 408–412.
[16] *Ibid.*, 398–404.
[17] *Ibid.*, 404–408.
[18] *Ibid.*, 413–416.
[19] Liebknecht, "Militarism," 65–67.

visible differences of principle in other bearings will commonly be found to be derivatives or ramifications of these incompatible sentiments on the head of personal government." [20]

The German national character was determined less by inevitable "racial traits" than by the instinctive impulses stirred by the situation of the German people. "A Dutchman has probably much the same native disposition as a German, but his instincts in adult life are very different owing to the absence of militarism and of the pride of a Great Power." [21] The militarism that was fostered by the dynasty and the capitalistic classes of Germany attained the dignity of a cult through the teaching of Treitschke and Nietzsche. The national development seemed to many thinking men to verify this philosophy. The rapidly increasing population of Germany caused apprehension of national need unless there was the necessary economic expansion. Apprehension was caused, also, by the rapidly increasing population of Russia and the menace of this to Germany's subsistence and security.[22] What would Germany do when the country became too small for its population? What would happen if, with its diminishing natural resources, it became unable to get raw materials from other nations with which to supply the factories that gave work to its immense population? Comparatively easy was it to suggest to the masses so situated that their prosperity depended on the attitude of Russia, with its immense resources, and that a favourable attitude could be guaranteed only by Germany's becoming the great political power of Europe. This would guarantee, also, a favourable attitude on the part of England and France. The capricious autocracy of Russia, the historical resentment of France, and the naval dominance of England seemed to preclude the possibility of any relation of international co-operation. Thus it was easy for the ambitious dynasty and the capitalistic interests of Germany to instigate thinking and non-thinking people to an impulse for national supremacy. Obviously this militaristic national character developed out of a situation which is not inevitable but can be removed by international organization for economic co-operation.

The submission of the German people, in the autocratic period,

[20] Veblen, *op. cit.*, 165–168.
[21] Russell, "Why Men Fight," 37.
[22] Turner, "The Causes of the Great War," *Amer. Pol. Sc. Rev.*, IX: 23.

was a less unwilling submission than in Russia. During the two decades that preceded the outbreak of the World War the German people showed an increasing impulse for national superiority, which came to animate all classes. German socialism was a protest against this ideal but eventually acquiesced. Of that autocratic period it is said: "Germany has passed far beyond the state of paying homage to her dreamers and poets. The vast developments of technical science are leaving a characteristically 'real' mark, not only on the intellectuals, but on the common people. The men who shape industrial policies have left no stone unturned to stimulate a consciousness of the growing power of Germany, and to strengthen the hands of the class that directs imperial policy. . . . What the university professors have been for the pure intellectuals, captains of industry have been for the middle classes and the masses. Their joint influence has tended to infect the nation with a restless impulse, . . . to shape things anew at whatever cost, materially and spiritually." [23] The attitude that characterized social relations in Germany during the autocratic period sprang from an impulse for national superiority which, through various sources of social suggestion, came to animate all classes. Individual and class subordination resulted as a willing surrender to that obsession.[24] The really intellectual men, the men who had the courage of their convictions, were denied a hearing and imprisoned if they persisted. And wherever dissent spread among the masses, fear to speak, even to think the dissent through to conviction, kept the dissenter subservient to the militarism.

The essential feature of the national consciousness of Germany during that period was the vigour and energy of its underlying instinctive impulses. This was such as to captivate the intellectual processes and draw them into the service of the predominant impulsive movements. Thus developed associations of ideas that reinforced the impulsive movements. The vigour of these movements was due, in part, to the contribution made to that vigour by the associations of ideas and, in part, to the great variety of strong instincts enlisted by the impulse for national superiority. That impulse justifies and instigates the sexual and parental instincts, for

[23] McLaren, "The Mind and Mood of Germany To-day," *Atlan. Mon.*, Dec., 1917, 798.

[24] Liebknecht, "Militarism," 3–7, 22–40.

national supremacy requires an overflowing population; hence the ideal of national supremacy appeals to the masses, especially in a nation the government of which has shown in a substantial way a paternalistic solicitude for the relief of the hazards of family life. Again, the impulse for national superiority enlists the instincts of intellectuals, for thinking on behalf of the ambitions of the political and other powers satisfies the rivalrous instinct to seek promotion, and the instinct to seek the protection of the strong; and is less of a mental strain than painstaking analysis; and involves less anxiety for security of academic tenure and social position than does singleminded thinking. It satisfies also the instinct of subservience to the great ones, and the instinct for the popular adulation of the "great philosopher." The impulse for national superiority satisfies, also, the instincts of economic interests; for the satisfaction of the acquisitive and rivalrous and dominating instincts these interests require the backing of a superior military power in their international operations and of a strong government in their relations with labour. The impulse for national superiority satisfies also the dominating and contemptuous instincts of an upper class; the greater the power of the state, the greater the superiority of an upper class and the more abject and contemptible the inferiority of a lower.

It is this combination of instinctive impulses on behalf of the ideal of national superiority that gives a culture which centres about that ideal an absorbing and solidifying influence. When we consider the driving force of this type of culture, we are inclined to doubt whether it can be outlived by mankind, unless each nation makes immense strides in increasing the general intelligence of its masses, and in the development of industrial democracy. It owes its strength to its unsurpassed variety of absorbing instinctive satisfactions, which appeal to all classes, and to the consequent ease with which instinctive impulses subconsciously determine the associations of ideas.

Just as the German people, by their impulse for national superiority and their belief in their superiority, worked themselves into a condition in which war was inevitable, so there is a tendency in all nations for propertied classes to become obsessed with their superiority and thus to become so dominating as inevitably to provoke a class war. In fact the dominating attitude of Germany toward the rest of the world originated with the propertied classes

of Germany. Those Germans who refused to accept the dominating attitude of their government toward other nations were those who resisted the domination of the upper classes over lower in their own nation. Germany was defeated but this dominating attitude of upper to lower classes was not defeated. Its final defeat in each nation can come only through a thorough education of all classes, which requires the substitution, for the class-controlled educational system of each nation, of education which emphasizes perfectly free intellectual inquiry, and an intellectual self-control.

Proceeding with our delineation of the German political attitude before the revolution, we note that its influence pervaded every aspect of German behaviour. It determined the repressive political policy toward dependent peoples,[25] as compared with the policy of autonomy followed by Great Britain and the United States; also the centralized financial control of Germany[26] as contrasted with the sentiment against centralized control in the United States, and the effort to avoid an appearance of centralization,[27] though decentralization has not been actually achieved.[28] It was seen in the disciplined industrial organization of Germany[29] due directly to military discipline.[30] The period of the great development of German industry coincided with the period of consolidation of industry throughout the world; and for this consolidation of industry the Germans were particularly fitted by army discipline. This made the industrial leaders organizers of men, developed capacity

[25] Thomas, "The Prussian-Polish Situation," *Amer. Jour. Sociol.*, March, 1914, 628–637.

[26] Federal Trade Commission, Report on Cooperation in American Export Trade, Pt. I, 44–48, 57–64.

[27] Report of the Committee Appointed to Investigate the Concentration and Control of Money and Credit. House of Rep., 62nd Congress, 3rd Sess., Report No. 1593, 136–138.

[28] The "process of pooling and syndication that is remaking the world of credit and corporation finance has been greatly helped on in America by the establishment of the Federal Reserve system while somewhat similar results have been achieved elsewhere by somewhat similar devices. That system has greatly helped to extend, facilitate, simplify, and consolidate the unified control of the country's credit arrangements, and it has very conveniently left the substantial control in the hands of those larger financial interests into whose hands the lines of control in credit and industrial business were already being gathered by force of circumstances and by sagacious management of the interested parties." (Veblen, "The Industrial System and the Captains of Industry," *The Dial*, May 31, 1919, 557.)

[29] Federal Trade Commission, Report on Cooperation in American Export Trade, Pt. I, 98–114.

[30] Sombart, "The Quintessence of Capitalism," 284.

to submit to discipline, not only among manual workers but also among brain workers and scientists of all kinds, for the progress of industry.[31] Army discipline made manual workmen submissive and reliable, made brain workers methodical in their work in that they were less disturbed by personal rivalry than workmen untrained in army life. And it enabled industrial and financial leaders to work together under governmental direction for national economic progress.

The German political attitude was seen, also, in the bureaucratic regulation of the life and conduct of the German people by their government,[32] as compared with the freedom allowed in England; [33] in the censorship of the press, as compared with the greater freedom of the press in England and America.[34] It was seen also in the domination exercised over wife and children by the husband and father, and in the " unthinking adulation, the blind acceptance of inferiority " shown by women toward the men.[35] This family submission is closely connected with political submission in that men must not listen to the appeal of wife and children when it conflicts with the command of the sovereign. Men must be ready to renounce family for the service of the State and the family must acquiesce. In a militarism the soldier is the attention-compelling figure in the community and only the man can be a soldier. So the woman is regarded as much inferior to man.[36] Furthermore, the officer's conspicuous attitude is one of arrogance toward civilians, and civilians imitate this attitude in their relations with their inferiors, including their inferiors in the family. This domination of women is further intensified by the effect of military life in provoking the lower instincts, particularly the sexual instinct, which intensifies sexual domination.

The German attitude of domination-submission was seen also in the educational system.[37] The studies prescribed and the methods of teaching were intended to fit the children of each social class to become efficient workmen as members of their class and to serve the state as obedient subjects. In addition to this training, Em-

[31] Hauser, " Germany's Commercial Grip on the World," 40.
[32] Collier, " Germany and the Germans," 356–358, 362, 405.
[33] *Ibid.*, " England and the English," 32–33.
[34] Dibble, " The Newspaper," 29–30, 88–95.
[35] Collier, " Germany and the Germans," 374–376, 339, 399, 407.
[36] Treitschke, " Politics," I: 23.
[37] Collier, " Germany and the Germans," 305.

peror William II, when a young man, advocated such a training in German history as should make the youth enthusiastic supporters of the autocracy. In a public address, he is reported to have said that, instead of so much teaching of languages, history should be taught, particularly the most glorious periods of German history, in order to enthuse the youth to support the royal ambition. "The Schools and Universities ought to have . . . instructed the young generations in such a way that young men who are now about my age, that is to say thirty, should by this time have brought together the materials wherewith I might work the State and thus speedily become master of the situation." "Such was not the case," he continued. "The last moment when our Schools provided for the needs of our patriot life and development, was in the years '64, '66, '70. Then the Prussian schools were depots for the idea of Unity which was taught everywhere. . . . All this ceased after 1871. The Empire was constituted, we had what we wanted, and we fell asleep on our laurels." [38] The German educators were not unresponsive to his mandate and the result was that "The Greater Germany gospel found its most active apostles in the schoolmasters and university professors. History in the German schools has always been taught on lines calculated to inspire respect for the national heritage as determined by the Prussian tradition. *Deutschland über Alles*, known to every boy and girl, I have frequently heard sung in the schools. The school-books all breathe an ardent nationalism. I also recollect vividly other books, widely read by the youth of both sexes, which present the potentialities of Germanism in glowing colors, and contrast Germany's cultural achievement with that of 'decadent' nations, to the disparagement of the latter. The university professors have done more than any other body of men in the empire to sow the seed of an aggressive *Deutschtum* in adolescent Germany. Their influence on public opinion has been particularly sinister, because, not only military officers, but thousands of students from the commercial middle class spend their most impressionable years in the atmosphere of the university." [39]

To the German educator of the autocratic period an education of the boy for citizenship was one "which enables him to under-

[38] Demolins, "Anglo-Saxon Superiority," 25–26.

[39] McLaren, "The Mind and Mood of Germany Today," *Atlan. Mon.*, Dec., 1917, 795–796.

stand generally the functions of the State, by means of which he is able and willing to fill his place in the State organism according to the best of his powers." [40] The essential function of German public education was to promote a feeling of national solidarity,[41] of acquiescence in the control of the upper classes,[42] and of contentment among the working classes.[43] The educational system it was declared must recognize the "two fundamental moral principles which indubitably guide every well-bred man, namely, those of moral self-assertion and of moral self-abnegation." [44] A militarism requires self-assertion toward those below, and self-abnegation before those above one in authority. Compare this ideal with that of American education. In the United States as well as in Germany, authority-obedience has played too large a part in education. This is contrary to the democratic ideal of education. "The conventional type of education, which trains children to docility and obedience, to the careful performance of imposed tasks because they are imposed, . . . is suited to an autocratic society. . . . But in a democracy they interfere with the successful conduct of society and government. . . . Responsibility for the conduct of society and government rests on every member of society. . . . If we train our children to take orders, to do things simply because they are told to, and fail to give them confidence to act and think for themselves," we are developing, as essential in character, an attitude which makes it impossible for them to perform the duties of citizenship. "The spread of the realization of this connection between democracy and education is perhaps the most interesting and significant phase of present educational tendencies." [45]

The delineation of the rôle of the political attitude of a people includes an analysis of its relation to the ideas and associative processes of the culture of the nation. We note that German thought

[40] Kerchensteiner, "Education for Citizenship," 23. The author was a member of the Royal Council of Education and Director of the Public Schools of Munich. His book was the prize essay offered in the competition announced by the Royal Academy of Youthful Knowledge of Erfurt. The theme was "How are our young men, from the time of leaving the Volksschule (age 14 years) until the entrance into military service, . . . to be educated for citizenship?"

[41] *Ibid.*, 9.

[42] *Ibid.*, 43.

[43] *Ibid.*, 42.

[44] *Ibid.*, 64.

[45] Dewey, "Schools of Tomorrow," 303–305. See also Dewey, "Democracy and Education," Chs. VII–XII.

took the lines of the political attitude. Where the thinker did not venture as did Hegel to invoke an Absolute Reason as the determining force in human affairs, he asserted a categorical imperative, as Kant, or invoked some other dominating agency; or he developed a philosophy of resignation, as did Schopenhauer, thus satisfying the attitude of submission; or he came smashing in with a philosophy of self-assertion, as did Nietzsche, who asserted that the "will to power," an exalted form of dominating power,[46] should be the one impulse of all true men. The impulsive line taken by the German thinker depended on his disposition, and also on his experience. Of the effect of his disposition on his thinking Nietzsche said, "I made my philosophy out of my will to health, to life. The years of my lowest vitality were the years when I ceased to be a pessimist." [47] This dispositional self-assertion [48] was strengthened by participation, in his youth, in the victory of Germany over France, and was still further developed by Nietzsche's reaction against the self-glorifying, self-satisfied spirit that came over Germany in the years that followed.[49] He is said to have gotten his idea of the will to power "amid the hurly-burly of the Franco-Prussian War. As ambulance worker he saw various regiments of our wonderful German army rush past him; ready to face battle and death, glorious in their pride of life, their courage for the conflict, a perfect expression of a race that must conquer or perish. Then, for the first time, he felt most vividly that the strongest and highest will to life is manifested, not in the paltry struggle for existence, but in the will to combat, in the will to power and mastery. When my brother afterward looked back at these events, how different and many-sided that feeling of pity, so highly extolled by Schopenhauer, must have appeared to him, in comparison with that marvellous glimpse of the will to life, to combat and to power. Here he saw a condition of things in which man feels his strongest impulses, his conscience and his ideals to be identical." [50]

The Germany of Nietzsche's day had passed out of the inferiority and depressed submission of the Germany of Schopenhauer's

[46] Salter, "Nietzsche the Thinker," 197–198.

[47] Quoted in Laing, "The Origin of Nietzsche's Problem and Its Solution," *Intern. Jour. Ethics*, July, 1916, 510–511.

[48] Kallen, "Nietzsche — Without Prejudice," *The Dial*, Sept 20, 1919, 252.

[49] Salter, *op. cit.*, 463–467.

[50] Frau Förster Nietzsche, "The Life of Nietzsche," II: 317–318.

day[51] and was moving on the rising tide of the anticipation of increasing national power.[52] But there was also a tendency contrary to this, a tendency to smug self-satisfaction, and Nietzsche's ambition was to stimulate the national impulse for increasing power, to combat the self-satisfied attitude.[53]

His own dispositional self-assertion was intensified by reacting against the self-satisfied tendency of his day, and was stimulated where it came in touch with the attitude of national self-assertion. This attitude of self-assertion he aimed to stir outside of Germany as well as inside, to dominate the minds of men by absorbing them in his ideal, which for this purpose he ejected into every field of knowledge.[54] He would inoculate not only the German people but all peoples with the will to power. His impulse was to dominate Europe with his idea and so "regenerate European culture,"[55] thus gaining an unrivalled position of authority in the world of culture. But his message was primarily for Germany. He called for an education that would develop the will to power. The object of education, he said, is "To live in the noblest aspirations of one's nation and to exercise influence thereby . . . to liberate one's age and one's ideal before one's eyes."[56] This impulse to dominate with the idea of the will to power, which idea he reinforced with a great range of secondary explanations, resulted in the denial

[51] "After the disappointment of the hopes of 1848, under the weight of the reaction an embittered mood prevailed. This mood rediscovered itself in Schopenhauer's philosophy. . . . The oppressive spirit of reaction on the part of the victorious rulers who sought to wipe out of the German constitution 'the democratic blot of that year of shame' (1848) denied scope for free activity in religion, in thought, in political and social effort to the strong healthy impulses of the youth of that period; and in so far as they refused to be quiescent under the Schopenhauerian doctrine of the nothingness of individuality, they sought an outlet in the sensuous life of beer-drinking and in the enjoyment of drinking-songs." (Laing, "Nietzsche's Problem and Its Solution," *Intern. Jour. Ethics*, July, 1916, 514–515.)

[52] In the same way the Japan of today has passed beyond the condition in which the pessimism of Buddhism is congenial. (Reichaurer, "Studies in Japanese Buddhism," 49, 317, 320.)

[53] "He noted after the victorious wars against Denmark, Austria, and particularly France, a new spirit emerging in Germany; and in its smugness, selfishness, self-glorification, repulsive nationalism, and national greed it showed itself a spirit that was far away from that of the world of Goethe. . . . Nietzsche saw among his fellow-countrymen a growing servility, imitativeness . . . and the gradual disappearance of any desire to accept individual responsibility." (Laing, *op. cit.*, 511.)

[54] Salter, *op. cit.*, Chs. XIII–XXX.

[55] Nietzsche, "The Case of Wagner," Trans. by J. M. Kennedy, Translator's Preface, xi.

[56] Frau Förster Nietzsche, "The Life of Nietzsche," trans. by Ludovici, I:281.

of opposing instinctive impulses, for instance, the sympathetic;[57] and in over-stimulating the rivalrous and dominating impulses until his ideas became obsessions; and obsessions introduce a strain that must be relieved by action. His teaching, in a nation subject to the domination of a military class, and of a capitalistic class, fostered impulses for national superiority by force, obsessions that caused a strain which could be relieved only by action in response to the ideas, that is, by aggressive warfare.[58]

Nietzsche's psychological situation required a perceptible national movement toward the acceptance of his gospel, which was not forthcoming — hence his suffering. This he tried to rise above by thinking comfort-giving ideas. Thus he exclaims, "Profound suffering makes noble; it separates."[59] But he failed to satisfy his impulse to dominate conspicuously with his ideas. He saw the men with whom he broke off relations because of their different ideas received and accepted as apostles of culture, while, as yet, he wandered unheeded.[60] Eventually, however, his writings became immensely popular in Germany and were one of the influences that prepared the German people to support the ambition of the ruling caste and the capitalistic interests for conquest and supremacy.

Nietzsche used the phrase, will to power, in an ambiguous sense, that is, to denote an individualistic impulse, and also to designate power achieved through increasing the power of the group of which one is a member.[61] His emphasis was on the latter conception, as contrasted with the individualism of Herbert Spencer.[62] Each thinker interpreted the doctrine of struggle and survival in terms of his own national attitude, Spencer using it to give sanctity to the individualistic struggle for property with a minimum of governmental regulation, Nietzsche using it to justify and enthuse the individual's aspiration for power[63] by impressing his individuality on his group, and against an adverse environment. Nietzsche opposed the Darwinian theory of the importance of environment in evolution and insisted upon personal power to shape the environ-

[57] Salter, *op. cit.*, 17, 148.
[58] Alexander, "Man's Supreme Inheritance," 173–174.
[59] Nietzsche, "The Case of Wagner," 78.
[60] Frau Förster Nietzsche, "The Life of Nietzsche," II: Ch. XXVII.
[61] Stewart, "Nietzsche and the Ideals of Modern Germany," 49–51.
[62] Salter, *op. cit.*, 459, 441.
[63] Stewart, *op. cit.*, Lectures IV–VI.

ment.[64] Those who demonstrate this power become the masterful class and those who lack it become the servile class. The servile class develops a code of morals that justifies its servility and this Nietzsche abhorred.[65] He would reform mankind by stirring everywhere a will to power. Man should be obsessed by this impulse, and should inhibit compassion and all other interfering impulses.[66] This masterful class should dominate the world, said Nietzsche.[67]

Thus the motive emphasized by his philosophy was congenial to the ambition of the militaristic class of Germany. But his philosophy as worked out was contrary to the forces that produced the World War, for essential therein was the rivalry of capitalistic interests that controlled the governments of European nations, and Nietzsche explicitly denied the right of business interests to control governments.[68] The sovereignty should be wielded, he said, by the real rulers, the men of unrivalled will to power.[69] The business and industrial classes should be prosperous but should not rule. Hence his opposition to democracy in any form.[70] Nor were Nietzsche's real rulers the military aristocracy, but the men of intellect who use the actual rulers as their instruments[71] and whose rule makes for the highest good of all concerned. His conception is, therefore, an idealistic one at this point and is opposed both to the forces that make of a monarchy a militarism, and to those that make of a democracy a plutocracy. But the effect of such a philosophy as Nietzsche's is, on the whole, to stimulate the self-assertion of rulers and plutocrats because in the last analysis it emphasizes instinctive self-assertion. The defect in his conception is that thinkers and rulers who have no sympathy — merely a will to power,— whose intellect serves this one impulse will not think in a way that is wise for the public welfare.

The more decisive the attitude of domination-obedience in the behaviour of a group, the less apt is thought to diverge from the associations of that attitude, except in the minds of the greatest

[64] Perry, "The Present Conflict of Ideals," 152; Salter, *op. cit.*, 198.
[65] Nietzsche, "The Genealogy of Morals," Sec. 14.
[66] "The Will to Power," Secs. 641, 681, 689.
[67] *Ibid.*, 728.
[68] Salter, *op. cit.*, 455.
[69] *Ibid.*, 429, 390–406.
[70] *Ibid.*, 441.
[71] *Ibid.*, 429.

thinkers. The very force of the social control exercised in a nation characterized by domination-submission intimidates all but the most vigorous thinkers; and the divergence of these from the prevailing thought tends to be extreme. The result is a scarcity of diverging thinkers, an inconsiderable influence exerted by those who diverge extremely, and, therefore, a tendency to uniformity in thought. This condition, among others, causes thinkers of those nations to minimize the importance of original thinking, and, in some cases to deny the existence of intellectually free individuals: "The greatest error of individual psychology is the assumption that *man thinks*. . . . What thinks in man is not *he* but the social community of which he is a part. The fountain of his thought lies not in himself, but in the social *milieu* in which he lives, in the social atmosphere which he breathes. . . ." [72] "The heroes of history are only marionettes who carry out the will of the group." [73] "Out of frictions and struggles, . . . finally come forth . . . the new civilizations, the new state and national unities . . . and this merely through social action and reaction, entirely independent of the initiative and will of individuals, . . ." [74]

German philosophers of the autocratic period showed a deficiency in brilliancy of analysis and discrimination, which distinguishes the scientific thinker, and an impulse to dominate with mere weight of learning or with prolific writing or with the impressiveness of their conceptions. The formula of struggle and survival lends itself to this type of thinker because it emphasizes the will to power, success, as well as because of the prestige of the theory itself.[75] The result is that it was used and misused by German thinkers who, in their impulse to dominate the age with their thought, either used the theory as a foil for an opposite theory, or extended the theory far beyond the scope originally assigned it, thus making extreme interpretations in the fields of politics, morals, religion, and art. The more it was used in this way, the greater its prestige became as a principle of interpretation of immense range, and hence the greater the incentive to its use because of the prestige it gave the ideas and the writer. Its satisfyingness for the impulse to domi-

[72] Gumplowicz, "Grundriss der Soziologie," 76.
[73] *Ibid.*, "Der Rassenkampf," 37.
[74] *Ibid.*, "Soziologie und Politik," 94.
[75] Stewart, *op. cit.*, Lecture IV.

nate with thought made Darwinian and anti-Darwinian interpretations seductive and blinded thinkers to the necessity of the use of those scientific methods which Darwin used so patiently and persistently.

Thinkers of a nation in which domination-obedience is essential in behaviour are affected by this attitude with a certain submissiveness to the powers that be, with whom they wish their ideas to find favour. They are affected also with an impulse to dominate with their ideas, to provoke a social assent to their views; and, therefore, they tend not to express views which are so contrary to the prevailing social attitudes as to call forth social dissent. On the contrary, the thinkers of a nation in which an attitude of resistance to domination, that is, an attitude of liberty, is pronounced, are, from the nature of the attitude, stimulated to more or less critical thinking. In England the attitude of resistance or independence has impressed itself on the institutions, and has expressed itself periodically in reforms in economic[76] and political institutions,[77] in ecclesiastical institutions[78] and in artistic standards.[79] However, a national attitude for individual liberty may tyrannize over the intellect as much as any other national attitude. It may prevent an unprejudiced analysis of political and economic problems where this analysis points to the necessity of governmental limitation of liberty for the public welfare. This is seen in the way in which the attitude called laissez-faire has given a bias to thinking on economic and political problems. Bentham, apostle of laissez-faire, declared that every economic class — laborers as well as employers — should be given complete freedom from governmental restrictions.[80] He assumed that, with such freedom, the economic classes could work out a relation to one another in which each would enjoy the maximum freedom that is possible in the industrial relation. This principle, re-affirmed by the early economists, was influential in retarding the development of labour legislation in Europe long after it had become evident that, without governmental restrictions on the freedom of the employing class,

[76] Bruce, "*Laissez-faire* and the Supreme Court of the United States," *Green Bag*, XX: 553–554.

[77] Jephson, "The Platform."

[78] Dicey, "Law and Opinion in England," 397–407.

[79] Brooke, "English Literature," Ch. VIII.

[80] Dicey, *op. cit.*, 147, quoting Bentham, "Works," V: 234.

the labouring class was subject to the domination and exploitation of that class, politically as well as economically.

Herbert Spencer re-affirmed the individualistic attitude, including the economic phase of it — laissez-faire,— and this endorsement of the political attitude of the English national character, and of the economic attitude of influential classes, won for his work marked approval.[81] Spencer came of non-conformist ancestry and was strongly conscious of his attitude of independence, and followed it in non-conformity in dress and manners as well as in his thinking.[82] His vigorous intellectual impulses required freedom from restraint for their satisfaction; and he felt that as *he* enjoyed independence in thought and action,[83] so no man's liberty ought to be hindered as long as he did not interfere with his neighbour's liberty. It should be noted that when his assertion of independence went beyond political and economic relations, in which his opposition to governmental regulation of industry amounted to an assertion of the right of industrial and political domination of the legally dominant propertied classes,— when his assertion of independence went beyond this and asserted freedom of thought and action of the individual in all his relations, his thinking was generally opposed. Nevertheless, the attitude of intellectual independence determined his thinking from the beginning to the end of his life.[84] It is a noteworthy fact that the leading English philosophers have never been as popular in their nation as the leading German philosophers in their nation.

The German attitude of submission of the autocratic period fitted the people to listen reverently to their philosophers, whose thinking gave the prevailing attitudes the prestige of learning and logic and made the philosophers the idols of academic circles. In England the indifference of the masses to abstract thinking as "impractical," and the conventionalized thinking of academic circles has given the independent philosopher a position of solitary distinction. Far from being the idol of academic circles, he leads a life apart and often in opposition to the academic life of the nation.

Spencer's philosophy was contrary to the philosophy of a mili-

[81] Spencer said that his Social Statics was more favourably noticed than any of his later books. ("Autobiography," I:422; see also Royce, "Herbert Spencer," 198.)

[82] Royce, *op. cit.*, 190–191.

[83] Spencer, "Autobiography," II: 513–514.

[84] *Ibid.*, II: 515–518.

taristic state. He distinguished two stages of progress, the military and the industrial. Coercion is characteristic of the one, voluntary co-operation of the other. "In a society organized for militant action, the individuality of each member has to be so subordinated in life, liberty and property, that he is largely or completely *owned* by the state. Under the industrial régime the citizen's individuality, instead of being sacrificed by the society, has to be defended by the society. The defence of his individuality becomes the society's essential duty." [85]

Protection of individuality by society, rightly understood, is the opposite of laissez-faire, which would leave each individual free and unprotected by governmental action. The latter type of individualism has been essential in the American national character. It is the attitude of American business enterprise; it emphasizes the right of the profit-seeker to take all the risks incident to profit-seeking [86] and to enjoy unlimited returns. The impulse for risk-taking in business has permeated American business from the beginning, including farmers and tradesmen, as well as manufacturers and financiers, and the result has been that, politically, the American people have stood for freedom of private enterprise, with an appeal to chance [87] that such a policy would "bring us out all right." Like the English, the Americans have also been characterized by a reverence for law as the means of preserving the established order of private property.[88] This political attitude originated away back when agriculture was the chief industry in the United States.[89] How the early economic conditions of America fostered an individualistic attitude, how this was in harmony with the individualistic attitude of the English common law, which was brought to this country by the early immigrants, how American business enterprise has continued individualistic and planless, so far as the public welfare is concerned, how conditions are beginning to change and are developing an economic and political attitude and a philosophy contrary to the traditional attitude and philosophy will be shown in subsequent chapters.

[85] Spencer, "Principles of Sociology," II: 607.
[86] Fisher, "Economists in Public Service," *Amer. Econ. Rev.*, IX (supplement): 13.
[87] Dewey, "Progress," *Intern. Jour. Ethics*, Apr., 1916, 313, 314, 318.
[88] Croly, "Progressive Democracy," 45.
[89] *Ibid.*, 73.

CHAPTER VII

PSYCHOLOGICAL ASPECTS OF INTRA-NATIONAL RELATIONS

IN the development of the United States we may distinguish four types of relations successively developing within the nation: a period of comparative equality of opportunity, with little class consciousness except between rural and urban populations, between agrarian and capitalistic interests;[1] a period of ascendancy of capitalistic interests and of national policies that sought primarily the prosperity of those interests,[2] with, however, a keen rivalry between those interests for political and economic advantage; a period of increasing dominance of financial and other great corporate interests; a rising resistance to monopoly, profiteering, labour domination and other forms of the dominance of capitalism, resulting in an attempt to regulate capitalism in the public interest.

In the period of settlement of a new country men feel their independence and their approximate equality in economic opportunity,[3] and they contrast this with the oppression suffered by the people of older nations. The sense of the superiority and the self-sufficiency of the new country is apt to cause a sentiment for national isolation. The consciousness of superiority may continue long after the equality of opportunity has ceased to exist for large sections of the population; and this surviving consciousness may maintain the sentiment for national isolation, and also for the preservation of the political unity of the nation,[4] on account of the sense of national strength which unity gives, and the confidence thereby afforded of power to perpetuate the national independence and isolation.

In the period of ascendancy of capitalistic interests, there was

[1] Croly, "Progressive Democracy," Ch. III.

[2] *Ibid.*, Chs. IV–V.

[3] This spirit of individualism was conspicuous in the eastern (Williams, "An American Town," Pt. I, Ch. V; Pt. II, Ch. XII) and in the western United States (Hill, "The Public Domain and Democracy, Chs. IV–VIII).

[4] Goodnow, "Principles of Constitutional Government," 19.

keen competition between transportation lines, manufacturing corporations, and financial corporations. Rivalry was not confined to the business enterprises; it was everywhere prevalent. The rivalrous [5] spirit of America survived from the freedom of opportunity of the preceding period afforded by the vast area of cheap land, and it was further stimulated by the active, outdoor life of the American. The contests of strength in both work and play "resulted in an unfeigned admiration of the powerful man. With this was associated a love of fair play which might show which really was the powerful man." [6] The rivalrous spirit was further intensified by the fact that a considerable part of the early population of America sprang from those who emigrated to the New World because of their, or their immediate ancestors', resistance of domination in the Old World. Consequently they were men who, by disposition, insisted on free rivalry.

The third type of behaviour arises when, in the struggle for wealth, certain men have acquired financial power and have the impulse to stifle competition in order to monopolize the market. The business men of an industry then begin to fear to antagonize the rising powers in the industry.[7] The impulse to stifle competition not only was the motive of the growth of the great monopolies, but also animated the many successful concerns that had long enjoyed semi-monopolistic privileges. The impulse is to maintain a privileged position by the domination of rivals. This type of behaviour has been encouraged by the passing of the conditions that stimulated free rivalry, which has resulted in a loss of independence,

[5] The coining of this new word, which will be used throughout this book, has the assent of certain professors of English literature to whom I stated the case: The word, rivalry, has come to be generally used by psychologists to designate a certain instinctive disposition and the impulses that spring therefrom; and, consequently, there is need of an adjective to correspond exactly with the noun, as emulous and other synonyms do not.

[6] Williams, *op. cit.*, 40.

[7] Corporations bent on creating a monopoly find their task made easy by the apprehension of independent weaker companies. In the meat-packing industry, "The powerful position in the industry which the big packers occupy and such practices as the foregoing, by which they have made themselves felt, have inspired the independents with much caution and even fear of running counter to them. (Federal Trade Commission, Report on the Meat-Packing Industry, 1919, Pt. III: 138.) Again, in a decision in a government suit against the American Can Company, the judge declared that the reason so many can-makers sold out to the American Can Company was fear of what would happen if they did not; that some were threatened but that threats were generally unnecessary because "the apprehension was quite general that the only choice was between going out or being driven out." (U. S. v. American Can Co., Distr. C. Md., Feb. 23, 1916, Reprint.)

a tendency to fear the powers that be and to seek to instigate their favour, and to rely on "pull."

The third type of behaviour is pronounced in a society controlled by an hereditary wealthy class. In the United States no class has won a position of undisputed domination because of the popular form of government. The development of constitutional government has been in the direction of the restraint of class domination by making government officials elective and by giving men and, recently, women of all classes the right to vote for legislators and executive officers, and, in many cases, administrative officers and judges, with a secret ballot and with other safeguards that prevent the voter being influenced by external influences.[8] But the law and custom inherited from the past developed in the course of social control by propertied classes. The development of social institutions has been determined by the property-owning classes with the supreme end of preserving unrestricted the rights of private property traditionally preserved by law [9] and religious sanction [10] and philosophical disquisition.[11] Therefore the attitudes of society are in harmony with the social control exercised by the propertied classes. We are, perhaps, too apt to think of those classes as exerting a conscious and deliberate control over the government. This is often done, but, until recently, it has been generally unnecessary. The propertied classes have always subconsciously assumed their right to govern; and the other classes have acquiesced in that attitude of authority. We are apt to think of lower classes as constantly resenting any assumption of authority on the part of upper, but such resentment has, until recently, been exceptional. These exceptional occasions of popular resentment are more vividly conscious to the public mind than is the prevailing subconscious acquiescence in the authority of propertied classes.

In European countries for a long period the control of one property-owning class, the landed class, was fixed and unquestioned. The third type of behaviour, that of domination by a propertied class, prevailed. Eventually, however, this control exercised by the landed class was disputed by the rising manufacturing and

[8] Goodnow, *op. cit.*, Ch. XV.

[9] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol. Soc.*, VII: 153; Schapiro, "Social Reform and the Reformation," 48–49.

[10] Westermarck, "The Origin and Development of Moral Ideas," II: 60–69.

[11] Harrington, "The Commonwealth of Oceana," with an introduction by Morley, 15–20; Locke, "Two Treatises of Government," Bk. II, Chs. 2, 5, 9, 11.

commercial classes. Before the ratification of the Constitution of the United States James Madison wrote: "A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of government." [12] Early in the history of our government we discern the rivalry of propertied interests in governmental affairs.[13] The capitalistic class at the present time includes rival interests which strive for governmental control but which draw together and work in common to repress any movement for popular control. This distrust of popular control also existed at the time of the formation of the federal constitution, which was so devised as to prevent the control of the government by "an overbearing majority, which Madison, in another place, prophesied would be the landless proletariat.[14] . . ." [15]

This dominating attitude of propertied classes was contrary to the spirit of America, which was one of free rivalry for property. The assumption of a landless, non-propertied class that must be guarded against in the fundamental law of the land was contrary to the existing conditions, for, in a country of cheap land and adventurous settlers, there was comparative freedom of opportunity for acquiring property. This condition affected men in different ways according to their instinctive dispositions. Those of a predominantly acquisitive disposition were persistent workers [16] with little imagination, those of an extremely rivalrous disposition were men of vivid imagination, who "were always going to do something great," [17] but with little power of persistent work. This speculative class pushed on to the frontier, where, in a new and rich country, the rivalrous imagination had free play, and economic activity took the form of exploitation rather than constructive production.[18]

[12] *The Federalist,* No. X.
[13] Beard, "Economic Origins of Jeffersonian Democracy."
[14] Farrand, *Records,* Vol. II, p. 203.
[15] Beard, "An Economic Interpretation of the Constitution of the United States," 157–158.
[16] Williams, "An American Town," 30–32.
[17] *Ibid.,* 202.
[18] Croly, "Progressive Democracy," 96.

Economic conditions were such as tended to stimulate the rivalrous disposition and the speculative attitude. Land was easily acquired,[19] men were independent, and not fearfully dependent on landlords for the opportunity to make a living. With the increase in population land was rising in value, and a man's land might prove to be so unusually well situated as to increase rapidly in value with the development of transportation and the growth of population.[20] Wherefore success in accumulation of wealth depended not merely on energy and sagacity but on chance. Hence the speculative aspect of American economic life.[21] So much was this so that economic behaviour often lost all semblance of productive effort.[22] As the opportunities for speculation diminished, there continued the uncertainty of the seasons so that the farmer, in planting in the spring, took a chance as to whether or not he would reap.[23] There continued uncertainty, also, as to the growth of population, the location of the railroad, the securing of capital for the development of land, and other conditions that affect land values. In many sections the natural resources were enormously rich, and stirred extravagant anticipation throughout the population.[24] This rivalrous ambition, developed by economic conditions, in turn affected political behaviour. It gave rise to the spoils system which made political activity an affair of reckless adventure. Any "position might lead anywhere, and that quickly; removal was constantly impending; government service was speculative. . . ."[25] There was an impatience with every appearance of an exercise of political domination over individualistic ambition.[26] This ambition and impulsive anticipation was seen, also, in the religious behaviour of the period, which was less conventional and more impulsive than anywhere else in the world.[27] It was seen, also, in the

[19] Hill, "The Public Domain and Democracy," Ch. II.

[20] *Ibid.*, 73–78.

[21] Flint, "Recollections of the Last Ten Years" (1826), 200–203; Trollope, "North America," I:45; Turner, "The Significance of the Frontier in American History," Proceedings of Forty-First Annual Meeting of State Historical Society of Wisconsin, Reprint, 11–13; Turner, "The Rise of the New West," 85–92.

[22] Flint, *op. cit.*, 199.

[23] Williams, "An American Town," 229; Carver, "Principles of Rural Economics," 14–24.

[24] Weyl, "The New Democracy," Chs. III–IV.

[25] Fish, "The Civil Service and the Patronage," 203, 104.

[26] *Ibid.*, 81; see also Ostrogorski, "Democracy and the Organization of Political Parties," II: 52; Turner, "The Rise of the New West," 107.

[27] Bryce, "American Commonwealth," II: 577; Hill, *op. cit.*, 87.

recreation of the period, in the prevalence of gambling[28] and horse-trading.[29]

From this period of individualistic rivalry we inherit many tendencies in present day American life, which will be traced in a future volume where, also, the period itself will be more fully analysed. But with the change in economic conditions that has resulted from the passing of the instruments of production under the control of great economic interests, this period of individualistic rivalry is being succeeded by one of domination-submission. Rivalry instinctively tends to domination and repression of rivals as soon as some of the rivals have acquired a financial or political advantage. For instance, " During the first half century banking in New York," says Horace White, " was an integral part of the spoils of politics. Federalists would grant no charters to Republicans, and Republicans none to Federalists. After a few banks had been established they united, regardless of politics, to create a monopoly by preventing other persons from getting charters. When charters were applied for and refused, the applicants began business on the common-law plan. Then, at the instigation of the favored ones, the politicians passed a law to suppress all unchartered banks. The latter went to Albany and bribed the legislature. In short, politics, monopoly, and bribery constitute the key to banking in the early history of the state." [30]

In spite of the inevitably growing tendency to economic domination in a capitalistic state, the impulses of the preceding period still survive in the United States, and the result is a persisting resistance of domination, especially in the West. But the persisting rivalrous impulses are less and less individualistic. In the period of the ascendancy of rivalrous capitalistic interests, the individualistic farmer and workman were slow in perceiving that the rivalrous corporation was not in the same category with the rivalrous individual. The fact that the rise of a corporation often was associated with the name of a business man who had risen from a poor boy still further perpetuated the traditional conception of individualistic rivalry. But gradually it appeared that the single-handed rivalry of individuals was fast disappearing from the capi-

[28] Schouler, " History of the United States," II: 269.
[29] Williams, *op. cit.*, 199.
[30] White, " Money and Banking," 327. See also Myers, " The History of Tammany Hall," 113–116.

talistic world. And now it has become generally understood that, as the reactionary forces are organized, so the resisting forces must be organized. We have, then, these tendencies that are combining to make the resistance effective: (1) a change in the type of mind of the people from one in which individualistic rivalrous ambition predominates to one in which more careful attention to work and co-operation with one's group is required for prosperity under the new economic conditions; (2) the rise of a menacing economic and political centralization of power;[31] (3) a growing sense of solidarity of the non-propertied masses and an increasing consciousness that submission and the suffering of exploitation is inevitable for masses dependent on a dominant class for the opportunity to work.

The domination exercised by powerful economic interests results in reactionary governmental action. We term the dominating type of industrial and financial leader reactionary because the effect of the behaviour of that type is not only to stifle free rivalry, which, up to the present time, has been the essential force in political and economic progress, but also to stifle the sympathetic and intellectual dispositions, which are to become more vitally active in progressive movements.

The resistance maintained against reactionary propertied interests has thus far been largely maintained by other propertied classes. The non-propertied are for the most part unorganized politically and without effective leadership. There are certain reasons why a political resistance confined to propertied classes does not insure a permanently progressive democracy. When a new propertied class has made good its claim to political recognition, domination on the part of an old class is no longer possible, and the situation makes for freer rivalry, at least for a time. The propertied classes, in their rivalry for political control avoid uncompromising domination and grant some demands of the working classes in the rivalry for their votes. The latter suspect the intentions of the propertied classes for they realize that the latter control governments; and they oppose labour legislation and governmental arbitration of industrial disputes because they believe they will gain more by trade union action than through the govern-

[31] Beard, "American Government and Politics," 724; Beard, "Readings in American Government and Politics," 606–607.

ment. Compromise is the method by which the political leader, in this régime of propertied class rivalry, maintains his control. Domination is, however, closely connected with property ownership. Just as children assume the right to dictate in connection with the use of their belongings by others, and just as, in the family of the workingman, the bread-winner assumes the right to dictate concerning expenditures, so the business corporation assumes the right to manage its own business.[32] Property owners who are not of the progressive type have an instinctive repressive reaction against any behaviour in the body politic which stirs a feeling of insecurity. There is an instinctive impulse to keep the non-propertied masses "down" and "quiet."[33] Whenever the non-propertied masses show an increasing influence over the government, the apprehension of reactionary propertied interests ceases to be subconscious and becomes conscious, and there is a drawing together of erstwhile competing interests, just as, in international rivalry, the citizens of a nation draw together, and feel their solidarity when they become fearful of a formidable nation over the boundary line. In both cases, the fear is apt to be more or less hysterical and to exaggerate the actual danger. That is the psychological tendency of fear. But the exaggeration increases the danger in that it makes mutually suspicious nations unduly self-assertive toward one another. This was true of the feeling in Germany toward England before the outbreak of the World War. It became increasingly true also of the attitude of capitalistic interests toward labour in the United States during the administrations of President Wilson. In those years of prosperity, profits were large and manufacturers became increasingly apprehensive of labour troubles. Then, too, there were evidences of an increasing political power of labour; and the result was a drawing together of propertied in-

[32] Croly, "Progressive Democracy," 387.

[33] To perpetuate the subjection of the non-propertied classes, it is declared that "Regardless of creed we should give individual and united support to the agencies of Christianity in the promulgation of the faith, thus aiding in diverting human unrest into its proper channels." (Chas. S. Keith, Chairman, Governmental Relations Committee, National Lumber Manufacturers' Association, First American Lumber Congress and Seventeenth Annual Meeting, April, 1919, 68.) Reactionary propertied interests aim to use, in maintaining the subjection of the non-propertied, not only the church but also the state, and urge universal compulsory military service as a means of training in workmen in their youth a spirit of obedience. From the same motive reactionary propertied interests warmly approve of those posts of the American Legion that have taken a reactionary attitude to labour unions. (*Open Shop Review*, Feb., 1920, 66–67; *Auto Workers' News*, Detroit, Dec. 25, 1919, Jan. 1 and 8, 1920.)

terests; and this increasing sense of solidarity of the capitalistic class encouraged a determination to fight labour, organized and unorganized, industrially and politically.

When this reactionary attitude spreads through a capitalistic class, there results an indiscriminate protection of all capitalistic interests. However unconscionably some monopolies may have profiteered legislators that represent capitalistic interests refuse to interfere to prevent it. But they interfere drastically on behalf of capitalistic interests.[34] Thus the class struggle is so intensified that progressive legislation is seriously impeded. The courts as well as legislatures become reactionary. Justice Holmes writes that "When socialism first began to be talked about, the comfortable classes of the community were a good deal frightened," and looked to the courts to protect their property; that as a result the courts were influenced by individualistic economic theories that favoured propertied interests, and were thus "led into taking sides upon debatable and often burning questions."[35] This effect of socialism in causing a reactionary attitude on the part of the courts has continued to the present day.[36] The class struggle is thus the essential intra-national phenomenon and draws into the impulsive conflict the different branches of state and national governments. The class struggle is as far as we can see an irrepressible conflict, which will be resolved either by progressive adjustments which tend toward but never reach entire harmony, or, if reactionary propertied interests maintain their political ascendancy, will continue with

[34] For instance the law passed in February, 1920, for the return of the railroads to private owners directed the Interstate Commerce Commission to fix rates high enough to earn at least 5½ per cent. dividends for all roads. In a speech against this law Senator La Follette pointed out that the Interstate Commerce Commission would be forced to accept the book valuation of the railroads (which included the vast amount of watered stock) inasmuch as the physical valuation of the roads would not be completed in two years, and he quoted an estimate of Interstate Commerce Commissioner Woolley that the guarantee of 5½ per cent. would necessitate an advance of at least 25 per cent. in freight rates, which would mean approximately $875,000.000. This would increase the cost of living by $4,375,000,000 "which the ultimate consumer would have to pay for what he uses, eats, and wears, because, when he buys the finished article he pays an accumulation of increases." (*Congressional Record,* Sixty-Sixth Congress, 2nd Sess., Dec. 15, 1919, 609, Jan. 26, 1920, 2197–2211.) It makes no difference whether this estimate turns out to be true or not, for the point is that, in the face of this estimate by an expert, Congress went ahead and passed the bill. This shows how drastically Congress protected illegitimate property rights at the expense of the public welfare.

[35] Holmes, "The Path of the Law," *Harv. L. Rev.,* X:457, 467.

[36] See the decision of the United States Supreme Court in Jacob Abrams v. United States, discussed in the chapter entitled, *The Conflict of Judicial Attitudes.*

increasing bitterness until a crisis has been reached and passed.

At this point it may be well again to caution the reader about preserving the intellectual attitude in an analysis of class relations. Without a conscious and deliberately maintained intellectual attitude, the individual subconsciously yields to social suggestion and accepts the attitudes and prejudices of his class. As was emphasized in preceding chapters, it is necessary to take the attitudes of all classes intellectively; this is the prerequisite for any social-psychological analysis of class relations. Otherwise, to assume the attitude of one class is to be prejudiced against the opposite class, which makes impossible a scientific analysis of either class. Yet so rare is this intellectual attitude that one who refuses to be suggestible to the class in the community that exercises the social control and to accept the attitudes and prejudices of that class is almost certain to be accused of " favouring " the opposite class. The community refuses to recognize the intellectual attitude. It is so rare that it seems incredible that any man could be characteristically actuated by it. Consequently, when, on account of it, a man is not suggestible to the favoured class in the community, as is the rest of the community, he is assumed to be " for," that is, suggestible to, the opposite class and to share the attitude of the latter against the favoured class. For instance, a man having an intellectual attitude to the conflict between the propertied classes and that type of non-propertied resistance termed Bolshevism is accused of being a Bolshevist because he is not against Bolshevism in the sense of sharing the impulsive prejudice of the propertied classes against Bolshevism. He insists on maintaining an intellectual attitude in the controversy and making a candid analysis both of the attitude of Bolshevism to the propertied classes and of the attitude of the propertied classes to Bolshevism. Likewise, among the Bolshevists, a man maintaining a severely intellectual attitude is condemned because he does not accept the Bolshevist attitude against capitalism. Class prejudice is contrary to the scientific attitude. The intelligent student of social psychology must maintain the scientific attitude and inhibit the impulse to be *for* or *against* any class. Let the reader, therefore, study and correct his own attitude as we proceed with our analysis.

The apprehension of a class for its position has much the same psychological causes as the apprehension of an individual. The

individual feels apprehension when his reasoning power is shaken by the unusual.[37] So a class whose behaviour is determined by the habitual reactions that depend on property ownership is thrown into apprehension when that property is threatened. If the financial, industrial, and political leadership of the propertied classes were overthrown it is not clear how finance and industry and politics would be conducted.[38] Yet social institutions are based, essentially, on instinctive impulses and ways of doing that became habitual with little direction from the point of view of public welfare. The institutions were justified and rationalized in order to protect the traditional privileges of propertied classes, but were not analysed from the point of view of a rational social purpose. In so far as existing institutions are based on habits of reaction of a dominant class that have developed corresponding habits of reacting in submitting classes, these institutions are based on fortuitous subconscious processes, not on conscious control. Conscious control is what is needed because changed conditions are bound to demand changes in institutions, and this necessity of change, of facing the unusual, will stir apprehension, unrest and disorder unless education develops power of conscious control. Democracy, rightly understood, means this, power of conscious control widely diffused. Until this new attitude develops there will be apprehension on the part of the propertied classes and unrest of the non-propertied. The old, absolute, satisfied domination of the propertied classes and the absolute, quiescent submission of the non-propertied is gone for ever.

The dominating attitude of reactionary propertied interests is everywhere subconscious and imperceptible except in periods of mass resistance; then it is possible to note among reactionary property owners indignation at the attempt to defy their traditionally dominant position. The indignation spreads from nations in which uprisings have occurred to nations in which uprisings have not yet occurred, where the general indignation is aggravated by the press. The indignation does not permit of dispassionate inquiry into the justice of the case. When a resistance confines itself to strictly legal forms, the same indignation, though in a milder form, is evident. It was evident in the attitude of certain reactionary prop-

[37] Alexander, "Man's Supreme Inheritance," 249.

[38] Veblen, "The Captains of Finance and the Engineers," *The Dial*, June 14, 1919, 606.

ertied interests to the election of President Wilson for a second term. In spite of the variety of issues that were presented from the platform and discussed among the citizens, it was felt by those vitally interested that the real issue was whether or not reactionary propertied interests were to determine certain important policies of the government.[39]

The determination of reactionary propertied interests to dominate the situation, regardless of consequences, is due to lack of intelligence and foresight. As the instinct to dominate is pronounced in connection with unintelligent property ownership, so an unintelligent non-propertied condition begets an instinctive attitude of submission. The non-propertied masses have instinctively accorded the possessor a right to dictate the terms on which they might use his property in production.[40] This attitude of submission has been disturbed only when workmen felt that, instead of being allowed to use the property of an employer on reasonable terms, they themselves were being used and abused. Then when they organized and resisted and found courts, executive officers, the police, in sympathy with the employing class and against them, they realized for the first time that the government conducted by representatives of the political parties they had heretofore supported was a government by the employing classes.[41] The masses have to learn these lessons by experience. Popular education teaches nothing vital as to government, and, if it did, only a small percentage of the masses have education. They have to learn by experience of political control by a dominant class. The effectiveness of this control has depended on its secrecy. Once realized by the masses it is apt to become less effective. Until recently it has

[39] "The Elusive Labor Vote," *Open Shop Review,* May, 1919, 184.

[40] "The average man who applies for a job is pretty sure to weaken when the question of salary is broached. He is apt to wish to leave it to the employer, which puts a large temptation in the latter's way. He is visibly relieved when he finds a place where a standard starting wage is offered with advancement every so often. He hates to discuss the business side of the question at all. Half of the applicants will accept a lower starting wage than they consider themselves worth. Men are not sure of their own qualifications. They are afraid that if they claim all that they should, the boss will bring out a job that they never saw before and show them up the first day. The few exceptions to this rule make so much stir about themselves that we are apt to over-estimate their number." (Henry, "A 'One-Price' System of Wages," *Industrial Management,* Dec., 1917, 358.)

[41] Statements to this effect were given to the press by the steel workers organization at the close of the great steel strike of 1919, but received scant attention in the newspapers. However, the political repression was independently attested. See Shaw, "Closed Towns," *The Survey,* Nov. 8, 1919, 38.

been little realized and, as yet, is not generally realized. The prevailing attitude of the masses to the propertied classes has been the habitual subconscious attitude of submission.[42] Because of the habitually submissive attitude of the non-propertied to the propertied classes, organized labour has had to proceed slowly in order to carry along with the policies of organized labour the conventional working masses.

Out of the awakening of the workers has developed the attitude of resistance, which, as it enlists larger bodies of workmen, gives the labour movement a mass impetus. With every set-back experienced by a large body of striking workmen, through governmental action on behalf of employers, the resentment thus occasioned unites a wider section of the working class. The antagonistic attitudes of workmen to employers, as well as of employers to workmen, are, thus, essentially, instinctive impulses, but ideas are adduced as explanations and justifications thereof, and thus reinforce the impulses, and modify them in a way to enlist a wider social acceptance of the essentially impulsive class purpose.

For their impulse to dominate the situation reactionary propertied interests give various justifications: that property is accumulated through the exercise of socially recognized superior ability, and that the men of superior ability should control the government; that capital is an essential requisite of production and that the saving of money and the creation of capital requires that the government guarantee to savers secure ownership and bequest of private property, which will be done if propertied classes control the government; that social order is furthered by unquestioned control by the propertied classes because the non-propertied are irresponsible; that the prosperity of the non-propertied classes depends on the prosperity of the propertied, and only the propertied understand how to run the government in a way to insure prosperity. On the other hand the non-propertied classes assert that property is accumulated not necessarily by superior ability, though many capitalists undoubtedly are men of great ability, but by privileges — in the case of the larger fortunes — which property owners have acquired through their control of the government; that the political leaders of the non-propertied classes are men of as great ability as are those of the propertied classes; that the non-propertied have even more incen-

[42] Webb, "The Restoration of Trade Union Conditions," 69–77.

tive to save than the propertied — if only they had adequate wages so that what they could save would seem to them worth while,— because they would save to forfend need while property owners have not the incentive to save that is given by the apprehension of possible need and suffering; that the non-propertied are as interested in preserving social order as are the propertied, because on social order depends the smooth running of industry, without which prices are high and the masses apt to suffer want; that because, under capitalism, the prosperity of the working masses depends on the prosperity of the employing classes, those classes should no longer be uncontrolled, but should be controlled by the political leaders of the working masses in order that the latter may thus protect their prosperity. It is further maintained that state ownership of the instruments of production would bring men of the highest ability into positions of leadership [43] through an extensive system of social accounting and control,[44] would stimulate production by the extension of scientific management to all industry;[45] would encourage saving by making wages adequate and so stimulating workmen with hopefulness of being able to accumulate considerable savings; would eliminate class struggle and so conduce to social order; and would put the ultimate control of industry and of the conditions of economic prosperity into the hands of the work-

[43] In the reports of the commission sent by the Paris Peace Conference to investigate and report on the Russian situation, it is said that "The Soviet Government has made great efforts to persuade industrial managers and technical experts of the old regime to enter its service. Many very prominent men have done so. And the Soviet Government pays them as high as $45,000 a year for their services, although Lenin gets but $1800 a year." (Reports of the Bullitt Mission on Russia, *The Nation,* Oct. 4, 1919, 475.) See also Bullitt's book, "The Mission to Russia."

[44] Lenin, "The Soviets at Work" (a pamphlet published by the Rand School of Social Science, 1918).

[45] "Without the direction of specialists of different branches of knowledge, technique and experience, the transformation toward socialism is impossible, for socialism demands a conscious mass movement toward a higher productivity of labor in comparison with capitalism, . . . We are forced now to make use of the old Bourgeois method and agree to a very high remuneration for the services of the biggest of the bourgeois specialists. . . . It is clear that such a measure is a compromise, that it is a defection from the principles of the Paris commune, and of any proletarian rule, which demand the reduction of salaries to the standard of remuneration of the average workers — principles which demand that career hunting be fought by deed, not by words." (*Ibid.*) "One might draw an analogy between the history of the Taylor efficiency scheme in the United States and in Russia. Here labor fights it as a device of production possessed solely by employers and controlled non-collectively by employers. In Russia, the Soviet Goverment is . . . attempting to utilize efficiency in the interests of the entire industrial world instead of in the interests of a small if important fraction thereof." (Stoddard, "The Shop Committee — Some Implications," *The Dial,* July 12, 1919, 8.)

ing masses' own political leaders and thereby stimulate efficient work because of their confidence in and co-operation with their leadership.

These assertions on both sides are explanations and justifications that are aside from the instinctive attitude of the classes to one another, that come after and qualify and reinforce the reactions of domination and resistance but do not originally determine those reactions. The assertions of the propertied classes are assertions that are thought to justify the capitalistic order and the control of the government by the propertied classes as against any possible improvement under the proposed socialistic measures; the assertions of the protagonists of the non-propertied classes are assertions that they think justify the socialistic order, as contrasted with any possible improvement of the capitalistic order. Into a discussion of the relative merits of these assertions of the parties to the class conflict we do not, therefore, need to enter as we are indicating merely their relation, as secondary explanations, to the instinctive attitude of the classes one to another.

The problem reduces, then, to a problem of public education. What is needed is a public education that will enlighten both upper and lower classes [46] in a way to convert the instinctive attitudes into an intelligent relation. Social progress, thus far, has taken place in spite of, instead of under the leadership of, educated men. Educated men, partly because of the nature of their education, have been largely indifferent to social progress. Most of them are members of the conservative political party, the party which aims to maintain things as they are, and oppose progressive measures.[47]

[46] This is realized in Great Britain. See the report of the *Committee on Adult Education. Ministry of Reconstruction.* London, 1918. The committee which included R. H. Tawney, the economist, Sir Graham Balfour, and Sir Henry Miers, Principal of Manchester University, found that the working masses of England "demand education in the hope that the power which it brings will enable them to understand and help in the solution of the common problems of human society." In the United States, the demand for education is voiced by a great number of labour groups. For instance, see pamphlet published by National Women's Trade Union League of America entitled, *Women and Reconstruction,* 1919; pamphlet entitled, *Platform and Plan of Organization of American Labor Party of Greater New York,* 1919, 9; platform of the Labor party of Illinois in *The New Majority,* Apr. 19, 1919, 6; platform of California State Federation of Labor, *The Survey,* Nov. 23, 1918, 224; and the educational program of the American Federation of Labor adopted at its annual convention, in *American Federationist,* August, 1919, 694. See also Stoddard, "The Boston Trade Union College," *The Nation,* Aug. 30, 1919, 298–300.

[47] In England, "nearly all the clergy of the Established Church, and . . . a majority of the graduates of the universities" belong to the Conservative or Unionist party, the party of the aristocratic and wealthy classes. (Ogg, "The Governments of

Social progress has taken place as a result of impulsive unrest and resistance of lower classes, to alleviate which compromises have been effected by officials and politicians who sought thereby to win or hold the support of the non-propertied voters by a minimum of yielding to their demands, and to keep the confidence of the propertied classes by maintaining, as far as possible, their traditional privileges. As long as this continues to be the method of progress, the class conflict will go on. Periods of unrest and violence will be followed by quiescent periods, but as long as the working hosts are without adequate leadership, as long as they are not sufficiently intelligent persistently to support a progressive leadership, the conflict will go on. The education that is necessary for a continual social progress must be unhampered by nationalistic, sectarian, and class prejudices, must reach all classes and conditions of men, and must be through and through scientific.

This brings us to the fourth type of intra-national relations referred to at the beginning of the present chapter. The growth of nation-wide corporations and their power to profiteer at the expense of the consumer has weakened the traditional belief that the profit-seeker is entitled to all he can make.[48] At the same time the population has developed capacity to co-operate and a taste for co-operation through the increasing tendency of individuals to form clubs and federations of clubs, for mutual association and improvement, and, thus organized, to take up as organizations, instead of as individuals, the economic and political problems of the members.[49] Another cause of the rise of an ideal of co-operation is the gradual enlightenment of the working classes as to the control under which they work, which enlightenment has begun to react on that control. They have begun to demand that the industrial relation be less a matter of instinct and habit and more a relation of intelligent adjustment. The change of attitude of labour has made the old reactionary capitalism conscious of the nature and significance of its behaviour and of the weakness of its position in a government controlled in the last analysis by a majority of the adult males and

Europe," 164.) Ogg writes: "Since 1885 not a Liberal member has been returned from any one of the universities." (*Ibid.*, 164, note.)

[48] This change of economic belief has spread throughout Europe as well as the United States. See "The Economic Council of Labor," *Cambridge Magazine*, Jan. 24, 1920, 229.

[49] Croly, "Progressive Democracy," 196–198; Sandburg, "The Farmer-Labor Congress," *Survey*, Feb. 21, 1920, 605–606.

females. The result is, in some quarters, a conciliatory attitude of capitalism, a disposition to relinquish the dominating attitude and to give labour a voice in industrial matters.[50] The development of industrial co-operation requires that the initiative be taken by employers,[51] as in the introduction of the shop committee;[52] but this co-operative relation will necessarily be supervised by the government.[53] Furthermore, the government will necessarily take the initiative in all cases where the public welfare requires co-operation which is not forthcoming on the initiative of the parties to the industrial relation. "But the essential work must be done by responsible business men, who are not afraid to reorganize their own industries in the interest of a constitutional system. They must be prepared to risk the prosperity of an established business for the sake of making the operation of that business conducive to the increasing independence, responsibility and loyalty of its work-

[50] Cyrus McCormick, Jr., of the International Harvester Company, is quoted as follows: "What the workingman is asking for, and what we are trying to give him, is a voice in the control of the business in which he is a copartner. This demand has taken on various forms in different places. In Russia and elsewhere on the European continent it is known as Bolshevism; in England they call it the Whitley plan; elsewhere it may be called employees' representation, and somewhere else co-partnership. Under all of these however, is the basic fact that the relationships between employer and employee must be founded on something else than a cash bond. . . . With every one of our hitherto most guarded ledgers open to these men, we believe that they would see the facts as clearly as we saw them." (Quoted by Stoddard, "The Shop Committee — Some Implications," *The Dial,* July 12, 1919, 8.)

[51] While the employer must take the initiative, the plan should be worked out in joint conference between the management and the workmen, instead of being handed down by the corporation. (Stoddard, "The Shop Committee — Some Implications," *The Dial,* July 12, 1919, 8.)

[52] Renold, "Shop Committees in Practice," *Survey,* March 1, 1919, 761–765; Gleason, "The New Constitutionalism in British Industry," *Survey,* Feb. 1, 1919, 594–598; Gleason, "The Whitley Councils," *Survey,* Apr. 5, 12, 19, 1919; Stoddard, "The Shop Committee."

[53] The Garton Foundation issued a report in 1919 wherein the Whitley councils, in which employers and workmen unite in the management of industry, were commended, but which added: "At the same time it must be recognized that there is a certain danger in this industrial autonomy. The possibility of employers and employed in any industry combining to exploit consumers or to put pressure on the government for the promotion of sectional interests must not be overlooked. . . . It seems inevitable that . . . some central organization, representative of all important industries, should be created for the purpose of coordinating the action of the various councils and adjusting the competing claims of overlapping or interconnected industries. In such case it will be necessary very carefully to consider and define the powers of such central organization and its relation to Parliament, in order to guard against the possibility of steps being taken by this functional body or by the industrial councils, which might prove detrimental to the interests of the general public or to national life in its social aspects." (Quoted by Gleason, "The Whitley Councils," *Survey,* Apr. 12, 1919, 76.)

ers." [54] This suggests the social-psychological nature of the problem of co-operation, for, obviously, employers who willingly ventured this risk would be animated by instinctive impulses different from those of the prevailing employer. That employers are, as a matter of fact, animated by different dispositions, and that these do cause variations in economic behaviour, and that there are variations of the kind required for the development of co-operation will be pointed out in a succeeding chapter.[55]

The industrial co-operation so far proposed by progressive employers does not go far enough to do away with class antagonism in industry. This will not be done away by shop committees [56] or other forms of co-operation that stop short of a co-operative distribution of income.[57] Professor Commons writes that "the trouble between capital and labor must be looked upon, so far as we can now see, as a permanent struggle. . . . But there are certain points where the interests of capital and labor are harmonious, or can be made harmonious. By recognizing these two facts of permanent opposition and progressive cooperation, it may be possible to devise methods of legislation, court interpretation and administration which will reduce antagonism to promote cooperation." [58]

The development of co-operative industrial relations cannot but have a marked effect on the class conflict as a political force. The

[54] Croly, "Progressive Democracy," 393.

[55] See the chapter entitled, *The Relation of Social Psychology to Economics.*

[56] Five of the fifteen members of the Whitley Committee, including J. A. Hobson, reported as follows: "By attaching our signatures to the general reports, we desire to render hearty support to the recommendations that industrial councils or trade boards . . . should be established for the several industries or businesses, and that these bodies, representative of employers and employed, should concern themselves with the establishment of minimum conditions and the furtherance of the common interests of their trades.

"But while recognizing that the more amicable relations thus established between capital and labor will afford an atmosphere generally favorable to industrial peace and progress, we desire to express our views that *a complete identity of interests between capital and labor cannot be thus effected,* and that such machinery cannot be expected to furnish a settlement for the more serious conflicts of interests involved in the working of an economic system primarily governed and directed by motives of private profit." (Quoted by Gleason, "The Whitley Councils," *Survey,* Apr. 12, 1919, 76.)

[57] Valentine and Tead, "Work and Pay: A suggestion for Representative Government in Industry," *Quart. Jour. Econ.,* XXXI: 248–257. The plan outlined is a result of the experience of the late Mr. Valentine as Director of the Joint Board of Protocol Standards of the Dress and Waist Industry of New York City.

[58] "Final Report of the United States Commission on Industrial Relations, 1915," 309; Commons, "Industrial Good Will," 58–61.

class conflict will become less bitter and it will be possible for law-making to become something besides a mere compromise between conflicting classes. It will be easier to enact laws which may affect the welfare of some classes more than others but without the aim of satisfying any particular class. Some of these measures are highly important for the public welfare, but have been delayed by class selfishness. For instance, both employers and wage earners originally opposed health insurance, the employers, among other reasons, because they must contribute a part of the insurance fund[59] and wage earners because they must contribute a part;[60] but under the administration of a health insurance law, both capital and labour would learn to co-operate for the public welfare.[61] "This class of legislation is cooperative. . . ."[62] As government passes under expert direction it is possible to ameliorate the class conflict through expert leadership for the public welfare.

However, in an economic system determined essentially by the impulse for private profits and in a political system in which the predominant influence is exercised by profit-seekers, if the profit-seeking impulses can be enlisted for a reform the reform is more apt to be effective than under the impulsion of other motives. Workmen's compensation has achieved its end of diminishing accidents because this was for the interest of the employer as profit-

[59] Tucker, "Compulsory Health Insurance," *American Industries,* Feb., 1919, 24.

[60] Fisher, "The Need for Health Insurance," *Amer. Labor. Leg. Rev.,* March, 1917, 14–16; Green, "Trade Union Sick Funds and Compulsory Health Insurance," *Amer. Labor Leg. Rev.,* March, 1917, 93.

[61] "Just as employers have installed safeguards for dangerous machinery in order to reduce the cost of workmen's compensation, so in order to reduce the cost of health insurance they will supply, for instance, better sanitation, ventilation and lighting, more physiological hours of labor, and fuller consideration for the special needs of employed women and children. In localities where the employer provides tenements for his workmen, he will be led to study and improve housing conditions. So-called welfare work will be made more effective and helpful. Employers will collect facts and statistics as to sickness, analyze them and apply such corrections as the facts discovered indicate. Dr. Rubinow states that a large corporation after introducing health insurance tried, for the first time, to discover its sickness rate and found it to be three times what is usual. Further investigations showed that this excessive rate was due to bad conditions, not in the factory, but in the sanitation of the city. As a consequence an effort was made for the first time toward improving these conditions. It is especially to be expected that as soon as employers realize the nerve strain caused by overlong hours and consequent increase of illness and, therefore, the cost to themselves, they will acquaint themselves with the effects of long hours of labor and reduce them." "The employee, on the other hand, will be likewise stimulated to welcome and to utilize factory hygiene, and improve his own domestic hygiene and individual hygiene." (Fisher, *op. cit.,* 17–18.)

[62] Commons and Andrews, "Principles of Labor Legislation," 462.

seeker; and it is said of health insurance that it will not be effective "until sickness prevention is made a source of financial profit to business men." [63] It is difficult effectively to administer a law affecting industrial conditions which has the opposition of business men. For governmental commissions and inspectors, in common with all other officials, are more or less under the subconscious influence and conscious control of business men. Incompetent politicians are appointed to positions which require experts, and men of this type readily succumb to the business influence so that the conscientious expert who occasionally is appointed finds it difficult to function.

The problem of co-operation under expert administration involves psychological analyses. The opposition to experts is due, among other causes, to the fact that until recent times "office meant dominance." [64] And though formally, in a democracy, the official is the servant of the people, actually office still means dominance. Office means dominance not only in the government but throughout the social organization. One of the chief incentives to the formation of voluntary associations is the possibility of holding office therein and thereby increasing the individual's prestige in the community. And when, for instance, a society for social service hires an expert social worker, the officers of the society often take pleasure in emphasizing their dominant position by dictating to the social worker. This attitude to expert knowledge is seen also in officials of a democratic state. They take pleasure in emphasizing their dominant position by expressing a contempt for experts and ignoring the recommendations of commissions of experts. Furthermore, these officials are primarily partisan in their point of view. They owe their position to the dominant party organization. Party organizations have traditionally assumed that administration does not require experts; that among the servants of the organization could be found men equal to any administrative work of the government; that if, in certain cases, other experts had to be called in, the regular officials were, in the last analysis, competent judges of their recommendations and their work. Consequently elected officials have been forced or influenced by the party organizations that elected them to make appointments at the dictation of local

[63] Commons, "A Reconstruction Health Program," *The Survey*, Sept. 6, 1919, 799.
[64] Tufts, "Ethics and International Relations," *Intern. Jour. Ethics*, Apr., 1918, 312.

party leaders, " and the appointed officials are naturally more solicitous to please their real than their technical superiors." [65] The result has been that officers of administration have not generally been experts and have been converted by their real superiors into " agents of partisan policy." [66]

The result is that the government is notoriously inefficient, and the result of this is that the attitude of the people is to entrust as little business as possible to the government. To remedy this governmental inefficiency it is suggested that the functions of government should be multiplied,[67] and thus the people be stimulated to develop a more efficient government, or suffer a break-down of administration. But the multiplication of governmental functions, if officials continue to serve selfish political and capitalistic interests, simply gives the party in power greater power to maintain its selfish dominance. Long-continued political dominance by a certain party gives the entire officialdom of that party an attitude of infallibility in the exercise of judgment and a tendency to be arbitrary and sometimes insolent in the exercise of authority,[68] particularly toward members of the opposite party. This arbitrary attitude is particularly true of the powers behind the throne, the local and state bosses, who maintain their positions through many ups and downs of officials, and it is true also of their creatures in the officialdom. The increase of governmental power may also increase the subservience of the people to political dominance. Professor Commons warns that " as soon as people come to look upon the coercive power of government as the only means of remedying abuses, then the struggle for control of government is substituted for the private initiative through private associations from which the real substantial improvements must come." [69] It is the intelligent initiative of these private associations that prevents public administration from becoming inefficient, wasteful, corrupt and arbitrary.[70]

Governmental efficiency requires an increasing use of expert knowledge not only in administration but also in legislative and ju-

[65] Croly, " Progressive Democracy," 348.
[66] *Ibid.*, 350.
[67] Rowe, " Problems of City Government," Chs. IX, XII.
[68] Croly, " Progressive Democracy," 351–353.
[69] " Final Report of the United States Commission on Industrial Relations, 1915," 308–309; Croly, " Progressive Democracy," 317–318.
[70] Beard, " American City Government," 79.

dicial work.[71] The courts[72] and the legislatures[73] should provide themselves with the necessary expert knowledge for the assistance of untrained judges and legislators, and for those who are trained but who, in the press of business, are unable to make sufficiently thorough investigations.

The development of expert administration waits upon a more intelligent electorate. With the increasing complication of political problems, thoughtful voters are less and less satisfied with their own understanding of these problems[74] and come to realize that problems requiring technical training must be entrusted for solution to experts. One of the main interests of the thoughtful voter is, therefore, in the attitude of candidates for executive positions carrying large appointive power. Will this candidate consider efficiency first or political obligations first in making important appointments? Again we come, therefore, to the social-psychological problem of the motives of the electorate.

An uneducated electorate does not appreciate the necessity of an expert administration. It is subject to the social control of political leaders who prevail largely through an unconscious use and a deliberate manipulation of the instinctive processes of social suggestion. What these are will be explained in a future volume. The point to be made here is that an electorate does not instinctively have confidence in administrative commissions of experts. It has to acquire this confidence through education. Popular education does nothing, and college education does little to give this vitally necessary education. "Is it fair to ask millions of democrats to have a profound respect for scientific accomplishments whose possession is denied to them by the prevailing social and educational organization? It can hardly be claimed that the greater proportion of the millions who are insufficiently educated are not just as capable of being better educated as the thousands to whom science comes to have a real meaning. Society has merely deprived them of the opportunity. . . . The best way to popularize scientific administration, and to enable the democracy to consider highly educated officials as representative, is to popularize the higher education. An expert administration cannot be sufficiently

[71] Commons and Andrews, "Principles of Labor Legislation," 416–430.
[72] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol. Soc.*, VII: 160–161.
[73] McCarthy, "The Wisconsin Idea."
[74] Lowell, "Public Opinion and Popular Government," 46–49.

representative until it comes to represent a better educated constituency." [75]

Even with the necessary education the functioning of the thoughtful voter is becoming more difficult in the modern state. This is due to the multiplication of the functions of the state and the increasing complexity of administration. Mere increase of population increases the power of the multitude as against the individual. We have to consider " its vastness and the resulting sense of individual helplessness. The citizen who is out of sympathy with the aims of the State, unless he is a man of very rare gifts, cannot hope to persuade the State to adopt purposes which seem to him better. Even in a democracy all questions except a very few are decided by a small number of officials and eminent men; and even the few questions which are left to the popular vote are decided by a diffused mass-psychology, not by individual initiative. This is especially noticeable in a country like the United States, where, in spite of democracy, most men have a sense of almost complete impotence in regard to all large issues." [76] Most voters do not understand the issues their votes decide. They are organized for political action into political parties; but this merely means organized ignorance, which party leaders and capitalistic interests easily control.

If in ordinary times the individual feels he counts for little or nothing, he feels still more powerless during a period when the nation is swept by an emotion, for instance, the " Red hysteria " of 1919–1920 in the United States. Not only the rank and file but leaders in every line were subject to that hysteria, or were afraid to speak out and show that they were not, or were silent because they felt they had no power to lead the many out of the mania.[77] There were, however, a few fearless spirits who could speak with authority and did so. For instance, Judge George W. Anderson said: " Many — perhaps most — of the agitators for the suppression of the so-called ' Red menace,' are, I observe, the same individuals, or class of forces, that in the years '17 and '18 were frightening the community to death about pro-German plots and their danger to America.

" I ought to know something about those plots. It was my duty

[75] Croly, " Progressive Democracy," 376–377.
[76] Russell, " Why Men Fight," 60–61.
[77] Hapgood, " The Storm Cellar," *New Republic,* Jan. 28, 1920, 255.

to know. As United States Attorney from November, 1914, to October 15, 1917, I was charged with a large responsibility as to protecting the community from pro-German plots. In October, 1917, I went on the Interstate Commerce Commission; and was until the armistice in intimate personal association with the Attorney General, and with the men charged with responsibility as to discovering, preventing, and punishing pro-German plots. What I now say, I say entirely on my own responsibility; but I say it after exchanging views with many others having analogous responsibilities during this war period. If in fact the pro-German plots were no adequate basis for public fear, and for legislative and official activities against the right of individual and social liberty, it is quite possible that the Red menace, promoted in large part by the same notoriety-seeking individuals and newspapers, ought not to frighten us to death. Now, I assert as my best judgment, grounded on the information that I can get, that more than ninety-nine percent of the advertised and reported pro-German plots never existed. I think it is time that publicity was given to this view. I doubt the Red menace having more basis in fact than the pro-German peril. I assert the significant fact that many of the same persons and newspapers that for two years were faking pro-German plots are now promoting 'The Red Terror.'"[78] The Red hysteria was even more intense than the pro-German hysteria "because nothing is so alarming as a threat against a bank account, more perhaps, because the German danger was thousands of miles away. In this case, on the contrary, our politicians and our newspapers have vied with one another in depicting the peril as crimson and as on our own doorsteps."[79] The Red hysteria was not due merely to notoriety-seeking politicians and newspapers, but was encouraged and supported by reactionary propertied interests because it distracted the attention of the people from the high prices, so that profiteering could go on unimpeded, and because it was a means of frightening people from expressing and holding opinions detrimental to reactionary propertied interests.

[78] Quoted in "The Red Hysteria," *New Republic*, Jan. 28, 1920, 250–251. A similar view was taken by United States district attorney F. F. Kane in opposition to Attorney-General Palmer. See Kane's letter to Palmer and Palmer's reply in the *Survey*, Jan. 31, 1920, 501–503. See also Hale, "The 'Force and Violence' Joker," *New Republic*, Jan. 21, 1920, 231.

[79] Hapgood, *op. cit.*, 256.

Owing to the tendency of the individual to feel his powerlessness in a great state at all times, and especially during a nation-wide mania, the state tends to become autocratic from the mere lack of individual initiative among its citizens. Thus discouraged by the bigness of the mass of which he is a minute part the individual lacks incentive to use what intelligence he may have and surrenders to the instinct to move with the crowd and to the instincts that move the crowd. The crowd prevails over the individual and thus gives the final impetus to utterly irresponsible behaviour.

In connection with this political impotence of the individual there must be considered, also, the tendency of a position of political authority to strengthen the rivalrous and dominating dispositions of those who have reached such a position largely through the exercise of those dispositions. A noticeable change in the direction of a tendency to be dominating often develops in the personality of political leaders who started in their careers with a pronounced disposition for free rivalry and fair play. The change is due to the habitual exercise of authority. One of the results of this change is that it introduces an autocratic tendency in the state. Another is that the autocratic officials thereby become unfit to promote friendly relations between states. "Pride of dominion, unwillingness to decide disputes otherwise than by force or the threat of force, is a habit of mind greatly encouraged by the possession of power. Those who have long been in the habit of exercising power become autocratic and quarrelsome, incapable of regarding an equal otherwise than as a rival. . . . Men who have the habit of authority are peculiarly unfit for friendly negotiation; but the official relations of States are mainly in the hands of men with a great deal of authority in their own country. This is, of course, more particularly the case where there is a monarch who actually governs. It is less true where there is a governing oligarchy, and still less true where there is some approach to real democracy. But it is true to a considerable extent in all countries." [80] The tendency of a great state is, then, to become a strong state, coercive both in internal and international relations, owing to the tendency of positions of great power to make officials dominating, and to

[80] Russell, *op. cit.*, 63–64. See also Young, "Nationalism and War in the Near East," 334 ff.

the tendency of the mere size of the mass to discourage individual initiative.

As indicated in the chapter on *The Psychology of Nationalism,* the remedies for this tendency toward increasing political domination-subservience are a change in industrial relations that will encourage individual initiative, and a reform in public education that will make the training of the intellect essential in education. Another remedy is governmental decentralization. Centralization means increase of power in the hands of those who hold the high offices. It means also an increase in the vastness of the business of government, and the removal of officials from the scene of the matters with which they are concerned. Officials thus situated "will tend to . . . pay attention not to the particular circumstances of the special problem involved, but to its general ruling in broad cases of the kind." [81] This tends to make officials arbitrary, for "what is thereby engendered is an attempt not so much to provide solutions as to evade them. In a great strike, for example, government arbitration will not mean so much a genuine effort after justice as the purchase of a solution on any terms. . . . In industry as a whole, the government is, from the nature of things, interested in the maintenance of order and it knows well enough that the maintenance of order is in inverse ratio to the duration of the strike. . . . And, at the worst, it may suffer itself to be used for the purpose of one of the contending parties. Where picketing, for instance, is concerned, the knowledge that government stands for a certain theory of order, necessarily operates to minimize the strength of the men." [82] This repressive tendency of government operates to repress interferences with order without inquiry into the justice of the case, and the tendency is increased in proportion to the size of the nation and the degree of centralization of the government.

The essential elements in the different types of intra-national relations are the instinctive dispositions that give the trend to those relations. This analysis does not ignore the customary aspects of a relation or the ideas involved. But the ideas are impulsively determined, and the essential thing in the customary aspect is the habitual instinctive impulses. For instance, the relation between

[81] Laski, "Authority in the Modern State," 77.
[82] *Ibid* (quoted without footnotes).

employer and workmen may be one of authority-obedience, or one of intelligent co-operation. When it is one of authority-obedience, it is a relation in which the essential factor is habitual domination on the part of the employer and habitual submission on the part of the workmen. When domination becomes habitual the dominating one ceases to have a conscious sense of *exerting domination;* and when submission becomes habitual the submitting one ceases to have a sense of *having to submit.* The relation has ceased to be consciously impulsive and has become habitual. The submitting one acquiesces subconsciously, and would perhaps defend his submission as "right" and failure to submit as "wrong." Or his submission may remain conscious, as when he submits grudgingly and with some resentment. The relation may be one of habitual domination-submission; or it may be a relation of intelligent co-operation, in which authority-subordination is *understood* by all concerned to be necessary. Employers differ in their conception of the industrial relation. Some believe in a relation of impulsive domination-submission, which ought to be made habitual by drill, while others believe in a relation of intelligence in the exercise of authority and in subordination.

Instinctive impulses are essential not only in the face-to-face relations of industry but also in relations between classes, in which one class aims to use the government to assist its domination of, or resistance of another. Reactionary employers aim to maintain the legal right to dominate workmen, and workmen aim to gain the legal right to resist the domination of reactionary employers. Hence the class struggle for the control of the government. The relations between classes are more complicated than, but not essentially different from, the relations between employers and workmen. If the latter are prevailingly those of domination-submission, the political relation will be one of class domination-submission, and one class will struggle to control the government in the interest of its domination of the other. If the relation between employers and workmen is one in which resistance of workmen and a sense of free rivalry is becoming increasingly prevalent, this will show itself in the relation between classes, and an upper class will find its exclusive control of the government becoming more difficult. Publicists who stand for a relation of intelligent authority-subordination between employers and workmen look upon the gov-

ernment not as a dominating power but as the supreme directing power in industry, and aim to enlist intelligent public opinion in policies to this end. What we actually have, then, are reactionary capitalistic interests and capitalistic interests which are less uncompromising and stand for freer action of labour; submissive labour interests that are conventional in their political allegiance and politically resistful labour interests; a thoughtful and, as yet, not very influential public opinion that stands for an intelligent authority-subordination in industry and for more effective governmental direction of industry — all these interests at the same time seeking to influence the conventionalized mass of voters and to direct governmental action; and the resulting governmental action is the adjustment which happens to be reached at any particular time between these conflicting interests.

This conflict is essentially a conflict of instinctive impulses. The dominating capitalistic interests are such because men of a dominating disposition have gained the ascendancy therein. The less uncompromising capitalistic interests are such not only because the leaders therein have learned by experience the folly of an uncompromising attitude, but also because they were of such a disposition that they could learn. The submissive labour interests are such because of a submissive disposition as well as because experience has confirmed or has not disturbed that disposition. Those labour groups are apt to be resistful whose work requires courage and daring, which work, therefore, selects workmen of a resistful disposition. The rational publicists are such because they are men of a strong sympathetic and intellectual disposition. As long as men differ in the emphasis laid by their heredity on certain parts of their original nature there will be a conflict of interests, and the adjustment of these conflicts will be an essential process in governmental action.

The different types of intra-national relations described in the present chapter became successively predominant in the United States as the nation developed, because economic conditions so changed as to make one instinctive disposition, or group of instinctive dispositions, after another pronounced. In the settlement of the country the acquisitive disposition predominated. The essential relation was that between man and the physical environment, and the instincts brought into play were the instincts to acquire

wealth.[83] The families lived more or less isolated lives and this economic condition determined that certain instinctive impulses should not be developed, as well as that others should be developed. The habitual exercise of the latter, in adaptation to the environment, developed the essential attitudes of character,— in this case, persistence, thrift, frugality and other acquisitive attitudes.

In addition to the acquisitive disposition, which was most pronounced,[84] the rivalrous and the sympathetic were brought into play in the course of the day's work and of the neighbourhood life. When the economic relation is primarily one between the individual and external nature, the rivalry is largely play rivalry that arises in the course of the work. Furthermore, the dominating disposition takes the form of attack on physical nature and the mastering of obstacles presented thereby. By this diverting of egoistic instinctive impulses into relations with physical nature the way is left open for a development of instinctive sympathy in social relations. And, as a matter of fact, we find a pronounced sympathetic relation in this period of development.[85] The hardships of the life of direct contact with nature strongly developed the egoistic instincts, but at the same time tended to confine the action of these largely to relations with physical nature; though, to be sure, when a farmer did meet an obstacle in his social relations, he was apt to react to it in the same masterful manner in which he skidded a log or persuaded an unwilling animal. But because, outside of his family, the economic factor in his social relations was casual, instinctive sympathy was pronounced in his social relations.

As the nation increased in population opportunities for acquiring wealth through business shrewdness, speculation, and governmental privileges multiplied and resulted in a keen business rivalry; and the increasing wealth of the population and the growth of towns stimulated rivalry in the display of wealth. In the rural districts the early rivalry in physical prowess and working power [86] developed into a rivalry in wealth power and its display.[87] In this period of small business enterprises the more or less comradely rela-

[83] Williams, "An American Town," Pt. I, Ch. IV; Thorndike, "The Original Nature of Man," 50–54.
[84] Wiliams, *op. cit.* 40.
[85] *Ibid.* 42-44.
[86] *Ibid.*, 36–37.
[87] *Ibid.*, Pt. II, Chs: I, V, VII.

tion of business men to their workmen continued much the same as that of the farmer to his hired help. Many business men were sons of farmers and had worked with the father and his men in the field. The spirit of good-natured rivalry prevailed among the workmen in the factory as it had in the field. The business man made profits but the difference between his income and that of his workmen was as nothing compared with the later period of price agreements and great corporations with their monopolistic advantages. In this period of business rivalry in the towns the direct relation with physical nature continued essential in the rural districts. The population of the nation thus differentiated into a section in which the acquisitive disposition continued to predominate and a section in which the rivalrous disposition came to the front.[88]

With the development of business rivalry, the dominating disposition[89] asserted itself. Domination was to be seen in the period of the predominance of the acquisitive, and of the rivalrous dispositions, but in these periods was confined to the treatment of horses and other beasts of burden, and occasionally of hired men by the farmer, and in some cases, of members of the family by the father.[90] If manifested toward neighbours or working associates, it stirred fierce resentment.[91] With the passing of the public domain into private ownership, however, and the rise of the great corporation and of a vast working population, containing a large foreign element, dependent for an opportunity to earn a living on financial interests that controlled the capital of the country, the instinctive disposition of domination became conspicuous in the behaviour of employers toward workmen, and eventually in behaviour toward competitors — in the development of monopoly. This dominating behaviour met resistance from those sections of the population in which the acquisitive and rivalrous dispositions continued to predominate,— resistance by trade unions, farmers' associations, and by merchants and manufacturers who demanded the privilege of independently carrying on their business. Where there was no resistance, the disposition of fearful submission came to prevail among the masses.

[88] *Ibid.*, 201–205.
[89] Thorndike, *op. cit.*, 92-94.
[90] Williams, *op. cit.*, 229-230.
[91] *Ibid.*, 60.

With the development of successive types of intra-national relations, the economic and the political organization are shaped in a way to satisfy the predominant dispositions. But the other dispositions continue active, so that the development of organization in satisfaction of the predominant dispositions is deflected by opposing tendencies. Industrial domination stirs resistance, evidences of prosperity and display among employers stir rivalry, the poverty caused by exploitation stirs sympathy; and there results a conflict in the group leadership between those whose plans for changes in the economic and political organizations are determined by egoistic dispositions and those whose plans are determined by a sympathetic intelligence. The point of view of the latter is wider than the welfare merely of the family or business group or class with which the self and its interests are identified. But the egoistic leadership has played the predominant part in the development of economic and political organization. The sympathetic point of view is discouraged by the fact that the interests of the public are vague and uncertain as compared with the concrete and positive interests of the groups with which the self is identified. Consequently the sympathetic disposition is hesitant, ineffective unless reinforced by a vigorous intellectual disposition. Vigour of intellect is increased by an education which emphasizes intellectual training and trains the youth in an appreciation of public welfare interests. When there has developed a leadership with a vigorous and trained intellectual capacity, and which is committed to the realization of a rational social purpose, we may expect a new trend in the economic and political organization. This great conflict between egoistic and public welfare interests is the subject of a future volume.

CHAPTER VIII

PSYCHOLOGICAL ASPECTS OF INTERNATIONAL RELATIONS

THE traditional conception of sovereignty has two aspects, the relation of sovereign and subjects, and the relation of a sovereign state to other states. "The modern idea of national sovereignty, i.e., of complete independence of external authority only gradually won its way, and the assertion of national sovereignty went along with the decay of the Holy Roman Empire and the revolt of the Northern nations against the authority of the Pope."[1] The conception of sovereignty as involving entire national independence was given final expression by Austin who denied that international law is law in a true sense, that is, positive law in the sense in which he used the term.[2] He assumed, therefore, that states might observe international law and still be under no positive law, that is, might still be independent, and that complete independence is characteristic of the sovereign state. Complete independence requires that a state be prepared to maintain its independence by force, unaided. While it is not economically self-sufficient it relies on its military force to maintain such a control of raw materials and trade routes as is necessary to its independence. Today, however, no state is thus independent. By no military force can it, unaided, maintain sufficient control of trade routes and raw materials to guarantee its independence. "For example: Indispensable engines of war require rubber, sulphuric acid, nitrates, manganese. Rubber is to be had mostly from Brazil, the East Indies, the Straits Settlements; sulphur, in commercial quantities, only in the United States, in Japan, in Sicily, and pyrites, from which it may be derived, largely in Spain; nitrates only in Chile; manganese only in Russia, India and Brazil. The blockade which cuts Germany off from these things cuts her off from necessaries of war. . . . Try as she will, she cannot, in the nature of

[1] Ritchie, "On the Conception of Sovereignty," *An. Amer. Acad. Pol. and Soc. Sc.*, I: 408-409.

[2] Austin, "Lectures on Jurisprudence," I: 187–188.

things, be a modern state and conduct a modern war, and be self-sufficient; nor can any other state. National economy, at least, is not sovereign. National economy, at least, means interdependence of nations." [3]

The traditional conception of entire independence of the sovereign state implies international relations similar to those assumed by international law. International law has assumed, as the prevailing international relation, a rivalry that tends to develop a struggle for supremacy between great nations or groups of nations. It is true that international rivalry has had this tendency. The strong and dominating nations have tended to absorb the weaker. It is stated that "All through history there has been but one determining cause of political union between communities — physical force or the fear of physical force. . . . No community has consented to link its fortunes with the fortunes of another save when instigated by the fear of violence from that other or a third power. Many attempts have been made on other grounds, many other excellent motives have suggested themselves to thinking men. But the determining cause, the dead lift over the hill, has always been force or fear of it." [4] President Goodnow writes that, "While this statement is perhaps too general and too sweeping, it cannot be denied that political unity owes much to conquest." [5]

International law has made this fact of international struggle for domination too exclusive in its assumptions as to the normal relation between states. The result is that the principles based on these assumptions involve contradictions, for instance, between the principle of the independence and equality of nations and "another principle antagonistic and potentially fatal to it. This was the principle that every independent nation had the right to declare war, for any cause deemed by it to be sufficient; and that, having declared war, it immediately acquired all the rights pertaining to that condition, including the right of conquest, under which the strongest power, even though it were the aggressor, might lawfully proceed to destroy or absorb its adversary." [6] A theory of international relations which is psychologically accurate requires a

[3] Kallen, "The Structure of Lasting Peace," 41–42.
[4] Jenks, "Government of Victoria," 373.
[5] Goodnow, *op cit.*, 17.
[6] Moore, "International Cooperation," Intern. Concil., Bulletin, No. 100, 5.

broader psychological basis than a mere assumed rivalry which tends to develop into a struggle for domination.

There are four possible types of international behaviour: more or less complete national isolation;[7] international rivalry without domination; an international struggle for domination; and international co-operation. National isolation is a temporary phase of international behaviour.[8] Isolation is sought by a nation which is settled in a new and rich country and is absorbed in the exploitation of its natural resources and in the development of transportation and manufacturing. The capitalistic class which develops finds isolation unprofitable; and the rivalry that develops with capitalistic classes in other nations leads the nation into a new international relation.

The international struggle for domination has predominated in international behaviour throughout the history of civilization.[9] "Historically, armed strength seems to have been the condition of national survival. In the pre-machine age the world was poor; such wealth as there was existed largely in the form of land and its products; slavery made profitable the conquest of rich territories and the subjugation of their peoples. Population growth was an almost inevitable stimulus to conquest, military aggression was the quick road to wealth. . . . Foreign trade in those days was always backed by force or the threat of force. It was, indeed, plunder where possible, browbeating and overreaching where strength was more equally matched. It easily passed over into actual war where that promised more profit. Commerce in good part was war; for, in a world of poverty, wealth was the condition of population, population of power, power of territory, and territory again of wealth."[10] Under these conditions much of the literature of the ancient nations on the subject of international relations was simply declamatory utterance of ideas suggested by the prevailing international hostility. This is illustrated in the literature of "the ancient Hebrews, who, regarding themselves as the 'chosen people of God,' conceived themselves to be merely the in-

[7] Veblen, "The Nature of Peace," 67, 40.

[8] Angell, "America and the New World-State," Pt. I, Ch. I.

[9] Gibbons, "The New Map of Asia."

[10] Mussey, "Is Commerce War?" Intern. Concil., Special Bulletin, 5. See also Adam Smith, "An Inquiry into the Nature and Causes of the Wealth of Nations," Bk. V, Ch. I.

strument of the Almighty in obliterating their enemies. It was in the 137th Psalm, in the phrase 'Happy shall he be that taketh and dasheth thy little ones against the stones,' that Grotius found an unquestionable proof that the right of war permitted the slaughter of women and infants with impunity. Nor can it be denied that, in a milder form, the doctrine of the 'manifest destiny' of certain nations to extend their boundaries, by force if necessary, is tinctured with the same thought." [11]

The aggressive relation of primitive groups was followed successively by the rivalry of village communities, of feudal groups and of free cities, all of which aimed to make themselves superior, economically and otherwise, at the expense of rival groups.[12] The territorial state restrained the rivalry of its constituent cities and feudal groups in the interest of its own superiority over rival states.[13] And finally with the development of industry and commerce arose the great nations,[14] which regulated the rivalry of their constituent groups in the interest of the national superiority. The policy of creating national economic superiority as a means to political superiority was called mercantilism. "The essence of the system lies not in some doctrine of money, or of the balance of trade; not in tariff barriers, protective duties, or navigation laws; but in something far greater: — namely, in the total transformation of society and its organization, . . . in the replacing of a local and territorial economic policy by that of the national state." [15] This theory of international relations has been given a new impetus by the impulses stirred by the World War; it is championed by those interests which stand for the traditional national rivalry of economic interests and is called neo-mercantilism. "The neo-mercantilist view harks back to the old concept of nations as economic no less than political or social units. It assumes and seeks consciously to cultivate an identity of economic interests among all the people and classes of a nation as against those outside, contradicting alike the Manchester doctrine of harmony and the socialist doctrine of class struggle. It expresses itself in protective tariffs, exclusive colonial policies, the mad race of military and naval arma-

[11] Moore, *op. cit.* 6.
[12] Schmoller, "The Mercantile System," trans. by Ashley, 4-12.
[13] *Ibid.*, 13–45.
[14] *Ibid.*, 46.
[15] *Ibid.*, 51; Small, "The Cameralists."

ment . . . postulating, therefore, the necessity of national survival, it leads directly to the duty of asserting national might — not only military, but economic, political, social, cultural.

". . . The whole organization and activity of state and people must accordingly be directed to greater effectiveness in the international struggle, for such is the condition of national survival." [16] Neo-mercantilism is, thus, merely an exposition of the relation of an international struggle for domination. As indicated, it is opposed to the Manchester doctrine of free rivalry according to which the advantages of free trade, as conceived by those early thinkers, " would soon unite all the peoples in bonds of economic interdependence so firm that war would become impossible. The Manchester men consistently urged the utmost freedom of competition both within and without the state. Their idea of harmony of interests applied to nations no less than to individuals. Free trade, internal harmony, international peace — such was their dream." [17] Neo-mercantilism is opposed also to socialism which advocates state ownership of industry as a means to international co-operation. The socialists declare that the governments of all nations are controlled by capitalistic interests and that war is simply a struggle between these interests. To do away with war, the workers in each nation must substitute for capitalism, state ownership of industry.[18]

The international struggle for domination has been stimulated, and the behaviour in which it expressed itself glorified, by the political preachers of the militaristic nation. The most distinguished political preacher of this type in recent years was the German Treitschke.[19] Treitschke was a preacher rather than a thinker; he translated into resounding phrases the impulse of domination of the ruling classes of Germany, and popularized these impulsive ideas as journalist, professor and deputy in the Reichstag. His system

[16] Mussey, *op. cit.*, 4–5. See also " Earl of Cromer," " Free Trade in its Relation to Peace and War," *Nineteenth Century,* LXVIII: 386–388.

[17] Mussey, *op. cit.*, 3.

[18] Walling, " Socialism as It Is," Pt. III; " Rand School of Social Science," " The Trial of Scott Nearing and the American Socialist Society."

[19] Treitschke's ideas are set forth in his " Politics," a book which contains a course of lectures given at the University of Berlin every year from 1874 till his death. He was invited to Berlin by Bismarck and became a great admirer of William II, who absorbed his ideas and whose personality inspired many of his thoughts. Treitschke's followers included Bernhardi (" Germany and the Next War "), and Von Bülow (" Imperial Germany "). Cramb (" Germany and England ") and Münsterberg (" The War and America ") also were imperialists.

of thought involves no psychological analysis but defines political relations in harmony with the attitude of political domination. The state, says Treitschke, is " above all, Power which makes its will to prevail. . . ." [20] It cannot " tolerate any power above its own." [21] The state " demands obedience, . . . A step forward has been taken when the mute obedience of the citizens is transformed into a rational inward assent, but it cannot be said that this is absolutely necessary. . . . Submission is what the state primarily requires; it insists upon acquiescence; its very essence is the accomplishment of its will." [22] " The State is power, precisely in order to assert itself as against other equally independent powers." [23] For this reason, " the idea of one universal empire is odious. . . ." [24] There can be no struggle of nations for domination with only one nation existing, hence the idea of a universal empire is odious. The supreme end of the state is power for domination, and the real statesman can recognize no one but God and the sword of the conqueror.[25] Treitschke's theory of the state springs, therefore, from an attitude for political domination, and his ideas, including his historical citations, are merely secondary explanations justifying this attitude for political domination. This is to be the determining motive in international relations. The powerful state can have only contempt for small states. Thus " if the State is power, only that State which has power realizes its own idea, and this accounts for the undeniably ridiculous aspect which we discern in the existence of a small State." " Weakness is not itself ridiculous, except when masquerading as strength." [26] Only in great states " can that truly national pride arise which is a sign of the moral stamina of a people." [27] Moral stamina springs from a sense of dominating power and only the people of such nations have national pride.[28] " No people ever attains to national consciousness without over-rating itself." [29] It follows from the conception of the state as absolute will that the state is obliged to keep its

[20] Treitschke, " Politics," trans. by Dugdale and De Bille, I: 22.
[21] *Ibid.*, I: 26.
[22] *Ibid.*, I: 23.
[23] *Ibid.*, I: 19.
[24] *Ibid.*, I: 19.
[25] *Ibid.*, I: 28.
[26] *Ibid.*, I: 34.
[27] *Ibid.*, I: 36.
[28] *Ibid.*, I: 19–20.
[29] *Ibid.*, I: 19.

treaties only so long as it wills to do so;[30] and, also, that statesmen cannot be expected to act according to the rules of private morality because the highest moral duty is to uphold the power of the state.[31] They must be above all, therefore, men of a massive ambition.[32] And in satisfying their ambition for the state, the end to a certain extent justifies the means.[33] Because of its underlying attitude of domination, the state cannot refer important international questions to arbitration.[34] It must enforce its will by war.[35] War is a sacred duty because it is necessary to wage war in order to satisfy the state's impulse for domination.[36] Peace means merely money-getting and is, therefore, a veritable curse.[37] In war man tastes the joy of the ambition to surpass himself. The state is the army, and citizens must have the impulse of soldiers; otherwise there is chaos in all relations, industrial and ecclesiastical as well as political.[38] The primary duty of citizens is to submit individually in order to dominate collectively.[39] The state must rule its subjects with firm, even harsh power.[40] Women are not fitted for such rule and hence should take no part in politics.[41] The attitude for national domination thus determines Treitschke's teaching, construing all social relations in harmony with itself, so that his theory of international relations can be explained only by tracing its wordy ramifications to their source in his essential attitude. Merely to argue against such a theory is not to analyse or refute it, for the arguments are apt to be suggested by opposing attitudes which themselves require explanation.[42]

We turn now to a third type of international relations, that in which relations are rivalrous without being dominating. Machine industry and steam transportation "have made it possible for growing peoples to live and prosper without plunder; they have made profitable the peaceful exchange of commodities on a world-

[30] *Ibid.*, I: 28; II: 596–597.
[31] *Ibid.*, I: 94.
[32] *Ibid.*, I: 58.
[33] *Ibid.*, I: 84–85, 99.
[34] *Ibid.*, I: 29; II: 598.
[35] *Ibid.*, I: 65–67; II: 599.
[36] *Ibid.*, I: 66–69.
[37] *Ibid.*, I: 50–51.
[38] *Ibid.*, I: 47–53; II: 394–396.
[39] *Ibid.*, I: 54.
[40] *Ibid.*, I: 95.
[41] *Ibid.*, I: 23.
[42] Veblen, "Imperial Germany and the Industrial Revolution," 208.

wide scale. . . . Reciprocal trade means excess of wealth to both nations." [43] But the development of capitalistic industry has resulted in a rivalry of capitalistic groups in the different nations to possess themselves of exclusive economic advantages. "In fact, the whole modern system of economic rivalries is due to the misappropriation of economic endeavor to dynastic and capitalistic uses; is due to the militaristic requirement of a self-sufficient state. . . . States that grow and make different things, that vary their use and bring them constantly within the easier reach of more and more people, become more and more dependent on each other with time. Germany's rivalry with England did not spring from the diversity of the two states' products, but from their identity — the latter made them competitors; the former, friends.

"Now the unnecessary existence of rivalry is a perversion of function in state and industry." [44] The rivalry of capitalistic interests in different nations causes international rivalry to overshadow international co-operation, and the masses support this international rivalry because it satisfies those instinctive impulses once satisfied by sectarian rivalry.[45]

As in intra-national, so in international relations the third period is one of migration and the exploitation of natural resources. This is the purpose of the colonization of new lands and of the settlement by immigrants of the unoccupied territory of other nations. The prosperity of settlers and immigrants in a new country is reflected in the old, through the money sent back, and the glowing accounts of the opportunities in the new country. Subjects of other nations are welcomed in a new nation because they people the lands, make them productive, and furnish labour for the growing industries. Wherefore there is an era of free rivalry between new countries and old, and between old with their attention directed less on each other than on the peopling of colonies and new countries. But in time the earth is colonized, the new countries are rapidly filling up, and the economic opportunities originally within reach of all in the new countries eventually pass under the control of employing classes. The populations, in the new as in the old, become working masses dependent on employers; international rivalry ceases to be free rivalry and centres in the rivalry of great

[43] Mussey, *op. cit.*, 5.
[44] Kallen, "The Structure of Permanent Peace," 65-66.
[45] Croly, "The Future of the State," *New Republic*, Sept. 15, 1917, 180.

economic interests, backed by military and naval forces, for the control of the natural resources and of the markets of the world.

The international rivalry for power in international politics is essentially an economic phenomenon. It is an inevitable accompaniment of international trade and investment for private profit. So long as propertied classes find profitable investments at home, the investments of the nation abroad may be inconsiderable. But there comes a time when investments abroad are more profitable and capital follows the direction of private profits. When this development in international relations came in European nations, "Capital the world over, instead of being invested directly, was committed to banks for investment; and banks, seeking the largest profits for themselves, aimed to invest this capital in loans, concessions and other things abroad that would bring them the largest commissions and rake-offs, and their clients a somewhat higher income. . . ." [46] Dr. Kallen gives examples of the profits made by international bankers and continues: "Clearly the largest profits went in these cases to the banks. To operate, they had to concentrate the savings of both large and small depositors and investors. Great banking firms thus were led to establish branches at home and abroad, to absorb small banks or destroy them, and to come to agreements with rivals. . . . Amsterdam, Berlin, Frankfort, London, New York, Paris, Vienna, became the great money centres of the world. . . ." [47] At the beginning of the World War "England was the foremost creditor country of the world. She had 20 billion pounds of foreign investments. . . . France was second to England as creditor country. She had 8 billions in foreign investments. Germany, on the other hand, had only in recent times begun to export capital. She had a foreign investment of about 5 billion dollars. . . . In this respect the United States was like Germany — a great debtor country, most concerned in the development of her own resources." [48] But the United States has now become a creditor country. The banking interests in these nations are now intent on the enormous profits that can be made from investments abroad. These profits are said to be the reward for risk-taking, but the banking interests are intent on putting behind their investments abroad the military and

[46] Kallen, "The League of Nations, Today and Tomorrow," 189–190.
[47] *Ibid.*, 192.
[48] *Ibid.*, 192.

naval power of their nation in a way to eliminate as much as possible of the risk; and the enormous expense of maintaining a vast military and naval power is borne, in the last analysis, by the masses of the people.

The international rivalry is a rivalry of economic interests for private profits. Sovereignty becomes essentially an obedience-compelling power of propertied classes that control governments.[49] A League of Nations would assist those economic interests in jointly controlling all governments in the interest of private profits unless there was an international commission that controlled the placing of loans and concessions, and which itself was not controlled by those interests.[50] A League of Nations might eventually do away with the international struggle for domination by force and, at the same time, might make possible a more absolute economic domination of small nations by large [51] and of the masses of all nations by propertied classes.[52] But, what appears in the immediate future is a continuation of international economic rivalry with extensive political preparedness. International co-operation requires the growth of an intelligent public opinion in all nations and an insistence on the regulation of international economic relations by international administrative commissions [53] in the interests of the people of all nations.

The struggle for economic supremacy that developed between some of the great nations during the years preceding the World War was a struggle between the economic interests of those nations, which stood to gain in the struggle, and which had the secret or outspoken sympathy and support of their respective govern-

[49] Kallen, "The Structure of Lasting Peace," 44-56; Kallen, "The League of Nations, Today and Tomorrow," 38.

[50] Kallen, "The League of Nations, Today and Tomorrow," 95.

[51] *Ibid.*, 40.

[52] For the present such a development is prevented by the rivalry of capitalistic interests of different nations and the resentment felt by financiers of one nation against those of another who for the time being have the advantage. As an illustration of this resentment, in 1919–1920, when American industrial and financial corporations were profiteering at the expense of the whole world, an English financier printed an article in the *Daily Express* in which he declared that "the American people as such are not to blame for the exploitation of Europe"; "the real enemies of Europe are the American banks and financial institutions." "I had considerable experience in handling exchange before the war, during the war, and after the war, and I have come to the conclusion that your so-called money trust over here is a babe compared with the giant ring . . . in America . . ." (N. Y. T., Feb. 4, 1920.)

[53] Dewey, "A League of Nations and Economic Freedom," *The Dial*, Dec. 14, 1918, 538.

ments. The masses in each nation had nothing to do with forcing the increasingly intense struggle, except as their unrestrained production of offspring gave a mass support to the ambitions of economic interests. And the masses stood to gain little or nothing from the realization of the ambitions of the economic interests. "Those material interests for which modern nations are in the habit of taking to arms are commonly of a fanciful character, in that they commonly have none but an imaginary net value to the community at large. Such are, e.g., the national trade or the increase of the national territory. These and the like may serve the warlike or dynastic ambitions of the nation's masters; they may also further the interests of office-holders, and more particularly of certain business houses or businessmen who stand to gain some small advantage by help of the powers in control; but it all signifies nothing more to the common man than an increased bill of governmental expense and a probable increase in the cost of living.

. . . . . .

"In case it should happen that these business interests of the nation's businessmen interested in trade or investments abroad are jeopardized by a disturbance of any kind in these foreign parts in which these business interests lie, then it immediately becomes the urgent concern of the national authorities to use all means at hand for maintaining the gainful traffic of these businessmen undiminished, and the common man pays the cost. Should such an untoward situation go to such sinister lengths as to involve actual loss to the business interests or otherwise give rise to a tangible grievance, it becomes an affair of the national honor; whereupon no sense of proportion as between the material gains at stake and the cost of remedy or retaliation need longer to be observed, since the national honor is beyond price." [54]

The international rivalry of business interests tends to threaten international peace because of the determination of the business interests of one nation to get the advantage of those of another,[55] because of the vast gains which vested interests draw from international trade,[56] because of the limitation of the basic raw ma-

[54] Veblen, "The Nature of Peace," 24-27.

[55] "Trade is a competitive affair, and it is to the advantage of the traders engaged in any given line of business to extend their own markets and to exclude competing traders. Competition may be the soul of trade, but monopoly is necessarily the aim of every trader." (*Ibid.*, 74.)

[56] Brailsford, "The Age of Iron," *New Republic*, V: 164–166.

terials of food, fuel and other necessities of life and the consequent international struggle for these limited natural resources, because such a struggle is a means of satisfying the ambitions of statesmen, as well as financiers and other business men, and because the support of the mass of the people may be gained by appeal to their strongest instincts.[57]

Militarism thus rests on an economic basis, but it has a social-psychological aspect. The militarist in competition with the pacifist for suggestive control of the masses easily has the best of it because all his attitudes speak of courage, daring — the qualities mankind most admires. His exhortation is to "fight for your country," to "stand up for your rights," to "show you are men," and the strength of this appeal to the strongest instincts of human nature is sufficient to make it unnecessary to explain *whose* rights or *just what* rights men are asked to fight for. The pacifist, on the other hand, appeals to comparatively weak instincts, and to reason, weak in most people. When he asks the people to "consider who owns this country that you are asked to fight for," or "who will bear the brunt of this war?" he is asking the people to *think,* and when he reminds them of the suffering caused by war he is appealing to the comparatively weak instinct of pity. A militarism appeals to the fear of the masses, to their pugnacity, rivalry, their admiration for the physically superior man, the man full of fight, to their submissiveness to the commanding personality. The appeal to these strong instincts makes it possible for the militarists to control the minds of the masses and to make the pacifist a sorry spectacle.

The militaristic propaganda, being favourable to financial and other economic interests, is voiced in the press, while the pacifist propaganda with difficulty gets any hearing at all. If it is desired to make war on another nation, the war may be made to appear a war for needed economic advantages, and the appeal to arms becomes a sporting event in which the masses must support their government's ambition for their future;[58] or it may be made to appear a defensive war by instigating lawless elements in the other nation to violence and thus provoking an attack and making war seem inevitable — an affair of "national honour." "In this connection 'honor' is of course to be taken in the euphemistic sense

[57] Angell, "Arms and Industry," xxxvi–xxxvii.
[58] Lippmann, "The Stakes of Diplomacy," 74–81.

which the term has under the *code duello* governing 'affairs of honor.' It carries no connotation of honesty, veracity, equity, liberality, or unselfishness." [59] Men react to an injury collectively on much the same provocation as they react individually; if it is done brazenly, flagrantly, they feel violent resentment; if done deferentially, under stress of circumstances, they may condone it.[60] To get collective or patriotic action the people's instincts must be aroused and they must be brought to feel, through the utterances of national leaders and the attitude of the press, that the rights of the nation have been violated, and its prestige among the powers of the world has been impaired by the conduct of another nation,[61] and that the nation must assert its superiority by force. This motive to reassert the national superiority is reinforced by connecting it with a great variety of ideas which stimulate reinforcing instinctive impulses and with symbols of deep-seated attitudes.[62] In this way the movement is given the force of a "moral" or "just" war. "The requisite moral sanction may be had on various grounds, and, on the whole, it is not an extremely difficult matter to arrange. In the simplest and not infrequent case it may turn on a question of equity in respect of trade or investment as between the citizens or subjects of the several rival nations; . . . Or it may be only an envious demand for a share in the world's material resources —'A place in the Sun,' as a picturesque phrase describes it; . . . These demands are put forward with a color of demanding something in the way of equitable opportunity for the commonplace peaceable citizen; but quite plainly they have none but a fanciful bearing on the fortunes of the common man in time of peace, and they have a meaning to the nation only as a fighting unit. . . .

"It is not that the national line of policies or patriotic enterprise so entered upon with the support of popular sentiment need be right and equitable as seen in dispassionate perspective from the outside, but only that it should be capable of being made to seem right and equitable to the biased populace whose moral convictions are requisite to its prosecution; which is quite another matter. Nor is it that any such patriotic enterprise is, in fact, entered on

[59] Veblen, *op. cit.*, 27.
[60] *Ibid.*, 28.
[61] *Ibid.*, 31.
[62] *Ibid.*, 34–36.

simply or mainly on these moral grounds that are so alleged in its justification, but only that some such colorable ground of justification or extenuation is necessary to be alleged, and to be credited by popular belief." [63]

The explanations advanced to prove that the military action is righteous are intended to stimulate the warlike instincts of the masses of the nation and to win the support of neutral nations. Certain situations enlist the spontaneous support of the instinctive impulses of subjects of a nation, for instance, the necessity of self-defence. There is less need of invoking extraneous moral sanction when acting on the defensive because the instinct to resist is stronger than the instinct to aggress; and neutral nations instinctively sympathize with nations acting on the defensive. Hence the manipulation of a situation [64] and the elaboration of secondary explanations to make it appear that a war is a defensive war. Each group of allies in the World War claimed to have acted originally on the defensive and to be continuing so to act. The group whose claim had least basis in fact, the Teutonic allies,[65] was most verbose and insistent throughout the war in repeating that the war was, for the Teutonic allies, a defensive war. Moral justification is most extravagantly used where least justified, and, where unjustified, may be very effective. For it must be remembered that the masses learn of a situation only through the press. Aggression against a small nation may be made to appear justified if it suits the interests that control the press; conversely, the wantonness of an aggression suffered at the hands of a rival nation may be aggravated, if it suits those interests. There is no such thing as direct contact on the part of the masses with an international situation, so that patriotism can be manufactured by the controlling interests.

In this connection it is necessary to recall what was said in the preceding chapter about the connection of instinctive fear with property ownership. This fear becomes marked in the behaviour of the property-owning class when the leadership of a rival nation shows or is imagined to show a menacing attitude. The menacing attitude disturbs first and for the most part the property owners of the nation menaced, especially the industrial and financial cor-

[63] *Ibid.*, 36–38. See also Eastman, "What Shall We Do With Patriotism," *Survey*, Jan. 1, 1916.

[64] Butler, "Bismarck," II: 101.

[65] See the chapter entitled, *The Field of Social Psychology.*

porations which are the repositories of the interests of property owners. The slightest menace to the security of property or of markets or of supplies of raw materials stirs the fear of industrial and financial interests. These guardians of property occupy the strategic and controlling positions in the group and through the press exercise the social control. As contrasted with these interests, the common man has little to lose, and hence little apprehension, because of the intentions of another nation. But the controlling interests are in a position to make him feel that his opportunity to make a living depends on the attitude of a rival nation. The apprehension felt by the controlling interests may pass to the masses by social suggestion, through the press, though, in their sober moments, workingmen realize they have nothing to lose and hence nothing to fear on account of the alleged menace. The apprehension of the masses is largely the deflected apprehension of property ownership. When this apprehension infects a nation it intensifies the hostile attitude to another nation, which attitude in turn stirs hostility in the latter whether it existed before or not. Consequently there is needed a public education that will acquaint the masses with the necessary conditions of national peace and prosperity and free them from the control, by social suggestion, of reactionary capitalistic interests; and there is needed also a development of industrial democracy that will free the working masses from their sense of abject dependence on the powers that be for an opportunity to earn a livelihood. These reforms in public education and in industrial management are, as indicated in a preceding chapter,[66] the essential conditions of political progress.

[66] The chapter entitled, *The Psychology of Nationality*.

CHAPTER IX

THE FAILURE OF INTERNATIONAL CO-OPERATION

A FOURTH international relation which has been proclaimed is international co-operation. Some of its psychological features were incidentally touched on by President Wilson in an address before the Pan-American Financial Conference in 1915: "There can be no sort of union of interest if there is a purpose of exploitation by any one of the parties to a great conference of this sort. . . . The basis of successful commercial intercourse is common interest, not selfish interest. It is an actual interchange of services and of values; it is based upon reciprocal relations and not selfish relations. . . . We are not, therefore, trying to make use of each other, but we are trying to be of use to one another. It would be a very great thing if the Americas could add to the distinction which they already wear, this of showing the way to peace, to permanent peace.

"The way to peace for us, at any rate, is manifest. It is the kind of rivalry which does not involve aggression. It is the knowledge that men can be of the greatest service to one another, and nations of the greatest service to one another, when the jealousy between them is merely a jealousy of excellence, and when the basis of their intercourse is friendship.

"There is only one way in which we wish to take advantage of you, and that is by making better goods, by doing the things that we seek to do for each other better, if we can, than you do them, and so spurring you on, if we might, by so handsome a jealousy as that to excel us. I am so keenly aware that the basis of personal friendship is this competition in excellence, that I am perfectly certain that this is the only basis for the friendship of nations . . . this rivalry in which there is nothing but the hope of a common elevation in great enterprises which we can undertake in common." [1] This statement declares that international relations should be essen-

[1] Review of Reviews Company, "President Wilson's State Papers and Addresses," 119–121.

tially friendly and co-operative. If there is rivalry it should be a rivalry in excellence of goods and services, not for private or national advantage.

Instinctive rivalry is satisfied only by the attainment of superiority and advantage over rivals. In instinctive rivalry there comes a time when, if the rivalry continues essential in the relation, the rivals cease to be friends, under the impulse of each to get the advantage over the other. Otherwise the rivalry is not "in earnest"; rivalry is not the instinct that is essential in the relation. The essential instinct is the playful, friendly instinct,[2] and the rivalry is sport between friends who have pitted their intelligence and energy against one another. The one who proves to be inferior with good will acknowledges the superiority of the other, and the superior admires the points of excellence in the inferior, instead of contemptuously noting his weaknesses and defects. Each is interested, mainly, not in proving his superiority over the other but in the increased strength, skill or prosperity which each realizes from the effort. This sort of rivalry means gain for all concerned. "Just so in foreign trade. International commercial competition is not war, but rivalry in service, and intelligently conducted for economic ends it brings gain to all concerned."[3] We see this relation between the nations of a group of allied nations in war. How eagerly the citizens of a nation, emulous for the excellence and superiority of their own nation, note the points of excellence in their allies and praise their efforts. The essential attitude of the allied nations to one another is friendly, not rivalrous. The more intense the rivalry between one group of nations and another, the stronger is apt to be the friendship between the nations in each group.

An international relation of rivalry results either in a national ideal of power and superiority, which tends to precipitate a struggle for supremacy, or in the development of friendly relations, in the course of rivalry, so that the impulse for national advantage falls in abeyance; and an ideal of mutually serviceable co-operation directs the aims of statesmanship. If once the ultimate aims of international relations were sympathetically and intellectually determined, then rivalry might accentuate the working out of these aims,

[2] Hocking, "Human Nature and Its Remaking," 55.
[3] Mussey, *op. cit.*, 12.

as we see when the cities of a nation sometimes rival one another in measures for the general welfare.[4] If international rivalry is to result in an increasing friendliness between nations, rather than in a struggle for supremacy, the governments of nations must be freed from the control of ambitious kings, of military classes, and of reactionary capitalistic interests.[5] International economic rivalry is not primarily a rivalry of the people of different nations, but a rivalry between economic interests situated in different nations. The character of the international relations will depend on the character of the relations that are instigated by these economic interests, not only by the corporations and affiliated interests engaged in international trade, but also by industry and finance more widely, in so far as the acquiescence of business men generally in international policy is required in a democratic government.

The economic basis of international co-operation lies in that economic development whereby industrial groups have come to overlap national boundaries,[6] and whereby the mechanism of credit has become world-wide. Industry and finance, being international, require, for the smooth and uninterrupted working of economic processes, peace between nations. An interruption of peaceful relations is occasioned when certain capitalistic interests of a nation seek to protect property rights in another nation, or to extend their interests in other nations, or otherwise to profit, even at the expense of war,[7] and are able to influence the press and the government of their nation for war; or when the entire industry of a nation has outgrown its commercial facilities and its supply of raw materials and has come to believe that adequate facilities and materials can be acquired only by war and conquest. In the former case a war is a speculative venture foisted on a nation by reactionary capitalistic interests, which are accustomed to speculative ventures, and which stand to lose little or nothing and to gain much from a successful outcome. In the latter case a war is a gigantic speculative or gambling enterprise forced, by the organized industry and finance

[4] Pillsbury, "The Psychology of Nationality and Internationalism," 287.

[5] Orth, "The Imperial Impulse," Ch. I.

[6] Angell, "Arms and Industry," xviii–xix; Gide, "Principles of Political Economy," 303–307; Taylor, "Principles of Economics," 75–77.

[7] Editorial, "Oil and Intervention in Mexico," *The Nation*, April 12, 1919, 538–539; de Bekker, "The Plot Against Mexico," *The Nation*, July 12, 1919, 637, July 26, 1919, 107, Aug. 9, 1919, 165.

of a nation, on other nations. Immense loss is risked, in case of defeat, in order to win immense gain if the nation is victorious. The venture fits in with the ambitions of ruling cliques and politicians, and appeals to the subconscious impulse for national superiority of the whole people. Those of the people not thus moved are persuaded by the argument that their prosperity is bound up with that of the national industry,[8] or are moved to acquiesce by the war agitation conducted in the press and from various centres of influence throughout the nation. This patriotism may be worked up, throughout a nation, to further the ends of ambitious economic and other interests, or for the national self-defence against the ambitious economic and other interests of another nation. In either case so far as the masses are concerned, it is largely a matter of instinctive impulses that operate without any understanding of the underlying situation.

It is evident, therefore, that the economic basis of internationalism afforded by an economic system based on private profits is an insufficient basis for international co-operation. To illustrate more concretely why this is so let us look into the psychological processes of the mechanism of credit. An approach to the subject is afforded by Norman Angell's quotation of the remarks of an American banker to a group of his colleagues to this effect: "We may talk of bank reserves, of currency reforms, of anything you will, but one of the most important facts which makes London the centre of the world of banking is the psychological reserve with which the bankers work."[9] By the psychological reserve of a bank is meant the confidence of the public in it and the consequent willingness of the public to deposit its funds in the bank, and the disinclination to believe anything contrary to this public attitude of confidence. Such confidence is a real asset in that it enables a bank to make calculations with assurance, and possibly to do business with a lower money reserve than banks which are in a less secure position as regards the public confidence. The principle is the same in the case of the banks of a nation which have won, to an unusual degree, the confidence of the banks of another nation. In the case of the English bankers, their alleged superior psychological reserve is said to be due to "the wisdom, the probity, and at times

[8] Johnson, "The War, by an Economist," *Unpopular Review*, II:419.
[9] Angell, "Arms and Industry," 138.

the courage with which the English bankers protect the interests that are confided to them." [10]

This delicate psychological mechanism of confidence of which bankers have oversight may be easily disturbed, which tends to make them extremely cautious of progressive tendencies. For it is not evident where such tendencies will lead and this uncertainty is annoying to the conservative mind. Financiers want to see all business they finance reduced as far as possible to a mechanism. This requires that workmen everywhere act as well-disciplined hosts. A progressive manufacturer is feared as one who encourages labour to act contrary to discipline. Consequently bankers are apt to warn progressive young business men to be more conservative. Bankers consider not merely security but character in the making of loans and are apt to include in the category of unsafe character any man whose sympathetic and intellectual impulses prompt him to endorse unusual measures on behalf of labour. Industrial engineers, in the course of their experiments in stimulating the creative impulse of workmen in order to increase production, feel the heavy hand of the reactionary financial interests. Fear, then, is one cause of the conservatism of financial interests, fear of some interference with the mechanism of credit. Another cause is the aloofness of financiers. They do not come into contact with workmen but are concerned with the cold financial side of business.[11] Consequently the instinctive interest felt by business men of strong sympathetic and intellectual impulses in workmen with whom they are in close contact is not aroused in financiers. Financial interests have reduced profit-seeking to a mechanism, and their vision ranges over the whole extent of this mechanism without coming close to its human basis. Consequently they have no sympathy with the idea that the day's work of the masses should be made a means of development of their personalities. From the financial point of view business is not to be conducted for the public welfare, in the sense of fuller opportunities for the development

[10] *Ibid.*, 138.

[11] The progressive business man is opposed to this cold, financial leadership of business. For instance, Mr. Dennison, President of the Dennison Manufacturing Co., Framingham, Mass., says: "Seriously, I look forward with great hope to the day . . . when the man coming up through the human side . . . will become the business leader, and not the man that has come through either the cold mechanical side or the colder financial side." (Dennison, "What the Employment Department should be in Industry," Proceedings of the Employment Managers' Conference, 1917, 79–80.)

of personality, but for private profit. Politics, also, are to be managed for the welfare primarily of the propertied classes. Because the masterful type of man rises to the positions of authority in the realm of finance, and his attitudes infiltrate among his subordinates and associates by the process of social suggestion, modern business has assumed a reactionary aspect. Most business men do business on borrowed money, and the conservative manufacturer or merchant is the one who commends himself to the financial powers and thereby gains an advantage over a rival. Furthermore, the spreading control of the investment banker makes him a power on the directorates of corporations far and wide. The competitive spirit of the enterprising manufacturer or merchant is in marked contrast to the more dominating attitude of the financier, for the competitive aspect of *his* business is subordinate to the directive, controlling aspect.

The basis of this reactionary attitude of financial interests is the necessity, under the system of private credit, of extreme caution in preserving confidence, and the fear that a proposed change in industrial relations may unsettle the regularly working hosts and so disturb confidence. But this fear of any change in industrial relations may precipitate industrial troubles, if a change is necessary in order to preserve industrial peace. Conservatism may defeat its own end. For the power of a corporation to command credit depends on the contented and reliable action of its working hosts; industrial troubles in a corporation impair the confidence of financial interests and make it more difficult for that corporation to borrow money. Wherefore, a reactionary industrial policy that results in labour troubles may be the very thing that impairs confidence. Conservatism may cause the very result that conservatism fears. It is evident, therefore, that when conservatism becomes so irrational and reactionary as to defeat its own end, the only way to restore confidence in business, the only way to make business sufficiently progressive to make it worthy of the confidence of investors, is for the government to take a larger part in the regulation, perchance in the issuance, of credit.[12] Investors have a

[12] Economic as well as social-psychological conditions call for increased governmental action in the regulation and issuance of credit. See Fisher, "Economists in Public Service," *Amer. Econ. Rev.*, IX (supplement): 13–15; Wolf, "Securing the Initiative of the Workman," *Amer. Econ. Rev.*, IX (supplement): 129; Gantt, "Organizing for Work," Ch. VI.

stronger confidence in governmental than in private securities, wherefore the government can borrow at a lower rate of interest than private corporations. And the progressive enterprises which receive credit will then be free to institute a labour policy that will result in a contented and highly productive labour force. The reliable and contented action of the working hosts that is the basis of confidence can be insured only by removing them from under the control of reactionary financial interests.

The control exercised by the financial interests of a nation may be much weakened at those times when, in their rivalry with the financial interests of another nation, they find themselves in a critical condition. At such a time the ultimate dependence of the economic system of a nation on the productivity and economy of the working hosts becomes evident, and, for the time being, capital shows a conciliatory attitude toward labour.[13] But the serious obstacle to any considerable development of co-operation — the profit-seeking motive — again becomes prominent as soon as economic conditions become normal.

The system of private credit has developed out of the profit-seeking motive. This motive, instead of fostering international co-operation, causes the financial interests of a nation (1) to take advantage of the need of capital of backward nations to exact from them an exorbitant interest;[14] (2) to exact exorbitant interest of nations in which there are progressive labour movements or to refuse such credit altogether. Because of the necessary uncertainty and greater risk of international as compared with national economic operations, a profit-seeking national economic system tends

[13] At a financial conference called in London in February, 1920, to consider measures to relieve the financial situation caused by the economic collapse of Europe and by American profiteering, labour leaders were for the first time in history invited to attend such a conference; and it was decided that the only remedy for the critical situation was to appeal to the working hosts to increase production and to practise economies in their consumption where possible, thus increasing exports and decreasing imports. (N. Y. T., Feb. 4, 1920.)

[14] President Wilson, in an address before the Southern Commercial Congress, declared that the Latin-American states had had "harder bargains driven with them in the matter of loans than any other people in the world. Interest has been exacted of them that was not exacted of anybody else, because the risk was said to be greater, and then securities were taken that destroyed the risk — an admirable arrangement for those who were forcing the terms. I rejoice in nothing so much as in the prospect that they will now be emancipated from these conditions . . . I think that some of these gentlemen have already had occasion to bear witness that the Department of State in recent months has tried to serve them in that wise." (President Wilson's State Papers and Addresses, 35.)

to profiteer and to become reactionary in its international relations.[15]

Instead of international co-operation there is developing an international class feeling. On its surface this is due to economic causes. For instance, world-wide migration tends to equalize wages in different nations; in so far as the standard of living determines wages, an influx of workmen from a low standard nation lowers wages in a high standard nation. Furthermore, even without immigration, low wages and evil working conditions in a nation of industrial importance tend to prevent wages from rising in another, because the business interests in the latter assert that they fear to put themselves at a disadvantage with those in the former by granting better wages and working conditions. Economically the fortunes of the working hosts of all nations are becoming more and more identical. In addition to these economic aspects of international working class solidarity, we find a social-psychological aspect. We note that the socialistic movement, which has become international, is essentially an instinctive resistance on the part of the working classes to capitalistic domination. The socialistic ideas have gained a wide acceptance because of the psychological condition of resistance in which the working hosts of the great nations have been for some decades. They have been in a condition to accept the socialistic suggestion as to the menace of capitalism, and to draw together to resist what was felt to be the common menace.[16] Drawing together before a common menace is an instinctive process. But this instinctive process alone is not sufficient to effectuate an international drawing together, inasmuch as those who are to draw together in purpose are widely separated and therefore not subject to an effective instinctive movement, and, furthermore, are separated by the hostile instincts that inhere in an intense nationalism. The drawing together process, if it is to take place between workmen of different nations must, therefore, be reinforced by ideation, and to furnish the necessary ideas is one of the functions

[15] Not only capitalistic interests but investors generally want a high rate of interest on foreign investments. The United States government raised, at a low rate of interest, during the World War, funds to loan to foreign governments, while banking firms, in the year following the World War, could not raise, at a higher rate of interest, an adequate sum of money to loan private business enterprises abroad.

[16] "The workingman has become the critic. Here you have the heart of Socialism. Whatever form its outward aspect may take, at heart it is a rebellion against things as they are." (Orth, "Socialism and Democracy in Europe," 35.) See also Lenin, "A Letter to American Workingmen, pamphlet published by the Liberator," 28–39; "Manifesto of the Spartacus Group," Intern. Concil., No. 137, Apr., 1919, 20–25.

of socialistic theory. This emphasizes the doctrine of the brotherhood of the workers of the world by indicating that they are all alike "slaves" of the same "masters," and by pointing out, first, that a socialistic state, unless it developed in all nations, would be subject to the "capitalistic tax" exacted by the business interests of capitalistic states in the ordinary course of international trade, and second, that, with some states still capitalistic, the socialistic states would not be secure against war foisted on the world by those capitalistic states. Thus a system of ideas is provided to reinforce the instinctive tendency to draw together against the common menace of capitalism and to repress the thwarting instincts of nationalism. In addition to this cognitive process toward internationalism, there is an affective process in the same direction. The organized labour of a nation is stimulated in aggressive action against capitalistic interests of the nation by the conspicuous success of organized labour in another nation; [17] and employers in one nation resist the organization of labour in the nation and the action of organized labour because they fear it will result in as aggressive resistance of their domination as of capitalistic domination in another nation.[18]

There is also a social-psychological basis for the internationalism of propertied classes. Just as, as we saw in a preceding chapter,[19] reactionary propertied interests of a nation, erstwhile competing, draw together before a common menace of non-propertied resistance, so do the reactionary propertied interests of different nations draw together before the common menace of an international non-propertied resistance. Though a reactionary propertied class in one nation may have no love for a similar class in another, its distrust of the lower classes not only of another nation but also within its own borders causes a ready indignation against lower classes

[17] Unquestionably the organization of English trade unions into a strong political labour party stimulated the development of an aggressive trade unionism in the United States and the great strikes of 1919. The convention of the United Mine Workers of America in Cleveland in September, 1919, inspired by the success of English miners in securing a government report favouring nationalization of mines, declared for the nationalization of mines in the United States and an international alliance of coal miners. (Blankenhorn, "The Miners at Cleveland," *The Nation,* Sept. 27, 1919, 436.)

[18] The president of the United States Steel Corporation testified before the committee of the U. S. Senate investigating the steel strike that he had refused to recognize the representatives of the steel workers' organization because that was the only way to meet the menace of organized labour as it had developed in England and might develop in this country. (Associated Press (R. D. C.), Oct. 2, 1919.)

[19] The chapter entitled, *Psychological Aspects of Intra-national Relations.*

that are resisting in another nation, and, therefore, an indirect sympathy with the upper class resisted. From the point of view of reactionary propertied classes the only way to reduce the menace of a non-propertied resistance in another nation is to aid the propertied classes in that nation to maintain their social control. This attitude was reflected in the press during the months immediately following the cessation of the World War. Bits of news concerning radical political groups were cleverly turned to direct odium on the latter.[20] The reactionary propertied attitude against radical non-propertied groups thus passed to the whole people, and even influenced the decisions of judges and juries in this[21] and other countries.[22] This attitude was as pronounced against resisting groups in distant nations, where a scientific knowledge of the situation was impossible, as against groups near at hand. It was an impulsive reaction against non-propertied resistance, the reaction aggravated, in some cases almost to hysteria, by the apprehension of reactionary propertied classes for the security of their interests. In the absence of a critical attitude the masses accepted the attitude of the reactionary propertied classes to the menace of non-propertied resistance as it passed to them in the ordinary course of social suggestion through the press. What the social-psychologist is interested in is the functioning of this apprehension of reactionary propertied classes in different nations; their drawing together before a common menace of non-propertied resistance;[23] their protection of one another's reputation, less deliberately to be sure but from the same motive that solvent banks protect an insolvent bank lest the failure of the insolvent bank should stir a lack of confidence

[20] The most conspicuous instance of this is the newspaper stories of Bolshevist cruelty and chaos. Later when it seemed that the Bolshevist government could not be suppressed by force and when business interests of the allied nations wanted to resume trade with Russia there began to appear newspaper stories of the pretty Bolshevist girls and the perfectly humane Bolshevist men (*New York Times,* Feb. 23, 1920). And a statement by the editor of the *London Daily Herald* was copied in newspapers of the United States in which he said of Lenin: "I never met any statesman who surpasses him in knowledge, honesty and courage of purpose. . . . He has profound contempt for compromises. . . . It is laughable to think Lenine is a lover of bloodshed." (*Geneva Daily Times,* March 3, 1920.)

[21] Lanier, "An Open Letter to the President," *New Republic,* Apr. 19, 1919, 383–384.

[22] See the London *Nation's* editorial on the acquittal of Villian, the murderer of Jaures, in the New York *Nation,* May 3, 1919.

[23] See the periodicals of employers' associations, for instance, *The Open Shop Review,* published by the National Founders' Association, April, 1919, 145, and May, 1919, 206; and the proceedings of the seventeenth annual meeting of the National Lumber Manufacturers' Association, April, 1919, 66–68.

in banks generally; the dissemination throughout a nation, by means of the press, of opinions thus originating in a class attitude, and the emergence of these opinions in the most diverse behaviour.

The political control maintained by propertied classes up to the present time has strengthened their tendency to reactionary behaviour. It is possession of political power and the assurance this gives that confirms reactionary propertied interests in their economic domination. To maintain this they are determined to maintain their political domination.[24] Wherefore the menace of reactionary capitalistic interests, and of the violent resistance they provoke, is to be met by the formation of a progressive political party which shall represent the diverse purposes of organized labour, organized agriculture and progressive business, as against reactionary capitalistic interests.

The tendency of propertied interests to reactionary behaviour is strengthened also by their social power. This is due to their control of the press through which the public largely gets its information and the impressions which determine its feelings and behaviour.[25] This control gives propertied interests an assurance, which confirms the conservative impulse to keep things as they are. This social-psychological condition of mass subservience to press control is due, obviously, to the ignorance of the masses. To escape the suggestive control exercised through the press it is necessary only to assume a critical attitude before which impressions have no effect. But this is a product of training. The natural attitude of man is one of response to social suggestion. This is the natural attitude because, as will be shown in a future volume, the agencies that exercise social control appeal primarily to strong instincts of the masses. The propertied minority maintains its political control by clever appeal to the instincts of the masses through the press. Hence the struggle of organized labour is to undo the suggestive control that is exercised over the public by organized capital. Obviously the remedy for the intensifying class struggle, which has now become international, is an education of the masses such that neither organized labour nor organized capital can hope to

[24] See expressions of this determination in employers' magazines, for instance, Laughlin, "British and American Labor Problems," *Open Shop Review,* Jan., 1920, 3–18.

[25] This capitalistic control of the press obtains in England (Angell, "The British Revolution and the American Democracy," 244–245), in France ("Some Astounding Diplomatic Revelations," *The Nation,* Aug. 9, 1919, 161), as well as in the United States ("The Press and the Siberian Situation," *The Nation,* Nov. 8, 1919, 592–598).

control by social suggestion. What is needed is a system of public education in each nation that will stimulate the intellectual and sympathetic impulses of the young of all classes and give some understanding of economic and political and other human relations, this to make possible an industrial management that appeals to the creative intelligence and intelligent self-control of all concerned, and to lay the foundations for an intelligent citizenship. People of all classes in all nations continue to be subject to suggestive control because systems of public education fail to develop intelligence and, in fact, were not devised with that end in view.

The control of governments by reactionary capitalistic interests and the co-operation of these governments to crush resistful popular movements in any one nation involve not only the preservation of systems of education that perpetuate the ignorance of the masses in order that they may be subjected to propaganda in the interest of reactionary capitalism, but also the repression of scholarship and the destruction of international co-operation in scholarship. Scholarship is essentially international for the truth is true for all scholars no matter of what nation they may happen to be. Furthermore, " Modern culture is drawn on too large a scale, . . . requires the cooperation of too many and various lines of inquiry . . . to admit of its being confined within national frontiers . . . the science and scholarship that is the peculiar pride of civilized Christendom is not only international, but rather it is homogeneously cosmopolitan." [26] The beginnings of international co-operation in scholarship were rudely broken by the World War.[27] This very fact, together with the repression of free intellectual inquiry, of the war period and the period that followed, shows that the progress of scholarship and popular enlightenment calls for international relations of co-operation instead of rivalry and a struggle for domination.

But education alone will not insure sufficient intelligence for international co-operation. Whatever education the masses may have, the sources of information as to world conditions are under the control of the press, wherefore contact with the facts never can be first-hand.[28] The facts can be gotten only through the press,

[26] Veblen, " The Nature of Peace," 38–41.

[27] Neilson, " Inter Arma Veritas," Intern. Concil., *Bulletin* 105, 5–19.

[28] " The news system of the world being what it is, and education being what it is, it is possible to fool most of the public a good part of the time." (Lippmann, " Unrest," *The New Republic,* Nov. 12, 1919, 321.)

which presents the facts in a way to further the propaganda that is fostered by the interests behind the press. For instance the "cool complacency of America" in the presence of the suffering and starvation in Russia in the fall and winter of 1919–1920 was due not only to the natural lack of compassion for misery that is remote but also to the fact that the people were kept in ignorance of this starvation by failure of the papers to mention it, and also to the fact that "the population, having been forced by propaganda to believe that all this is necessary to overcome Bolshevism and pro-Germanism, is silent and it acquiesces." [29] "The plight of the common people is terrible beyond words," [30] but this condition of the Russians, and the fact that it was due to the Allied blockade of Russia, in which the United States was participating [31] by an embargo on exports to Russia, was not generally known because to let it become known was contrary to the propaganda of the capitalistic interests that controlled newspapers and governments. When the discussion about lifting the blockade finally was officially opened, the reason given for so doing was that the English Prime Minister had urged that otherwise the Russian revolutionary ideas would spread to the British dominions in the East; also that if Russia was furnished with agricultural implements and other instruments of production that were necessary to get production under way in Russia it would enable England to reduce the cost of living of its people by bringing food stuffs from Russia instead of America where prices were very high.[32] That is, the motive for considering the resumption of trade with Russia was to protect the British Empire and benefit the people of Great Britain, also fear of disorder and the spread of Bolshevism in Central Europe, which might be prevented by bringing in Russian wheat to feed the people,[33] not sympathy for the people of Central Europe, much less for the suffering Russians. A motive less explicitly stated than these was the rivalry of British and American business interests for contracts to sell goods to Russia,[34] and the fear of these rivals lest further hostilities against

[29] "Europe's Misery and America's Complacency," *The New Republic,* Nov. 12, 1919, 305.
[30] *Ibid.,* 307.
[31] "Reports of the Bullitt Mission on Russia," *The Nation,* Oct. 4, 1919, 475.
[32] *Associated Press,* Jan. 17, 1920.
[33] *N. Y. Times,* Feb. 23, 1920.
[34] *Ibid.,* Jan. 19, 26, 27, 1920.

Russia would incline the Russians to commercial relations with the reviving German business interests.[35]

As long as governments are so largely influenced by profit-seeking capitalistic interests, the exigencies of profit-seeking will determine international relations. International co-operation in the sense explained by President Wilson, will not be possible until international relations are determined by the working hosts of the different nations — the "plain people" as President Wilson termed them. Their interests are not the exclusive interests of profit-seeking; as workers they have an economic basis for friendliness. International co-operation requires this relation of friendliness. But a friendliness that will stand the strain of national animosities that might arise requires the proper education, also facilities for spreading broadcast an adequate knowledge of conditions in other nations, also the most open diplomacy, and finally scrupulous honesty in reporting the news on all international situations.

Therefore, the progress of democracy requires democratic control of the agencies which furnish the news, on which the formation of public opinion depends. As Mr. Lippmann says, "The mechanism of the news-supply has developed without plan, and there is no one point in it at which one can fix the responsibility for truth." [36] The reporter gets his accounts of conditions in Russia, for instance, from witnesses who are seldom dependable,[37] and selects what he will transmit according to his own prejudices and those of the powers above. When the report reaches the editor "another series of interventions occurs. The editor . . . has to decide the question which is of more importance than any other in the formation of opinions, the question where attention is to be directed. . . . The news of the day as it reaches the newspaper office is an incredible medley of fact, propaganda, rumor, suspicion, clues, hopes and

[35] Senator France of Maryland introduced a resolution in the United States Senate proposing that the United States government recognize Soviet Russia and said: "The European statesmen played on our emotions and used them to further their own purposes when they feared Bolshevism. Now that they see Russia is to form a coalition with Germany and realize that she offers tremendous opportunities for trade they want to find a way to capture those markets. . . . The State Department apparently believes it a crime for the Russian Soviet Ambassador to the United States to offer gold for goods in this country. . . . The free people of the United States should welcome the people of Russia as the creators of another great republic." (*International News Service* (G. D. T.), Feb. 28, 1920.)

[36] Lippmann, "The Basic Problem of Democracy," *Atlan. Mon.*, Nov., 1919, 621.

[37] *Ibid.*, 621.

fears, and the task of selecting and ordering that news is one of the truly sacred and priestly offices in a democracy. For the newspaper is in all literalness the bible of democracy, the book out of which a people determines its conduct. It is the only serious book most people read. It is the only book they read every day. Now the power to determine each day what shall seem important and what shall be neglected is a power unlike any that has been exercised since the Pope lost his hold on the secular mind." [38] But this duty is not discharged on behalf of the public welfare, consequently it is impossible for a thinking man to take very seriously what he reads in the newspapers. The " facts that count are not systematically reported and presented in a form we can digest." [39] The result is that the press is beginning to be regarded among the more enlightened of the working masses as the means of manufacturing propaganda against them and on behalf of propertied classes.[40] The secrecy as to the interests back of the press, and as to the sources and ultimate reliability of what is printed as news causes among thoughtful readers a distrust of the whole news system. This is increased by the misrepresentations for the sake of propaganda that are plain to the thoughtful reader, but escape the more careless mass of readers who, thereby, receive the impressions it is intended to convey. This distrust may mark the beginning of a sentiment for governmental regulation of the news system. " For sometime the community must find a way of making men who publish news accept responsibility for an honest effort not to misrepresent the facts." [41] Obviously, however, effective governmental action against a capitalistically controlled press is not apt to come until governments themselves cease to be controlled by reactionary capitalistic interests.

[38] *Ibid.*, 622.
[39] *Ibid.*, 624.
[40] Lippmann, " Liberty and the News," *Atlan. Mon.*, Dec., 1919, 780.
[41] *Ibid.*, 780–781.

CHAPTER X

PSYCHOLOGICAL ASPECTS OF A LEAGUE OF NATIONS

THIS chapter aims to present certain psychological aspects of an effective League of Nations and is, therefore, only incidentally concerned with the League provided by the Treaty of Versailles. Important provisions of that Treaty warrant the inference that commercial jealousy was one of the underlying motives of the War,[1] and that the Allies used their victory to satisfy that pre-war rivalry for advantage.[2] Furthermore, the League of Nations Covenant "scrupulously eliminates from its jurisdiction everything that makes for privilege and inequality among the peoples of the world and perpetuates as far as lies in its power the present international order."[3] The Covenant, therefore, does not achieve, or purpose to achieve, international co-operation. International economic rivalry remains as before the essential international process.

An effective League of Nations would be not merely a political league to enforce peace or a legal mechanism for settling disputes but an organization for international co-operation in economic affairs. Such a League might have grown out of the international economic organization that developed between the allied nations during the war. The need for co-operation which called forth that organization remained after the war because, without it, there is bound to result disastrous competition and dissatisfaction among nations over the distribution of raw materials, access to markets, methods used by rivals in the acquisition of markets, and immigration restrictions.[4] An organization for economic co-operation, once its benefits had been experienced would generate in time the requisite political means and legal mechanisms. Such a League was not provided by the treaty of peace because the old relation of

[1] Freund, "The Treaty and International Law," *New Republic*, Dec. 17, 1919, 75.
[2] Keynes, "The Economic Consequences of the Peace," Chs. IV–V.
[3] Freund, *op. cit.*, 76.
[4] League of Free Nations Association, "Statement of Principles," *New Republic*, Nov. 30, 1918, 135.

rivalry between nations was too strongly entrenched in the capitalistic organization of each nation to make possible the unprecedented effort necessary to establish an effective League of Nations.[5]

The ultimate aim of a League of Nations, as stated by President Wilson before the Peace Conference convened, was thereby to foster a new psychological relation between nations. In an address at Rome he said: "The only thing that binds men together is friendship and by the same token the only thing that binds nations together is friendship. Therefore our task at Paris is to organize the friendship of the world — to see to it that all the moral forces that make for right and justice and liberty are united and are given a vital organization to which the peoples of the world will readily and gladly respond. In other words, our task is no less colossal than this: To set up a new international psychology."[6] This new relation of international friendship and co-operation can be fostered only by an organization of the nations for economic co-operation that will prevent the economic interdependence of nations being used by dominant nations against a nation which they want to coerce. This "may appear to exact a spirit not merely of justice but of altruism toward economically weak peoples, which is hopelessly Utopian to forecast."[7] Nevertheless, unless economic co-operation is honestly intended, the talk of international friendship is merely empty words; what is really meant instead of friendship is community of interest between the capitalistic interests of great nations, the friendship of self-interest (if such a relation can properly be termed friendship), the warming of one nation toward another that can be as much to it as it can be to the other. A league of such nations will be a menace, instead of a blessing, because it will facilitate co-operation of a group of dominant nations against any one that propertied interests desire to coerce.

The economic organization required for the co-operative relation was not achieved by the peace treaty because the masses in each nation whom President Wilson assumed to be behind him in his purpose to establish a new psychological relation, were not in control of their governments and of the representatives of their governments at the Peace Conference. Sections of the masses were in

[5] Croly, "The Obstacle to Peace," *New Republic,* April 26, 1919, 403–407.
[6] *Associated Press* (R. D. C.), Jan. 4, 1919.
[7] Dewey, "The League of Nations and Economic Freedom," *The Dial,* Dec. 14, 1918, 538.

process of struggling for control, and, to prevent President Wilson from "appealing à la improvisatore over the heads of diplomats to the unorganized, scattered and unenlightened peoples of the earth . . . the diplomats had only to point out to him that he would thereby decrease the waning power of governmental authority, increase popular unrest, and run the risk of plunging Europe into the chaos of political revolutions. After that he could not speak effectually for himself, to say nothing of 'representing' the unrepresented peoples of the earth."[8] Were the movements of the peoples of the earth toward industrial democracy to be condemned because they involved a temporary waning of the authority of the state? Because the Peace Conference cared more to maintain the traditional authority of the state than for industrial democracy the Treaty did not provide a league that effectuates the idealistic purpose of international co-operation.[9]

Is the class consciousness in the different nations really as destructive of an ordered social life as is often assumed by those who fear for the traditional authority of the state? Is there not in human nature a capacity of admiration for real leadership, which is more or less blindly seeking the real leadership? Is not class consciousness essentially a disowning of unworthy leadership? In spite of the intense popular resentment of the domination exercised by certain capitalistic interests, is not the capitalistic class in the United States regarded with adulation as essential to American greatness? In their enjoyment of their superiority that is implied in the superiority of the capitalistic class of their own nation do not the American people generally ignore its short-comings? Dewey writes: "The United States has extended money and credit almost 'without stint' to governments of Europe irrespective of whether they were supporting the announced policies of the United States, nay, even when those governments were doing what they could to undermine American ends. And doubtless the average American has taken pride in this fact. We are . . . so careless of our professed ideals that we prefer a reputation for doing a grand seigneur act to the realization of our national aims. . . . Our Christianity has become identified with . . . an opti-

[8] Dewey, "The Discrediting of Idealism," *The New Republic*, Oct. 8, 1919, 286.
[9] *Ibid.*, 285.

mism which we think is a sign of a pious faith in Providence but which in reality is a trust in luck, a deification of the feeling of success regardless of any intelligent discrimination of the nature of success." [10] The leadership that makes possible this national success is coming more and more to be popularly understood to be the economic leadership. To the people of the cities the men of prestige there are the men who have built up industries, given men work and caused the city to grow, and, perhaps, have enriched some of the citizens. These are the men whose names are blazoned in the press of the city as the public "benefactors." So it is in the nation. The exceptions, the rich men who have incurred public odium, do not at all interfere with the adulation of the capitalistic class generally. And public resentment against particular capitalists wears off and they later share in the general adulation. However, it is easy to exaggerate this tendency. It depends on a tolerable satisfaction of the essential instinctive impulses. Unemployment or rising prices may stir resentment that shakes the popular adulation and threatens the institutions that rest upon it. A class consciousness may develop, and, when once it is well started, it may be fostered by the class leadership even in a time when economic conditions would give the instinctive adulation free play, until the class antagonism has become fixed.

The purpose of a League of Nations which seeks to realize the idealistic purpose of international co-operation is contrary to the traditional national ambition for supremacy. In the past the essential aim of states was to increase their wealth power and their military power. There seemed no way to preserve their independence but to become ever stronger. There resulted a rivalry in armaments, and this inevitably led to a struggle for domination. "If all States increase their strength, the balance of power is unchanged, and no one State has a better chance of victory than before. And when the means of offence exist, even though their original purpose may have been defensive, the temptation to use them is likely, sooner or later, to prove overwhelming. In this way the very measures which promote security within the borders of the State promote insecurity elsewhere. It is the essence of the State to suppress violence within and to facilitate it without. The

[10] *Ibid.*, 286–287.

State makes an entirely artificial division of mankind and of our duties toward them; toward one group we are bound by the law, toward the other only by the prudence of highwaymen." [11]

The purpose of a League of Nations is contrary also to the traditional conception of sovereignty as involving the complete independence of nations.[12] For, inasmuch as the essential purpose of a League of Nations is to guarantee to all nations a secure national existence, this requires that nations renounce that spirit of proud independence that would prompt them to refuse to relinquish those exclusive advantages which make the existence of other nations insecure.[13] There will not be the necessary equality of nations "if . . . states are to be shut out from the sea; if rapidly expanding populations find themselves excluded from raw materials indispensable to their prosperity; if the privileges and preferences enjoyed by the states with overseas territories place the less powerful states at a disadvantage." [14] Heretofore, a nation's security and prosperity has depended on its own military and naval strength and economic resources, and this has caused statesmen to feel justified in enlarging armaments in order to protect and increase the national resources and trade opportunities; this competitive nationalism has been destructive of the security and prosperity of all nations. The League of Nations should substitute for this insecure rivalrous relation an organization for the just distribution of economic advantages.[15]

The traditional conception of sovereignty as absolute independence is no longer true, inasmuch as no state of itself can maintain its independence against all others. The traditional conception of sovereignty as absolute power to compel obedience also is no longer true. Only under favourable conditions could a great empire compel the obedience of its strongest dominions. These are bound to the mother country by loyalty, not by fear of subjection. "The British Empire is a perpetual contradiction to the theory of sovereignty on which our jurists and statesmen have been nourished." [16]

[11] Russell, "Why Men Fight," 59.

[12] Kallen, "The Structure of Lasting Peace," 87–89.

[13] League of Free Nations Association, "Statement of Principles," 135; Kallen, "The League of Nations Today and Tomorrow," 74–88.

[14] League of Free Nations Association, "Statement of Principles," 135.

[15] *Ibid.*, 134–135.

[16] McMurray, "Inter-citizenship: A Basis for World Peace," *Yale Law Journal*, XXVII: 306.

Yet in the face of this waning traditional absolutism of the state "publicists are proposing — and the people are supporting the idea — not alone to have one supreme source of authority in international matters, but to enforce its decrees by the use of an overwhelming aggrandizement of internationalized force. . . . Unquestionably regarding specific questions of territorial division and economic adjustment between nations it may be necessary and practical to create temporary umpires, exactly as we now do, who will arbitrate differences and hand down decisions to the acceptance of which the parties are committed before they go to arbitration. But it is a fair question whether the transfer of absolutism in sovereignty from the State to the super-State . . . would not be paying too dearly for a very doubtful gain." [17]

Instead of a super-State of this type Mr. Tead proposes that it be constructed along the lines of a reorganized state. "Mr. G. D. H. Cole in his 'Self-Government in Industry' proposes that within the State the problem of adjusting the claims of sovereignty to the claims of personality can be solved by dividing sovereignty between the supreme organization of the nation in its producing capacity (an industrial parliament) and the supreme organization of the consumers (the present political parliaments). If issues come to a deadlock between these two groups, the only recourse, as he conceives it, is to effect whatever ultimate adjustment is possible without an appeal to force. In the contest for power between the State as producer and the State as consumer, the individual gets his chance to preserve and advance the claims of personality and freedom. Perhaps his approach to the problem has its suggestion for our thinking in international affairs. Certainly, as we shall see in succeeding chapters, the sort of functional division which his scheme contemplates seems inevitably necessary and sound in the building of administrative machinery on a world scale. For it becomes clearer each day that if international government means the reestablishment of absolute sovereignty on a basis twice removed from popular control, the weakness of that government will be fundamental and the allegiance it can summon will diminish as soon as its exercise of power becomes significant." [18] Mr. Tead finds in the mechanisms that were developed and which proved invaluable

[17] Tead, "The People's Part in Peace," 23.
[18] *Ibid.*, 24–25.

for the co-operation of the Entente Allies in the World War the basis of an effective international economic organization for peace.

Whatever its constitution may be, a League of Nations will internationalize the class struggle; one class will aim to use the League against another. As capitalistic classes for the most part control the governments of the different states, those classes will use the League against working classes, as far as the masses can be brought to acquiesce. In nations where trade unionism had become a formidable political power, as in England, a League of Nations was hailed by opponents of trade unionism as a means of repressing unionism.[19] In England and the United States influential public opinion rapidly came to favour a League when it became evident that it could be used against Bolshevism; inside of government circles and outside, appeals were made for support of a League of Nations which should act to repress Bolshevism. Through a League of Nations the class struggle will be internationalized and brought to the fore, and nationalism will, not immediately or soon but ultimately, become less pronounced. That this inevitable class conflict may go on without violence, under legal forms, "the international machinery will need democratization. . . . If the League of Nations is not to develop into an immense bureaucratic union of governments instead of a democratic union of peoples, the elements of (a) complete publicity and (b) effective popular representation must be insisted upon. The first of these is implicit in the principle . . . that in the future there must be an end to secret diplomacy. The second can only be met by some representation of the peoples in a body with legislative powers over international affairs — which must include minority elements — as distinct from the governments of the constituent states of the League."[20] The minority parties as well as the great parties of the various states must be represented.

The effectiveness of a League will depend on subordinating the rivalry of economic interests and that blind patriotism of the masses which make a state intensely nationalistic[21] to the rational

[19] Sir Charles C. Allom, "Unionism as Foe of Labor," *American Industries*, March, 1919, 42. Sir Charles C. Allom is "head of an airplane and other important manufacturing enterprises in England." (*Ibid.*, 42.)

[20] League of Free Nations Association, "Statement of Principles," *New Republic*, Nov. 30, 1918, 136.

[21] Reeves, "The Justiciability of International Disputes," *Amer. Pol. Sc. Rev.*, X: 71–79.

social purpose of world-wide industrial democracy. On the one hand it is easy for statesmen and the press to enlist the support of the masses in projects of conquest and capitalistic aggrandizement because the hostile impulses are stronger among men than the impulses to friendly co-operation; and the belief is widespread that whatever strengthens the nation and enriches the employing classes must benefit the working masses. As against this strong combination of instinctive forces we have a growing intelligence in every nation — among employers, workmen and professional men — and this intelligence can be increased by education. Education will be necessary to the success of a League [22] because the relations of a League are contrary not only to traditional international relations, but to the traditional relations throughout the social organization. It is contrary to traditional family relations. The prevailing idea of family duty — that it is the duty of the mother to bear as many children as possible — which originated in the struggle for domination of rival political and sectarian groups, which called for as high a birth rate as possible, particularly of male children,— is contrary to a régime of universal peace and friendly relations between nations.[23] An overflowing population encourages the interests of a nation that are ambitious for national aggrandizement. As a result of "the war, it is possible that population questions will attract more attention than they did before, and it is likely that they will be studied from the point of view of international rivalry. This motive, unlike reason and humanity, is perhaps strong enough to overcome men's objections to a scientific treatment of the birth-rate." [24] The ultimate purpose of a League of Nations is thus contrary to the traditional family relation of masculine domination and the submission of the wife as child-bearer.

The purpose of a League of Nations is contrary, also, to the domination-submission attitudes in educational practice, for these attitudes are opposed to the stimulation and training of the sympathetic and intellectual dispositions so essential in co-operation. For the same reason it is contrary to ecclesiastical domination and to dogmas reinforcing this attitude. The clergymen of some re-

[22] Kallen, "The League of Nations, Today and Tomorrow," 127–133; Kallen, "The Structure of Lasting Peace," 172–176.

[23] Ross, "Changing America," 32–49; Thompson, "Population: A Study in Malthusianism," 156–164.

[24] Russell, "Why Men Fight," 198–199.

ligious sects endorse an unrestricted increase of population;[25] obviously this is a means of increasing the numbers and thus advancing the superiority of the sect.[26] A League of Nations is contrary, also, to the rivalry of the financial and industrial interests of different nations for control of the markets of the world, except through the excellence and cheapness of their products. These interests are apt to favour an unrestricted growth of population, which gives them a large supply of labour which can be easily dominated and hired for low wages.[27] In short, a League of Nations is contrary to domination-submission in family, educational, ecclesiastical, and economic relations. However, domination-submission is the traditional and still prevailing attitude in all these relations. All that we can expect therefore is a very gradual and halting development in the direction of the great purpose of a League of Nations.

Under present conditions, economic rivalry is the disturbing force in international relations.[28] When nations, after a war, settle down to mutually recognized territorial limits, the political status of each has been decided, and the more aggressive forms of rivalry fall in abeyance for the time being. But the economic status of each nation has not by any means been decided, and the economic rivalry continues without any such recognition of fixed status. National animosities give an animus to this economic rivalry.[29] The economic interests of the different nations are not slow to take advantage of national animosities and to use these to support their own schemes of pecuniary aggrandizement.[30] Thus, while the political status may be settled for the time being, the economic status, under a system of private ownership of industry, never is settled, and there is left open a sphere of conflict which

[25] "In choosing a state of life, everyone is at full liberty either to follow the counsel of Jesus Christ as to virginity, or to enter into the bonds of marriage. No human law can abolish the natural and primitive right of marriage, or in any way limit the principal purpose of marriage, ordained by God's authority from the beginning: *Increase and Multiply.*" (K. of C., War Activities Committee, "Bolshevism — the Remedy," 8. This is a pamphlet written by Leo XIII against socialism.)

[26] Russell, "Why Men Fight," 193.

[27] Fetter, "Population or Prosperity," *Amer. Econ. Rev.*, Vol. III, Supplement, March, 1913. Reprint, pp. 14–17.

[28] Angell, "The Problems of the War — and the Peace," 58–62; Kallen, "The Structure of Permanent Peace," Chs. IV–V.

[29] Brailsford, "The Covenant of Peace," 12.

[30] Overstreet, "Ethical Clarifications through the War," *Intern. Jour. Ethics*, Apr., 1918, 327–336.

may at any time unsettle the political status.[31] Permanent peace cannot be expected without a development of industrial democracy in each nation. These democratized nations must then subject the economic interests of the different nations to the international control that is necessary to insure a lasting peace.

[31] Keller, "Through War to Peace," 76–77.

BOOK II

SOCIAL PSYCHOLOGY AND JURISPRUDENCE

CHAPTER XI

PSYCHOLOGICAL ASPECTS OF THE DEVELOPMENT OF JURISPRUDENCE

THE traditional theories of the nature of law are a functioning of the attitudes of the jurists who contributed to the development of those theories. Not until recently have attempts been made to develop a severely inductive conception of law. The assumptions of the theories were suggested by the attitudes of jurists, and the method of development of the theories was deductive. Jurists were lawyers and not scientists; the professional method of thinking of the lawyer is deductive, not the inductive method of the scientist. Thinking men not lawyers have been accustomed to accept the lawyer's deductively derived conception of law because it was thought that the lawyer, who knew more law than anybody else, must know more about the nature of law. However, the fact that a man knows the law and uses this knowledge in his business is no more a valid reason why he should know the nature of law than the fact that a man is a farmer is a reason why he should know anything about scientific agriculture, or should have the scientific attitude that is needed to be interested in scientific agriculture.

The lawyer's definition of the nature of law has been a functioning of the legal attitude, the *professional* deductive attitude, the only *respected* attitude. The legal attitude is one of deference to law as command, the meaning of which in the particular case is interpreted according to tradition. Legal attitudes contrary to this have gained increasing recognition of late years inside the profession, and outside in the appointment of progressive lawyers to judicial positions.[1] But the deferential, deductive attitude still predominates in the profession and is most respected. This attitude is expressed in the phrase to "lay down the law." The pre-

[1] See the chapters entitled, *The Conflict of Judicial Attitudes, Judicial Attitudes and the Nature of Law,* and *Psychological Processes in the Development of Private Property.*

dominant legal attitude is that of a man respectfully receiving law as traditionally interpreted and laying it down as command; he has authority and dominates not in his own right but in virtue of that which he represents,— a command that has behind it the obedience-compelling power of the state. Men of a strong dominating disposition "take to the law,"— find the practice of that profession congenial. And in their practice they naturally develop the attitude of laying down the law, of accepting law as traditionally interpreted and applying it in particular cases as the final word in a cause.

Lawyers have made the mistake of believing that this attitude to the law indicates the nature of law. Definitions of the nature of law which were in harmony with this attitude have been spontaneously accepted by lawyers and other definitions rejected; and thinkers in other lines have accepted, without analysis, the "authoritative" definitions made by leading lawyers. For instance, "probably no definition ever had a more pronounced effect on legal thinking than has the definition of law, given by Austin in his work on 'Jurisprudence,' upon the legal mind in England and the United States. According to Austin, 'a law, in the literal and proper sense of the word,' is 'a rule laid down for the guidance of an intelligent being by an intelligent being having power over him.' This definition, according to its author, embraced 'laws set by God to men' and 'law as set by men to men.' Of the latter, some were 'established by political superiors acting as such,' and constituted 'positive law'— the appropriate matter of jurisprudence." [2]

This definition had a pronounced effect on legal thinking because it was in harmony with the predominant legal attitude; also because it represented, by implication, the relation of the masses to the law-making and law-enforcing power at the time Austin wrote. The masses of England were then without political rights; the will of the propertied classes, expressed through Parliament, was then supreme, so that the masses were, in fact, in a position of abject obedience to laws "established by political superiors." That is, Austin's definition of law was effective, not only because it was congenial to the traditional legal attitude but also because it represented the social-psychological condition that obtained at that time, namely, the habitual obedience of unenfranchised masses to law as

[2] Moore, "Law and Organization," *Amer. Pol. Sc. Rev.*, IX: 3–4.

the command of political superiors. But the political subjection of the masses in England ceased fifty years ago and the surviving attitude of unquestioning obedience to law has gradually weakened as the working masses have become conscious of the conflict between the existing laws and their own interests. The sole surviving sanction of the traditional conception of law is its endorsement by the property-owning classes on the one hand and the legal profession on the other. It is congenial to the legal attitude of deference to law; and it is congenial to the attitude of those reactionary propertied interests which purpose to keep the masses in subjection.

Another reason why lawyers and property-owning classes are harmonious on this point is that the most lucrative clients are property owners; wherefore the lawyer of a rivalrous disposition commends himself to the class of clients he most desires by maintaining the traditional professional attitude to the law. There are corporation lawyers who, while ostensibly maintaining this attitude of deference to the law as traditionally interpreted, make it their business to enable their clients to "get around the law." They profess the traditional attitude of deference while in their practice aiming to place the law at the service of a dominant class. While the influence of the property-owning classes and the legal profession has maintained Austin's definition as authoritative, that definition, as we shall see presently, whatever its social-psychological basis in the past, has ceased truly to represent social-psychological conditions. A true definition of the nature of law requires valid social-psychological assumptions, which can be had only by an understanding of social psychology. Hence the close relation of social psychology to jurisprudence. Only as this scientific point of view replaces the deductive legal point of view will conceptions as to the nature of law approximate to the truth.

The preceding paragraphs have prepared us to understand why the development of jurisprudence cannot be understood without the aid of social psychology. That development has been directly the work of lawyers, acting as legislators and judges. Their conspicuous mental processes have been those of deductive reasoning, but, in addition to these more conscious processes there has been the subconscious action of attitudes that determine the assumptions of reasoning. It follows that the development of jurisprudence cannot be understood without the aid of the science that studies the nature

and functioning of attitudes, that is, social psychology. Social psychology is necessary, also, because, while the development of jurisprudence has been directly in the hands of lawyers,[3] it has been indirectly and ultimately under the control of the economic class or classes that dominated the law-making organs. Even before the rise of class consciousness, indeed, even before the period of mass subservience to the word of a despot or an autocrat who was backed by military force and divine right, away back at the very beginning of the development of jurisprudence, we find observance of custom and customary law was due to the action of certain social-psychological processes, which must be explained in order to explain the origin and development of jurisprudence.

The types of behaviour suggested in previous chapters as important in interpretations of the development of the state are essential also in interpretations of the development of jurisprudence. These types of behaviour are discernible in the functioning of law and the purposes of law-making. As to the effect of these types on the functioning of law: First, there is the individualistic type of behaviour which obtained among a population where behaviour was essentially acquisitive and industry unorganized. The function of law was to restrain violence and bring about a peaceful settlement of disputes according to the usages of immutable custom. Law was originally custom, customs were interpreted by the elders, and men were bound hand and foot by custom.[4] Violation of custom called forth disapproval, which was particularly effective in small groups where the members lived intimately and could not get away from the communal disapproval.[5] With the rise of the kingship,

[3] "A civilized system of law cannot be maintained without a learned profession of the law. The formation and continuance of such a learned class can be and has been provided for, at different times and in different lands. . . . It is not necessary for this purpose that the actual administration of justice should be wholly, or with insignificant exceptions, in the hands of persons learned in the law, though such is the prevailing tendency of modern judicial systems. It is enough that the learned profession exists, and that knowledge of the law has to be sought directly or indirectly, in the deliberate and matured opinion of its most capable members. And the activity of modern legislation makes little or no difference to this . . . . The office of the lawyer is first to inform the legislature how the law stands, and then, if change is desired, . . . to advise how the change may best be effected. Every modern legislature is constantly and largely dependent on expert aid of this kind." (Pollock, "Justice According to Law," *Harvard Law Review*, IX: 307–308.)

[4] Spencer and Gillen, "The Native Tribes of Central Australia," 11–12; Boas, "The Mind of Primitive Man," 220; Webster, "Primitive Secret Societies," 60.

[5] Westermarck, *op. cit.*, I: Chs. II–V, VII, IX; Hall, "Crime in its Relation to Social Progress," 3–22.

the king impartially enforced custom. As long as the king in his judgments followed custom exactly, declaring the traditional rule and applying it according to the letter of the law, he had the popular support. Certainty and uniformity of rule and penalty were the permanent contributions of this period.[6]

Whenever, in later stages of development, social relations become thus individualistic, the law assumes this violence-restraining and dispute-settling function, for instance, in the early American rural township.[7] For this period of American development the English common law, developed from the old German law, was well suited because of its individualistic character;[8] and the law was enforced as custom — by strong communal disapproval.[9] The effect of this individualistic period in jurisprudence survives to the present day, as seen in the prejudice of the farmer against legislation;[10] in the judicial theory of the perfection of the common law,[11] causing it to be given precedence by judges over statute law;[12] and in the prejudice of the courts against labour legislation as limiting freedom of contract. Beard writes that "while the United States has been transformed into an industrial nation, the notion of the older agricultural life that anybody has a right to work as long as he pleases, under any conditions he is willing to accept, has pervaded our legislatures."[13] In an agricultural régime with plenty of land to be had at a nominal price, "any man can rise out of the working class. . . ."[14] This has blinded the American people to new industrial conditions, and has caused jurists to oppose labour legislation, and to ignore the fact that, "however great may be the opportunity for individuals to rise, the working class must yet remain, and that upon its standards of life, its intelligence and physical vitality the very fate of the nation depends."[15]

[6] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol. Soc.*, VII: 151; see also Pound, "The End of Law as Developed in Legal Rules and Doctrines, *Harvard Law Review*, XXVII: 198–212.

[7] Williams, "An American Town," Pt. I: Ch. VI.

[8] Pound, "A Feudal Principle in Modern Law," *Inter. Jour. Ethics*, XXV: 13–15; Pound, "Readings on the History and System of the Common Law," 263.

[9] Williams, *op. cit.*, Pt. II: Ch. XI.

[10] Bernard, "A Theory of Rural Attitudes," *Amer. Jour. Sociol.*, XXII: 639.

[11] Lincoln, "The Relation of Judicial Decisions to the Law," *Harv. L. Rev.*, XXI: 121.

[12] Swift & Tyson, 41 U. S. Peters, 871, January, 1842; Baltimore & Ohio Railroad Co. v. Baugh, 149 U. S. May, 1893, 778.

[13] Beard, "American Government and Politics," 742.

[14] *Ibid.*, 742.

[15] *Ibid.*, 742.

The second type of behaviour influencing the development of law, domination-submission, emerges with the rise of despotic rule. Under despotic rule the kinds of crime punished and the severity of punishments increased, with the impulse to deter from crime by arousing fear of punishment.[16] Violations of customs, which had before been left to the action of tabu or the chance of private vengeance, came to be habitually punished by the authority of the king, in order to put a stop to the excesses and failures of private vengeance, and also to magnify his authority.[17] At the same time the king sought to make it appear that crimes were also sins against the god, thus shifting the responsibility of punishment, and increasing the social abhorrence of crime. Methods of ascertaining guilt or innocence, as the ordeal and the judicial combat, were calculated to give the deity an opportunity to indicate the guilty party, so that the judgment was apparently given the sanction of the deity. The severity of punishments was to inspire fear and also to give the king a chance to relax the severity in particular cases.[18] In this period, the motive behind the enforcement of law was not only the indignation of the group, but also the domination of a despotic government which was determined on weeding out all who resisted the arbitrary will of the sovereign. This attitude was supported by the rank and file who were submissive to arbitrary will and indignant with one who showed defiance. Offenders were treated " not only as offenders against the individuals whom they injure or against society at large, but as rebels against their sovereign or their god. Their disobedience to the will of the mighty legislator incurs, or is supposed to incur, his anger, and is, in consequence, severely resented. But however severe they may be, the punishments inflicted by the despot on disobedient subjects are not regarded as mere outbursts of personal anger. In the archaic state the king is an object of profound regard, and even of religious veneration. He is looked upon as a sacred being, and his decrees as the embodiment of divine justice. The transgression of any law he makes is, therefore, apt to evoke a feeling of public indignation proportionate to the punishment which he pleases to inflict on the transgressor. Again, as to the acts which are supposed to

[16] Westermarck, *op. cit.*, I: 185–186.
[17] *Ibid.*, I: 177–185.
[18] *Ibid.*, I: 192.

arouse the anger of invisible powers, the people are anxious to punish them with the utmost severity so as to prevent the divine wrath from turning against the community itself. But the fear which, in such cases, lies at the bottom of the punishment, is certainly combined with genuine indignation against the offender, both because he rebels against God and religion, and because he thereby exposes the whole community to supernatural dangers." [19] In this stage of legal development, "law has definitely prevailed as the regulative agency of society and the state has prevailed as the organ of social control. Self-help and self-redress has been superseded for all but exceptional causes. Normally men appeal only to the state to redress wrongs." [20] The law remains almost as formal and immutable as in the preceding period and its application is arbitrary and without regard to the justice of the case.[21]

Then arose new conditions that called for changes in the law, which, however, could not be made as long as the law was regarded as immutable. Consequently there developed the fiction of natural law to justify the changes made. The changes were said to arise, not from the reason and conscience of the judge, but from the interpretation by the judge of a higher law, the law of nature. "Four ideas of the first magnitude come into the law" as a result of this development. "The first is that legal personality should extend to all human beings and that incapacities to produce legal consequences should be rejected except where a natural as distinguished from a historical reason can be found for them. The second is that the law should look to the substance and not to the form, the spirit and not to the letter. . . . Only the systems that went through this change and came to measure things by reason rather than by arbitrary rule or arbitrary formula have become laws of the world.

"The third idea is good faith, the idea that justice demands one should not disappoint well founded expectations which he has created; in other words, that it is not so much that rules should be certain as that men's conduct should be certain.

"The fourth idea is that one person should not be unjustly enriched at the expense of another." [22]

[19] *Ibid.*, I: 194.
[20] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol. Soc.*, VII: 150.
[21] *Ibid.*, I: 194.
[22] *Ibid.*, 151-152.

The third type of behaviour that impressed itself on the development of jurisprudence is that of the free rivalry of propertied classes as opposed to class domination. It arose when a new propertied class had arisen and had become a formidable rival for social control of the class long dominant. In this stage of legal development " the watch-words are equality and security. The former involves equality in operation of legal rules and equality of opportunity to exercise one's faculties and employ one's substance. The latter involves the idea that every one is to be secured in his interests against aggression by others and that others are to be permitted to acquire from him or to exact from him only through his will that they do so or because of his infringement of rules devised to secure others in like interests. To this end, the idea of individual rights is worked out thoroughly and is put as the basis of the legal system, so that duties are regarded as correlative thereto and remedies as vindications thereof. Accordingly the all-important legal institutions of this period are property and contract . . . preservation of the rights of private property was the fundamental object of the law." [23] This principle of free rivalry of propertied classes and freedom of contract continued to be essential in law-making in England until well into the second half of the nineteenth century.[24]

The fourth type of behaviour that expressed itself in the functioning of law is that of co-operation for the realization of public welfare. This marks the stage of legal development just beginning. Dean Pound writes, " Toward the end of the nineteenth century signs of the beginnings of a new stage of legal development begin to be manifest throughout the world." [25] In the preceding stage of development, " the legal system seeks to secure individuals in the advantages given them by nature or their station in the world and to enable them to use these advantages as freely as is compatible with a like free exercise of their faculties and use of their advantages by others. To accomplish these ends it reverts in some measure to the ideas of the strict law. In consequence a certain opposition between law and morals develops once more, and just as the neglect of the moral aspects of conduct in the stage of strict law required the legal revolution through infusion of lay moral

[23] *Ibid.*, 152–153.
[24] Dicey, " Law and Opinion in England," Lectures VII–VIII.
[25] Pound, *op. cit.*, 153.

ideas into the law, which in different legal systems we call equity or natural law, so the neglect of the moral worth of the individual and of his claims to a complete moral and social life involved in the insistence upon property and contract in the maturity of the law are requiring a similar legal revolution through the absorption into the law of ideas developed in the social sciences. Juristically, this is beginning in the recognition of interests as the ultimate idea behind rights, duties, and remedies. It is seen that the so-called natural rights are something quite distinct in character from legal rights; that they are claims which human beings may reasonably make, whereas legal rights are means which the state employs in order to give effect to such claims. But when natural rights are put in this form it becomes evident that these individual interests are on no higher plane than social interests, and, indeed, for the most part get their significance from a social interest in giving effect to them. In consequence the emphasis comes to be transferred gradually from individual interests to social interests. Such a movement is taking place palpably in the law of all countries today. Its watchword is satisfaction of human wants, and it seems to put as the end of law the satisfaction of as many human demands as we can with the least sacrifice of other demands." [26] This change in the function of law came as the result of a change in human nature, a passing of the abject submission of the working hosts and a growing resistance of the control exercised by reactionary propertied classes. Human wants have come to the fore because of this situation that necessitates their satisfaction. There has been, also, a quickening of the sympathetic and intellectual dispositions of many of the more fortunately situated individuals. The present trend in jurisprudence is, therefore, one for the welfare of the masses, as opposed to the welfare of one class at the expense of another.

Correlative with the development of the functioning of law that has been outlined is a development in the purpose of law-making. (1) " In the first stage of legal development, law-making is wholly subconscious. Historically the judge precedes the law and the court precedes the legislature. What we call legislation in the beginnings of law is wholly declaratory. It is not an authoritative making of new law, it is an authoritative publication of law already existing in the form of traditional modes of applying for judicial

[26] *Ibid.*, 153–154. See also Pound, "The End of Law as Developed in Legal Rules and Doctrines," *Harv. L. Rev.*, XXVII: 225–234.

action, traditional rules of decision, and traditional limitations upon self-help." [27] (2) "The first conscious making of law takes place when choice has to be made between conflicting traditions or where conflicting traditions must be harmonized through amendment. This necessity arises whenever an attempt is made to declare the common custom of a political unit formed by the union of heretofore distinct tribes or peoples with customs of their own." [28] Change was facilitated by the development of the conception of natural law which made it possible to preserve the theory that law was to be found rather than made; when it was not to be found in the law of the land, it was to be found in the principles of natural law.[29] (3) A third stage of law-making sought to insure freedom of contract, as well as security of property and contract.[30] (4) In the fourth stage of law-making the reasonable development of law for the public welfare becomes the conscious guiding purpose. If this purpose is to be realized, "both judicial law-making and legislative law-making must know the ends to which they are employed. For our trust is in the efficacy of intelligent effort; so far as we can make law consciously, we are to make it intelligently. This was hardly possible until we had arrived at the conception of interests. Our hope of achieving it is in definition of the interests that may claim to be secured and determination of the principles according to which they are to be selected and delimited for legal recognition." [31]

The study of the interests that may claim to be secured is, in part, a social-psychological problem. Intelligent law-making involves also a shrewd estimate of the limits of effective legal action, which requires a knowledge of social psychology. "We must remember that . . . the legal system is obliged to rely upon external agencies to put its machinery in motion. Even the best of laws do not enforce themselves. Hence it is of the first importance to study the social-psychological limitations upon enforcement of legal rules. It needs very little comparison of the law in the books with the law in action to demonstrate that both judge-made and statutory rules fail continually because they lack what has been called the

[27] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol. Soc.*, VII: 154.
[28] *Ibid.*, 154.
[29] *Ibid.*, 155.
[30] *Ibid.*, 155.
[31] *Ibid.*, 155–156.

social-psychological guaranty. A rule may run counter to the individual interests of a majority or of a militant minority or of a powerful class; or it may run counter to the moral ideas of individuals, as in the case of the Fugitive Slave Law; or it may be that no immediate interests are involved and hence they are indifferent." [32] The limits of effective legal action depend, therefore, on social-psychological processes.

We may gather from what has preceded that the types of behaviour discerned in political relations determine also legal development. For instance, in the United States, the rural conditions which long prevailed guaranteed an approximate equality of economic opportunity; the social differentiation was along occupational lines — chiefly between city and country. There was a sense of individual independence and equality. The law was individualistic; its essential function was to restrain violence and to settle disputes.[33] Law was essentially custom and there was an aversion to law-making. In this period also politics were a partisan rather than a class phenomenon.[34] This period of political development was followed by a keenly competitive struggle of business and financial interests, which resulted in the rise of semi-monopolistic corporations, which, in turn, was followed by a movement of lesser business interests against economic domination and for " free competition," and this by a progressive political movement for the control of great corporate interests for the public welfare. This political development enlisted the old individualism in law-making, which facilitates the domination and control exercised by great corporate interests; and, opposed to this the free rivalry principle which calls for the restraint of ruthless monopoly in the interest of free competition; [35] and opposed to both the principle of the extensive use of the police power on behalf of the public welfare.

[32] *Ibid.*, 159.
[33] Williams, *op. cit.*, 57–59.
[34] *Ibid.*, 60.
[35] Adams, Bigelow and others, " Centralization and the Law," 64–65.

CHAPTER XII

PSYCHOLOGICAL ASPECTS OF THE JURISTIC PROBLEM

THE preceding chapter has suggested the social-psychological aspects of the juristic problem. We need to know in how far law can free itself from its traditional aspects, in assisting adaptation to changing conditions that necessitate new social adjustments, and still remain law, that is, a rule of conduct infractions of which, in so far as the law is understood and the infractions made public, stir an effective public disapproval. In the first and second periods of the development of law, law was custom arbitrarily applied, because of the rigidly conventional character of the people. The customary law of this early period was originally unwritten, and the first codifications merely stated as exactly as possible the customary law. Codification gives customs a definite statement which, like the codification of religious dogma, hampers progressive interpretation. For instance, the Institutes of Justinian abound in explanations based on supposed derivations of words, as do commentaries on the Talmud and the Bible. "A 'system of unwritten law,' said Chief Justice Cockburn, 'has at least this advantage, that its elasticity enables those who administer it to adapt it to the requirements and habits of the age in which we live, so as to avoid the inconsistencies and injustice which arise when the law is no longer in harmony with the habits and usages and interests of the generation to which it is immediately applied.'" [1]

Positive enactment of laws, as distinguished from mere codification of custom, does not come "until reverence for ancestors has been so much weakened that it is no longer thought wrong to interfere with traditional customs by positive enactment. Even then there is reluctance to make enactments, and there is a stage of transition during which traditional customs are extended by interpretation to cover new cases and to prevent evils." [2] This use of tra-

[1] Quoted by Smith, "The Use of Maxims in Jurisprudence," *Harvard Law Review*, IX: 23.

[2] Sumner, "Folkways," 55.

ditional formulas continues on into and through the period of positive enactment, in the form of the use of legal maxims. The social-psychological cause, here, is the conventional attitude of lawyer and judge. It "should be noticed that 'many of the sayings that are dignified by the name of maxims are nothing but the *obiter dicta* of ancient judges who were fond of sententious phrases, and sometimes sacrificed accuracy of definition to tenseness of expression.' Moreover, a statement intended as a maxim may have gained currency as such out of deference to the reputation of its author, rather than by reason of its intrinsic correctness as a faithful representation of existing law. . . . It is not unreasonable to suppose that the old sagas, in some instances, intentionally overstated a truth for the purpose of attracting attention. . . .

"'Legal maxims do not change; they are the fundamental principles of law, and therefore no alterations in them can be noted. . . .' Such is the claim made in the preface to a recent collection of maxims. This statement apparently assumes, first, that all prominent legal maxims are correct representations of fundamental principles of law; second, that these so-called 'fundamental principles of law' never change. The first assumption is not well founded, as appears from the extracts we have already given from high authorities. Nor is the second assumption correct, unless the term 'fundamental principles of law' is so defined as to restrict the class to a very small number. . . .

"If the foregoing criticisms are well founded, how shall we account for the fact that various objectionable maxims keep their place in the books, and are daily quoted by eminent jurists. One answer to this inquiry is suggested by the remark of Sir Henry Maine that 'legal phraseology is the part of the law which is the last to alter.' The most ardent law reformers, in spite of the scriptural warning against putting new wine in old bottles, sometimes prefer to give a new interpretation to an old phrase rather than attempt the almost 'impossible task of blotting it out of our jurisprudence.' Even Austin, who did not hesitate to apply to some existing terms such an epithet as 'jargon,' is not inclined to unnecessarily 'engage in a toilsome struggle with the current of ordinary speech.'"[3] Most "legal maxims are clothed in the words of a dead language."[4] They are put forward as the reason

[3] Smith, *op. cit.*, 22–24 (quoted without foot-notes).
[4] *Ibid.*, 25.

for a ruling when they are merely " dogma, not reasoning." [5] This use of maxims, and the conservative attitude which fosters it in judicial reasoning, is contrary to progress in jurisprudence, which requires that the law be given greater definiteness as to its meaning. " As our law develops it becomes more and more important to give definiteness to its phraseology; discriminations multiply, new situations and complications of fact arise, and the old outfit of ideas, discriminations, and phrases has to be carefully revised. Law is not so unlike all other subjects of human contemplation that clearness of thought will not help us powerfully in grasping it. If terms in common legal use are used exactly, it is well to know it; if they are used inexactly, it is well to know that, and to remark just how they are used." [6]

The conventional judicial attitude is encouraged by the conventional character of the mass of the people. For the rank and file of people, law remains today what it was in the beginning; people conform to law as to custom. " The laws themselves, in fact, command obedience more as customs than as laws. A rule of conduct which, from one point of view, is a law, is in most cases, from another point of view, a custom; . . . the ordinary citizen stands in no need of studying the laws under which he lives, custom being generally the safe guiding star of his conduct." [7] Law which is custom has the force both of custom and of law, while it is a social-psychological problem in how far laws which are not custom can be enforced.[8]

Owing to the fact that, until modern times, the law-making and law-declaring machinery was controlled by an hereditary aristocracy, with the conventional acquiescence of other classes, the law was little subject to change, and judges regarded — and most of them do, to the present day, continue to regard — themselves not as legislators, but as discoverers of rules logically pre-existing in the law. It is maintained today, by one school of jurists, that " the effort of the judge is to *find* the *best* rule by which the case

[5] *Ibid.*, 25.

[6] Thayer, " Preliminary Treatise on Evidence," 190.

[7] Westermarck, *op. cit.*, I: 164.

[8] Pound, *op. cit.*, 159; Pound, " Law in Books and Law in Action," *Amer. Law Rev.*, XLIV: 12–36; Westermarck, *op. cit.*, I: 163; Sumner, " Folkways," 55. See also the testimony of Louis D. Brandeis before Committee on Interstate Commerce of United States Senate investigating the Desirability of changing the Laws regulating and controlling Corporations, Persons and Firms engaged in Interstate Commerce, 1912, in Orth, " Readings on the Relation of Government to Property and Industry," 607–608.

may be determined. In this search the things considered are the ordinary ways in which the business, the intercourse, and the conduct of life are conducted; and whether the conduct in question is in harmony with them, or, if not, in what particular it is discordant. . . .

"Even where the question is one of the interpretation of written law, involving the meaning of words and the legislative intent, the things contended about in argument and decision are the customary employment of language, the customary motives of action, and the mischievous departures from established custom, which the statute was probably intended to remedy." [9] Although this theory of the proper judicial attitude was, as Dean Pound says in his review of Carter's book, twenty-five years behind the times when it was published,[10] yet the theory is held by many of the leading lawyers and judges of the country today, who regard Carter's book as the final word on the subject. The conception of a progressive jurisprudence which seeks rationally to promote the public welfare is not new, but not until recently has the conception become influential in some law schools.

The prominence of the customary aspect of law has prompted some sociologists to treat law as an evolution of custom, with a minimum of purposeful development; [11] and it has led some jurists to find in sociology, as the science of institutions in their customary as distinguished from their dynamic aspects, the basis of their science. For instance, Professor Ehrlich has shown at great length that the law applied by the courts is by no means identical with the jural relations of a group, that those relations also include customs not recognized by law and which often could not be enforced in a law court but yet determine social relations.[12] He generalizes that law is therefore the settled form of the social order, instead of rules imposed from above, and that the nature of law cannot be deduced from the fiction of sovereignty as an omnipotence of the state. He maintains that the new powerful economic organizations, as trusts and trade unions, have discredited the old theory of sovereignty as absolute obedience-compelling power. He likewise minimizes the effect on law of conscious directing purpose.

[9] Carter, "Law, Its Origin, Growth and Function," 172–173.
[10] See Pound's review in the *Political Science Quarterly*, XXIV: 317–320.
[11] Keller, "Law in Evolution," *Yale Law Journal*, XXVIII: 775–776.
[12] Ehrlich, "Grundlegung einer Soziologie des Rechts," 396–398.

Consequently he exaggerates the difference between his point of view and that of Ihering, both of whom emphasized the necessity of a social background for the study of jurisprudence but emphasized different aspects of that background, and both of whom suffered from lack of a sufficiently developed science, either of sociology or of social psychology, for that reconstruction of jurisprudence which each sought to achieve.

The customary nature of law and the divergence of law from custom raises problems which are essentially social-psychological. Jurists and legal philosophers have explained and justified the divergence of law from custom under five conceptions, the conception of natural law, the conception of the sovereign will, the conception of the right of the individual to pursue his interests unhampered by legal restrictions, the conception of justice on behalf of those that need some assistance from the strong arm of the state, and the conception of the public welfare. These conceptions have a social-psychological basis. Natural law is a figment of the imagination, used to give a sanction to certain persistent dispositions and necessary interests of man. The sovereign will is a mere phrase until we understand the psychological processes involved in the relation of sovereign and subjects. The conception of individual liberty refers primarily to impulses for the acquisition of property, and the freedom to be given these impulses depends on social-psychological conditions. The conception of justice on behalf of the weak and the conception of the public welfare imply an assumption of human wants, and of a human personality that is entitled to opportunities for development, assumptions which, in both cases, involve conceptions of social psychology.

Distinct from juristic explanations that justify the divergence of law from custom is the problem of the causes of that divergence. One cause, of which we have abundant evidence, is the will of a dominant class. The will of a dominant class is evident in changes in the law early in the history of jurisprudence, for instance, in the substitution of Roman law for the older German customary law in continental Europe. The public welfare required a law more suited than the German law to the needs of developing industry, but this public welfare aspect of the change does not explain it. It was due to the influence of a dominant class, working in its own interest. Thus we find that, as a result of the development of

commerce and the handicrafts in the sixteenth century, and of the decreasing importance of the agrarian class, that is, the lower nobility, the tendency in Germany was "toward princely centralization, at the expense of the empire on the one hand and the lower nobility on the other. . . . The knights, impoverished by high prices and the fall of land values, their fighting status made lower by gunpowder, rose in rebellion," [13] but in vain. The princes mastered the situation. To make good their domination, as well as to facilitate the development of the rising commercial class, they sought to replace the old German with the Roman law. "The old German law was a vast array of uncodified local laws and customs, varying with the principality, commune, town, village or manor. . . . The new economy demanded uniformity and precision, and the highly-developed and comprehensive system of Roman law which was ready at hand, suited it admirably." [14] "The princes counted on the assistance of the Roman jurists to legitimize what they had accomplished by force. . . . Jacob Wimpheling complains that 'according to the abominable axioms of the jurists the princes must be everything in the land and the people nothing.'" [15] And again: "'Who would not rejoice if the knights, burghers and peasants, loyal to the old customs, were to unite themselves and war manfully against these enemies, whose deceit and sophistry has done so much to undermine them?'" [16] "In spite of denunciation . . . the jurists continued to find lucrative employment. Their services were too valuable to those in power to cause a really serious effort to be made to oust them. Roman law continued to develop in Germany undisturbed, and by the end of the sixteenth century the old German law had practically disappeared." [17]

This change took place gradually, under the influence of the dominant class. "The method of procedure according to German law, or rather local customs and traditions, largely unwritten, was in sharp contrast to that of the Roman. Every case tried under German law was brought before a sort of jury-court, called the Schöffen, composed of the free inhabitants of the district. This

[13] Schapiro, "Social Reform and the Reformation," 41.
[14] *Ibid.*, 40.
[15] *Ibid.*, 41–42.
[16] *Ibid.*, 51–52.
[17] *Ibid.*, 52–53.

body tried the case and rendered the verdict which was pronounced by a presiding judge who was merely their mouthpiece. . . . Roman jurists were gradually introduced into these jury-courts in the following manner. The lord would appoint one . . . to sit with the Schöffen and advise with them. He soon made his influence felt, however, being generally much abler and more learned than his associates." [18] He finally displaced these German judges. "The jurist, now the sole arbiter, was appointed by the prince or lord, and his duty was to interpret a written code promulgated by the same authority. The machinery of justice being in complete control of the ruling powers, the subserviency of the jurists to the latter's interests was but natural. The lord could now easily work his will in the administration of justice since he both proclaimed the law and controlled the judge." [19] "Roman law was appropriate to an economic system based on a few great land-owners and a horde of slaves and dependents. Its ideal was that every individual was to seek his own advantage protected by the power of the state. The German law on the contrary was tinctured with communal ethics and emphasized the welfare of the group as against that of the individual. . . . The new jurisprudence had the effect of undermining the personal status of the German peasant. . . . The tendency, already strong, to reduce a comparatively free and prosperous peasantry to a state of hopeless serfdom by increasing dues and services, confiscating common lands and enforcing severe game laws, received a fresh impetus. . . . The jurists were of great service to the lords in getting up legal quibbles to despoil the peasant of his rights. . . . The legal tyranny of the lord could be more easily exercised now that he was *dominus* under Roman law." [20]

Thus did a dominant class gradually do away with the customary law of the land, which was "either discarded or absorbed by the foreign code." [21] Even though this development was resisted by so strong a conservative force as the Roman Church, because it favoured the claims of the princes as against those of the pope to temporal sovereignty,[22] it gradually prevailed. It was in line also

[18] *Ibid.*, 46.
[19] *Ibid.*, 47.
[20] *Ibid.*, 47–49.
[21] *Ibid.*, 53.
[22] *Ibid.*, 42–43.

with the intellectual enthusiasm of the time, which found satisfaction in its "logical reasoning, subtle distinctions and comprehensive principles."[23] These intellectuals became the ready servants of the dominant class.

Another cause of changes in law is changing requirements for the public welfare. This is seen in the history of criminal law, from its beginning in the attempt of a central authority in the interest of public order to punish crimes heretofore left to private vengeance, to the modern emphasis on the necessity of adequate penalties for the protection of the public from predatory capitalistic interests. The development of criminal law in the direction of the public welfare has been thwarted by the influence of a dominant class. This influence has acted on the law indirectly, through affecting public sentiment, which determines penalties. Penalties were at first determined, not by an intelligent purpose to deter from crime, but by an impulsive reaction against the criminal because of the crime,[24] which reaction depended on the class standing of the criminal. For instance, among barbarian peoples, the higher the class of the criminal, the smaller the fine he had to pay; the higher the class of the victim of the crime, the larger the fine exacted of the criminal.[25] Even at the present time the influence of a dominant class makes itself felt in the determination of penalties, contrary to the public welfare. Laws which in the nature of the case will apply only to wealthy offenders have ridiculously low penalties, in view of the gravity of the offence and the marginal utility of money to the rich; and some of those laws are made devoid of aspects of criminality, and have no penalties at all until experience proves that, without penalties, such laws are ineffective.[26] Furthermore, the anti-social action of the "respectable and strong" is often not forbidden by law, and, where forbidden, the law is often not enforced.[27] Where the social reaction against anti-social action is weakened by the prevailing attitude of admiration for or fear of the wealthy, an effective adjustment of penalty to crime is prevented.

[23] *Ibid.*, 42.

[24] Smith, "Criminal Law in the United States," 60–61.

[25] Westermarck, *op. cit.*, II: 19–20; Jastrow, "The Civilization of Babylonia and Assyria," 293–296.

[26] Brandeis, "The Constitution and the Minimum Wage," *Survey*, Feb. 6, 1915, 492.

[27] Henderson, "The Cause and Cure of Crime," 36–39.

Where the aggressive special interests have no traits that cause them to be admired but are disliked and detested, the popular reaction against them is most effective. This is illustrated by the movement to prohibit the manufacture and sale of liquor for beverage purposes. In the United States this movement has been strongest in rural districts in which the inhabitants had personal experience of the effect of the liquor traffic in debauching neighbours and relatives, in causing poverty, disorder, crime, insanity and all kinds of misfortune, so that, outside his own circle the saloonkeeper was the most detested man in the neighbourhood. In the South there was the added motive of fear of liquor-crazed Negroes. But in the great cities, with their lack of neighbourhood feeling, the evil developed until the aggressive liquor interests encountered another aggressive class,— business men who, especially during the war, feared the disorder that might be caused by liquor-drinking and regretted the economic waste of the traffic which consumed so much food products, and also regretted the diminished productivity of labour caused by liquor-drinking. This was the period of the passage of the Eighteenth Amendment to the Constitution forbidding the manufacture and sale of liquor for beverage purposes. The aggressive liquor interests were successfully curbed, so far as the fundamental law was concerned, but persisted wherever public sentiment permitted. After the war was over business interests — no longer fearful of the traffic because it interfered with the war activities, and prosperous and therefore more favourable to the use of liquor as a beverage, and inclined to allow workmen anything that would allay discontent — were less inclined to prohibition, so that in the manufacturing states there was a strong reaction against it. The prohibition movement is, therefore, an example of the successful curbing of a detested aggressive interest by the effective action of public opinion, unorganized, and also organized, for instance, in the Anti-Saloon League. The movement has been for the most part opposed by organized labour, officially at least, and it is doubtful if national prohibition would have been achieved unless public opinion had had the powerful support of business interests during the war period. The prestige of the committees,— which included prominent business men,— that were formed in the various cities to secure favourable legislative action on the proposed

amendment often converted an indifferent public opinion into a positive force for the Amendment.

One of the weaknesses of a prohibitory law lies in the fact that when the detested saloon-keeper disappears from view, the sentiment against the traffic weakens. On the other hand, a law has the effect of weakening the forbidden behaviour, not only because of fear of penalty but also because the existence of the law strengthens the social abhorrence of that behaviour. For the law puts the obedience-compelling power of the state — which to most people means so much,— with all its prestige, on the side of the abhorrence. And the greater the state, the greater its support — hence the preference of prohibitionists for national, instead of state laws. The evil of the disrespect for law which may be occasioned by passing a law that can be only partially enforced may, it is maintained, be more than compensated by diminishing the evil behaviour through removing the temptation thereto, and through strengthening the social abhorrence thereof.

The harm done by statutes that are " in advance of public opinion " is usually over-estimated because statutes are interpreted by the courts according to legal tradition, and law is, in the last analysis, as judges interpret it. Consequently the degree of deliberate purpose that is involved in law-making depends, in the last analysis, on the judge. If extremely conventional he may so interpret — or ignore — a statute as to make it practically identical with tradition; if extremely rational he may interpret it from the point of view of a rational social purpose with a minimum of attention to legal tradition; or, between the two extremes, he may use the practical reasoning of business men who are often unable to give an intelligent account of their mental processes, even to themselves,[28] but are nevertheless successful business men.

The public welfare purpose in legal regulations of industrial relations is most in evidence in laws affecting women and children. This is due to the fact that the sympathetic impulses are more easily enlisted on behalf of women and children [29] than of men. For this reason legal changes have been marked also in the treatment of juvenile delinquents. This tendency has been accelerated by the

[28] Brown, "Law and Evolution," *Yale Law Journal*, Feb., 1920, 397.

[29] Higgins, "A New Province for Law and Order," II, *Harvard Law Review*, XXXII: 191.

fact that adult criminals tend to begin their careers as juvenile delinquents. Consequently the analysis of the causes of crime begins with a study of the motives of juvenile delinquents. And where there are social-psychological studies of this kind there are most apt to be changes in law. The most careful studies of the causes of crime "show very clearly the immense importance of studying the causation of delinquency at the only time when it really can satisfactorily be studied, namely, during the years when delinquency begins. All of our experience goes to show that the many writers who insist that practically all criminal careers begin during youth are entirely correct. Not only is the high point for crime, according to ages, well within the later years of adolescence, but very many delinquents begin their careers even younger." [30] The study of the causes of crime must be made during these early years because, later, the individual has drifted away from his home and home town in which his criminal career began. He is a criminal from different impulses than at first and shows deterioration from dissipation, which is difficult to distinguish from innate mental defect; and besides this, "the many interesting and more subtle psychological considerations concerning the earliest growth of criminalism steadily become more difficult to discern." [31] In delinquents the instinctive impulses of conduct are less covered "with added experiences and their accumulation of memories." [32] It is necessary to know these essential motives of criminal behaviour if the courts are to act wisely in their treatment of delinquents. For, "to help the adjudicating authorities in their decisions they must not be given a mere bald statement of what the individual is on the physical side and on the mental side from the psychiatric standpoint; there is much more at the foundations of delinquency than that." [33] "Our whole work shows nothing more certainly than that no satisfactory study of delinquents, even for practical purposes, can be made without building sanely upon the foundations of all that goes to make character and conduct." [34]

Analysis of the psychological causes of crime has already worked some radical changes in punishment. However, these changes did

[30] Healy and Bronner, "Youthful Offenders," *Amer. Jour. Sociol.*, July, 1916, 38.
[31] *Ibid.*, 38.
[32] Healy, "Mental Conflicts and Misconduct," 55.
[33] Healy and Bronner, "Youthful Offenders," *Amer. Jour. Sociol.*, July, 1916, 39.
[34] *Ibid.*, 52.

not wait upon painstaking studies of the causes of crime but were initiated by men of discrimination and insight like Judge Ben B. Lindsey. He discerned the non-criminal nature of much juvenile delinquency,[35] before scientific investigations emphasized the predominant effect of environmental conditions upon character,[36] and wrought reforms in criminal law and procedure with a view to creating a favourable environment under the fostering care of the court and thereby reforming delinquents instead of confirming their criminal development by the usual judicial attitude[37] and the conventional punishments.[38] That is, progressive changes in methods of punishment sprang originally not from reasoned conviction as to just what results would follow from such changes but from the disposition of the judge, which varied from that of the prevailing type of judge. This exceptional judge was predominantly sympathetic and intellectual in disposition and altered procedure and punishment in line with his sympathetic and penetrating analysis on behalf of the delinquent and of society. Facilities for analysis of the causes of crime were then developed by these courts and further alterations in procedure and in treatment of the delinquent were made as the result of scientific analysis.

Social psychology is necessary, also, for an understanding of the motives of adult criminals. Criminal cases usually involve questions of motive and intention. It is said that "As to the nature of will and of the control exercised by it, it is not for lawyers to dispute, this being a problem of psychology or physiology, not of jurisprudence."[39] In the legal definition of motive and intention, social-psychology is still more intimately related to jurisprudence; the

[35] Lindsey, "The Reformation of Juvenile Delinquents Through the Juvenile Courts," "National Conference of Charities and Corrections," 1903, 210–228; Lindsey, "The Boy and the Court," *Charities*, XIII: 350–357; "The Beast," 74–152.

[36] Goldmark, "Boyhood and Lawlessness"; True, "The Neglected Girl."

[37] Healy writes that "we may, even at the risk of reiteration, emphasize once more the importance of attitude towards the offender. . . . It is most interesting to note that even young delinquents assume towards the law that sporting attitude which they conceive to be its own towards them. Even a little lad says, 'I'll take my medicine when the judge hands it out,' and an older fellow blurts out, 'It's one to ten (years) for assault with a deadly weapon and that's all there is to it. I took my chance and lost.' Set rules induce just this give-and-take attitude, not only on the part of the offender, but also on the part of the officers of the law." ("The Individual Delinquent," 171.)

[38] Lindsey, "The Problem of the Children and How the State of Colorado Cares for Them," 1904; Lindsey, "Children's Courts in the United States," *Document* 701, 58th Congress, 2nd Session, 28–132.

[39] Salmond, "Jurisprudence," 325–326.

difference of opinion between jurists as to the meaning to be given to these terms is due, in part, to defective psychological analysis.[40]

The problem of the enforcement of law and the punishment of crime is a social-psychological problem. It is said that punishment should be for some intelligent purpose, for the purpose of deterring from crime or of reforming the criminal. But, as a matter of fact, society does not punish from either of these purposes; punishment is an impulsive expression of society's hostile attitude.[41] The comparative seriousness of punishments is determined not according to the amount of punishment that is necessary to deter from particular crimes, but according to the impulsive reaction of the people.[42] As degree of punishment depends on popular impulse so the enforcement of law depends on popular impulse. Again take the case of a law prohibiting the manufacture and sale of liquor. In Maine the law was rigorously enforced only when its violation was open and flagrant and the violators angered the people by their open selling in defiance of the law.[43] Periods of rigorous enforcement were followed by periods of laxity.[44] But popular impulse can be turned to good account by an intelligent leadership. With a prohibitory law on the books, it is there to use when the people, awakened by an alert leadership, will to use it. On the other hand, if a law is not on the books, the people cannot meet an evil when they will to meet it. The idea that an evil must first be generally recognized and condemned before a law forbidding it is enacted is not adapted to this day of trained leadership and of the quick development of social evils into serious proportions.

The same situation is becoming increasingly prevalent in modern industry. Modern industry gives rise to abuses which do not stir public resentment except occasionally when they become known. They may arise from a motive which everywhere obtains in the business world and is not generally condemned. For instance, raising prices by agreement does not stir public resentment among the masses when done very cautiously, without marked effect, and without publicity. The profiteering that stirs resentment is the marked raising of prices, like that which took place during the years

[40] See the discussion in Cook, "Act, Intention and Motive in Law," *Yale Law Journal*, XXVI: 658–663.

[41] Mead, "The Psychology of Punitive Justice," *Amer. Jour. Sociol.*, XXIII: 590.

[42] Westermarck, "The Origin and Development of Moral Ideas," I: 198–200.

[43] Wines and Koren, "The Liquor Problem in its Legislative Aspects," 38.

[44] *Ibid.*, 38.

following the World War. Before the war there was much raising of prices by agreement but it was more cautious and less conspicuous. This practice was condoned by business men on the ground that, as one business man put it, "Those fellows are doing no more than you or I would do in our line. They want all there is in it. So do we. You can't blame them and I don't see how you can do anything about it." That is, cautiously holding goods by agreement for a moderate rise in price is so widely prevalent and arises from a motive that is so universal that, from the business point of view, "you can't blame them." There can be no resentment, and hence — so it is maintained — law can do nothing to remedy the evil. That is, without public resentment against an act, there can be no law prohibiting the act. This is the subconscious, traditional conception of effective legal action. It is contrary to the effective regulation of modern industry, for, if industry is to serve the public welfare, it requires legal regulations devised by experts, which the rank and file do not understand. These laws will forbid evil practices with penalties adequate to deter from their violation. When we come, therefore, to the constructive regulation of modern industry, we have laws that call forth little or no popular reaction.

The development of law for the expert direction of economic processes will be slow because of the lack of strong popular sanction, and also because of the adverse influence of a dominant class. The prevailing tendency among business men has been and still is to distrust every extension of state regulation to industry as apt to interfere with their opportunities to make money. Moreover they realize that the strength of all business interests is in union, that one line of business, by favouring the regulation of another business, weakens its own position against the public insistence on the regulation of business. It is realized that the rivalry of different propertied interests in England, causing one interest to grant concessions to labour and to the public in order to get votes, has weakened the position of all propertied interests,[45] and that this mistake should not be made by propertied interests in this country. Propertied interests should stand together against governmental interference with business operations. This strong opposition to governmental regulation for the public welfare suggests that law should be the command of the sovereign people which must over-ride all

[45] Beard, "American Government and Politics," 742.

opposition of a would-be dominant class. How far law does exercise this function is a question of fact.

The assumption of economic functions by the state has, therefore, brought to the fore again the principle of law as the command of the sovereign. This principle was maintained by Hobbes on behalf of the absolute monarch and against the jurists who regarded law as the logical perfection of customary law. He declared that custom is not law because it has long prevailed or because it is reasonable, but because the sovereign wills, either expressly or through his will manifested by his silence, that it shall be binding. With the development of constitutional government, which emphasizes the legislature as the supreme organ of the sovereign will, the theory of law as command lost the odium which attached to that theory as long as the ruler was still the supreme organ of the sovereign will. Austin, who wrote with the sovereignty of the legislature in mind, declared that customary law becomes positive law only when endorsed as a command of the sovereign power.[46] Finally, with the assumption of economic functions by the state and the increasing rôle of investigating and administrative commissions, the findings and regulations of which are little understood and supported by public sentiment, there has resulted a new emphasis on law as the command of the sovereign power. But this means something entirely different from the traditional conception of law as command. Both Hobbes and Austin meant that people submit impulsively, without question, without thinking that they may consider the purpose and reasonableness of the command. Law as command implied the servility of a conventional people. This attitude to law still widely prevails in the United States. But there has been developing a distrust of that part of law that has to do with the protection of privileged classes, a resentment on account of the aggressive special interests which very evidently regard law in quite a different light than command imposed on all. To those of the public who are cognizant of the way in which the recommendations of expert commissions are ignored by a government predominantly influenced by corporate interests,[47] and of the way in which corporations ignore the regula-

[46] Austin, "Lectures on Jurisprudence," II: *Lecture* XXX: 555.

[47] For instance, the Interstate Commerce Commission long insisted on being given power to define the purpose for which stocks and other securities should be issued by railway corporations, and to confine the expenditure of money realized to that purpose.

tions of commissions,[48] it is evident how seriously the will of a dominant class conflicts with law as a command of the sovereign people. Wherefore, thoughtful citizens are driven to reject the irresponsibility of the people implied in the old theory of law as command, and to admit the plain fact, namely, that if the law is to satisfy public needs, which is manifestly its function,[49] if it is to cease to be an instrument through which aggressive special interests have their will, contrary to the public welfare, then the citizen is responsible for fitting the law to public needs and enforcing it; and, unless he realizes his responsibility, law will continue predominantly to serve the interests of a dominant class.

(Interstate Commerce Commission, the New England Investigation, 616–617.) This power was withheld. (*Ibid.*, 582–592.) Again, the Federal Trade Commission pointed out the exploitation practised by coal companies, but up to 1920 nothing had been done to stop it. (Report of the Federal Trade Commission on Anthracite and Bituminous Coal, 1917, 13–20, 27–31, 40–43, 118–119.) See also Jones, "The Anthracite Coal Combination in the United States," Chs. IV–VII.

[48] For instance, see Interstate Commerce Commission, In Re — investigation of Accident on the New York, New Haven, and Hartford Railroad Near North Haven, Conn., on Sept. 2, 1913, 31, 35.

[49] Duguit, "Law in the Modern State," trans. by Laski, Ch. II. Introduction by Laski, xx.

CHAPTER XIII

PSYCHOLOGICAL IMPLICATIONS OF THE THEORY OF NATURAL RIGHTS

WE have seen that, in spite of the judicial tendency to interpret law according to precedent, judges have been forced to recognize social-psychological processes; that, for a long period, they justified deviations from precedent under the conception of a law of nature, a higher law from which the deviations were deductions. With the rise of popular government and the forced recognition on the part of judges of changes in public opinion, the *raison d'être* of a law of nature passed away. Government by the people has forced the consideration of public opinion in the making of judicial decisions, as well as in legislation; it has come to be recognized that judges have a legislative function, and that interpretations of law may, in some instances, be more largely legislative than logical deductions from precedent. The conception of natural rights[1] and natural law has accordingly passed, except in so far as impulses of human nature act with a regularity and an insistence for legal recognition that justifies the analogy of a legal demand.

Owing to the fact that government by the people is a recent achievement, there was, until recently, no conception of interests which the people were entitled to have satisfied through legal provisions. Deviations from precedent that were forced by social conditions were explained as deductions from natural law which was immutable and above the customary and positive law. Among the Greeks natural law was conceived as in origin, impersonal, showing itself in individual reason and conviction.[2] Through the exercise of reason in accordance with natural law, the individual promoted the interests of the state. Natural law was conceived, therefore, as the higher law of the state. The laws of physical

[1] For the different senses in which the word "right" is used in law books see Pound, "Legal Rights," *Intern. Jour. Ethics*, Oct., 1915, 92–116.

[2] Windelband, "A History of Philosophy," 73.

and of human nature were vaguely conceived as aspects of this higher law. When the Greek states fell before the Macedonian conqueror, natural law came to be regarded as the law of the reason of man and of the universe, whereby, through the exercise of reason in conformity with the laws of the universe, the individual was enabled to remain imperturbable in the presence of injustice and despotism and to become a citizen of the universe.[3] With the rise of the Roman Empire, Cicero identified this eternal and universal law of nature with the Roman law,[4] which made the rule of the emperor supreme; whereby the idea of natural law as universal reason and as opposed to despotic rule was replaced by the identification of the law of nature with the command of a world emperor. Cicero's idea of natural law was adopted by Thomas Aquinas, but Aquinas declared that natural law was subject to correction by the divine law of revelation which is the expression of the will of God.[5] Bodin, an apologist of absolutism, maintained that the sovereign of a state must rule rationally, that is, in accordance both with the law of God and with the law of nature, which represents the mandates of justice.[6] Hobbes, also an apologist of absolutism, declared that "law, properly, is the word of him that by right hath command over others."[7] In case of a conflict between the will of the ruler and the alleged divine law "subjects are bound to obey that for divine law which is declared to be so by the laws of the commonwealth."[8] And, as for the law of nature, this becomes law proper only when it is embodied in commands of the ruler.[9]

Locke rejected Hobbes' conception and declared the legislature to be the supreme governmental organ, though not absolute, for it is bound to legislate according to the law of nature. Of this law he says: "To understand political power rightly and derive it from its original, we must consider, what state all men are naturally in, and that is *a state of perfect freedom* to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man." "The *state of nature* has a

[3] Dunning, "Political Theories," *Ancient and Mediaeval,* 104.
[4] *Ibid.,* 163–164.
[5] *Ibid.,* 193, 196–197.
[6] Bodin, "Six Books Concerning the State" (1576), translated by Knolles, 104–106.
[7] "Leviathan." Ch. XV.
[8] *Ibid.,* Ch. XXVI.
[9] *Ibid.,* Ch. XXVI.

law of nature to govern it . . . and reason, which is that law, teaches all mankind . . . that being all *equal and independent,* no one ought to harm another in his life, health, liberty, or possessions; for men being all the workmanship of one omnipotent, and infinitely wise maker . . . are his property . . . made to last during his . . . pleasure. . . . Every one, as he is *bound to preserve himself,* and not to quit his station wilfully, so . . . may not . . . impair the life . . . the liberty, health, limb or goods of another." [10] If the legislature fails thus to preserve the political independence of the individual that is guaranteed by the law of nature, " the community perpetually *retains a supreme power* of saving themselves from the attempts and designs of any body, even of their legislators, whenever they shall be so foolish, or so wicked, as to lay and carry on designs against the liberties and properties of the subject." [11]

The natural law was held to be contrary not only to class domination within the nation that subverted individual liberty but also to the struggle for domination between nations. Thus Grotius declared war to be contrary to human nature which has a " natural impulse to social life." [12] He discussed international relations in the light of his principle of " abstract justice " which he declared to be a " fixed and eternal law of nature." This principle " embodies merely his own personal ideal — wise and noble, indeed, but nevertheless purely subjective — of the principles which would conduce most to the happiness of mankind." The chief value of the idea of natural law seems to lie in the facility it affords for sheltering his own opinions under the more dignified category of natural law.[13]

This individualistic aspect of the theory of natural rights was again emphasized by Rousseau who, in his reaction against the exploiting class rule of eighteenth century France, declared that all men, as individuals, are endowed by the Creator with natural rights, and that from these develop natural law on which all law is based. The state was said to have originated in a compact between governors and governed in which the latter gave the former their powers to govern but did not surrender their natural rights

[10] " Two Treatises of Government," Bk. II: Ch. II.
[11] *Ibid.,* II: sec. 149.
[12] Dunning, " Political Theories, From Luther to Montesquieu," 174.
[13] *Ibid.,* 170.

which they had as men, and of which they might not be deprived by the governors.[14] This emphasis on the rights of the individual has continued in French thought to the present day, but the rights are no longer emphasized as natural rights. They are rights which the individual possesses in virtue of his personality, and which cannot be taken away from him without his ceasing to be a man. This principle of individual rights is said to rest "on faith in the absolute value, in the inimitable originality, of the human will. . . . The idea of the sublime dignity of the human person is what the eighteenth century has bequeathed to us." [15] "Justice lies in the will and the effort to assure to moral persons the effective enjoyment of rights which have previously been recognized for them; and it is possible to reduce these to two, namely, the right to live and the right to develop one's self through culture. A just citizen would be one who wishes to manage social and political institutions in such a way that this double right would be recognized in principle — assured in fact — to his fellow citizens." [16] The Frenchman likes to associate with individual desires that are widely felt some semblance of legal right, while the American, less inclined to look to the state for protection, is content with letting such desires remain private interests until there is a general demand that they be provided for by the state.

Social classes like individuals have shown an inclination to give their desires a legal dignity by identifying them with natural rights. Thinkers who sympathized with a rising class have been more apt to appeal to natural law as sanctioning the alleged rights of that class than have those who represented an aristocracy long in control, because the alleged rights of the latter had weight from the mere fact that they were in accord with tradition. Those who resisted autocracy justified their resistance on the theory of natural rights. Thus the American revolutionists, in their defiance of the autocratic king, relied on the concept of the law of nature as used by Locke,[17] and made this central in their Declaration of Independence, which began as follows: "When, in the course of human events, it becomes necessary for one people to dissolve the political bonds which have connected them with another, and to

[14] Rousseau, "The Social Contract," Bk. I, Chs. II–VII.
[15] Michel, "L'Idée de L'État," 60, 644.
[16] *Ibid.*, 646.
[17] Merriam, "American Political Theories," 89–92.

assume, among the powers of the earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

"We hold these truths to be self-evident: That all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That, to secure these rights, governments are instituted among men, deriving their just powers from the consent of governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, . . ." In the state constitutions of the time the same natural right ideas occur, expressed in different language.[18]

While autocracy was still firmly in control in England, judges and juries maintained that the autocrat's will was limited by the requirements of the law of nature. Blackstone defined law as "a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong." [19] By right and wrong Blackstone meant whether or not in harmony with those natural rights "which God and nature have established." Later, Austin opposed Blackstone's definition and maintained that whatever a sovereign commands is law,[20] regardless of whether or not it conforms to custom or natural law or divine law; and that sovereignty rests on the fact that "the bulk of the given society are in a . . . habit of obedience or submission to a determinate and common superior." [21] This represented the condition of England at the time Austin wrote. The struggle between Parliament and the arbitrary king was now settled; "the king in Parliament," or, practically, Parliament, was now sovereign and "that is the only power which can issue supreme and uncontrolled legal commands." [22] A law of Parliament is recognized as supreme even over the English common law and constitution.[23] Parliament was the sovereign which Austin had in mind; and with the sovereignty

[18] *Ibid.*, 54–59.

[19] Blackstone, "Commentaries on the Law of England" (edition of 1791), 53–54.

[20] Austin, "Lectures on Jurisprudence," I: Lecture I.

[21] *Ibid.*, I: 226.

[22] Pollock, "Sovereignty in English Law," *Harvard Law Review*, VIII: 248.

[23] Lowell, "The Government of England," I: 8–10; Dicey, "The Law of the Constitution," 36.

of Parliament undisputed, there was no further use for the conception of natural law, so far as Austin was concerned; for he acquiesced in the political control of the propertied classes which, alone, were represented in Parliament, and did not take seriously the aspirations for political rights of the non-propertied masses.

The juristic theory of the eighteenth century was, then, based on the fiction of natural rights. "Eighteenth-century juristic theory, down to Kant, holds to four propositions: (1) There are natural rights demonstrable by reason. These rights are eternal and absolute. They are valid for all men in all times and in all places. (2) Natural law is a body of rules, ascertainable by reason, which perfectly secures all of these natural rights. (3) The state exists only to secure men in these natural rights. (4) Positive law is the means by which the state performs this function, and it is obligatory only so far as it conforms to natural law. The appeal is to individual reason. Hence every individual is the judge of this conformity. Also on this theory natural rights alone are legal rights, for law is only a means of securing them. Pushed to its logical limits, this leads straight to anarchy, and, indeed, the philosophical anarchist still proceeds upon this line. But the eighteenth-century writers who taught that every man's conscience was the measure of the obligatory force of legal rules assumed a sort of standard conscience, a standard man's or conscientious man's conscience analogous to the prudence of the reasonable man in our law of torts." [24] Natural law was, thus, assumed to have as its end to maintain and protect individual interests; and this was also the end of the English common law. "Hence the Americans of the end of the eighteenth century argued for either or both. The declaration of rights of the Continental Congress in 1774 asserted the legal rights of Englishmen. The Declaration of Independence two years later asserted the natural rights of man. Yet each claimed the same things.

"From this identifying of common-law rights with natural rights it followed that the common law was taken to be a system of giving effect to individual natural rights. It was taken to exist in order to secure individual interests not merely against aggression by other individuals but even more against arbitrary invasion by state

[24] Pound, "The End of the Law as Developed in Juristic Thought," *Harv. L. Rev.*, XXVII: 623–624 (quoted without footnotes).

or society." [25] This attitude to the common law has survived, in the United States, in the attitude to the Constitution, which has been assumed by the judiciary to protect individuals against governmental interference in their economic activity; and some judges have even alleged that the constitutional rights of the individual, as interpreted by them, were natural rights. Thus "these rights obtained a judicial protection which prevented their violation by any other governmental authority." [26]

After independence from Great Britain had been achieved, the impulse of property owners to dominate the national situation [27] succeeded the impulse of resistance against the domination of the English government; and there came a reaction against theories of natural rights and natural law.[28] The Constitution of the United States in its original form contained few, if any, provisions relative to these natural rights. But it "was ultimately adopted only on condition that they should be enumerated in a bill of rights to be appended to the Constitution as adopted. This was subsequently done, and they appear as Amendments I to IX. The Ninth Amendment to the United States Constitution is an expression characteristic of the feeling of the time that these natural rights existed independently of all law. It reads: 'The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.'" [29] The prejudice against the idea of natural rights pertaining to all individuals continued after the adoption of the Constitution and was one of the essential attitudes which characterized the federalist party in its opposition to the party of Jefferson. Leaders of the former party stood for the alleged natural right of an upper class to dominant political rule; Jefferson, author of the Declaration of Independence, stood for the natural rights of the individual which made all men politically equal. John Adams declared that social classes rested on necessary distinctions in ability, wealth and influence, and that the upper classes are the natural governing class.[30] These ideas were opposed by Jefferson, who asserted the supremacy of natural law,

[25] *Ibid.*, 625 (quoted without footnotes).
[26] Goodnow, "Principles of Constitutional Government," 260.
[27] Beard, "An Economic Interpretation of the Constitution of the United States," Chs. V–VII.
[28] Merriam, *op. cit.*, 99–103.
[29] Goodnow, *op. cit.*, 260–261.
[30] Beard, "Economic Origins of Jeffersonian Democracy," Ch. XI.

and maintained that men surrender none of their natural rights by the formation of government but rather make them more secure.[31] He admitted men were by nature unequal in ability and declared: "That form of government is the best which provides the most effectively for a pure selection of these natural aristoi into the offices of government." [32] He regarded the influence of the "artificial aristocracy" of wealth and birth as dangerous but believed that generally only natural aristoi would be chosen to office.[33] To this end he emphasized the necessity of the education of the electorate.[34] Political leaders he regarded as of two classes, those who distrust the people and believe they must be dominated or cajoled, and those who regard the people as intelligent beings and susceptible to intellective control.[35] This confidence in the intelligence of the people was essential in Jefferson's democratic attitude. His attitude throughout his political career was one of resistance to the larger propertied interests on behalf of the smaller propertied interests and the classes without property.[36]

The doctrine of the natural rights of the individual has continued to affect the development of jurisprudence in the United States down to the present time. The judicial inclination to regard natural law as above positive law has survived in American jurisprudence in the form of the inclination to regard as unconstitutional, laws which, in the opinion of judges, in any way interfere with that natural right of a citizen to acquire wealth which the judges assume to be guaranteed by certain provisions of the Constitution.[37] And certain judicial decisions have even assumed freedom of economic contract to be guaranteed by the Declaration of Independence and therefore binding.[38] Natural law has been used

[31] Merriam, *op. cit.*, 147.
[32] *Ibid.*, 156.
[33] *Ibid.*, 156.
[34] *Ibid.*, 159.
[35] *Ibid.*, 162–163.
[36] Beard, *op. cit.*, 227, 387.
[37] Goodnow, "Social Reform and the Constitution," 336; Goodnow, "Principles of Constitutional Government," 259–269.
[38] Instance the opinion delivered by Justice Field: "I cannot believe that what is termed in the Declaration of Independence a God-given and inalienable right can be thus ruthlessly taken from the citizen. . . . The right to follow any of the common occupations of life is an inalienable right; it was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence." (Butchers' Union, Co. v. Crescent City Co., 111 U. S. 746, 756. 1883. Quoted by Haines, "The Law of Nature in State and Federal Judicial Decisions," *Yale Law Journal*, XXV: 632.) For the in-

to guarantee the inviolability of vested propertied rights and freedom of contract, and to forbid legislatures to exercise "arbitrary power" against these rights.[39] Both these rights work for the advantage of reactionary capitalistic interests against the workers. Judicial insistence on freedom of contract has annulled much labour legislation. This judicial action culminated in the dictum of Justice Harlan that "the employer and the employee have equal right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land."[40] The prejudice of judges in favour of the individualistic attitude to property, which has prevailed among business men up to the present time,[41] subconsciously inclined judges to the acceptance of the conception of natural rights, which served legally to justify that attitude.[42] This judicial attitude, thus justified, gave its direction to the interpretation of the Fourteenth Amendment. "When the Fourteenth Amendment first came before the court in the Slaughterhouse cases,[43] the four dissenting justices, under the lead of Mr. Justice Field, sought to pour into the general words of the Due Process clause the eighteenth century 'law of nature' philosophy. This attempt gradually prevailed and Mr. Justice Field's dissent in effect established itself as the prevailing opinion of the Supreme Court.[44] In Allgeyer v. Louisiana,[45] we reach the crest of the wave. The break comes with the Lochner case.[46] Mr. Justice Holmes has given us the

fluence of the above opinion in the development of the constitutional doctrine of liberty of contract see Pound, "Liberty of Contract," *Yale Law Journal*, XVIII:454. Haines notes that in support of this contention of Justice Field, Justice Brewer claimed that the first ten amendments to the Federal Constitution enacted those rights of person and property which by the Declaration of Independence were affirmed to be inalienable rights. (*Ibid.*, 632–633.)

[39] Haines, *op. cit.*, 639–648.

[40] Adair v. United States, 208 U. S. 161, 175.

[41] Mr. J. A. Emery, in an address before the National Association of Manufacturers, 1908, said of the Adair decision: "A great decision, in terse, vigorous and illuminating language, vindicated in the most striking manner these original and inalienable natural rights which are the first possession of each individual." "I am sure we all realize that it is practically impossible to think of personal liberty without also thinking of personal property. For the moment a man begins to exercise his mental faculties, their application results in some reward to him, and whether it be little or great, the fruit of this activity is property." (Reprint of address, 15–16.)

[42] Goodnow, "Principles of Constitutional Government," 266–267.

[43] 16 Wall (U. S.) 36.

[44] See Dean Pound, "Liberty of Contract," 18, *Yale L. J.*, 454–470.

[45] 165 U. S., 578.

[46] 198 U. S., 45.

explanation for this attempt to make a permanent prohibition of a temporary theory. 'It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong. I think we have suffered from this misfortune, in State Courts at least, and that this is another and very important truth to be extracted from the popular discontent. When twenty years ago a vague terror went over the earth and the word socialism began to be heard, I thought and still think that fear [47] was translated into doctrines that had no proper place in the Constitution or the common law. Judges are apt to be naif, simple-minded men, and they need something of Mephistopheles. We too need education in the obvious — to learn to transcend our own convictions and to leave room for much that we hold dear to be done away with short of revolution by the orderly change of law.' " [48]

On the whole, therefore, the influence of the conception of natural rights on legal development in the United States has been to support the position of a reactionary dominant, propertied class. Under the subconscious influence of their upper class bias, judges have assumed that the employer has a natural right to be protected, in the use of his property, from attempts of the legislature to restrict that use for the welfare of employés and for the public welfare.[49] The result of "the attempt on their part to fix the relations between employer and employed through their postulation of these substantive rights has precipitated them into the struggle

[47] That this fear has been an unconscious factor he has told us elsewhere. "When socialism first began to be talked about, the comfortable classes of the community were a good deal frightened. I suspect that this fear has influenced judicial action both here and in England, yet it is certain that it is not a conscious factor in the decisions to which I refer. I think that something similar has led people who no longer hope to control the legislatures to look to the Courts as expounders of the Constitution, and that in some courts new principles have been discovered outside the bodies of those instruments, which may be generalized into acceptance of the economic doctrines which prevailed about fifty years ago, and a wholesale prohibition of what a tribunal of lawyers does not think about right. I cannot but believe that if the training of lawyers led them habitually to consider more definitely and explicitly the social advantage on which the rule they lay down must be justified, they sometimes would hesitate where now they are confident, and see that really they were taking sides upon debatable and often burning questions." "The Path of the Law," 10, *Harv. L. Rev.*, 457, 467.

[48] "Speeches of Oliver Wendell Holmes, 'Law and the Court,' speech at a dinner of the Harvard Law School Association of New York on February 15, 1913, 98–102." The entire quotation with the notes is from Frankfurter, "The Constitutional Opinions of Justice Holmes," *Harvard Law Review*, XXIX: 690–691.

[49] Goodnow, "Principles of Constitutional Government," 266–267.

between capital and labour. The courts in the United States have thus become important factors in the determination of questions elsewhere usually regarded as questions of legislative policy, and to the extent that they have taken sides in the bitter political struggles incident to the settlement of these questions have lost the position of impartial arbiters between man and man on the base of the rule of law to be made by the legislative authorities of the country." [50]

As distinguished from this judicial use of the fiction of natural rights " to consecrate the existent state of affairs, whatever its distribution of advantages and disadvantages," [51] the use of the fiction to justify departures from legal precedent on behalf of justice and in accordance with reason, is seen in the grounds implied for the judicial application of the test of reasonableness to legislative acts passed under the police power of the legislature.[52] Natural law has been used, therefore, in the jurisprudence of the United States, mainly for the protection of propertied interests, but has been used also for the protection of the working classes against capitalistic exploitation.

It has been used also, against legal tradition, in the adjustment of the rights of foreign-born citizens naturalized in the United States, and in the slavery controversy. Let us take, first, its use in the adjustment of the rights of foreign-born citizens. International law has maintained that a citizen has no natural right of expatriation. He cannot renounce his allegiance to his native land without the express permission of the laws of that land, consequently he cannot swear allegiance to another country unless permitted by the laws of the land of his former allegiance. Nevertheless, during the nineteenth century, our statesmen more than once acted on the implicit assumption of a natural right of expatriation.[53] And, in 1868, Congress passed a law declaring the right of expatriation to be " the natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness." [54] By this action the government of the United States contradicted the legal doctrine of its own jurists from the begin-

[50] Goodnow, *op. cit.*, 268; Adams, "The Theory of Social Revolutions," 111–117.
[51] Dewey, "Nature and Reason in Law," *Intern. Jour. Ethics*, XXV: 31.
[52] Haines, *op. cit.*, 648–651.
[53] Moore, "The Doctrine of Expatriation," *Harper's Magazine*, January, 1905, 226–232.
[54] *Ibid.*, 232.

ning.[55] The law of Congress was contrary to international law and to the law and custom of all nations up to that time; hence the appeal to natural law. It was passed under the patriotic impulse of the people and the government to protect naturalized foreigners as American citizens against the coercion of the government of their native land, if they returned there.[56]

Another occasion on which the natural law conception of the Declaration of Independence was invoked, in opposition to the law of the land, was the slavery controversy. Throughout the slavery controversy those opposed to slavery appealed to natural rights while those for slavery denounced the idea of natural rights. Calhoun, the leader in the formulation of the pro-slavery argument, said concerning the assertions of the Declaration of Independence: "Nothing can be more unfounded and false than the opinion that all men are born free and equal." [57] The anti-slavery protagonists, on the other hand, asserted a "higher law," [58] holding that the inalienable rights named in the Declaration of Independence belonged to all men. Seward declared that "there is a higher law than the Constitution," and that slavery was contrary to the laws of God.[59] Lincoln would not accept Seward's idea of a higher law,[60] but maintained that the Declaration of Independence applied in the slavery controversy. "I have said that I do not understand the Declaration to mean that all men were created equal in all respects. They are not our equal in color; but I suppose that it does mean to declare that all men are equal in some respects; they are equal in their right to 'life, liberty, and the pursuit of happiness' . . . in the right to put into his mouth the bread that his own hands have earned, he is the equal of any other man, white or black." [61]

The theory of absolute and eternal natural rights, which entered into and became the foundation of our political and juristic system, was at that early day discredited by the criticism of Kant.

[55] *Ibid.*, 225–226.

[56] *Ibid.*, 228–232.

[57] Cralle, "The Works of John C. Calhoun," II (New York, 1853–56), 630, quoted by Dodd, "The Social Philosophy of the Old South," *Amer. Jour. Sociol.*, May, 1918, 741

[58] Hosmer, "The Higher Law," Chs. II–V.

[59] Merriam, *op. cit.*, 212.

[60] Hapgood, "Abraham Lincoln," 157.

[61] Nicolay and Hay, "Complete Works of Abraham Lincoln," III: 186. See also III: 46–49.

"While we were receiving the eighteenth-century theory in America and were making it the foundation of our political and juristic structures, the theory was about to get its death-blow at the hands of Immanuel Kant. If in fact the individual conscience was made the sole test, the theory could be practically tolerable only at a time when absolute theories of morals prevailed. . . . When absolute theories began to be discarded and ultimate authorities were no longer recognized; when, moreover, classes with divergent interests came to hold diverse views upon fundamental points, natural law in the eighteenth-century sense became impossible. . . . Kant sought to find the basis of rights and of justice as a means of securing rights in some ultimate metaphysical principle, some ultimate datum from which rights might be deduced. He found this fundamental idea in freedom of will. He conceived that the problem of law was to reconcile conflicting free wills. He held that the principle by which this reconciliation was to be effected was equality in freedom of will, the application of a universal rule to each action which would enable the free will of the actor to coexist along with the free will of every one else. The whole course of nineteenth-century juristic theory was determined by this conception." [62] Kant's postulate of the free willing man had no more scientific foundation than had the man of the standard conscience of natural law. "Man *in abstracto,* as assumed by philosophies of law, has never actually existed at any point in time or space." [63] This change of base of jurisprudence, therefore, did not free it from the errors of unanalysed assumptions. There remained, as before, the necessity, though unrecognized, of a correct psychological basis for juristic assumptions.

The terms natural rights and natural law are no longer used by philosophers and jurists; but the conception continues operative in the attitude of the courts to the constitution, in the way above indicated. As we have seen, the conception of natural rights has had several distinct functions. It has been used to justify a formulation of international relations contrary to the customary form; to justify the resistance of subjects to, and constitutional limitations on, autocratic rule; to justify autocratic rule; to justify changes in the interpretation of law for the sake of a nearer ap-

[62] Pound, "The End of Law as Developed in Juristic Thought," *Harv. L. Rev.,* XXVII: 627–628.

[63] Wundt, "Ethics," trans. by Gulliver, Washburn and Titchener, III: 160.

proximation to justice under changed conditions; to justify the resistance of the domination of an aristocratic class by a new and increasingly powerful propertied class; to justify the assertion, by a dominant class, of a right to be protected, in the use of its property, from attempts of the legislature to restrict that use for the welfare of employés and for the public welfare; and to justify the right of the legislature to pass laws on behalf of a class without political rights, or which, with political rights but without property, is too weak to resist exploitation without the help of the strong arm of the state. The conception of natural rights was used originally to justify the individual in rational behaviour contrary to custom and customary law. It was conceived as the higher law of the state; whereupon the individual who acted in accordance with reason and with this law was a more truly patriotic and efficient citizen than one who acted according to customary law. But, like other conceptions, after it acquired prestige it came to be used to endorse the alleged rights of an autocrat, and of a dominant class.

The conception of natural law is essentially different from the modern idea of law which assumes, not an individual with a God-given original nature, protected in his self-expression by God-given natural rights, but a conflict of groups for the control of the law-making power, and law as the outcome of this conflict. The original natures of the members of the conflicting groups are modified by the group attitudes they have acquired, and they act according to those attitudes. The meaning of justice always depends, therefore, on the exigencies of the group conflict, out of which comes the demand for justice. For instance, a rising propertied class may seek to abolish the legal privileges with which the old aristocracy buttressed its political and economic dominance. The justice which the rising propertied class seeks is freer political and economic opportunity for itself. This conflict determines that the "just" principle of the law shall be that of the free rivalry of propertied classes. But a class without property cannot take advantage of the opportunities for free rivalry legally guaranteed to the rising propertied class. For the non-propertied class the law does not guarantee free rivalry. Hence justice may mean at least two entirely different things. It may mean giving to one propertied class the same political privileges enjoyed by another or, what is the same thing, taking away from a propertied class exclusive

privileges; or it may mean improving the economic position of a class which is without property and hence without the means of free rivalry in political affairs, and which is, on this account, in a position to be exploited by the propertied classes in the course of their political and economic rivalry.[64] The realization of the first type of justice was sought in the third stage of legal development referred to in a preceding chapter; the second type of justice is beginning to be sought in the fourth stage of legal development.

The first type of justice does not involve a rational conception of public welfare; the second type does. For, inasmuch as the great mass of citizens belong to the class without property, public welfare requires that the masses be protected in their work to the extent of providing conditions of labour and remuneration sufficient for their maximum vitality and progressive self-development.[65] But judges are slow to grasp the national welfare ideal and the importance of the protection and self-development of the workers. Being ignorant of the living conditions of the workers, they are still largely bound by traditional juristic principles. As Mr. Roosevelt said of a bill to prohibit the manufacture of cigars in tenement houses, which he championed when a member of the New York legislature: "The Court of Appeals declared the law unconstitutional, and in their decision the judges reprobated the law as an assault upon the 'hallowed' influences of 'home.' It was this case which first waked me to a dim and partial understanding of the fact that the courts were not necessarily the best judges of what should be done to better social and industrial conditions. The judges who rendered this decision were well-meaning men. They knew nothing whatever of the needs, or of the life and labor, of three-fourths of their fellow-citizens in great cities. They knew legalism, but not life. Their choice of the words 'hallowed' and

[64] "As the doctrines of divine right formerly had no permanent validity for the rising middle class, so the doctrines of individual liberty — trial and indictment by jury and due process of law — do not have the same reality to the working-man that they have to members of the possessing group. Freedom of contract between an employer and an employe with a few days' supplies behind him obviously cannot have the same meaning that it has between persons similarly situated as far as economic goods are concerned. To discourse on the liberty afforded by jury trial to a man who has never appeared in a court but often suffers from considerable periods of unemployment is to overlook the patent fact that liberty has economic as well as legal elements." (Beard, "American Government and Politics," 732–733.)

[65] Goldmark and Frankfurter, "The Case for the Shorter Work Day," U. S. Supreme Court, Bunting vs. State of Oregon, 1915, 471–605.

'home,' as applicable to the revolting conditions attending the manufacture of cigars in tenement-houses, showed that they had no idea what it was they were deciding. Imagine the 'hallowed' associations of a 'home' consisting of one room where two families, one of them with a boarder, live, eat, and work! This decision completely blocked tenement-house reform legislation in New York for a score of years, and hampers it to this day. It was one of the most serious setbacks which the cause of industrial and social progress and reform ever received." [66] In their interpretations of law, "lawyers and judges should have an extensive knowledge of economic conditions. The acquisition of such knowledge should be a part of their training for their profession. It may be added that just as the lawyer must, to be successful, keep up his legal studies after admission to the bar, so the really great and successful lawyer and judge must keep up his economic studies, if he is to wield the proper influence he should have on the development of the law." [67]

Though there is no longer any belief in an existing natural law, jurists recognize extra-legal forces that voice themselves in demands for justice and cause changes in the law. Some of these jurists have attempted to make a conception of these extra-legal forces central in their science of jurisprudence. Among these is the brilliant French jurist, Léon Duguit. A brief statement of his theory will suggest the intimate relation of social psychology to jurisprudence. His essential assumption is that of the solidarity of the members of a social group. This arises from a sense of common needs that can be satisfied only by co-operation, and of diverse needs that can be best satisfied by an exchange of products and services requiring different aptitudes.[68] From the social solidarity thus originating springs law. Law is not the command of a sovereign will imposed upon an inferior will.[69] Nevertheless, citizens must obey law.[70] For, since social solidarity is necessary to man's self-development, it follows that the impulse for self-development obliges men to behave in a way to promote the social soli-

[66] "Theodore Roosevelt — An Autobiography," 89–90.
[67] Goodnow, "The Relation of Economics to the Law." *Survey*, March 4, 1911, 937.
[68] Duguit, "L'État, de droit objectif et la loi positive," Ch. I; Duguit, "Manuel de droit constitutionnel," 9.
[69] Duguit, "Law in the Modern State," trans. by Laski, 70.
[70] *Ibid.*, 70–71.

darity. This is not a moral but a legal obligation. "The moral law considers man in the fulness of his being, both with respect to his mental states and his outward conduct. The jural principle (*la regle de droit*) looks only to the outward manifestations of the human will. It applies only to wills entering into relation with other wills." [71] This rule of conduct is a rule of law (*le droit objectif*) which is binding on every individual; [72] rulers must employ the force at their disposal to promote the social solidarity.[73]

Duguit distinguishes, therefore, between what he calls "normative" law — the obligatory rules of conduct — and "constructive" law — rules that have been given a formal legal sanction.[74] He writes that the ideal of normative law "has been remarkably worked out by Professor Dicey in his fine book on 'Law and Public Opinion.' [75] 'There exists at any given time a body of beliefs, convictions, sentiments, accepted principles, or firmly rooted prejudices, which, taken together, make up the public opinion of a particular era, . . . and . . . the influence of this dominant current of opinion has, in England, . . . determined, directly or indirectly, the course of legislation.'" [76] By normative law, therefore, Duguit has reference to the social-psychological basis of jurisprudence, at least part of it. He maintains that there are no natural rights of the individual independent of normative law. But his theory of normative law would function, in juristic thinking, not very differently from the theory of natural law.[77] However, Duguit denies the existence of rights, natural and legal, and asserts the existence of duties, which follow from the individual's position in society. It is the duty of individuals not to seek to satisfy their personal impulses unless these are common to many; then they ought to be satisfied in order to preserve the social solidarity. And every one who can contribute to such satisfaction is bound so to do by *le droit objectif*.[78] The basis of the sense of duty is in the impulse of the individuals of a group to disapprove of one of their number who acts in a way to weaken the social solidarity, and in

[71] Duguit, "The Law and the State," *Harvard Law Review*, XXXI: 4.
[72] Duguit, "L'État, le droit objectif et la loi positive," 116.
[73] Duguit, "L'État, les Gouvernants et les Agents," 153.
[74] Duguit, "Law in the Modern State," 71–74.
[75] "Law and Public Opinion" (2nd ed.) p. 19.
[76] Duguit, "Law in the Modern State," 72.
[77] Laski, Introduction to Duguit, "Law in the Modern State," xxx.
[78] Duguit, "Manuel de droit constitutionnel," 18.

the impulse to avoid this disapproval by conforming to the laws of the group. These motives are, says Duguit, the basis of all law and are found in groups which have not yet passed under the domination of rulers and become part of a state, as well as in a state.[79] In a state the rulers must rule according to the law of social solidarity,[80] and any legislative measure, judicial decision, or executive order contrary thereto is not law and no one is bound to obey it.[81] Thus it is denied that law is a command of a sovereign will.[82] But Duguit gives no suggestion for ascertaining definitely what the law of social solidarity is in any instance. He says it is in perpetual evolution; [83] and he suggests the creation of a tribunal, made up of representatives of all classes, which shall determine the legality of law.[84] Thus his final appeal is from the mass psychology of group solidarity to a rational theory of progress administered by the intellectual élite of the group. And he seems to incline to a written constitution which will give authoritative formulation to normative law.[85]

Duguit's theory is an effort to base jurisprudence on scientific assumptions as to the extra-legal forces which determine law. It is a revolt against the prevailing practice of jurists of reasoning from dogmatic assumptions as to these extra-legal forces. Thus English law makes of the individualistic economic relation a legal dogma, which is sanctified by a long line of precedents and justified with the sweeping generalization that "free competition is worth more to society than it costs," [86] in spite of the fact that "this is denied by an important school." [87] Duguit denies the fact of free competition between the parties to a labour contract, and declares that "what is called a collective labor contract is

[79] He extends this principle to both private (Les Transformations generales du droit prive depuis le code Napoleon) and public (Les Transformations du droit public) law. He believes that this socialistic (as distinguished from individualistic) development of law, which was accentuated during the World War, is bound to go on. (Duguit, "Collective Acts as Distinguished from Contracts," *Yale Law Journal*, Vol. XXVII: 768.)

[80] Duguit, "Le Droit social, le Droit individuel et la Transformation de l'État," 73; Duguit, "The Law and the State," *Harvard Law Review*, XXXI: 183–184.

[81] Duguit, "L'État de droit objectif et le loi positive," 423, 424.

[82] *Ibid.*, 366, 502.

[83] *Ibid.*, 428.

[84] Duguit, "Le Droit social, le Droit individuel et la Transformation de L'État," 58.

[85] Laski, *op. cit.*, xxii.

[86] Holmes, "Privilege, Malice, and Interest," *Harvard Law Review*, VIII. 3.

[87] *Ibid.*, VIII: 7.

. . . an agreement or law regulating the relations of two social classes . . . according to which the individual contracts between members of these two groups are to be concluded." [88] Duguit's purpose is to base legal reasoning on correct juristic assumptions. However, the assumptions do not need to be regarded as implying a distinct kind of law. With the development of popular government, judges have been forced to recognize that there are extra-legal forces that must be taken account of in the interpretation of the law. The judge does not need to concern himself with concealing changes in law,[89] nor to represent departures from precedent as deductions from a higher law. This gives no added sanction to such departures. The law-abiding attitude of the masses from henceforth is to be preserved, not by surrounding law and decisions with a legal sanctity, but by making law and decisions square with the requirements for social progress as viewed by an intelligent citizenship.

What was implied in the vague conception of natural law [90] is becoming more concrete with the development of social psychology. This science will indicate the interests of human nature of which legislation must be cognizant. "A legal system attains its end by recognizing certain interests. . . ." [91] "It is perfectly true that neither the law nor the state creates these interests. But it is destructive of sound thinking to treat them as legal conceptions. Rights in the legal sense are among the devices of the law to secure these interests. Legal rights are the creatures of law, although the interests secured or which ought to be secured by legal rights are independent of law and of state." [92] The final period of law-making will set itself especially to securing the social interests.[93] These are, in the last analysis, satisfactions of instinctive impulses felt to be imperative, so that, at this vital point, social psychology has the closest possible relation to jurisprudence.

The first interests recognized by law were primarily class inter-

[88] Duguit, "Collective Acts as Distinguished from Contracts," *Yale Law Journal*, XXVII: 765; Duguit, "Law in the Modern State," 120.

[89] Smith, "The Use of Maxims in Jurisprudence," *Harvard Law Review*, IX: 23; Smith, "Surviving Fictions," *Yale Law Journal*, XXVII: 154.

[90] Dunning, "Political Theories, From Luther to Montesquieu," 175–176.

[91] Pound, "Legislation as a Social Function," *Pub. Amer. Social Soc.*, VII: 156.

[92] Pound, "The End of the Law as Developed in Juristic Thought." *Harv. L. Rev.*, XXVII: 619.

[93] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol Soc.*, VII: 156.

ests. The individual was subordinated to the dominant class of the group. With economic development, individual interests gradually came to be recognized.[94] "We may say, then, that the law slowly worked out a conception of private rights as distinguished from group rights. This culminated in the eighteenth century in a working out of individual interests as distinguished from public interests, to which our bills of rights, in which the natural rights of the individual are solemnly asserted against the state, still bear witness. Next the law began to work out social interests as such and to endeavor to reach a balance between individual interests and social interests. But there is a social interest in the individual moral and social life. In securing individual interests to this end, the law is securing a social interest. Therefore the problem ultimately is not to balance individual interests and social interests, but to balance this social interest with other social interests. . . ." [95] Merely individual or class interests are not entitled to legal recognition. "The moral criterion by which to try social institutions and political measures may be summed up as follows: The test is whether a given custom or law sets free individual capacities in such a way as to make them available for the development of the general happiness or the common good. The formula states the test with the emphasis falling upon the side of the individual. It may be stated from the side of associated life, as follows: The test is whether the general, the public, organization and order, are promoted in such a way as to equalize opportunity for all." [96] The emphasis is thus on the common welfare. Individual interests are to be secured by law only "to the extent that they are social interests," and the law is to "secure at all times the greatest number of interests possible, with the least possible sacrifice of other interests." [97]

The individual interests which have gained legal recognition are immunity from bodily injury, preservation of health, immunity from coercion, immunity from mental injury, preservation of mental health.[98] The expansion of the legal recognition of the mental

[94] Pound, "Interests of Personality," *Harv. L. Rev.*, XXVIII: 348.

[95] *Ibid.*, 349.

[96] Dewey and Tufts, "Ethics," 482–483.

[97] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol Soc.*, VII: 158–159; Pound, "Interests of Personality," *Harv. L. Rev.*, XXVIII: 354–355.

[98] Pound, "Interests of Personality," *Harv. L. Rev.*, XXVIII: 355–356; Terry, "The Correspondence of Rights and Duties," *Yale Law Journal*, XXV: 177–178.

interests waits upon the development of social psychology.[99] The legal recognition at present includes recognition of a right to privacy,[100] to reputation,[101] and to freedom of thought and speech,[102] the degree of right in each case depending on compromise between conflicting interests.

The progressive recognition of social interests by the law is possible only as legislators and judges appreciate the necessity of studying the problem of what interests must be satisfied for the common welfare.[103] Law is no longer a command set by a dominant class to subjects whose economic condition is unchanging. The law must change as conditions and interests change. Law-maker and judge must recognize "that there can be no final word on any point of the law. The legal system must be kept flexible and law-making must accommodate itself perennially to shiftings in the quantity and quality of the interests it has to meet." [104] This new view of the function of law makes law-making and interpretation according to precedent inadequate, and will increase the rôle of the legislature as against the judiciary, unless the latter equips itself for the task by that training in the social sciences which is necessary for inductive legal interpretation.[105] The law-maker is not asked to accept principles of social science in place of legal principles, for deductive interpretation. He is asked to give attention to the analyses and facts of social science bearing on the case and inductively to reach a legal interpretation. "The modern theory of natural law, with the ethical and psychological assumptions on which it is based, does not lay down any eternal or immutable laws of human conduct; it simply urges that the research of reason cannot help reaching conclusions which are valid so long as the conditions they resume obtain. Such a generalization must be the necessary basis of all political action." [106] It is "necessary to the functioning of any legal system." [107]

[99] Pound, *op. cit.*, 362.
[100] Warren and Brandeis, "The Right to Privacy," *Harv. L. Rev.*, IV: 193–220.
[101] Pound, "Interests of Personality," *Harv. L. Rev.*, XXVIII: 449–453.
[102] *Ibid.*, 453–456.
[103] Brandeis, "Business — A Profession," liv–lvi.
[104] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol Soc.*, VII: 159.
[105] *Ibid.*, 160–161.
[106] Laski, Introduction to Duguit, "Law in the Modern State," xxviii.
[107] *Ibid.*

CHAPTER XIV

THE CONFLICT OF JUDICIAL ATTITUDES

THE law of a nation is in the last analysis determined by the judges. This is true not only in the United States where judges have the power of constitutional veto but also in the British Empire where they have no such power. There judges distinguish "between the ostensible and the real law. . . . To speak of an act of the legislature as ostensible law may seem a contempt of the 'High Court of Parliament,' but it is a recognition of the fact that what the legislature enacts, judges interpret. The sociologist *may* say that a statute is an expression of a general will; the lawyer is *bound* to say that the law is as the judges decide. He knows from practical experience that the metamorphoses which take place in the process of applying an enactment to the infinitely varying groups of facts, are such as to warrant the statement that the enactment is but ostensible law." [1] The fact that judges are the ultimate makers of law [2] may seem to cut the law loose from a social-psychological basis. However, the previous chapters have shown us that judges differ in their interpretations according to their judicial attitudes. These are social-psychological phenomena for analysis.

One does not have to go far in an analysis of judicial decisions to see that there is something in a decision back of the ideas given, even back of the expressed or implied principles to justify which the ideas are advanced. A study of a court decision in connection

[1] Brown (President of the Industrial Court, South Australia), "Law and Evolution," *Yale Law Journal,* Feb., 1920, 394.

[2] There are three distinct theories of judicial interpretation: (1) That judges may not make law; they may merely discover and apply the existing laws (Carter, "Law. Its Origin, Growth and Function," 172–173); (2) that judges may make law on subjects not covered by previous decisions, but may not change the previous judge-made law (Dicey, "The Relation between Law and Public Opinion in England," Ch. XI: 481–493; Pollock, "Expansion of the Common Law," 15); (3) that judges may also change previous judge-made law, whether made by themselves or their predecessors (Justice Oliver Wendell Holmes in Southern Pacific Co. v. Jensen, 37 Sup. Ct. Rep., 531; Gray, "The Nature and Sources of Law," ss. 215–231, 465–512, 545–550, 626–628).

with which a dissenting opinion has been filed makes it evident that judges differ in their attitudes and hence in their assumptions, and, therefore, in the ideas advanced and cases cited as proof. Explanations in terms of constitutional formulations or legal maxims [3] are advanced, that, as basic legal formulations, are thought to serve as justifications of the opposite assumptions. Occasionally, however, the attitudes themselves, which ordinarily determine subconsciously the trend of legal interpretation, are clearly indicated by the decision or dissenting opinion. This is illustrated in the dissenting opinion of Justice Holmes of the United States Supreme Court in the case in which the Court found that the New York law providing that no employé should be required or permitted to work in bakeries more than sixty hours a week or ten hours a day, was not " a legitimate exercise of the police power of the state, but an unreasonable, unnecessary, and arbitrary interference with the right and liberty of the individual to contract, in relation to labor." [4] " The mere assertion," declares the decision of the court, " that the subject relates though but in a remote degree to the public health does not necessarily render the enactment valid. . . . There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty." " Here is an invasion of individual liberty. The employee may desire to earn the extra money, which he would be paid for working more than the prescribed time, but this statute forbids the employer's permitting the employee to earn it."

Dissenting, Justice Holmes said: " This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law. It is settled by various decisions of this court that state constitutions and state laws may regulate life in many ways which we as legislators might think as injudicious, or if you like as tyrannical, as this, and which, equally with this, interfere with the liberty to contract. . . . Some of these laws embody convictions or prejudices which judges

[3] Smith, " The Use of Maxims in Jurisprudence," *Harvard Law Review*, IX: 14–25.
[4] Lochner v. New York, 198 U. S., 75.

are likely to share. Some may not. But a Constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizens of the state or of *laissez faire*. It is made for people of fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel, and even shocking, ought not to conclude our judgment upon the question whether statutes embodying them conflict with the Constitution of the United States."[5] "The 14th Amendment," declares Justice Holmes, "does not enact Mr. Herbert Spencer's *Social Statics*." He warns that a judicial "decision will depend on a judgment or intuition more subtle than any articulate major premise."[6] Thus Justice Holmes distinguishes between the formulations of the Constitution and the economic theory and attitude of the judge. In virtue of his attitude a judge may find congenial this or that economic theory and consciously or subconsciously use it as an assumption to justify a decision as to the constitutionality of a law. Judicial attitudes and theories, it is maintained, should not be allowed to determine the interpretation of constitutional formulations.

This opinion of Justice Holmes, as indicated in the preceding chapter, marks a break in the development of the Fourteenth Amendment by the United States Supreme Court, whereby the court had sought "to make a permanent prohibition of a temporary theory" and thus to protect propertied interests against feared encroachments by non-propertied classes. His opinion was based on the proposition that a judicial opinion should not be deduced from some economic theory but should, in each case, be the result of an inductive study of the facts in the case. As judge he affirmed the constitutionality of statutes that happened to be in line with economic theories that he did not himself share,[7] maintaining that a judge should not declare a law unconstitutional just because he does not accept the economic theory it implies. In the course of one opinion he said: "In present conditions a workman not unnaturally may believe that only by belonging to a union can he secure a contract that shall be fair to him. . . . If that belief, whether right or wrong, may be held by a reasonable man, it seems

[5] Lochner v. New York, 198 U. S., 74–76.
[6] *Ibid.*, 74–76.
[7] Frankfurter, *op. cit.*, 694.

to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins. Whether in the long run it is wise for workingmen to enact legislation of this sort is not my concern, but I am strongly of the opinion that there is nothing in the Constitution of the United States to prevent it, and that Adair v. United States, 208 U. S. . . . and Lochner v. New York, 198 U. S. . . . should be overruled." [8]

The judicial attitude which predominates in legal decisions is that of the individualistic property owner,[9] which long ago was written into the law and which has, therefore, determined legal tradition and interpretation. It determined the interpretation of the court in Lochner v. New York. As Professor Ely says: "The majority decision of the court is based upon a primitive theory of individualism. The bakers were without liberty in the true sense for they were without the right to health. The statute represents their struggle for liberty, for freedom from restraint and oppression. And this liberty sought for the bakers was a liberty positive, constructive, and substantial, liberty for them to employ their powers, liberty to improve their faculties. . . ." [10] The law sought to relieve them from the domination and oppression incident to the individualistic conception of property right and to provide a more adequate freedom to contract. It forbade bakers working under conditions in which, by so doing, they would deprive themselves of health and the capacity to keep a contract to do efficient work. In so far as judicial decisions depend on "public sentiment," such a decision as this wins approval from employers and from the rank and file of the legal profession, who reason from precedent, and, therefore, approve or, at least, do not disapprove such a decision. Its effect among labour leaders is to cause resentment and distrust of government, and to cause indignation among intelligently philanthropic citizens; [11] "such a decision deeply im-

[8] Coppage v. Kansas, 236 U. S., 249.

[9] See the chapter entitled, *Psychological Processes in the Development of Private Property.*

[10] Ely, "Property and Contract in their Relations to the Distribution of Wealth," II: 675.

[11] This public distrust of the reactionary majority of the United States Supreme Court has deepened as one decision declaring unconstitutional labour legislation has succeeded another. In some cases the law so declared void was passed by a large majority of Congress and was supported by every section of the body politic except reactionary propertied interests. (Mitchell, "The End of Child Labor," *The Survey,*

pairs that public confidence upon which the healthy exercise of judicial power must rest." [12] The attitude to the law which it implies and the acquiescence of the legal profession in this attitude also impairs the confidence of the public in the legal profession.[13]

The Lochner decision rests on a long line of similar interpretations. The attitude of the judges who thus decided is not congenial to the judge who looks at a case involving property right inductively from the point of view of a rational theory of progress. The rational or progressive attitude is that a statute should not be declared unconstitutional as long as a legislature might reasonably think such a statute would further the public welfare. This rational attitude has established itself in certain decisions in cases involving controversies between capital and labour. For instance, "The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments (mines) and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. . . . In such cases self-interest is often an unsafe guide, and the legislature may promptly interpose its authority." [14] "The question in each case is whether the legislature has adopted the statute in exercise of a reasonable discretion, or whether its action be a mere excuse for an unjust discrimination, or the oppression, or spoliation of a particular class." [15] By a reasonable discretion is not meant what appears reasonable to "the common understanding," though certain judicial decisions assume this standard of reasonableness,[16] but what appears reasonable from scientific studies of the questions involved, as a result of attention to which legislation must be progressive. In "passing upon

Aug. 23, 1919, 748–749.) This attitude of distrust toward the highest court in the land is one of the psychological elements in the increasing opposition to the state, as at present constituted, as an undemocratic institution.

[12] Frankfurter, "Hours of Labor and Realism in Constitutional Law," *Harvard Law Review*, XXIX: 371.

[13] Wehle, "Social Justice and Legal Education," *Intern. Jour. Ethics*, July, 1917, 498.

[14] Holden v. Hardy, 169 U. S., 397.

[15] *Ibid.*, 398.

[16] Lochner v. New York, 198 U. S., 45, 59.

the validity of state legislation under that (Fourteenth) Amendment, this court has not failed to recognize the fact that the law is to a certain extent a progressive science." [17] "They (statutory changes passed in review) are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future. . . . Of course it is impossible to forecast the character or extent of these changes, but . . . it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and, particularly, to the new relations between employers and employees, as they arise." [18] In short, "In the Holden v. Hardy case it was recognized that inequality of bargaining power was a public disadvantage, that the state is concerned in having equal powers among individuals. Where they are unequal, if a public purpose is served thereby, the employers may be deprived, without compensation, of their greater liberty, power and property rights." [19]

The reasoning of the rational judge is bound to include, therefore, considerations of public policy. Justice Holmes long ago proved the necessity of judges considering questions of policy in decisions that involve questions of how far one party has the privilege of acting in a way that injures another party; and in this connection he referred incidentally to the functioning of subconscious attitudes, and the necessity of assuming a rational attitude if questions of policy were to be wisely determined. He said: "The danger is that such considerations (of public policy) should have their weight in an articulate form as unconscious prejudice or half conscious inclination. To measure them justly needs not only the highest powers of a judge and a training which the practice of the law does not insure, but also a freedom from prepossessions which is very hard to attain. It seems to me desirable that the work should be done with express recognition of its nature. The time has gone when law is only an unconscious embodiment of the common will. It has become a conscious reaction upon itself of organized society knowingly seeking to determine its own destinies." [20] He does not confine himself to explanations of his own rational attitude but occa-

[17] Holden v. Hardy, 385–388.
[18] *Ibid.*, 385–388.
[19] Commons, "Industrial Goodwill," 34.
[20] Holmes, "Privilege, Malice, and Intent," *Harvard Law Review*," VIII (Apr. 25, 1894): 9.

sionally ventures a bit of incisive psychological analysis of the conservative judicial attitude. For instance, how far a party can go in action that injures another without the action constituting malicious damage, "is a question of policy. Questions of policy are legislative questions, and judges are shy of reasoning from such grounds. Therefore, decisions for or against the privilege, which really can stand only upon such grounds, often are presented as hollow deductions from empty general propositions . . . or else are put as if they themselves embodied a postulate of the law and admitted of no further deduction." [21]

The alternative to introducing into a case involving a consideration of privilege, questions of policy is to argue deductively from maxims that have been given the force of legal dogmas by long judicial usage. One such dogma — the one used in the Lochner case — is the economic postulate of free competition. This dogma is justified on the ground that "free competition is worth more to society than it costs." [22] Thus justified it has been used as a legal principle deductively by judges in the effort to avoid questions of policy in decisions on the constitutionality of labour legislation, and to give their decisions the effect of incontrovertible, logical conclusions. Justice Holmes criticizes this judicial attitude as follows: "Perhaps one of the reasons why judges do not like to discuss questions of policy, or to put a decision in terms upon their views as lawmakers, is that the moment you leave the path of merely logical deduction you lose the illusion of certainty which makes legal reasoning seem like mathematics. But the certainty is only an illusion, nevertheless. Views of policy are taught by experience of the interests of life. Those interests are fields of battle. Whatever decisions are made must be against the wishes and opinions of one party, and the distinctions on which they go will be distinctions of degree. Even the economic postulate of the benefit of free competition, which I have mentioned above, is denied by an important school." [23] This criticism of emphasis on logic does not, of course, imply that logic is not to be used in reaching judicial decisions. "The settlement of any legal question must, of course, be reached

[21] *Ibid.*, 3. See also Smith, "The Use of Maxims in Jurisprudence," *Harvard Law Review*, IX: 14–25. For the conservative attitude to questions of policy see Clark, "The Constitutional Opinions of Justice Harlan," J. H. U. S. H. P. S., Series XXXIII: 201–202.

[22] Holmes, *op cit.*, 3.

[23] *Ibid.*, 7.

by logical processes. The error which the learned writer apparently had in mind consists, at least in some instances, in the assumption without sufficient consideration of certain alleged general principles . . . and then arguing from them by means of reasoning purely deductive in form." [24] The best corrective is a reform in the training of lawyers such that they will be better trained (1) for analysis of prior cases; (2) for analysis of the essential features of the case before them in all its bearings, economic and social-psychological as well as legal; (3) for understanding the meaning of such legal terms as right, duty, etc., a training commonly known as "Analytical Jurisprudence" [25]; (4) and finally for understanding the functioning of law,[26] and in "a clearer conception of just what the function of judges in deciding cases really is." [27]

The rational attitude requires that the judge know intimately the social and economic conditions with which the law has to do; or at least realize his ignorance of social and economic conditions in the various states and be willing to assume that the legislature might reasonably suppose the statute would further the public welfare. As Professor Frankfurter points out, it is the lack of knowledge of social and economic conditions, and, we might add, the lack of a consciousness of a necessity of such knowledge — the lack of a consciousness of ignorance and of a proper humility — that has caused judges to follow the Lochner case up to the present time. In criticizing such an instance, he points out, with numerous citations, that it "is now clearly enough recognized that each case presents a distinct issue" which "must be determined by the facts relevant to it"; that the "groundwork of the Lochner case has by this time been cut from under. The majority opinion was based upon 'a common understanding' as to the effect of work in bakeshops upon the public and upon those engaged in it. 'Common understanding' has ceased to be the reliance in matters calling for essentially scientific determination"; and an influential body of professional opinion "has been impressively arrayed against this de-

[24] Cook, "Privileges of Labor Unions in the Struggle for Life," *Yale Law Journal*, XXXVII: 784.

[25] *Ibid.*, 785.

[26] Wehle, "Social Justice and Legal Education," *Intern. Jour. Ethics*, July, 1917, 505–511.

[27] Cook, *op. cit.*, 785.

cision." [28] Because of the necessity of considering the facts in each case, and the difficulty, in the stress of judicial work, of making an investigation as to the facts, courts must decide cases on the facts as presented by the counsel in the case. This " throws the decision of the courts largely upon those chances which determine the selection of counsel." [29] Consequently it is necessary " that the profession realize the true nature of the issues involved in these constitutional questions and the limited scope of the reviewing power of the courts. With the recognition that those questions raise, substantially, disputed questions of fact must come the invention of some machinery by which knowledge of the facts, which are the foundation of the legal judgment, may be at the service of the courts as a regular form of the judicial process. This need has been voiced alike by jurists and judges. Once the need shall be felt as the common longing of the profession the inventive powers of our law will find the means for its satisfaction." [30] Thus the development of a rational judicial attitude requires a development of that attitude throughout the legal profession. .

It is to the increase in the number of judges of a rational attitude that progressive tendencies in jurisprudence are due. In this development the letter of the constitution remains the same; interpretations change not only because social and economic conditions change but also because judicial attitudes change. The conservative judicial attitude emphasizes the letter of the law, that is, its meaning as determined by precedent. The rational or progressive judge, on the other hand, declares: The " provisions of the Constitution are not mathematical formulas having their essence in their form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth." [31]

The functioning of judicial attitudes in determining judicial decisions is evident not only where the court is divided on questions of the constitutionality of legislation, but also where the court is di-

[28] Frankfurter, " Hours of Labor and Realism in Constitutional Law," *Harvard Law Review,* XXIX: 369–371.

[29] *Ibid.,* 371.

[30] *Ibid.,* 372–373 (quoted, like the preceding quotations, without the citations and footnotes).

[31] Justice Holmes in Gompers v. United States, 34 Sup. Ct. Rep., 695.

vided on a question of a justifiable use of the injunction in labour disputes. Take the case of the Hitchman Coal & Coke Company vs. John Mitchell, T. L. Lewis, and W. B. Wilson. The defendants were officials of the United Mine Workers of America, which organization attempted to unionize the employés of the Hitchman Company. The company obtained a perpetual injunction forbidding the officials to pursue their purpose; the injunction was affirmed by the United States Supreme Court,[32] with a dissenting opinion by Justices Brandeis, Holmes, and Clarke. This case is particularly favourable for a comparison of the rational and the conservative judicial attitudes because it is one in which a rational attitude was especially called for. For " it seems that there was no case in any state involving facts substantially identical with that before the court. In other words, the court had to ' find ' the law applicable to a new case.[33] In spite of this, the opinion of the majority of the court does not reveal that the question for decision is actually a novel one. Following the prevailing fashion in judicial opinions, it proceeds to its conclusions chiefly by a process of deductive reasoning from apparently fixed premises supposed to be established by prior cases. The fact that in the last analysis the decision really turns upon notions of policy entertained — more or less consciously or unconsciously — by the members of the court is thus thrown into the background. Where policy is mentioned, it is rather as a justification for existing law than as basis for a new rule." [34]

The majority opinion points out that the case resolved itself into a problem of conflicting rights. The right of the employer to run his mine non-union conflicted with the right of workmen to organize and prevent his doing so. In the prefatory discussion of these conflicting rights the opinion of the majority uses the term " right " first in one sense and then in another, asserting one proposition after another in the process of deductive reasoning, and relying for proof

[32] Hitchman Coal & Coke Company vs. John Mitchell, Individually; T. L. Lewis, Individually; W. B. Wilson, Individually, et al. U. S. Supreme Court, No. 11, October Term, 1917. See the dissenting opinion of Justices Brandeis, Holmes, and Clarke. See also a similar decision, Eagle Glass & Mfg. Co. vs. Thomas W. Rowe (U. S. Supreme Court, No. 23, October Term, 1917) and the dissenting opinion of Justices Brandeis, Holmes, and Clarke.

[33] The writer's note reads: " Some of the cases supposed to be in point will be discussed later, either in the text or in the notes."

[34] Cook, " Privileges of Labor Unions in the Struggle for Life," *Yale Law Journal*, XXXVII: 783.

on a plausible use of precedents.[35] The attitude of the majority was plainly the individualistic insistence on freedom of contract, which the court interpreted in the interest of the employers, on the ground that, while the union officials might legally attempt to unionize the mine, the attempt in this case involved "unfair methods" which were construed as illegal.[36] The decision of the court implies an acceptance of the individualistic attitude,— of the business man's individualistic insistence on freedom from interference in his quest for private profits, this dignified by having been made the economic postulate of free competition, and by having been given the sanctity of the legal doctrine of freedom of contract. From the judges who held this attitude in this case explanations in the form of legal justifications are forthcoming, which justify the attitude by finding the action of the labour organizers unlawful in one respect or another.

The dissenting opinion, on the other hand, finds no legal ground for interfering with the action of the union organizers. Their "purpose . . . was confessedly . . . to strengthen the union, in the belief that thereby the condition of workmen engaged in mining would be improved; the bargaining power of the individual working man was to be strengthened by collective bargaining; and collective bargaining was to be insured by obtaining the union agreement. It should not, at this day, be doubted that to induce workingmen to leave or not to enter an employment in order to advance such a purpose, is justifiable when the workmen are not bound by contract to remain in such employment." [37] The dissenting opinion holds that there could be no breach of their contract by the men until they had formally joined the union. The majority opinion held that there could be and was a breach of contract.[38] This difference of opinion is plainly due to a difference of judicial attitude in the case. The attitude of the majority is on behalf of the right of employers to be free of interference from employés and is therefore against the employés; that of the minority is on behalf of freedom of the employés in this case to organize against their employers.

[35] *Ibid.*, 786–795; see also Powell, "Collective Bargaining before the Supreme Court," *Pol. Sc. Quart.*, XXXIII: 420.

[36] Reprint of decision, 20.

[37] Reprint of dissenting opinion, 9.

[38] See Professor Cook's discussion of this point, *op. cit.*, 796.

Another evidence of the difference of judicial attitude lies in the "remarkable scope of the injunction"[39] as approved by the decision of the court, and dissented from in the minority opinion. The injunction enjoins the union organizers not only from trying to organize the employés of the mine but also from making the forbidden representations to "any person who might become an employee of the plaintiff."[40] Commenting on this remarkable scope of the injunction Professor Cook writes: "Apparently this portion of the injunction is based upon the notion expounded by some judges that employers have a 'right to a free flow of labor.' In the whole opinion of the majority of the court there is no discussion of the 'free flow of labor' doctrine, and no attempt to justify any such sweeping prohibition. Noteworthy also is the character of the prohibited representations. The defendants are not to represent 'that such person . . . *is likely to suffer some loss or trouble* in continuing in or in entering the employment of plaintiff, . . . *by reason of plaintiff not recognizing the United Mine Workers of America, or because plaintiff runs a non-union mine.*' Apparently statements to persons contemplating, or who might at any time in the future contemplate, entering plaintiff's employment, to the effect that they were likely to lose financially in the long run and have 'some trouble' because of the non-union character of the plaintiff's mine, would be forbidden if made 'for the purpose of unionizing plaintiff's mine without its consent.' If we are to judge from the decree and not merely from the opinion, it is clear that the court is holding that almost any acts of labor unions done for the purpose of unionizing an employer's business without his consent, are illegal, even where the members of the union are not and never have been employees of the employer concerned."[41]

The decision of the court, therefore, shows a "policy" of restraining the action of employés in order to protect the interests of employers — whose rights have been adjudged deserving of protection by the court —, as contrasted with the minority opinion, which inclines to the policy of not finding the action of employés unlawful except in case such acts explicitly have been declared unlawful, and of not favouring the use of the injunction to anticipate and prevent alleged impending unlawful behaviour. This implied ac-

[39] *Ibid.*, 796.
[40] Reprint of decision, 23; Reprint of dissenting opinion, 3.
[41] Cook, *op. cit.*, 797–798.

ceptance, in the minority opinion, of the fact of a class struggle which a court must not hasten to restrain in the interest of the employer is opposed by the decision of the court. The decision explicitly states that "the defendants' acts cannot be justified by any analogy to competition in trade. They are not competitors of plaintiff; . . ." [42] The reply to this was made long ago by Justice Holmes, as follows: "I have seen the suggestion made that the conflict between employers and employed is not competition. But I venture to assume that none of my brethren would rely on that suggestion. If the policy on which our law is founded is too narrowly expressed in the term free competition, we may substitute free struggle for life. Certainly the policy is not limited to struggles between persons of the same class competing for the same end. It applies to all conflicts of temporal interests." [43] A similar attitude was taken by the dissenting opinion as follows: "Both the plaintiff and defendant insisted upon exercising the right to secure contracts for a closed shop. The plaintiff sought to secure the *closed non-union* shop through individual agreements with employees. The defendants sought to secure the *closed union* shop through a collective agreement with the union. Since collective bargaining is legal . . . defendants' efforts to unionize the mine can be illegal, only if the methods or means pursued are unlawful; . . ." [44] Here we have an implicit recognition of a relation of class struggle for income in which the mere fact that workmen, by united action, may divert some of the income of an industry from the owner to themselves, as service income, does not constitute an unlawful act.

The dissenting opinion takes up the argument that union restraint on the liberty of the property owner — which might presumably result in such diverting of income — in this case injures the employer in a way that the law forbids. "It is urged that a union agreement curtails the liberty of the operator. Every agreement curtails the liberty of those who enter into it. The test of legality is not whether an agreement curtails liberty, but whether the parties have agreed upon something which the law prohibits or declares otherwise to be inconsistent for the public welfare. The

[42] Reprint of decision, 21.
[43] Dissenting opinion in Vegelahn v. Guntner (1896), 167 Mass. 92, 107.
[44] Reprint of dissenting opinion, 6, 7.

operator by the union agreement binds himself: (1) to employ only members of the union; (2) to negotiate with union officers instead of with employees individually the scale of wages and the hours of work; (3) to treat with the duly constituted representatives of the union to settle disputes concerning the discharge of men and other controversies arising out of the employment. These are the chief features of a 'unionizing' by which the employer's liberty is curtailed. Each of them is legal. To obtain any of them or all of them men may lawfully strive and even strike. And, if the union may legally strike to obtain each of the things for which the agreement provides; why may it not strike or use equivalent economic pressure to secure an agreement to provide them?

"It is also urged that the defendants are seeking to 'coerce' plaintiff to 'unionize' its mine. But coercion, in a legal sense, is not exerted when a union merely endeavors to induce employees to join a union with the intention thereafter to order a strike unless the employer consents to unionize his shop. Such pressure is not coercion in the legal sense. The employer is free either to accept the agreement or the disadvantage. Indeed, the plaintiff's whole case is rested upon agreements secured under similar pressure of economic necessity or disadvantage. If it is coercion to threaten to strike unless plaintiff consents to a closed union shop, it is coercion also to threaten not to give one employment unless the applicant will consent to a closed non-union shop. The employer may sign the union agreement for fear that *labor* may not be otherwise obtainable; the workman may sign the individual agreement, for fear that *employment* may not be otherwise obtainable. But such fear does not imply coercion in a legal sense.[45]

The divided court, in the above case, was due, therefore, to a difference of attitude. The majority of the judges accepted the traditional individualistic attitude of the employer to his workmen, endorsed by the weight of economic and legal tradition. The individualistic employer insists that he be permitted to run his own business as he sees fit, without the interference of workmen, and the individualistic judge insists that such interference is illegal. Judges who subconsciously assume this attitude plausibly give it legal justification and thus supplement the domination exercised by employers with domination exercised on their behalf by the government. The

[45] *Ibid.*, 7–8.

dissenting opinion implicitly rejects the traditional relation of domination-submision of employer and workmen and recognizes a class struggle between employers and employés in which workmen may resist the domination of employers in all ways which have not been explicitly declared illegal.

There are able jurists who think it doubtful whether our courts ever will show themselves capable of taking a rational attitude in cases involving controversies between labour and capital. The traditional legal development on behalf of the employer, and the tendency of judges, who, as lawyers, had property owners for their clients, to seek first to guard the interests of employers, tends to make a rational attitude in questions of policy difficult to assume. Professor Cook writes: "Whether our courts will show themselves competent to settle rightly the questions of policy involved is perhaps doubtful. If not, we have our legislative bodies to fall back upon. In making our decision we shall have to bear in mind that if we do not give organized labor a fair chance to assert itself in competition with organized capital in this 'free struggle for life,' the only alternative will be a larger and larger measure of direct governmental interference in fixing wages and conditions of employment.[46]" [47]

Judicial attitudes as the basis of court decisions and opinions stand out most conspicuously in decisions which involve no complex legal reasoning and in which there is a dissenting opinion. Such a decision, for instance, is that of the United States Supreme Court in Jacob Abrams et al. vs. United States.[48] This was a case under the Espionage Act in which the defendants were found guilty of violating the act and the decision was affirmed by the Supreme Court on the ground that, by the publication and circulation of a pamphlet, the defendants proposed to stir up a revolution in the United

[46] The author's note is as follows: "This of course is what has been going on in Australia. See *The Judicial Regulation of Industrial Conditions,* by W. Jenthro Brown (1918) 27, *Yale Law Journal,* 427. Minimum wage laws, the Adamson law, and similar legislation suggest the possibility of greater developments along this line in our own country. Undoubtedly the experiences we are now going through in the great war will have much effect upon our notions of what it is feasible for the government to undertake in the way of the regulation of matters heretofore regarded as 'private' and exempt from governmental interference. The recent program of the British Labor Party is perhaps another sign of the times."

[47] Cook, *op. cit.,* XXVII: 800–801.

[48] Decided Nov. 10, 1919. I use the text of the decision and dissenting opinion as printed in *The New Republic,* Nov. 26, 1919, 377–383.

States which would interfere with the success of the American arms in the World War. The dissenting opinion, written by Justice Holmes and concurred in by Justice Brandeis, held that, while the immediate purpose was to stir up a revolution, the ultimate purpose was not to interfere with the success of the American arms against Germany but to prevent the United States government interfering with the revolution in Russia, and that "An intent to prevent interference with the revolution in Russia might have been satisfied without any hindrance to carrying on the war in which we were engaged." [49] Wherefore the dissenting opinion does not see how any one can find the intent required by the statute in any of the defendant's words." [50] Furthermore, "nobody can suppose that the surreptitious publishing of a silly leaflet by an unknown man, without more, would present any immediate danger that its opinion would hinder the success of the government arms." [51] The minority opinion maintained that the decision of the lower court violated the First Amendment of the Constitution, which is that Congress shall make no law abridging the freedom of speech. For, while Congress may limit freedom of speech because of "the present danger of immediate evil . . . Congress certainly cannot forbid all effort to change the mind of the country . . . . . .

"Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. . . . But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of thought to get itself accepted in the competition of the market and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution." [52]

Here, then, is a difference of judicial opinion which can be explained only on the basis of a difference of judicial attitude. The

[49] *Ibid.*, 381.
[50] *Ibid.*, 381.
[51] *Ibid.*, 381.
[52] *Ibid.*, 383.

facts in the case, the law, and the situation before the country appeared differently to the justices because they took different attitudes to the facts, the law and the situation. The interpretation of the two dissenting justices was in accord with legal tradition. The test of the constitutionality of limitations on free speech laid down by Justice Holmes —" present danger of immediate evil or intent to bring it about "— was that of common-law incitement to crime, which doubtlessly is the test intended by the Constitution.[53] The interpretation of the majority, on the contrary, made the mere use of words criminal, in spite of the lack of evidence of intent and without regard to whether there was present danger of immediate evil.[54] The two dissenting justices are men who throughout their careers have been distinguished for a discriminating interpretation of law. Their pronounced attitude is the intellectual, as distinguished from the dominating, order-preserving attitude of the judge who feels his part as the exponent of the will of his group, whether conservative, as that will usually is, or impulsive, as in the decision under discussion. This type of judge emphasizes the traditional function of the court,— that of the exponent of criminal law. This judicial attitude is in accordance with the attitude to law and the courts of the common man, who commonly thinks of law in the form of criminal law.[55] The behaviour of judges of this type varies all the way from that of judges who, like the majority of the Supreme Court in the above case, over-emphasize the traditional function of the court as the order-preserving organ of government, especially when such action is in line with popular sentiment or the sentiment of a dominant class, to that of the judge who uses this function as a subterfuge for indulging, in his judicial behaviour, his class bias and dominating disposition.[56] The progressive judge, on the contrary, in accordance with a rational social purpose interprets law in a way to effectuate community ideals of progress. Constitutional provisions are, to him, formulations of such ideals, the meaning of which changes from age to age. He follows, primarily,

[53] K. N. L., " Free Speech in Time of Peace," *Yale Law Journal,* Jan., 1920, 338; Hart, " Power of Government over Speech and Press," *Yale Law Journal,* Feb., 1920, 422–428.

[54] K. N. L., " Free Speech in Time of Peace," *Yale Law Journal,* Jan., 1920, 338.

[55] Pound, " Juristic Problems of National Progress," *Amer. Jour. Sociol.,* May, 1917, 728.

[56] Hard, " In Judge Anderson's Courtroom," *The New Republic,* Nov. 26, 1919, 373–377. See also *The Survey,* March 25, 1916, 763.

not the conservative or impulsive public sentiment, but the more intelligent public opinion. Because of his intellectual attitude he believes that "we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." [57]

[57] Justice Holmes' dissenting opinion, *op. cit.*, 383.

CHAPTER XV

JUDICIAL ATTITUDES AND THE NATURE OF LAW

JUDGES usually state in their decisions and opinions merely the legal reasons for their attitude without making more explicit the attitude itself. A study of judicial attitudes is, therefore, largely a matter of inference from the reasoning of decisions and opinions. In the case of a divided bench, a difference of attitude is plainly the deciding cause of the difference of opinion; for all judges, at least of the Supreme Court of the United States, are men of ability and learned in the law. The reason for the difference of opinion lies not in the law, which is the same for all judges, but in the theories and subconscious assumptions that constitute the premises from which they reason. Decisions would be more enlightening, therefore, if judges would be more explicit as to their economic and other theories, and would delve more deeply into their subconscious assumptions and state the essential reasons for an important difference of opinion. It is to be regretted that judicial decisions do not make more clear than they usually do the ultimate grounds of opinion, especially when there is a divided court. Those who commend a judge for keeping his own economic theories in the background in his legal opinions unwarrantedly assume that the fact that he does so shows that he has eliminated them from the premises from which he reasons.[1] He may think he has kept his theories in the background in the formation of his opinions, when all the time they are subconsciously influencing his opinions; or he may keep them in the background because he fears to expose them to scientific scrutiny, while he conservatively clings to them as valid assumptions. Instead of keeping theories and assumptions in the background it is much safer to bring them into the light of day and subject them to scientific scrutiny and thereby make the judicial attitude a thoroughly rational one. Says Justice Holmes: "I think that the judges themselves have failed adequately to recognize their

[1] Allen, "The Opinions of Justice Hughes," *Columbia Law Review*, XVI: 579.

duty of weighing considerations of social advantage. The duty is inevitable, and the result of the often proclaimed judicial aversion to deal with such considerations is simply to leave the very ground and foundation of judgments inarticulate and often unconscious." [2] The rational judge is more apt to be explicit as to his premises than is the conservative judge, because his attitude is inductive and analytical, and he is, therefore, critical of the traditional elements in his premises; and because his opinions are apt to vary more widely from traditional decisions than those of the conservative judge so that he naturally is more explicit in justifying his opinions. It is therefore, easier for the student of judicial attitudes to analyse the rational than the conservative attitude.

Judges who are moved by a rational attitude may differ in their economic views and, therefore, may have contrary opinions in a particular case.[3] But the differences of such judges are less fundamental than are those of the rational and the conservative judge. Judges themselves are conscious of a difference of attitude as essential in determining a difference of judicial opinion; rational judges, especially, as above indicated, feel called upon to justify their opinions by justifying their unusual attitude, as compared with the usual, conservative judicial attitude. Judge Learned Hand of New York writes as follows: "Conservative political opinion in America cleaves to the tradition of the judge as passive interpreter, believing that his absolute loyalty to authoritative law is the price of his immunity from political pressure and of the security of his tenure. Therefore, since he should have no aim but to understand the law as he finds it, conservative opinion finds it monstrous to require of him results which shall suit the changing popular aspirations, . . . In its passionate adherence to this tradition such opinion is not disinterested; it would as eagerly encourage judicial initiative, if the laws were framed by labor unions, as it insists upon rigid obedience in a system framed for the most part for the protection of property and for the prevention of thorough going social regulation. . . .

"This attitude is in part right and in part wrong. Much of the law is indeed written in formal shape, the authoritative emanation of the state. . . . Nevertheless, the judge has, by custom, his own

[2] Holmes, "The Path of the Law," *Harv. L. Rev.*, X: 457, 467.

[3] See the comparison of the economic attitudes of Justice Holmes and Justice Hughes in Allen, *op. cit.*, XVI: 569–581.

proper representative character as a complementary organ of the social will, and in so far as conservative sentiment, in the excess of caution that he shall be obedient, frustrates his free power of interpretation to manifest the half-framed purposes of his time, it misconceives the historical significance of his position and will in the end render him incompetent to perform the very duties upon which it lays so much emphasis. The profession of the law of which he is a part is charged with the articulation and final incidence of the successive efforts toward justice; it must feel the circulation of the communal blood or it will wither and drop off, a useless member. . . .

"Two conditions are essential to the realization of justice according to law. The law must have an authority supreme over the will of the individual, and such an authority can arise only from a background of social acquiescence, which gives it the voice of indefinitely greater numbers than those of its expositors. Thus, the law surpasses the deliverances of even the most exalted of its prophets; the momentum of its composite will alone makes it effective to coerce the individual and reconcile him to his subserviency. The pious traditionalism of the law has its roots in a sound conviction of this necessity; it must be content to lag behind the best inspiration of its time until it feels behind it the weight of such general acceptance as will give sanction to its pretension to unquestioned dictation. Yet with this piety must go a test for courageous experiment, by which alone the law has been built as we have it, . . ."[4] Modern conditions have increased the necessity of experimentation. It was less called for while the propertied classes, which law-makers represented, were the only classes which had political power so that "class grievances were inaudible." "All this has changed; the profession is still drawn, and so far as we can see, will always be drawn, from the propertied class, but other classes have awakened to conscious control of their fate, their demands are vocal which before were dumb, and they will no longer be disregarded. If justice be a passable accommodation between the vital and self-conscious interests of society, it has taken on a meaning not known before. But the profession has not yet learned to adapt itself to the change; that most difficult of adjustments has not been made, an understanding of and sympathy with the purposes and ideals of

[4] Hand, "The Speech of Justice," *Harvard Law Review*, XXIX: 617–618.

those parts of the common society whose interests are discordant with its own." [5] The rational type of lawyer is indeed the rare exception. This is the essential reason for the recent agitation for a more responsible judiciary, and for making the regulations of administrative departments and commissions final and not subject to judicial review, and for " an increasing body of minute formularies which leave no option and permit no latitude. . . . A large part of the tendency towards such meticulous prolixity rests in the very inability of the profession to show a more enlightened sympathy with the deeper aspirations of the time." [6]

Judge Hand's conception of " sympathy with the deeper aspirations of the time " is not a vague conception. He means understanding in the most thoroughly scientific sense of that term. A satisfying understanding of the cases that come before him the busy judge finds it very difficult to attain, as indicated in a previous chapter. In one instance, Judge Hand exclaimed: " How long we shall continue to blunder along without the aid of unpartisan and authoritative scientific assistance in the administration of justice no one knows; but all fair persons not conventionalized by provincial legal habits of mind ought, I should think, unite to effect some such advance." [7]

Judge Young of New Hampshire likewise conceives of law as effectuating social adjustment to changing conditions; he considers the sanction of law to be, in the last analysis, the assent of the community, and the law as effectuating the ideals of the community. He says, while " I cannot show just what the community mind is, . . . I shall assume for the purpose of this discussion that there is such an entity. . . ." [8] " I think that whenever two or more persons associate themselves together for any purpose, their minds interpenetrate one another in such a way as to form . . . a community mind in so far as the common purpose is concerned." [9] He holds that not only statute law but also the common law as interpreted by judges is determined by community ideals of justice or, in

[5] *Ibid.*, 619–620.

[6] *Ibid.*, 620.

[7] Park-Davis & Co. v. H. K. Mulford Co., 189 Fed., 115.

[8] Young, " The Law as an Expression of Community Ideals and the Lawmaking Functions of Courts," *Yale Law Journal*, XXVII: 17.

[9] Korkunov, " General Theory of Law " (1909), 276. The quotation and note are from Young, *op. cit.*, 17.

short, public opinion. He says: "Just what part public opinion plays in formulating the rules of the common law is very difficult to say. It is the final test with many judges, or what a judge has in mind, when he says that a particular rule does not apply because of the results it would produce. It is obvious that it dominates the minds of all judges to a greater or less extent; for whenever the results a rule produces are . . . unjust as the ordinary man understands justice, the court will find a way of distinguishing the case it is considering from the one it was considering when the rule was announced. In other words, the court will overrule the rule while professing to follow it. It is, therefore, in a sense true that public opinion is the final arbiter of right and wrong in so far as the rules of the common law are concerned, as well as in the case of statutes." [10] Judge Young distinguishes his theory of law from that of those who assume an objective standard: "By law, as that term is sometimes used, the standard of justice or the yard stick determining right from wrong, is intended: and an attempt to define it resolves itself into an attempt to define the standard of justice.

"I think that that standard is subjective, or to be found in the mind of the lawmakers; but many, perhaps the majority, think that it is objective or to be found outside of the consciousness of the lawmakers. In other words, I think the yard stick to determine right from wrong for each of the communities into which the race is divided is to be found in its consciousness. . . . While this is my view . . . the majority believe that the standard is objective, or that it is to be found somewhere in space rather than in the consciousness of . . . the community. . . . If we are to understand what law is and its office in the social scheme, it will be necessary to determine which of these views is sound; . . ." [11] Evidently, under Judge Young's view, social psychology is closely related to jurisprudence in that it must explain the operation of the ideals of the community, and of public opinion, and of the attitudes of lawmakers in determining the law of the community and its interpretation in a particular case.

To the judge who takes a rational attitude to law, law becomes very closely dependent on public opinion. But, because most judges

[10] Frye v. Hubbell (1907), 74 N. H. 358, 68 Atl. 325. The quotation and note are from Young, *op. cit.*, 30.

[11] Young, *op. cit.*, 3–4.

are deductive in their mental processes, they rarely recognize the influence on law of public opinion and of considerations of public policy. "The very considerations which judges most rarely mention, and always with an apology, are the secret root from which the law draws all the juices of life. I mean, of course, considerations of what is expedient for the community concerned. Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less, traceable to views of public policy in the last analysis." [12] "The true grounds of decisions are considerations of policy and of social advantage, and it is vain to suppose that solutions can be attained merely by logic and general propositions of law which nobody disputes. Propositions as to public policy rarely are unanimously accepted, and still more rarely if ever, are capable of unanswerable proof. They require a special training to enable any one even to form an intelligent opinion about them. In the early stages of law, at least, they generally are acted on rather as inarticulate instincts than as definite ideas for which a rational defence is ready." [13]

The conventional judge, in his thinking about the nature of law, differs from the rational judge chiefly in his indiscriminating predilection for tradition. This is seen in his inclination to the use of legal fictions. The rational judge emphasizes induction and, therefore, opposes such use.[14] The inductive attitude insists on an examination of the social-psychological and other facts assumed by the fictions without examination. Thus it is the inductive legal attitude that emphasizes the close connection between social-psychology and jurisprudence. Take, for instance, the fiction "that every man intends the natural and probable consequences of his acts." [15] This legal presumption arbitrarily does away with the necessity of an inductive inquiry as to intent. However, there is no valid reason for the elimination of such an inquiry. The justi-

[12] Holmes, "The Common Law," 35–36.

[13] Dissenting opinion in Vegelahn v. Guntner (1896), 167 Mass., 106.

[14] "If the fiction is not founded on truth, its use is unjustifiable. If it is founded on truth, its use is foolish." (Smith, "Surviving Fictions," *Yale Law Journal*, XXVII. 152.) For the opposite view see Pollock, "The Extension of the Common Law," 135–136.

[15] Smith, *op. cit.*, 156.

fication offered for these legal shortcuts is merely the claim that induction is unnecessary because of the existence of the legal rule; but the use of such a rule is unjustified because it is not a duly authorized rule but merely a legal fiction use of which is prompted by the *penchant* of the deductive mind for shortcuts that eliminate the annoyance incidental to the more laborious process of induction. From the inductive point of view intent may be inferred only when the facts warrant such an inference. " In many cases, undoubtedly, the facts are such as to justify a jury in finding intent. And, if the facts are so strong that no other finding could reasonably be made, the judge may be justified in assuming the existence of intent without submitting that issue to the jury. But whenever intent is thus inferred, ' the process is one of inference from facts, not of pre-determination by law,' or, in other words, ' the process is induction from fact, not deduction from arbitrary law.' " [16] Fiction, because it assumes something which is not necessarily true,[17] in a particular case, " tends not only to impair in a general way reverence for truth; but also to diminish the respect which would otherwise be felt for the courts and for the law itself. These objections, in substance, have been urged, not by mere theorists, but by experienced lawyers and judges." [18] The averseness to inductive legal thinking is due in part to the fact that cases involving the use of legal fictions often involve questions of the motives of the parties to the case; and questions of motives are so obscure, and lawyers so lack the social-psychological training necessary to conduct such inquiries and to make unerring inferences as to motives, that they have easily drifted into the habit of covering such inquiries by legal fictions.

Conservative and rational judges differ, also, in their attitudes to the common law. The conservative attitude is that the common law is a complete body of law, which judges apply to particular cases by deductive reasoning. " The theory that law is a complete

[16] *Ibid.*, 157, quoting 2 Wharton, Evid. (3d ed.) ss. 1258, 1261, 1262.

[17] The deductive thinker, lacking analytical power, confuses ideas with terms. " No doubt this psychological and linguistic principle — what might be called ' the principle of linguistic contamination ' — explains why certain well-known legal authors have assumed, with unfortunate effect on their reasoning and argument " that contrasted pairs of terms have the same intrinsic meaning in different cases. (Hohfeld, " Fundamental Legal Conceptions as Applied in Judicial Reasoning," *Yale Law Journal*, XXVI: 716.)

[18] Smith, *op. cit.*, 154.

existing body discovered or interpreted by the courts is a natural result of the tendency or desire which impels every thinker to seek to form abstractions." [19] The United States Supreme Court has asserted that its function is to apply the principles of the common law to particular cases even though this may conflict with the traditional law of a particular state.[20] In Baltimore and Ohio Railroad v. Baugh,[21] it was decided that the traditional law of the state of Ohio concerning employers' liability for accidents should be set aside and the case decided according to the common law.[22] It was implied that in the absence of statutes the common law covers every emergency.[23] The rational judge, on the other hand, declares: "The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi sovereign that can be identified; although some decisions with which I have disagreed seem to me to have forgotten the fact. It is always the law of some state." [24] Says Justice Holmes: "It is revolting to have no better reason for a rule than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past." [25] "It does not follow, because we all are compelled to take on faith at second hand most of the rules on which we base our action and our thought, that each of us may not try to set some corner of his world in the order of reason, or that all of us collectively should not aspire to carry reason as far as it will go throughout the whole domain . . . a body of law is more rational and more civilized when every rule it contains is referred articulately and definitely to an end which it subserves,

[19] Lincoln, "The Relation of Judicial Decisions to the Law," *Harv. L. Rev.*, XXI: 121.

[20] Swift v. Tyson, 41 U. S., Peters, 871, January, 1842.

[21] 149 U. S., May, 1893.

[22] *Ibid.*, 778.

[23] In a dissenting opinion Justice Field maintained that "There is no unwritten general or common law of the United States on the subject. Indeed, there is no unwritten general or common law of the United States on any subject. . . . The common law could be made a part of our Federal system only by legislative adoption." (*Ibid.*, 784.) "I am aware that what has been termed the general law of the country — which is often little less than what the judge advancing the doctrine thinks at the time should be the general law on a particular subject — has been often advanced in judicial opinions of this court to control a conflicting law of a state. I admit that learned judges have fallen into the habit of repeating this doctrine as a convenient mode of brushing aside the law of a state in conflict with their views." (*Ibid.*, 786.)

[24] Justice Oliver Wendell Holmes, in *Southern Pacific Co. v. Jensen*, 37 Sup. Ct. Rep., 531.

[25] Holmes, "The Path of Law," *Harv. L. Rev.*, X: 469.

and when the grounds for desiring that end are stated or are ready to be stated in words." [26]

The conservative attitude to the common law results in a prejudice against statute law and a contempt for the action of legislatures, as indicated in a preceding chapter. Dean Pound distinguishes four possible attitudes to statute law, varying from a thoroughly rational attitude on the one hand to a thoroughly conservative attitude on the other. "Four ways may be conceived of in which courts in such a legal system as ours might deal with a legislative innovation. (1) They might receive it fully into the body of the law as affording not only a rule to be applied but a principle from which to reason, and hold it, as a later and more direct expression of the general will, of superior authority to judge-made rules on the same general subject; and so reason from it by analogy in preference to them. (2) They might receive it fully into the body of the law to be reasoned from by analogy the same as any other rule of law, regarding it, however, as of equal or co-ordinate authority in this respect with judge-made rules upon the same general subject. (3) They might refuse to receive it fully into the body of the law and give effect to it directly only; refusing to reason from it by analogy but giving it, nevertheless, a liberal interpretation to cover the whole field it was intended to cover. (4) They might not only refuse to reason from it by analogy and apply it directly only, but also give to it a strict and narrow interpretation, holding it down rigidly to those cases which it covers expressly. The fourth hypothesis represents the orthodox common law attitude toward legislative innovations. Probably the third hypothesis, however, represents more nearly the attitude toward which we are tending. The second and first hypotheses doubtless appeal to the common law lawyer as absurd. He can hardly conceive that a rule of statutory origin may be treated as a permanent part of the general body of the law. But it is submitted that the course of legal development upon which we have entered must lead us to adopt the method of the second and eventually the method of the first hypothesis." [27]

The difference of attitude in legal interpretation is seen not only in the work of practising lawyers and in the opinions of judges but also in theories as to the proper method of teaching law. On the

[26] *Ibid.*, 468.

[27] Pound, "Common Law and Legislation," *Harv. L. Rev.*, XXI: 385–386.

one hand it is maintained that in the teaching of law, emphasis should be laid on the inculcation of legal principles, particularly of the common law, which " existed, in theory at least, before any case in which it may be applied." [28] On the other hand, it is maintained that principles of law are not the formal principles of the common law but pragmatic principles derived from a study of the functioning of law in human society.[29]

The premises of the judge who relies on pre-existing rules are as truly individual assumptions as are those of the rational judge. Deduction is never used to the exclusion of induction, nor induction to the exclusion of deduction. The conservative judge is one who uses deduction extremely and thinks thereby he is eliminating the personal element. " In a superficial aspect, the application of rules to cases may seem to be a deductive process; a pre-existing general rule is the major premise from which the judge arrives at a particular conclusion applicable to John Doe. In fact, however, the . . . supposed general rule is an inductive conclusion on the part of the judge from preceding individual instances. His decision of the case is a new instance which later judges and theorists will use as the basis of a new induction. In all cases the judge must construct his own major premise, and this he does not find an easy matter. Who can tell to-day just how far a combination of laborers may lawfully go in attempting to secure higher wages? Who can construct an indisputable rule for determining whether or not a contract is an illegal restraint of trade? . . . Cases involving these questions cannot be decided merely by constructing a syllogism." [30] The reasoning of the conservative judge necessarily involves some induction in the construction of his major premise, and that of the rational judge involves some deduction from general principles. The degree in which the rational judge will use deduction in a particular case depends on " the degree of difference between the state of facts before the court and states of fact passed upon in previous decisions. If

[28] Baldwin, " Education for the Bar in the United States," *Amer. Pol. Sc. Rev.*, IX: 447.

[29] Pound, " Mechanical Jurisprudence," *Columbia Law Review*, VIII: 614–623; Pound, " Common Law and Legislation," *Harv. L. Rev.*, XXI: 383–407; Pound, Note to Fowler, " The New Philosophies of Law," *Harv. L. Rev.*, XXVII: 734; Pound, " The End of Law as Developed in Legal Rules and Doctrines," *Harv. L. Rev.*, XXVII: 195–198; Pound, " The End of Law as Developed in Juristic Thought," *Harv. L. Rev.*, XXVII: 619; Pound, " Juristic Science and Law," *Harv. L. Rev.*, XXXI: 1050–1060.

[30] Corbin, " The Law and the Judges," *Yale Review*, N. S., Vol. III: 239–240.

this difference be sufficiently great the case cannot fairly be regarded as covered by the previous cases. If on the other hand the difference is sufficiently small, so that no reason of policy can fairly be said to exist for differentiating the present situation from those previously passed upon, we may fairly regard the case in hand as governed by 'settled legal principles.' The chief practical difference is, that in the one case the court has for the first time to pass upon the policy of a decision one way or the other, while in the other it has previous determinations as to the policy to rely upon. Inasmuch, however, as the court may in any case refuse to follow the past adjudications, ultimately the function of the court in both cases is the same." [31]

From the different legal attitudes indicated in the preceding paragraphs, the conservative and the rational, there have developed two fundamentally different conceptions of law. "The law rests on two fundamental and contradictory concepts of society, . . . the absolutistic and the evolutionary concepts. The absolutistic concept assumes a fixed social constitution, fixed social relationships . . . resting upon a natural order in which exist the natural and inalienable rights of private property, individual liberty, free contract and free competition. . . . The evolutionary concept assumes a developing social constitution and changing social relations. . . . It, therefore, assumes that social right, justice and welfare consist in changing or adapting . . . law to meet the particular needs . . . of developing . . . relationships, and that this is best secured when the people are allowed through their legislators to make the laws with regard to present and developing needs, . . .

"As yet the law as it stands, in its fundamental assumptions, . . . is predominantly representative of the first of these conflicting concepts. The second shows its influence mainly in laws where it can be made to appear that the persons primarily affected are not complete individuals, e.g., women, minors, children, dependents, defectives and delinquents; or where it can be made to appear that the public is more concerned than the employers and workers, e.g., in cases related to public health and safety. . . . So far, then, as the labor field is concerned, with the exception of laws relating to women's work, child labor . . . sanitation and safety, . . .

[31] Cook, *op. cit.*, 796, note.

where there is a struggle on between the two principles, with the latter rapidly gaining, the law in principle, . . . still reflects the absolutistic principle." [32]

The conservative lawyer and judge regards the law as a body of relatively fixed principles while the rational lawyer and judge regards it as a means of progressive adjustment in particular cases of social conflict. The more vigorously intellectual the lawyer or judge " the more he distrusts broad general principles and theories, and the more important he thinks it to confine the decision to the particular case." [33] However, the rational judge does not consider it his function to read into the law his own private ethical standards,[34] but to adjust the conflicts involved in the cases before him from the point of view of a rational social purpose.[35] Justice Holmes declares: " While the courts must exercise a judgment of their own, it by no means is true that every law is void which may seem to the judges who pass upon it excessive, unsuited to its ostensible end, or based upon conceptions of morality with which they disagree. Considerable latitude must be allowed for differences of view as well as for possible peculiar conditions which this court can know but imperfectly if at all. Otherwise a constitution, instead of embodying only relatively fundamental rules of right, as generally understood by all English-speaking communities, would become the partisan of a particular set of ethical or economical opinions, which by no means are held *semper ubique et ab omnibus.*" [36] This rational attitude requires a rational social purpose and a consideration of questions of policy in a particular case with reference thereto. Under this attitude general legal principles " are recognized but settle few controversies. Claim or denial of governmental power, of ' individual rights,' reveal themselves not as logical antitheses, but as demands of clashing ' rights.' . . . Choice must be exercised. The choice is not, however, capricious; it involves judgment between defined claims, each of recognized validity,

[32] Hoxie, " Trade Unionism in the United States," 212–213 (quoted without footnotes).

[33] Swayze, " The Growing Law," *Yale Law Journal,* XXV: 14.

[34] Pound, ".The End of Law as Developed in Legal Rules and Doctrines," *Harv. L. Rev.,* XXVII: 217.

[35] Pound, " Do we need a Philosophy of Law?" *Columbia Law Review,* V: 352; Pound, " Common Law and Legislation," *Harv. L. Rev.,* XXI: 385–407; Pound, " Mechanical Jurisprudence," *Columbia Law Review,* VIII: 608–623; Pound, " The Scope and Purpose of Sociological Jurisprudence," *Harv. L. Rev.,* XXV: 503–516.

[36] Otis V. Parker, 187 U. S., 607–609.

each with a pedigree of its own, but all of which necessarily cannot be satisfied completely." [37]

The insistence of Justice Holmes on the discretionary power of the judge, and his use of that power to introduce questions of policy manifested itself in the two great fields of constitutional law, the Fourteenth Amendment and the Commerce Clause. His interpretation of the Fourteenth Amendment has already been explained. He interpreted the Commerce Clause as giving Congress power to legislate concerning not only transportation but also "the human relations involved in commerce," [38] and, in accordance with this interpretation, in a memorable opinion against the majority of the Court, asserted the power of Congress to legislate concerning industrial relations on interstate roads to guarantee industrial peace.[39]

Essential in Justice Holmes' rational attitude are these principles: that "Life, as a fact, is a stern, endless struggle of interests, and government can merely mitigate and regulate its conditions; and, Life, as a purpose and a career, is an effort to reach an unattainable ideal; the ideal (not the actual) *must* be the aim, we *must* strive, yet it is *never* attainable." [40] There are, in the rational personality, three kinds of conflicts. The first is the conflict between the egoistic and the altruistic self. A perfect resolution of this conflict is unattainable because one can never be sure, however much of money, position or other value he has sacrificed for higher ends, that the longings for family, for leisure, for influence may not selfishly prevail. The second is the never ending experience of the intellectual self that just when clearness on a certain problem is reached, another greater problem challenges the attention. There is, therefore, the conflict between the impulse to rest content with clearness already achieved, and the impulse to respond to the challenge of still other problems. An ideal intellectual comprehension is, therefore, in the nature of the case never attainable. The third conflict of the rational personality arises from its position in human society.[41] The rational man identifies himself with the progressive

[37] Frankfurter, "The Constitutional Opinions of Justice Holmes," *Harv. L. Rev.*, XXIX: 687.
[38] *Ibid.*, 689.
[39] Adair v. United States, 208 U. S., 286–287.
[40] Wigmore, "Justice Holmes and the Law of Torts," *Harv. L. Rev.*, XXIX: 602.
[41] Hayden, "The Social Will," *Psy. Rev.*, X, No. 2, 78.

section of his profession, or his party, and the more he accomplish the more opportunities for progress open up. This conflict is n distinct from the conflict in his intellectual personality because it his intellect that is at work on the professional or political problen These do not present themselves to the conservative section of t profession or party because of their lack of intellectual initiative, because of selfishness. There is, then, this third never-ending co flict between the impulse to acquiesce in the conservative view things and the impulse to accept the challenge of new problems.

As the rational judge interprets the law, it is a means of a reaso able compromise between clashing rights. With the rise of co flicting clauses, the clashing rights come to be more and more t claims of conflicting classes. But the decision is not merely a co promise between conflicting classes; rather the rational judge tak advantage of the conflict presented for adjudication to advan as far as possible the welfare of the whole.[42] Consequently, " v find a growing extension of this sphere of law, a gradual displac ment of force by law, bringing not only the peaceful settlement controversies as isolated instances, each on its own bottom, b settlement based on certain common considerations beyond the me avoidance of force." [43] These common considerations constitu the legal basis of organized society, and the basis of a rational a quiescence in the power of the state as distinguished from fearf submission to it as an obedience-compelling power. Legal rig thus assumes the aspect, to use President Goodnow's reconstructi of Brooks Adams' definition, of " the determination, reached as t result of compromise between social classes whose interests are co flicting, of the relations which those classes shall have to one a other, so far as concerns the recognition which shall be accorded them by the supreme social power, i.e., the state." [44] Those wh identify the will of a dominant class with the supreme power d clare: " Legal right, broadly, is what the dominant force in so ety, deflected more or less by opposition, requires or authorizes." If the judge has a rational social purpose and is eminently wise, t

[42] Ely, *op. cit.*, I: 176–179.

[43] Frankfurter, "The Constitutional Opinions of Justice Holmes," *Harvard Law R view*, XXIX: 683; Justice Higgins, "A New Province for Law and Order," *Harva Law Review*, XXIX: 15–39.

[44] Goodnow, "The Relation of Economics to the Law," *Survey*, March 4, 1911.

[45] Adams, Bigelow, and others, *op. cit.*, 154, 23, 45, 63–64.

decision will be more highly rational than a mere deflected reflection of an impulsive claim of a dominant class. For instance, in Australia, the court had to decide what should constitute a legal minimum wage, and it did not take the low figure suggested by the prevailing sentiment among the employers affected.[46] It deduced a reasonable minimum wage from a concept of a reasonable standard of living of labour, and the court was surprised " to find how often, as the principles of the court's action come to be understood and appreciated they guide parties disputing to friendly collective agreements, without any award made by the Court." [47] In dealing with conflicting classes, what the jurist has to do is " to overcome instinctive action and put in its place conscious direction of the human will toward an ideal justice." [48]

Before the rise of the rational judicial attitude, law-making proceeded with an eye largely to the adjustment of conflicting interests within or between propertied classes. With the establishment of popular government judges and legislators were forced to consider public opinion, but class prejudice still continued operative, and the deductive attitude was adhered to because this attitude accorded with the impulse to protect propertied interests. The struggle of propertied interests to prevent the confirmation of the appointment of Mr. Brandeis to be Associate Justice of the United States Supreme Court [49] showed the anxiety of those interests for the perpetuation of their traditional influence over the courts; it proved the difficulty of getting appointed to office a judge with a rational social purpose and demonstrated why such a purpose has not been more effective in the development of jurisprudence. The fact that jurisprudence shows some development in the direction of overcoming instinctive action for an ideal justice does not by any means contradict the fact that that development has been retarded by the influence of reactionary propertied classes.

Under the conception of legal right as a right enjoyed as the result of an adjustment of conflicting interests, law that regulates economic behaviour, whether made by judge or legislature, repre-

[46] Justice Higgins, *op. cit.*, 16–17.

[47] *Ibid.*, 16. See also Higgins, " A New Province for Law and Order, II," *Harv. L. Rev.*, XXXII: 199–200.

[48] Pound, " Juristic Science and Law," *Harv. L. Rev.*, XXXI: 1058.

[49] Reports from the Subcommittee to the Committee on the Judiciary, U. S. Senate, 64th Congress, 1st Session, on the Nomination of Louis D. Brandeis to be an Associate Justice of the Supreme Court of the United States, Washington, 1916, 59–60.

sents a compromise between conflicting classes, which is apt to favour the interests of a dominant class. Some interesting social-psychological objections are urged against the conception of law as compromise. One of these is that it robs law of the proper respect for it, which is necessary to its effective functioning. For, to a compromise between classes, it is said, one cannot have an attitude either of respect or obedience. However, we cannot define law from the point of view of what *ought to be* the attitude to it. Let us ask, what is the attitude to law? Is not the attitude of corporations to laws that limit what they regard as their rights one of a determination, first, to test the constitutionality of such laws, and, if this fails, to get them repealed or, very often, to evade them? Does a monopoly actually dissolve in obedience to the law and the command of the court? Again, is not the attitude of trade unions to laws that limit what they regard as their rights that of a determination to get those laws repealed as soon as possible? Evasion is not as pronounced in the attitude of trade unions as in that of corporations because the former lack financial resources to test the constitutionality of laws, and they have more respect for the obedience-compelling power of the state than have corporations.[50] But in neither case is there any respect for law as such. It is regarded by each class as a means of protecting its interests, or as an obstacle to the realization of its interests. It fixes limits for the time being to the behaviour of the conflicting parties in the class struggle.

Another objection to the theory of law as compromise is that it makes law uncertain. From time immemorial, jurists have insisted that it is more important for law to be made certain than for it to be just. Hence adherence to precedent was justified even though it involved injustice, because such adherence made the law certain. The " paramount social interest in the general security has dictated orderliness, certainty, system and rule in the administration of justice so that men rely on appearances and act with assurance in their every day activities unworried by the aggressions of others and unharassed by the caprice of their rulers. The intense desire to exclude the personality of the magistrate for the time being at almost any cost has left its mark on the law beyond any other fac-

[50] Lindsey and O'Higgins, " The Beast," 247–250.

tor in law making." [51] The interest in security is especially strong in the case of the property owner, whose secure ownership and quiet enjoyment of his property depends on the protection given by the law. Property-owning classes in the nature of the case are more interested in perpetuating a strong obedience-compelling power of the state than are non-propertied classes. On the other hand, the non-propertied need protection from oppression by employers. According as they look upon law as protecting them or as protecting the propertied, a non-propertied class is for strong authority of the state — socialistic, or against strong authority, and perhaps against government altogether — anarchistic. Both propertied and non-propertied classes, therefore, value law if it protects them, yet the tendency of classes to try to do away with laws that protect the other and are contrary to their interests provokes an inevitable uncertainty. There is uncertainty as to the permanency of the law, and an uncertainty as to its interpretation while it endures, since in a democracy public opinion affects the interpretation of law. " It took, for instance, nearly twenty years, with the aid of our judicial authorities, to ascertain the meaning of the so-called Sherman Law, and when the Supreme Court at length applied to it ' the rule of reason,' there were those who felt so much or so little regard for the wisdom of Congress as to assert that the effect of the statute had been misinterpreted. And even yet its bearing upon some of our most important companies remains to be determined." [52] As indicated in a preceding chapter, the ultimate effect of the statute was eminently satisfying to the dominant capitalistic class. It did not break up monopoly or prevent monoplies from profiteering.

The uncertainty of law, because subject to the exigencies of class conflict, may, however, be over-emphasized. When a law regulating this conflict comes to be generally accepted as essential for the public welfare, it is apt to become a fairly certain addition to our jurisprudence. For instance, when the bailiffs of capitalistic interests purposed, at the entrance of the United States into the World War, to do away with the labour legislation of the State of New York for the period of the war, clothing their exploiting intent under the resplendent garb of patriotism, they failed to accomplish

[51] Pound, " Juristic Science and Law," *Harv. L. Rev.*, XXXI: 1059–1060.
[52] Moore, " Law and Organization," *Amer. Pol. Sc. Rev.*, IX: 10.

their purpose because of the opposition of thinking men and women of the State. Though there will be constant change in labour laws, there will remain a body of legislation of increasing certainty as to its meaning and its value for social progress. In the last analysis, the only desirable ground of certainty in law is its wisdom from the point of social progress. We would reverse the traditional juristic maxim and say that it is not so important that law should be certain as that it should be just.[53]

The essential obstacle to this development is the wilfulness of the "aggressive particular interests" that have been generalized under the term "dominant class." "Legislation is too much at the mercy of aggressive particular interests . . . any statute book will show how completely our legislation may be moulded by any aggressive particular interest that does not come into conflict with a well-defined permanent group of voters."[54] To combat these interests Dean Pound declares that we need "a real ministry of justice charged with the duty of active and continuous effort to make the law effective for its purpose, as the courts are charged with the duty of effective administration of the law . . . so long as this is everybody's business it is nobody's business, and so much of the pressure for legislation comes from purely selfish motives that one who essays a real improvement out of pure public spirit is not unlikely to be met with suspicion. Thus he becomes discouraged and, lacking any selfish motive for persistence, gives up where the advocate of legislation for some particular group or class continues the pressure and succeeds."[55]

What shall be the nature of the rational social purpose that is to guide a ministry of justice? The interpretations for such a purpose, says Dean Pound, are lacking.[56] The development of law shows an effort to withstand the wilfulness of aggressive particular individuals and interests on the one hand, and of autocratic control on the other by "conscious attempts to attain an absolute objective standard of justice."[57] But we are as far as ever from agreement on a workable standard. Lack of such a standard and of the posi-

[53] Croly, "Progressive Democracy," 226.

[54] Pound, "Juristic Problems of National Progress," *Amer. Jour. Sociol.*, May, 1917, 730.

[55] *Ibid.*, 731.

[56] *Ibid.*, 724.

[57] Pound, "Juristic Science and Law," *Harv. L. Rev.*, XXXI: 1060.

tive action that depends on clear conviction is doubtless one reason for the ineffectual legal restraint of aggressive particular interests. In the economic sphere no reliable principle of the distribution of income has been arrived at, wherefore there is no principle to guide in legal adjustments of the economic phases of the class conflict. Those adjustments are compromises that tend to lie in the direction of the interests of the dominant class.

Lest the criticism be made that the analysis is left without any constructive suggestion as to a standard of justice, it may be well at this point to suggest the theory of the relativity of social adjustment. As the problem for the individual life is one of so adjusting the satisfactions of the different dispositions as to attain and maintain a maximum readiness for satisfaction of the entire instinctive nature, and, therefore, a maximum will to power,[58] so the social problem is that of so adjusting the conflicting instinctive interests of the population as to attain a maximum social power. The individual problem is not merely analogous to the social problem but is a part of it, for the social problem involves so adjusting the instinctive interests of the population as to make possible the maximum will to power of each individual. What we actually have, however, is not this rational adjustment of conflicting groups but classes divided against one another in an instinctive struggle for the material means of self-development, with little or no conception of the rational end. Such a conception would react upon the behaviour to acquire the means. As it is the behaviour is essentially instinctive and, like all instinctive behaviour, the instinctive impulses are exercised without foresight or rational purpose.

The traditional division of the state is into those who have risen to power by means of a strong rivalrous and dominating disposition, and the acquisitive and submissive masses. Those who have risen to power bequeath to their descendants and others of their number who may be without power the means whereby they maintain their traditional position in the dominant class. When individuals of intellectual power and sympathy arise in the working class, or in the dominant class and take up the cause of the working class, this leadership encourages resistance on the part of the working class. The reactionary leadership of the dominant class attempts indiscriminately to repress all resistance and the resisting

[58] Hocking, "Human Nature and Its Remaking," Chs. X–XIV.

class, therefore, as indiscriminately condemns the entire dominant class. This is the class struggle. It is an instinctive phenomenon and prevents the adjustment of the instinctive interests of conflicting groups for the sake of the development of the personality of the individual. But it may be a necessary prelude to rational adjustment. For, if a dominant class insists on maintaining its position by force, social progress requires resistance by force.

Progress begins with the conception, vague at first and confined to the few, of the relativity of social adjustment. It is seen that no perfect development of personality is possible for any individual, for he must live in society where the material means are limited and conditions are always imperfect. In the ideal world — in religion and art — he may create the mental means of personal development, and this has been the idealistic function of religion and art.[59] But still the development of personality remains imperfect by reason of the short-comings of objective conditions; — the religious man is never satisfied with mere contemplation of the Kingdom of God but aims to bring it to pass and complete satisfaction can come only with that. For the great mass of people the possibilities of ideal satisfaction are limited, and the development of personality depends largely on social adjustment. We have, then, this situation: (1) the need of religion and art for all; (2) the need of a progressive social adjustment; (3) the need of grasping the conception of relativity, that is, that both ideal adjustment and social adjustment are relative to the social condition in which we are.

These principles of progress, once vitally active in the population, will work these changes: (1) The instinctively dominant class, and therefore, the instinctively resisting class will disappear; (2) the state will, then, change its form. There will be substituted for the present form a state based, not on classes whose attitudes to one another are determined by instinctive impulses that have become habitual, but on economic groups which have cultivated a tradition of their relation to the whole which is handed down as is craft or professional knowledge. Only as men act as economic groups is law within their reach, for, at the present time, between eight and thirty-five million individuals in the United States, in their "struggle for law"[60] find the law beyond their reach because of

[59] *Ibid.*, Pt. VI.

[60] Ihering, "The Struggle for Law," trans. by Lalor, 49–50.

their poverty,[61] and are dependent on the uncertain aid of philanthropic legal aid societies.[62] Obviously the proper agency to invoke the law on behalf of a man is not a charitable organization but his own economic group. Furthermore, in the clash of collective wills that gives rise to industrial problems, men are coming more and more to act as groups.

The group's tradition of its relation to the social whole, as worked out in its economic details, will be different for different groups, but will be determined according to a standard which is the same for all groups — the development of personality of each individual. For instance, the development of the personality of miners requires a shorter work day than that of farmers, for the former work underground, in the dark, heat and dust, while farmers work in the open. The income of groups working in unhealthful or hazardous occupations will be greater than that of those working in healthful and safe occupations. Those differences of occupation will require governmental investigations by experts.[63] There will be great differences in income, hours of work and other economic conditions, but the differences will be determined intelligently according to a standard that is the same for all and not according to the exigencies of instinctive rivalry and class domination-submission as at present. But the day of the full realization of this ideal standard of justice is doubtlessly far in the future. The method of class conflict and compromise will long continue. The ideal standard will gradually appear, first, as the directive principle of compromise, and then as a positive standard before which class pretensions must fall in abeyance.

This positive standard of justice that is the same for all groups is a relative standard. No economic group may raise prices at the expense of the whole on the ground that the income of the group even at those prices is not sufficient for the development of personality of the members. For there is an inevitable economic scarcity which all alike must suffer.[64] Even with the greatest increase in

[61] Smith, "Justice and the Poor," 33.

[62] *Ibid.*, Pt. III.

[63] For instance, see U. S. Bureau of Labor Statistics, "Preventable Death in Cotton Manufacturing Industry," *Bulletin* No. 251.

[64] As a result of the war this scarcity meant, for Europe, a subsistence level for all. If some had more than they needed, others must starve. Failure to appreciate this essential economic fact and to found the Treaty of Peace on a standard of just distribution of the means of production and of products is the essential defect of the Treaty of Peace. (Keynes, "The Economic Consequences of the Peace," Chs. IV–VII.)

production of which we could conceive this scarcity will continue.[65] We have to accept this fact of economic scarcity and the limitation it places on capacity for self-development. We must accept, also, the further fact that population is increasing while natural resources are being exhausted, causing an inevitably increasing scarcity. Facing these facts, the principle of relativity becomes fundamental. As in the individual's organization of his instinctive dispositions, the degree of satisfaction to be given each is never absolute but always relative to the demands of the others, so in the adjustment of social groups, the degree of opportunity for development of personality to be accorded each is always relative to the opportunity to be given others. Who is to decide the degree of opportunity to be given each? It can be decided only in a parliament of representatives of all groups, and only if those chosen as representatives are men who have grasped the principle of relativity in their own lives, and for their own group in its relation with other groups.

According to the theory of relativity the standard of justice does not imply merely that the masses shall have the means of escaping physical want and the humiliation of submission; they are to be provided with the means not merely of escaping evil but of positive self-development. Nor does the standard look merely to an equalization of means of satisfaction,— that one shall not have more and another less —; for the motive of such an equalization is merely the instinct of rivalry which demands that one shall not be superior to or better off than another. The standard assumes that the individual has an impulse for self-development broader than any one instinctive impulse, and that the function of law is to organize individuals for self-development. So organized they constitute a state. As this theory of ideal justice implies a clear, positive ethical purpose for one's own life, which, as yet, few men possess, so it implies a rational social purpose for the state, which few men have. But let us not be misled by the scarcity of men of ethical and social purpose. These variant types, apparently insignificant, may prove to be immensely significant for the future. We must admit that there never was a time when statesmen seemed so utterly devoid of clear purpose, so content to temporize and drift as in these years following the World War. But we must not ignore the voluntary political groups that are forming with very clear and positive

[65] Croly, "Progressive Democracy," 396–397.

purposes, and with a leadership that stands for intellectual freedom in the realm of thought and for equality of opportunity for self-development. To be sure these motives are idealistic — in an age when most men, in the instinctive pursuit of satisfactions, bow to, admire and follow those who have amassed the means of such satisfactions. But the social control of a dominant class can last only as long as the masses continue instinctive; and our hypothesis is that this period will be followed by a development of intelligence — that it is beginning already, as seen, for instance, in a movement for more vital education, in a vigorous labour movement with a high-minded purpose, as defined in a preceding chapter, and in the progressive political groups. These movements mean that men are becoming conscious of a rational social purpose, and are organizing for concerted action in its realization, and are demanding that the state adopt and progressively realize in its laws an ideal standard of justice.

CHAPTER XVI

PSYCHOLOGICAL IMPLICATIONS OF INTERPRETATIONS OF PRIVATE RIGHTS

THE nature of private rights is determined not merely by legal provisions but more fundamentally by the impulses, attitudes and ideas that constitute the public opinion of the day. Rights may be guaranteed in the Constitution and yet nullified by failure of public opinion to stand effectively for them, as the constitutional right of trial by jury often has been nullified by their abuse of their enjoining power by the courts with the acquiescence of public opinion; and as the constitutional right of free speech has recently been abridged by the coercion exercised by city, state and federal governments against socialists.

That private rights have a social-psychological as well as a legal basis may be shown by comparing the conception of private rights underlying the constitutional system of the United States with that underlying the English constitutional system. Englishmen always have regarded their private rights as more fundamental than their form of government. These were nowhere explicitly stated but consisted of certain vaguely conscious attitudes which vigorously asserted themselves whenever conditions arose which thwarted those attitudes. The English have made no attempt to give legal definition to their private rights. What they have developed in law is a series of measures safeguarding them. President Goodnow writes: "The English were always a practical people. . . . Far from believing that there was an inherent virtue in any form of government, the English hardly knew that they had any peculiar form of government until a foreign observer, the French philosopher, Montesquieu, called their attention to it. What the Englishman had always in mind was certain rights, which he often called the rights of an Englishman, and upon whose existence and recognition he insisted with all the strength of his character. . . . The form of government which the French philosopher told him that he had was a matter of indifference to him, except in so far as it

was a means through which he could secure the end for which he had always fought. That end was the recognition of what he believed to be his ' rights.'

" Furthermore, when it came to the determination of those rights, that is, to the statement of what they were and of the methods by which he was to secure them, his attitude was just as practical, just as non-philosophical. He never consciously formulated a system of rights any more than he framed a system of government." [1] The rights of Englishmen " were of extreme importance, but it was difficult to find out what they were. Indeed, in many cases, the only way to find out what they were was to fight for what it was believed they were. . . . The rights of Englishmen have in large measure been ascertained through attempts that have been made to violate them." [2] " Thus the right to a special kind of trial for crime, that is, the trial by jury, is regarded as one of the most sacred rights of an Englishman. This insistence on particular methods of procedure is, of course, due to the fact that these methods have shown themselves, as the result of a long-continued experience, to be valuable in securing the end desired. This end was freedom from arbitrary autocratic action on the part of those to whom political power had been intrusted. It was the rule of law — that is, the rule of a principle of general application as opposed to the rule of a person arbitrary and capricious — which the Englishman sought. It was to secure his rights through this rule of law that he originated the form of government which has been called constitutional." [3]

Resistance to autocratic domination and deference to law are, therefore, attitudes essential in the English national character; and out of this social-psychological basis developed the English form of government and the English conception of private rights. The analysis of the national attitudes that determine the political institutions is one of the services which social psychology should perform for, or with, the student of jurisprudence. In the case of the English it must be shown how men living in a relatively secure environment and subsisting largely through agriculture devoted themselves to the acquisition of wealth without any of that fearfulness which prompts men not thus securely situated to submit to a dynas-

[1] Goodnow, " Principles of Constitutional Government," 246–248.
[2] *Ibid.*, 248.
[3] *Ibid.*, 249.

tic absolutism. Thus devoting themselves, with a sense of security, to the acquisition of wealth, they were impatient with any form of domination which interfered with free acquisition. Resistance to domination or a "love of liberty" became a conspicuous national trait. This attitude of resistance, reinforced by memories of successful resistance to political domination in the past, resulted in the gradual development of constitutional limitations on absolutism,[4] and has continued essential when manufacturing and commerce have become more important than agriculture, and when there is required a less dogged and a more intelligent ideal of liberty. We find that, in England, those legal guarantees which served the Englishman in his impulse for free acquisition and in his resistance of domination and exploitation on the part of the king and the higher ranks of the social order, represent that for which, above all else, he has a sentiment of deference. An absorption in property-getting conduces to an exceeding respect for law and deference thereto as the bulwark of the security of the institution of private property. In a nation less securely situated, the protection of the frontier of which requires a large standing army, there is less exclusive attention to the aequisition of wealth, a greater feeling of insecurity, and a tendency to turn to the ruler as the protecting organ of government. And the masses are inclined to obey the arbitrary command, and have a weaker regard for law which obligates all, including the ruler.

In both types of nations the masses have a personal deference; in the nation that suffers a sense of insecurity, the deference is felt toward the strong ruler and military leader; in the nation that, with a sense of security, devotes itself to the acquisition of property, the deference is felt toward the class of large property owners. No hesitancy is felt in entrusting the government to this class because it is felt that, on account of their large holdings, they will be especially zealous in maintaining the safeguards against political domination.

Compare with this social-psychological basis of the English constitutional system that of the constitutional system of the United States. The separation of the American colonies from the mother country was justified on the basis of natural rights. This emphasis on the natural rights passed into the state constitutions of the Amer-

[4] *Ibid.*, 85.

ican states and later into the Constitution of the United States, which included bills of rights that formulated the ideas then prevalent with regard to natural rights, and with which legislators were forbidden to tamper.[5] "The rights so enumerated . . . are assumed to exist — they never are expressly granted to the people, as such a grant would have been inconsistent with their character as natural rights — and the government is forbidden to violate them."[6] "In this respect the American conception of civil liberty differs considerably from the English conception. In England the exact meaning of a right which may be recognized is determined by the law, that is, by the legislature. In the United States these rights are recognized by the Constitution, and their precise meaning is to be fixed by the courts as the occasion arises."[7]

The significance of this distinction is seen on the examination of particular rights. For instance, the legal principle of freedom of contract is, in England, modified by statutes as occasion arises, while, in the United States, the courts have read into certain constitutional provisions natural rights doctrines which have caused them to declare unconstitutional laws that limited freedom of contract. President Goodnow explains the relation of the natural rights theory to the Constitution as follows: "The rights of man as an individual human being are set forth in a written constitution which it is beyond the power of the legislature to change. If an attempt is made to make such a change it may be prevented by the courts, which may thus protect the individual in his rights recognized in the constitution. . . . As the constitution may be changed by the sovereign people, the rights recognized are not in fact natural rights which have an existence apart from the law. But the law which recognizes them is the constitution, which is finally interpreted by courts independent of both executive and legislature. Judicial interpretation of the provisions affecting private rights in the United States has been much influenced by the philosophical ideas of the eighteenth century, and therefore, though these rights find their origin in constitutional law, their actual legal extent resembles that of the natural rights described by an extremely individualistic political philosophy, and is much the same as that held by the natural-rights philosophers of the eighteenth century. Owing to the power of interpretation

[5] *Ibid.*, 259–261.
[6] *Ibid.*, 261.
[7] *Ibid.*, 263.

possessed by the courts, and to the system of remedies which the Americans inherited with the English law, the provisions in their constitutions with regard to private rights are not, however, more general theoretical statements as to what ought to be, but are rules of law interpreted and defined by the court and protected by them in specific concrete judicial decisions." [8] On the same point Dean Pound writes: "Eighteenth century jurists conceived that certain principles were inherent in nature, were necessary results of human nature, and that these principles were discoverable *a priori*. They held that it was the business of the jurist to discover these principles, and, when discovered, to deduce a system therefrom and test all actual rules thereby. Such is even now the orthodox method in our constitutional law. Our bills of rights are regarded as merely declaratory of fundamental natural rights. Eminent judges assert that legislation is to be judged by those rights and not by the constitutional texts in which they are declared." [9]

The effect of this procedure has been to fortify the attitude of the individualistic property owner in America as it could not have been fortified under the English system. Our system has perpetuated "an individualistic rather than a social conception of man." [10] This development was due, essentially, not to the individualistic philosophy of natural rights but to the fact that the attitude of the individualistic American business man which moved the judge received endorsement from the individualistic philosophy. Judges are apt to be prejudiced on behalf of the property-owning classes, owing to the fact that, as lawyers, they were for the most part employed by those classes to defend their interests, and owing to the fact that the law, a knowledge of which is their stock in trade, is for the most part occupied with defining and safeguarding property rights. On account of this prejudice for the property owner, judges have interpreted the formulation of private rights in the Constitution in a way to satisfy this prejudice. For instance, note the extensive use by the courts of the injunction on behalf of employers against workmen. This nullifies the constitutional right of trial by jury inasmuch as the violation of an injunction is summarily punished by the judge as contempt of court. Nevertheless such use of the injunction, as indicated in a preceding chapter, has received

[8] *Ibid.*, 278–279.
[9] Pound, "Law in Books and Law in Action," *American Law Review*, XLIV: 28.
[10] Goodnow, *op. cit.*, 278.

the sanction of the Supreme Court of the United States. Note also the reactionary attitude of courts in declaring labour legislation unconstitutional. In bargaining between an employer and individual workmen the latter are at such a disadvantage that free contract, under those conditions, does not exist except in the mind of the judge; yet he uses a constitutional provision to perpetuate bargaining between individuals and to prevent collective bargaining on the assumption that individual bargaining is freedom of contract. But he is not unmindful of the fact that this individual bargaining favours the interest of employers and that its perpetuation is vehemently demanded by employers' associations.[11] It is because of this prejudice on behalf of the property owner that judges have readily interpreted constitutional provisions from the point of view of the eighteenth century philosophy of inherent natural rights.[12]

The bias of judges for the protection of property rights is seen in at least two different reactions of the courts: in the judicial prejudice against legislation on behalf of labour, and the readiness to use the injunction against labour; and in the denial of free speech to those who would express sentiments against property rights as recognized in legal tradition. Let us look at the question of free speech. The First Amendment to the Constitution provides that "Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people to assemble. . . ." This was "an express mandatory prohibition, absolute in its terms." [13] No exception was made of opinions the evident tendency of which might be, in the mind of the judge, to instigate illegal violence against the government. It was because judicial discretion had been used in England against those who publicly disagreed with the autocracy [14] that the First Amendment was made mandatory and absolute.[15] The meaning of the constitutional prohibition is the common-law test, which is variously interpreted today, [16]

[11] See the following pamphlets published by the National Association of Manufacturers of the United States: "Closed vs. Open Shop Unionism," "What Does the Closed Shop Mean to You?" "Closed Shop Unionism," "Class Legislation for Industry."

[12] Goodnow, *op. cit.*, 267.

[13] Hart, "Power of Government Over Speech and Press," *Yale Law Journal*, Feb., 1920, 422.

[14] *Ibid.*, 414–417.

[15] Jephson, "The Platform," I: 135–139; Schofield, "Freedom of Press in the United States," *Pub. Amer. Sociol Soc.*, IX. 71–73.

[16] Hart, *op. cit.*, 423–427.

the most liberal interpretation being that by Judge Hand in interpreting the Espionage Act of 1917, in which he maintained that words which in the forum of public discussion "might not themselves amount to advice or counsel to violate the law, could nevertheless make their author criminally responsible if they were in fact the cause of the results forbidden (by a law), and if they were uttered with the specific intent of producing those results." [17] He stated the right of free speech thus: "Political agitation, by the passions it arouses or the convictions it engenders, may in fact stimulate men to the violation of law. . . . Yet to assimilate agitation, legitimate as such, with direct incitement to violent resistance, is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government. The distinction is not a scholastic subterfuge, but a hard-bought acquisition in the fight for freedom." [18]

Judge Hand's interpretation and similar ones were condemned by the Attorney General of the United States as taking the teeth out of the statute; [19] and the prevailing tendency of courts was to give it a much more repressive interpretation than that permitted by the common law test,[20] especially when, after the war was over, the statute came to be used to repress utterances which threatened property rights. In 1919–1920 socialists were convicted under the war time sedition act when, in many cases there was no intent to incite to violation of laws and no violation followed their words. The mere inference in the mind of the judge of the possible tendency of their words was regarded as sufficient to convict. This is the testimony of a brilliant and scholarly young lawyer who took a prominent part in the defence of those accused of sedition in 1919, and I may quote at length from his testimony because it reveals certain phases of the social-psychological basis of jurisprudence which are rarely brought to view, namely, the emotional aspect of beliefs, which usually is hidden under a circumspect official decorum. What "the Inquisitors are after," says Mr. Hale, "is *not* the finding of a person who actually preaches immediate violent acts — he is almost non-existent — but the chance to put up to a magistrate, an immigration official, or an upper-class, special-panel

[17] United States v. Nearing (1918, S. D. N. Y.) 252 Fed., 223.
[18] Masses Publishing Co. v. Patten, 244 Fed. (1917), 535, 540.
[19] *Amer. Bar Assoc. Jour.*, 306.
[20] Chafee, "Freedom of Speech in War Time," *Harv. L. Rev.*, XXXII: 964–966.

jury, the legal question whether extremist doctrines do not in themselves *imply* "force and violence," and so make their holder jailable or deportable. The answer to which question depends on one fact only, a fact outside the record, namely the conservative or liberal temper of the person who has to answer it. In one of my cases the District Attorney challenged a prospective juror because he had once upon a time had something to do with an association for ameliorating the condition of children of the poor." [21] The fallacy of the "force and violence" test lies in the fact that conclusions of judge and jury as to whether or not force or violence is implied in the opinons of the alleged criminal depends less on the words and opinions of the latter than on the *attitude* of the officials, or "temper" as Mr. Hale terms it; and, perhaps, in a period of excitement like that of which he was writing, temper was a more apt term for the mental condition of many officials. For, as Mr. Hale says, the prosecuting officials even attempted to eliminate from a jury, on one pretext or another, those who appeared to them not to share their impulsive attitude. In addition to the *attitude* against the alleged Reds there was, as Mr. Hale showed by citations of facts, much excitement among judges and prosecuting officers, but there was no talk of punishing *them* for language that incited to illegal violence against alleged Reds. "But let an I. W. W. or an alien or a Communist get one-half as excited, and what happens to him? We take him in dead seriousness and run for the hand-cuffs." The result was, as Mr. Hale shows, that in very many cases those taken for deportation were simply the victims of the excitement of officials, which affected the behaviour and determined the ideas even of the highest officials of the national government [22]— this shameful injustice being possible because of the power vested in those officials to punish free speech that seemed to them, in their excitement, to *imply* some force and violence against the government. Hence the First Amendment is practically nullified, in a time of excitement, for all those whose speech is sufficiently displeasing to a dominant class [23] and its zealous and excited representatives.

When a non-propertied class begins to aspire for political power, the rights of free speech and assemblage, which propertied classes

[21] Hale, "The 'Force and Violence' Joker," *New Republic*, Jan. 21, 1920, 231.
[22] *Ibid.*, 232. See also Lane, "The Buford Widows," *The Survey*, Jan. 10, 1920, 392.
[23] Hale, *op. cit.*, 231–232.

gained in the course of their resistance to autocratic repression,[24] and which were made legal rights of all citizens, are, by reactionary propertied interests that control governments, denied non-propertied classes, under the impulse to protect property rights. A struggle then ensues between those who would re-affirm those private rights for all classes and those who would nullify them. If they are re-affirmed those rights must cease to be associated mainly with property rights and must become rights in their own right, so to speak, that is, rights springing directly from a government by public opinion, which can function only through perfectly free discussion in the open forum. Only with such free discussion is it possible to ascertain what the public opinion is. Those who advocate freedom of speech on any other ground miss the fundamental principle. The protests of individuals and organizations against the unconstitutional repression of freedom of speech and assemblage of groups of striking workmen and of socialists, in the United States, in 1919-1920, were generaly grounded on the fact that, without these rights, the only action open to them was illegal, violent propaganda. But, even if, instead of conducting violent propaganda, they submitted, and even if the mass of the people acquiesced in this exercise of domination by reactionary propertied interests, there would still be an argument for free speech for the socialists, and that argument would be, not the legal argument that the Constitution guarantees free speech, for the Constitution might be amended, but the social-psychological argument that wise political policy, in a government by public opinion, depends, in the first instance, on knowing what the people think and also what the people feel — what *all* the people think and feel. This is impossible unless all the people enjoy perfect freedom publicly to express their opinions. With no political repression this sense of freedom always will be imperfect enough, because most men are timid about expressing their views in public, and also because most men fear to express their views if these are contrary to those of employers, customers, clients, boards of trustees or others on whom they are economically dependent. In the nature of the case there is no real sense of free speech anywhere, and political repression only makes a bad matter worse. In a government by public opinion it is necessary to promote the greatest possible freedom, and

[24] Hart, "Power of Government Over Free Speech," *Yale Law Journal*, Feb., 1920, 414–417.

because some people think and feel what is contrary to the prejudices of propertied classes is no reason why the power of the state should intimidate them into silence. Indeed, it is all the more reason why they should speak out,— that views that are the opposite of the prevailing views may see the light of day and error be dissipated under intellectual scrutiny. No man knows he is right until he has answered every possible claim that he is wrong; and no man can be convinced that he is wrong until he has had his chance freely to discuss his views with those who think they are right. The private right of absolutely free speech is thus grounded in its necessity for a government that rests on public opinion.

In addition to this social-psychological argument for free speech there is the further social-psychological fact, which has been so frequently mentioned in the public protests, that if a part of the public opinion is suppressed it tends to move under the surface and ultimately to take the course of a reaction of suppressed impulses. "Repression of expression has in the past meant disorder; stern repression, long continued, has meant revolution." [25] Repression thus produces all those evils which it is the function of law and government to prevent. Because the principle of entire freedom of speech has a sound social-psychological basis, it should be made a legal right.

If the jurist accepts the principle stated at the conclusion of the preceding chapter, that the purpose of law is to enable the individuals of a population to organize for self-development, then the right of entire freedom of speech and assemblage follows. For self-development is impossible without free expression and interchange of thought. Organization for self-development involves the organization of men of different views into opposing political parties, and the right of these parties freely to appeal to the voters with their propaganda. The development of political freedom has, however, sprung not from the impulse for development of personality but, especially among Anglo-Saxons, for security of property. Hence the Englishman's lack of interest in the conception of natural law and natural rights, that is, the rights to which man is entitled as a human being — the right to full development of personality. "The Englishman has . . . never claimed that he has natural rights; that is, rights to which he is entitled by

[25] K. N. T., "Free Speech in Time of Peace," *Yale Law Journal*, Jan., 1920, 343.

reason of the fact that he is a man, a human being." [26] Free speech has been valued especially because of the impulse to resist autocratic encroachments on private property, and later to protest against state regulation of property-getting as paternalistic; wherefore reactionary propertied interests as readily deny freedom of speech to socialists in the twentieth century as our forefathers asserted the right against the English autocracy in the eighteenth.[27] And this repressive attitude of reactionary propertied interests is made effective because of the bias of the courts on behalf of propertied classes.

The bias of courts for the protection of property rights is not necessarily due to the direct or indirect influence of property owners on the judge, but to the fact that the law is largely concerned with property rights. The law makes the propertied classes the respected classes, because it makes them the classes to be protected, as contrasted with the non-propertied classes. Consequently mere legal conservatism gives a judge a strong bias on behalf of propertied classes. This is true both in England and in the United States. But where, as in the United States, a bench of judges is given a veto on legislation, their conservative bias on behalf of propertied classes has a profound effect on the development of private rights.

The analysis of the psychological basis of private rights in the United States takes us, therefore, finally into the problem of the causes of judicial conservatism. The tendency of the judge to adhere to precedent is due to the professional attitude of the legal profession, which in turn is congenial to men of the disposition and type of mind that attain unusual success in that profession. But the mind of the judge often is still more inflexible than was his mind as a lawyer. This is due, in the first place, to the traditional function of the judge. As shown in a previous chapter his function in the first periods of legal development was inexorably to declare the custom bearing on the case. And this traditional function has determined his attitude to the present day. His attitude is not that of arbiter [28] or of progressive legal interpreter,[29] but that of a bench applying legal commands in particular situations by logical

[26] Goodnow, *op. cit.*, 249–250.
[27] Becker, "The Eve of the Revolution," Chs. I–IV.
[28] Dicey, "Law and Opinion in England," 483–484.
[29] *Ibid.*, 364–365.

deduction from precedent. "Men trained in and for this kind of employment acquire a logical conscience; they come to care greatly — in some cases excessively — for consistency." [30] Habitually thinking deductively, the judge finds it impossible to appreciate changes in social and economic conditions and to reason inductively from these facts in his interpretation of law. For the inductive reasoning and application might work changes in the law and cause it to conflict with the logical perfection of the legal tradition. In the development of English judge-made law, the rules laid down for the application of precedents were regarded as binding judges for all future time, unless over-ruled by a higher court or declared no longer a law by the legislature. This prideful adherence to rules once laid down is characteristic of the dominating impulse wherever observed. It is seen in the father of the family who believes that he must carry out his command and not change it, else he will lose his authority in the family. As he says, "Unless I stick to what I say, my children won't respect me." This action of the dominating impulse with respect to commands springs from the nature of the submissive attitude, that is, from the respect of the submissive person for one who never changes his command and who insists that it be obeyed. One reason, therefore, for logical adherence to precedent is that in the exercise of its order-preserving function, the court feels that its decisions are more apt to subdue human wilfulness, as well as to call forth the unqualified assent of a conventional people if decisions are logical deductions from tradition. The judge feels that he represents the conventional people, that legal tradition represents their will, that he is the exponent of that will, and, therefore, that his function is logically to apply the law in a particular case as the command of the people against a wilful individual or class. Another reason for logical adherence to precedent is that by adhering strictly to precedent a judge shuts himself off from influences that might otherwise tempt him to favouritism, or to placate, or cultivate the favour of, feared individuals or powerful interests. Another reason, the one usually given by judges, is that judgments must be made certain.[31] It is said to be more important that judgments should be more certain than that they should be just.[32] The justice that may have to be

[30] *Ibid.*, 364.
[31] *Ibid.*, 360.
[32] Goodnow, "The Court of Appeals Decision," *Survey*, Apr. 29, 1911, 191.

sacrificed in particular cases to certainty is said to be "part, and not a large part, of the price which the individual has to pay the state for the general protection afforded by its power, . . ." [33] But all these reasons given for adherence to precedent are in the nature of justifications of the deductive attitude itself, which does not depend on the reasons but on the position of the judge as exponent of the law of a conventional people against human wilfulness. Obviously the man who will rise to such a position will generally be a man of unusually strong dominating disposition. People want a masterful man in such a position, and such a position is congenial to a masterful man.

Throughout the history of the law the commanding, deductive attitude of the judge has repeatedly brought the development of jurisprudence to a standstill. In the history of English law, the development of the logical perfection of the law produced a closed system which, with changing conditions, made impossible the attainment of justice under the law. In order that, despite changing conditions, justice might be done and the logical perfection of the law still not be broken, there evolved the equity courts with equity law developing alongside of but divergent from the law of the regular courts.[34] But, as Blackstone said, the equity courts developed "a laboured connected system, governed by established rules, and bound down by precedents, from which they do not depart, although the reason of some of them may perhaps be liable to objection." [35] Blackstone pointed out injustices involved in applying the precedents of the equity law which, however, were allowed to stand, he said, because of the "reverence" for these precedents.[36]

The judicial attitude of strict logical deduction from precedent was rendered more extreme in England by the rivalry of the judiciary with the other organs of government for social control. The king invoked the divine right; the legislature, the law of nature and popular right; while the judge invoked the logical perfection of the law as authority for the right of the courts finally to interpret the law.[37] President Goodnow, after tracing the de-

[33] Pollock, "Justice According to Law," *Harv. L. Rev.*, IX: 307.
[34] Dicey, *op. cit.*, 375–398.
[35] Blackstone, "Commentaries on the Law of England," Bk. III: 432.
[36] *Ibid.*, Bk. III: 432.
[37] Pollock, "A First Book of Jurisprudence," 236–243.

velopment, in English history, of judicial independence of the crown, writes that " the experience of the English people, in their struggle for constitutional government, had led them to believe that it was absolutely necessary to the continued existence of that form of government, that the judges who were to determine the legality of the actions of the agents of the executive must be independent of that executive.

" English-speaking people, therefore, accepted with eagerness the principle. They were proud of and had confidence in their courts. They believed that the English courts had developed the English common law. . . . They remembered the many instances in which the English judges, notwithstanding their dependence upon the Crown, had opposed the royal wish, and had endeavoured to stand for the rule of law against autocracy. The historic remark of one English judge who, on being pressed by the King to decide in a particular way, had said, ' Sire, you may perhaps find a judge who will reach that decision, but you will hardly find a lawyer,' is indicative both of the belief of the English people in the necessity for the rule of law, and of their conviction that the rule of law could be secured only if the judges were independent of the executive." [38] Against the arbitrary monarch, backed in his insistence by the military and police forces of the nation, the judges plausibly evaded personal responsibility for their decisions — and so escaped the bias that fear gives — by making these impersonal, — logically plausible applications of precedents coming down from the past and having the authority of hoary tradition. The people, conventional in type of mind, were impressed by the traditional aspect of decisions, and had a reverential regard for the learning and the non-capricious, impressive attitude of the repositories of those traditions, as compared with the capricious, arbitrary monarch. Thus the judiciary prevailed over the king, because of its superior social control. For the same reason Parliament, after a long rivalry with the Crown for the dominant position in the government, ultimately won the dominant position.[39]

The English judiciary is the conservative governmental organ. Most of the English judges have been Tories. But its conservatism has not interfered as much with the progress of jurisprudence in England as has judicial conservatism in the United States, be-

[38] Goodnow, " Principles of Constitutional Government," 224–225.
[39] *Ibid.*, 202.

cause Parliamentary statutes are not subject to judicial veto. Even in England, however, the conservatism of the judiciary has hampered the development of jurisprudence, though judges are more influenced by public opinion than they used to be. Says Dicey: "The Courts or the judges, when acting as legislators, are of course influenced by the beliefs and feelings of their time, and are guided to a considerable extent by the dominant current of public opinion; . . . But whilst our tribunals, or the judges of whom they are composed, are swayed by the prevailing beliefs of a particular time, they are also guided by professional opinions and ways of thinking which are, to a certain extent, independent of and possibly opposed to the general tone of public opinion. The judges are the heads of the legal profession. . . . They are men advanced in life. They are for the most part persons of a conservative disposition. They are in no way dependent . . . upon the favor of the electors. . . . They are more likely to be biased by professional habits and feeling than by the popular sentiment of the hour." [40] The result is that "judge-made law has, owing to the training and age of our judges, tended at any given moment to represent the convictions of an earlier era than the ideas represented by parliamentary legislation. If a statute, as already stated, is apt to reproduce the public opinion not so much today as of yesterday, judge-made law occasionally represents the opinion of the day before yesterday." [41]

In the rivalry of governmental organs in English history, the judiciary has relied not on force, as did the king who wielded the military power, nor on appeals for popular support, but on commending itself to the conventional in human nature, especially to the conventional property owner and the legal profession. The result is that, in England, where the people are unusually conventional,[42] "law means a body of rules enforced by the courts. For this purpose it is unimportant whether the function of the courts be regarded as making or declaring law, because the question is not about the source or origin, but simply about the criterion of law. The essential point is that what the courts recognize and enforce is law, and what they refuse to recognize is not law." [43] In the United States this popular deference to the judiciary has

[40] Dicey, *op. cit.*, 363–364.
[41] *Ibid.*, 369 (quoted without footnote).
[42] Lowell, "The Government of England," I: 12–14.
[43] *Ibid.*, II: 473.

been equally marked,[44] and has resulted in popular acquiescence in the judiciary's power of constitutional veto, through which the judiciary has become the final authority in the determination of private rights. The respect for the judiciary, as compared with the legislative and executive branches, has been greater in the United States than in other countries, perhaps, among other reasons, because of our not having an hereditary upper class which is habitually deferred to politically. The influence of professional politicians over the nomination and election of legislators and executives has inclined the tendency in human nature that looks for something it can respect in government to feel extraordinary respect for the judiciary, as contrasted with "wire-pulling" legislators and executives; and this popular attitude has been fostered by the property-owning classes who look to the judiciary as the bulwark of the security of their property rights.

A further aspect of the rivalry of the legislature and the judiciary, in the United States, is more largely juristic, yet closely connected with social-psychological processes: "American courts, unrestrained by any doctrine of parliamentary supremacy, such as was established in England in 1688, found themselves opposed to legislatures, just as English courts of the sixteenth and seventeenth centuries had been opposed to the crown. They found in the books, over and above express constitutional limitations, vague doctrines of inherent limitations upon every form of law-making and of the intrinsic invalidity of certain laws. They soon wielded a conceded power over unconstitutional legislation. . . . But the determining factor in the attitude of our courts toward legislation is doubtless to be found in the coincidence of a period of development through judicial decisions with one of great legislative activity. Usually legislative activity has succeeded juristic or judicial activity. With us they happened to be coincident. Roughly speaking, the first century of American judicature was taken up with determining the applicability of the several doctrines of the common law to this country and working out the potential applications of common law principles to American conditions. Hence it was marked by fresh and living juristic thought and vigorous judicial law-making. For once, legislation had to contend with living and growing law of the discursive type instead of with the

[44] *Ibid.*, II: 472.

feeble off-spring of a period of juristic decadence." [45] The result was the development of the American system of private rights.

The rivalry between the judiciary and the legislature in the United States has been most keen on those occasions when judges, in their decisions, have plainly shown a tendency to favour propertied interests as against the legislature seeking to enact, and the executive to enforce, laws on behalf of the public welfare. This rivalry of governmental organs, with its profound influence on the development of private rights, indicates underlying social-psychological conditions that must be apprehended in order to understand the development of jurisprudence. This knowledge can be had only imperfectly for the past, with the meagre documentary sources; but, in the present, investigations can be carried out more thoroughly.

The rivalry of governmental organs was once approved as a condition alleviating the burden of arbitrary rule. It was felt that any one governmental organ tended to become despotic if its power was undisputed, and that the separation of powers provided a system of checks and balances which prevented any one organ becoming despotic.[46] It is maintained that this necessity of a separation of powers still continues. "By compelling a distribution of authority over every subject-matter of government, the separation of powers insures to the holders of authority a position of relative impartiality which lessens the likelihood and the apprehension of unfairness. . . . It also concentrates on each department responsibility for the proper performance of its peculiar function and since the work of each department calls for special aptitude or experience, it brings about a desirable division of labor." [47] At the same time the division of labour must be directed by a rational social purpose which requires co-operation of the different departments.[48] This co-operation has developed somewhat in spite of all obstacles. The executive more and more co-operates with his party in the legislature in directing [49] the legislative program; the judiciary in many cases more carefully considers what was the legislative purpose, in applying the rule of reason in the interpreta-

[45] Pound, "Common Law and Legislation," *Harv. L. Rev.*, XXI: 402–403.

[46] Goodnow, *op. cit.*, 224.

[47] Green, "Separation of Governmental Powers," *Yale Law Journal*, Feb., 1920, 393 (quoted without footnotes).

[48] Pound, "Legislation as a Social Function," *Pub. Amer. Sociol Soc.*, VII: 155.

[49] Laski, "Authority in the Modern State," 72.

tion and application of statutes; the legislature more willingly consults the executive purpose in devising legislation and assents to the necessity of judicial legislation.

In the last analysis, the problem of a progressive development of private rights resolves itself into a political problem, namely, the problem of getting elected or appointed to office law-makers who will be guided by a rational social purpose, and of getting effective endorsement of their action. This is, in the last analysis, a social-psychological problem. While law-making will probably continue to be more largely the business of lawyers than of any other class, and judges will almost of necessity be lawyers, and while training in the law does tend to make a man deductively minded and conservative, nevertheless there are lawyers not thus affected, because of their unusually strong sympathetic and intellectual disposition, and these progressive lawyers should become the judges. But the propertied classes ordinarily exercise a predominant influence in determining nomination or appointment to judicial office. The lawyers who have influential backing for judicial office are those whose dispositions have made them the effective servants of corporations or of political organizations, and who, in the course of a career in which it was their business to serve those interests, and in which they attained conspicuous success in that service, developed those attitudes of character that would cause them, as judges, to take the attitude of those interests to the juristic problems that would come before them for decision. When a court finds unconstitutional a law that was passed on behalf of the public welfare, on the ground that it restricts freedom in the acquisition of property, the essential question is, was the court in sympathy with the law. Are the reasons for the adverse decision valid from the point of view of a rational theory of progress, or merely secondary explanations advanced to justify a bias against proposed legislation that restricts the rights of propertied interests? President Goodnow raised this essential question in connection with the decision that declared unconstitutional the New York compensation law.[50] He pointed out that "a careful reading of the decision can hardly fail to convince one who is in sympathy with the desire to benefit the lot of the laboring population, that, if the court had really shared this sympathy, it might

[50] New York Court of Appeals, Ives vs. South Buffalo Railway Company, 1911.

comparatively easily have given greater weight to such cases as the explosive cases which it does not even mention. . . . The Court of Appeals might also have shown greater willingness to follow the lead of the Supreme Court of the United States in the recent bank depositors guaranty fund cases. . . . It is true that the Court of Appeals is not bound by the decisions of the United States Supreme Court. . . . But it is not less true that a court desiring to uphold the constitutionality of the act in question might easily be more astute in finding reasons for supporting it than the New York Court of Appeals has shown itself to be." [51] The basis of a judge's opinion is his attitude, which determines whether he will try to find legal reasons for or against the constitutionality of a statute. The question is, has his attitude been formed in the course of a life-long attempt sympathetically and intellectually to comprehend the lines of social progress; or has it been formed in the course of a life-long attempt to satisfy a rivalrous impulse for superiority in his profession and in his state, to win which he must so commend himself to political and propertied interests as to secure advancement? As soon as a way has been found to advance the former instead of the latter type of lawyer in public life, then the way to win superiority will cease to be the service of propertied interests, and will become service for the progressive welfare of the whole people.

[51] Goodnow, "The Court of Appeals Decision," *Survey*, Apr. 29, 1911, 191–192.

CHAPTER XVII

PSYCHOLOGICAL PROCESSES IN THE DEVELOPMENT OF PRIVATE PROPERTY

THE essential process in the development of jurisprudence has been the struggle to acquire and to feel security in the ownership, the enjoyment, and the bequest of property. This brings to view a far-reaching social-psychological basis of jurisprudence. An adequate treatment of the subject would require a volume. The present and the succeeding chapters aim merely to note how private property is connected, at various points in its development with underlying social-psychological processes.

Private property originated in the individual's instinct to resist another's taking what he had found or made [1] or received or habitually used. The instinct to resist attack or exploitation is stronger than the instinct to aggress. Among animals it is, therefore, "dangerous for an individual to try to seize anything held by another of about equal strength, and in human society this naturally led to the habit of leaving each in possession of whatever he had attained, especially in early times when the objects possessed were of little value, and there was no great inequality in wealth." [2] Defence of possessions was sympathized with by the group and the possessor was supported by the communal resentment and restraint.

The property thus privately owned and protected in the beginning included merely articles of personal use, not the hunting and fishing grounds and other natural resources which were used in common. These group possessions were defended by the group against the encroachments of other groups.[3] Thus, among the native tribes of Australia, "Each of the various tribes speaks a distinct dialect, and regards itself as the possessor of the country in which it lives." [4] And it will defend its territory on occasion.[5]

[1] Animals will defend their hoards of food against intruders. See Morgan, "The American Beaver and his Works," 167.

[2] Westermarck, *op. cit.*, II: 51–52 (quoted without footnotes).

[3] *Ibid.*, II: 36, 51.

[4] Spencer and Gillen, "The Native Tribes of Central Australia," 7.

[5] *Ibid.*, "The Northern Tribes of Central Australia," 26–27.

There was, therefore, in the beginning, private property and public property.

Private property originated, in the last analysis, in the community's support of the individual's instinctive assertion of ownership. For while this assertion, of itself, was strong enough to enable the individual to support his claim against another of about equal strength, he could not do it against another of greater strength, or against several bent on exploiting him. The situations in which the community supported the individual were, first, when his possession was due to previous occupation. "The principle of occupation is illustrated by innumerable facts from all quarters of the world — by the hunter's right to the game which he has killed or captured; by the nomad's or settler's right to the previously unoccupied place where he has pitched his tent or built his dwelling; by the agriculturist's right to the land of which he has taken possession by cultivating the soil; . . ." [6] Creation of a thing also conferred a right to its possession. "Even among the rudest peoples there is property in weapons, implements, dress, decorations, and other things in which the value given by labour bears a specially large proportion to the value of the raw material. . . . Among uncivilized races we frequently find that the land itself and the crops or trees growing on it have different owners, the latter belonging to the person who planted them." [7] Habitual use, also, in the mind of primitive man conferred a right to property. "Besides occupation, or the taking possession of a thing, the keeping possession of it may establish a right of ownership. That these principles, though closely connected with each other, are not identical is obvious from two classes of facts. First, a proprietary right which is based on occupation may disappear if the object has ceased to remain in the possession of the person who had appropriated it . . . among agricultural savages the cultivator frequently loses his right to the field when he makes no more use of it. . . . Secondly, the retaining possession of an object for a certain length of time may make it the property of the possessor, even though the occupation of that object conferred on him no such right . . . ." [8] Habitual use gives ownership because "the longer a person is in possession of a certain object, the more apt are both he and other individuals to resent its

[6] Westermarck, *op. cit.*, II: 35–36.
[7] *Ibid.*, II: 41–43.
[8] *Ibid.*, II: 39–41 (quoted without footnotes).

alienation; whereas the loss or abandonment of a thing has a tendency to loosen the connection between the thing and its owner." [9]

While the community tended to support the individual in a claim to property based on occupation, creation or habitual use, the communal support thus instinctively enlisted was not invariably forthcoming. It was possible for a powerful war chief and his following to defy the community or, by his influence as orator or prestige as fighter, to have his will.[10] Furthermore, particular disputes often presented opposing claims each with some degree of validity, in which cases the popular instinct to favour the man of prestige entered into the communal determination of property right.

This influence of the man of power over public opinion was immensely increased by the rise of pastoral and agricultural industry. There then developed a struggle for the possession of land, which the rise of pastoral industry and agriculture had made valuable, but which, until that time, had not been private property. In England the law eventually provided that the land belonged to him who was strong enough to appropriate, hold and make use of it. Thus it is said of the land law of England: "In the history of our law there is no idea more cardinal than that of seisin. Even in the law of the present day it plays a part which must be studied by every lawyer; but in the past it was so important that we may almost say that the whole system of our land law was law about seisin and its consequence." [11] And "seisin simply meant possession." [12] "A man is in seisin of land when he is enjoying it or in a position to enjoy it. . . . The man who takes and enjoys the fruits of the earth thereby 'exploits' his seisin, that is to say, he makes his seisin 'explicit,' visible to the eyes of his neighbors. In order that seisin may have all its legal effects it must be thus exploited. Still a man must have seisin before he can exploit it. . . . Seisin of land, therefore, is not the enjoyment of the fruits of the earth; it is rather that state of things which in due time will render such an enjoyment possible." [13] Various plausible explanations have been assigned by students of jurisprudence for making obvious possession the criterion of ownership. For instance, there

[9] *Ibid.*, II: 52–53 (quoted without footnotes).
[10] Webster, "Primitive Individual Ascendency," *Pub. Amer. Sociol Soc.*, XII: 49–54.
[11] Pollock and Maitland, "History of English Law," II: 29.
[12] *Ibid.*, II: 31.
[13] *Ibid.*, II: 34.

is the supposition that possession came to be legally protected because this conduced to peace and public order.[14] This assumption is plausible in view of the fact that today people are impatient with a disturbance of public order, especially if the one whose property right is questioned is a man of power and influence. Men who made fortunes in violation of the Anti-Trust Law of 1890 maintain their ownership of those fortunes and, by their monopoly, are still able to extort high prices from the public.[15] So the men who forcibly possessed themselves of land were able to extort from the cultivators a large part of the fruits thereof. It is not possible to analyse the motives which resulted in legally established private property in land,[16] but it is probable that conquest and power to maintain ownership played a leading part. And those who acquired ownership used it to exploit the cultivators.[17]

With the development of ownership by conquest the land eventually passed into the ownership of one man, the king, who then disposed of it in a way to give him the greatest dominating power. Thus feudal England was organized on a military basis. The sovereign needed men for his wars, and " to obtain men, the sovereign granted his domains to his nearest friends, who, in their turn, cut their manors into as many farms as possible, and each farmer paid his rent with his body.

" A baron's strength lay in the band of spears which followed his banner, and therefore he subdivided his acres as much as possible, having no great need of money. Himself a farmer, he cultivated enough of his fief to supply his wants, to provide his table, and to furnish his castle, but, beyond this, all he kept to himself was loss." [18] During this age, " little inducement existed to pilfer these domains, since there was room in plenty, and the population increased slowly, if at all. The moment the form of competition changed, these conditions were reversed. Precisely when a money rent became a more potent force than armed men may be hard to determine, but certainly that time had come when Henry VIII mounted the throne, for then capitalistic farming was on the increase. . . . Instead of tending to subdivide, as in an age of de-

[14] *Ibid.*, II: 41.

[15] Manley, " Have the Packers Escaped Again? " *The Searchlight,* Washington, D. C., IV (December, 1919): 11.

[16] Jenks, " A History of Politics," 111.

[17] *Ibid.*, 106–107.

[18] Adams, " The Law of Civilization and Decay," 199.

centralization, land was consolidated in the hands of the economically strong, and capitalists systematically enlarged their estates by enclosing the commons, and depriving the yeomen of their immemorial rights." [19] "Thus by degrees the pressure of intensifying centralization split the old homogeneous population of England into classes graduated according to their economic capacity." [20]

The appropriation of the common land in England by the powerful property owners continued down to recent times. For a history of the subject, the reader is referred to the excellent works by Slater (1907), Johnson (1909), and Hammond (1911). With the rise of sheep farming and the growth of manufacturing and commerce, in the seventeenth and eighteenth centuries, farming became more profitable and land more valuable; and the larger landowners, who controlled Parliament, secured the passage of acts giving themselves the common land.[21] In 1844, Parliament had passed upwards of four thousands acts by which almost six million acres of common land were made private property.[22] It is estimated that approximately twenty per cent of the total acreage of England was enclosed during the eighteenth and nineteenth centuries.[23] By these acts of enclosure the peasantry lost their source of fuel on common land, also land to which they had acquired a legal claim, and also the house built upon and other improvements made on the land.[24] Hammond describes the motive for these acts as follows: "The agricultural community which was taken to pieces in the eighteenth century and reconstructed in the manner in which a dictator reconstructs a free government, . . . was not killed by avarice alone. Cobbett used to attribute the enclosure movement entirely to the greed of the landowners. But, if greed was a sufficient motive, greed was in this case clothed and almost enveloped in public spirit. Let us remember what this community looked like to men with the mind of the landlord class. English landowners have always believed that order would be resolved into its original chaos, if they ceased to control the lives and destinies of their neighbours. 'A great responsibility rests on us landlords; if we go, the whole thing goes.' So says the

[19] *Ibid.*, 199–200.
[20] *Ibid.*, 207.
[21] Johnson, "The Disappearance of the Small Landowner," 36–61.
[22] *Ibid.*, 90.
[23] *Ibid.*, 91.
[24] Slater, "The English Peasantry and the Enclosure of Common Fields," 118–122.

landlord in Mr. Galsworthy's novel, and so said the landlords in the eighteenth century. The English aristocracy . . . very naturally concluded that this old peasant community, with its troublesome rights, was a public encumbrance. This view received a special impetus from all the circumstances of the age. The landlord class was constantly being recruited from the ranks of the manufacturers, and the new landlords, bringing into this charmed circle an image of their own, caught at once its taste for power, for direction, for authority, for imposing its will. Readers of *Shirley* will remember that when Robert Moore pictures to himself a future of usefulness and success, he says that he will obtain an Act for enclosing Nunnely Common, that his brother will be put on the bench, and that between them they will dominate the parish. The book ends in this dream of triumph. Signorial position owes its special lustre for English minds to the association of social distinction with power over the life and ways of groups of men and women. When Bagehot sneered at the sudden millionaires of his day, who hoped to disguise their social defects by buying old places and hiding among aristocratic furniture, he was remarking on a feature of English life that was very far from being peculiar to his time. Did not Adam Smith observe that merchants were very commonly ambitious of becoming country gentlemen? This kind of ambition was the form that public spirit often took in successful Englishmen, and it was a very powerful menace to the old village and its traditions of collective life.

" Now this passion received at this time a special momentum from the condition of agriculture. . . . Thus, in addition to the desire for social power, there was behind the enclosure movement a zeal for economic progress. . . . Many an enclosing landlord thought only of the satisfaction of doubling or trebling his rent: . . . If we are to trust so warm a champion of enclosure as William Marshall, this was the state of mind of the great majority. But there were many who chafed under the restraints that the system of common agriculture placed on improvement and experiment." [25] As Hammond states, explanations justifying acts of enclosure from motives of public spirit are more numerous in the documentary sources than those which assign it to desire for wealth and dominating power, but the latter are not lacking. Thus he writes that " Mr. Bishton, who wrote the *Report on Shropshire* in 1794, gives

[25] Hammond, " The Village Laborer," 35–36.

a still more interesting glimpse into the mind of the enclosing class; 'The use of common land by labourers operates upon the mind as a sort of independence.' When the commons are enclosed 'the laborers will work every day in the year, their children will be put out to labor early,' and 'that subordination of the lower ranks of society which in the present times is so much wanted, would be thereby considerably secured.'" [26]

The motives essential in the acquisition of private property in land by acts of enclosure were, therefore, to be able to appropriate more and more wealth from the possession of land; to control labourers by depriving them of the use of the common land; to win the social power and recognition to be gained through ownership of land and control of labourers; and the desire merely professed or sincere to promote the national progress and superiority by promoting scientific farming. During the centuries when these acts of enclosure were being passed, and were reducing small farmers from the position of independent owner to that of tenant or farm labourer, laws were in force denying labourers the right to leave the landlord's estate in search of better paid work; [27] and also laws empowering justices of the peace, who were landlords, to fix the rate of wages in order to prevent the wages of agricultural labourers from rising.[28] These laws have been repealed, but the wages of English agricultural labourers up to the time of the World War continued so low that, in a vast majority of cases, the wages were insufficient to maintain a family of average size in a state of mere physical efficiency.[29] They "could not make ends meet at all if it were not for charitable gifts." [30] Private property in land thus enabled the larger landowners, who controlled the government, to acquire the holdings of smaller owners; and this landowning class also secured the enactment of laws facilitating the exploitation of tenants and labourers. Under this domination and exploitation tenants and labourers were reduced to a submissive labouring class living at a bare subsistence level.

The English land law aimed primarily to give the one who claimed ownership a sense of secure possession. Thus "To our

[26] *Ibid.*, 38.
[27] Nicholls, "History of the English Poor Law," I: 279–287, 323–327, 340; II: 49, 239–257, 394–395, 406–407.
[28] *Ibid.*, I: 154–156, 203, 209, 270; II: 44, 131–133.
[29] Rowntree, "How the Laborer Lives," 52.
[30] *Ibid.*, 34.

medieval lawyers, the word *seisina* suggested the very opposite of violence; it suggested peace and quiet. It did so to Coke. 'And so it was said that *possessio* is derived *a posse et sedeo,* because he who is in possession may sit down and rest in quiet; so *seisina* also is derived *a sedendo,* for till he has seisin all is *labour et dolor et vexatio spiritus;* but when he has obtained seisin, he may *sedere et acquiescere*' . . . The seated man is in quiet enjoyment. We reverence the throne, the bishop's see, 'the Right Reverend Bench,' the bench of judges, we obey the orders of the chair; the powers that be are seated." [31]

This effect of ownership continues to the present day. The property owner with an independent income feels free to give himself to the enjoyments of life. He feels a satisfied sense of being able to meet whatever situations may arise and to order his life as he chooses. With money he can care for, protect and gladden the lives of those he loves. He feels a sense of security for the future, as well as a gratifying sense of the social recognition accorded the property owner. He realizes that his property stands between him and the care and weariness of life, apprehension for the future, keen sorrow at not being able to adequately care for those he loves, and the misery of the sense of inferiority and social contempt suffered by the poor. To escape all this and realize the enjoyment which ownership of property makes possible is what most men work for. And the property itself, for those who are fortunate enough to accumulate, stands for that for which they have spent their life's energy; as such it is precious. It is because property thus comes to stand for everything worth while, to men of an egoistic attitude, that the property owner of this attitude feels subconsciously an apprehension and resentment in connection with everything which he imagines will make his ownership less secure and less advantageous,— in connection with every progressive political movement, every gain in votes of a "radical" party, every appointment to an important office, especially to the office of judge, of a man of "radical" views, every "radical" tendency in teaching, preaching, literary and scientific work. Before the menace of the radical political leader, these reactionary property-owning interests, however bitterly in conflict before, instinctively draw together. But this type of reaction is not peculiar

[31] Pollock and Maitland, *op. cit.,* II: 30–31.

to the property owner. In the same way do scholars of this egoistic attitude, when the learning to which they have given their lives is threatened by new ideas, react impulsively against the new ideas. Lawyers likewise are habitually conservative toward changes in the law, knowledge of which constitutes their stock in trade; teachers, toward changes in the curriculum which may diminish the demand for the line of teaching which is their stock in trade. The underlying motive for conservatism is the same in these cases as in that of the egoistic property owner. But the conservatism of the latter is more effective in staying progress than is that of the professional man because the property owner's power is vastly greater; lawyers, clergymen and teachers are, more or less directly, beneficiaries of property owners. The conservatism of the lawyer, scholar, ecclesiastic and teacher commends them to the property owner, which furnishes an added incentive to their conservatism. All this is true, however, only for conservative and reactionary property owners and professional men. The sympathetic and intellectual type are altruistic and progressive. The more public education centres on the cultivation of sympathy and intellect, the more influential will this type become.

James Madison long ago pointed out that property owners differ in their attitude to questions of property according to their dispositions — whether of " reason " or " self-love." [32] He implied that self-love predominated and emphasized " factions " or rivalries of propertied interests as the fundamental process of political behaviour.[33] Long before, as well as since this time, status was determined by possession of property. " In the higher civilization, until modern times, the possession of land was the only social power which would raise a man above sordid cares and enable him to plan his life as he chose." " Men of talent . . . had to win recognition from warriors and land owners, and they became comrades and allies of the latter." [34] Men who gained riches in the city bought land and got themselves ennobled. " In France, in the seventeenth and eighteenth centuries, nineteen-twentieths of those who were called nobles were middle-class men enriched, decorated, and ' possessed of land.' " [35] The rise of towns and of a commercial and manufac-

[32] *The Federalist,* No. X.
[33] *Ibid.*
[34] Sumner, " Folkways," 183–184.
[35] *Ibid.,* 165–166. In Japan, today, land-owners are more respected than business

turing class resulted in resistance to the political domination of the landowning class, and in the eventual sweeping away of the privileges which that class, as long as it controlled the government, had maintained in its own interest.[36] The manufacturing and commercial classes now became the dominant political classes. "While land owners possessed the great social advantage, they could form a class of hereditary nobles. The nobles now disappear because their social advantage is gone. The modern financiers, masters of industry, merchants, and transporters now hold control of moveable capital. They hold social and political power." [37]

The propertied classes controlled the government of England during the development of the English Constitution, at least up to 1870,[38] and shaped that development in a way to give security to their holdings and perpetuity to their control.[39] The contest of the American colonies with the mother country was essentially a contest over property; the propertied classes in England aimed to profit at the expense of the prosperous propertied classes in the colonies.[40] The resistance of the colonies was a resistance primarily of propertied classes, though the leader in the rebellion, Samuel Adams, "unlike most of his patriotic friends, . . . had neither private business nor private profession . . . his only business being . . . the definition and defence of popular rights." [41] But he relied on the influence and support of the men of property.[42] In the formulation of the Constitution of the United States the propertied classes controlled the constitutional convention and the

men, except in the largest cities, so that men who make money in the cities buy land and live in the country.

[36] Smith, "The Wealth of Nations," Bk. IV.

[37] Sumner, "Folkways,," 162.

[38] John Stuart Mill wrote in 1861: Does "Parliament, or almost any of the members composing it, ever for an instant look at any question with the eyes of a working man? . . . On the question of strikes, for instance, it is doubtful if there is so much as one among the leading members of either House who is not firmly convinced that the reason of the matter is unqualifiedly on the side of the masters, and that the men's view of it is simply absurd. Those who have studied the question know well how far this is from being the case; and in how different, and how infinitely less superficial a manner the point would have been argued if the parties who strike were able to make themselves heard in Parliament." (Mill, "Representative Government," 56–57.)

[39] Maitland writes that the constitutional law of England "seems at times to be but an appendix to the law of real property." ("Constitutional History of England," 538.)

[40] Becker, "The Eve of Revolution," 30, Chs. III–IV.

[41] *Ibid.*, 153.

[42] *Ibid.*, 179.

development of the Constitution after it was adopted.[43] The development of the Constitution has made private property more secure in the United States than in any other country. "The fact is that private property in the United States, in spite of all the dangers of unintelligent legislation, is constitutionally in a stronger position, as against the government and the governmental authority, than is the case in any country in Europe. This is partly because the governmental means provided for the control or limitation of private property are weaker in America than elsewhere, but chiefly because the rights of private property are more formally established in the Constitution itself."[44] In a new country, where the abundant and widely distributed opportunities for acquiring property stimulate a strong impulse generally for private property and secure ownership, the law, with popular acquiescence, takes a marked development in this direction. When the land has been appropriated, and when other opportunities for acquiring property have been more and more exploited and a great non-propertied class has developed, the *popular* sentiment for an extremely individualistic development of the law of private property is less pronounced, though the sentiment of the owning classes is stronger than ever, because the weakening sentiment of the non-propertied masses constitutes an increasing menace not only against privilege but also against ownership itself.[45]

There is a caste tendency in the institution of private property as we have it, which is due to the inheritance of wealth. It is a matter of common observation that the relations between an employer who has himself accumulated his property and loyal workmen with whom he has been intimately thrown are likely to be more or less comradely. He realizes that his success has been due to their efforts as well as to his own, and they are apt to have a profound respect for him as their leader. As one business leader puts it: "Every group must have a leadership. My idea is that the boss is the *natural* labor leader. If he is not a labor leader, then he has no right to be the boss. . . . If the employer is not a natural labor leader, then the working people will secure other

[43] Beard, "An Economic Interpretation of the Constitution of the United States"; Beard, "Economic Origins of Jeffersonian Democracy."

[44] Hadley, "Undercurrents in American Politics," 38–56; see also Hadley, "The Constitutional Position of Property in America," *Independent*, LXIV: 834–837.

[45] Veblen, "Bolshevism is a Menace — to Whom?" *The Dial*, Feb. 22, 1919, 174–176.

leaders." [46] The man who has built up a business is a natural labour leader, though often he is selfish and is secretly making large profits while paying low wages. Nevertheless he is admired and followed because of his ability as leader. But how is it when the business is inherited by a son? As Croly says, "He rarely inherits with the money the individual ability possessed by its maker, but he does inherit a money power wholly independent of his own qualifications or deserts." [47] And very probably he has grown up with an idea of his immeasurable superiority over the working class. Consequently the relation between employer and workmen may cease to be one of mutual regard and become one of impulsive domination and contempt on the part of the owner of the business, and of resentment and increasing indifference to their work on the part of workmen. The man who inherits property often supposes himself to be, for that reason, a little better than others, and to be thereby justified in contemning others and exploiting their labour. As Professor Fisher observes: "Unequal distribution of wealth produces a caste feeling, breeding contempt for poor by the rich." [48] The heirs to a business may take little interest in it, and may administer it through bailiffs who are apt to be over-zealous to commend themselves to their chiefs; wherefore they assume even more extremely the dominating and contemptuous attitude to subordinates.[49] Thus inheritance tends to develop a reactionary capitalistic class that has the attitudes of a caste. The corporation device under which most business is conducted has made managers the bailiffs of vested interests. The influence of these over governments in turn stimulates the same attitudes in governmental officials. Hence the reactionary attitude of government to labour unrest,[50] which is accentuated when the working classes are of a different race or national group, as in bygone days when one group conquered another and used the conquered as serfs to till the soil,[51] and today when a considerable part of the working population in the United States is of foreign descent and as such invites capitalistic exploitation and govern-

[46] Johnson, "30 Years Without a Strike," *System*, Jan., 1920, 45.
[47] Croly, "The Promise of American Life," 203; Wallas, "The Great Society," 294.
[48] Fisher, "Elementary Principles of Economics," 496.
[49] Ross, "Class and Caste," *Amer. Jour. Sociol.*, March, 1917, 594.
[50] Compare Ashley, "Economic History," I: 276–277, with West, "Report on the Colorado Strike," U. S. Com. on Ind. Rel., 1915.
[51] Oppenheimer, "The State," 89–116; Ross, "Class and Caste," *Amer. Jour. Sociol.*, Jan., 1917, 471.

mental coercion. This exploitation and coercion finds sanction in law, for instance, in the increased use of the injunction to repress labour unrest, in which use judges are encouraged by the large foreign and hence "dangerous" element in the labour force of many corporations.

CHAPTER XVIII

PSYCHOLOGICAL PROCESSES IN THE DEVELOPMENT OF PRIVATE PROPERTY (*concluded*)

THE law of the modern state is largely concerned with property. Dr. Beard writes that "most of the law (except the elemental law of community defence) is concerned with the property relations of men, which reduced to their simple terms means the processes by which the ownership of concrete forms of property is determined or passes from one person to another." [1] The essential aim of law-makers has been that of protecting private property, though they may disavow this as their essential purpose, and maintain that the protection of private property is merely a means to the end of promoting "general security." But general security would require that workmen be not subject to dismissal from employment at the will of the employer — at a moment's notice if the employer so wills. The security provided by law is the security of the property owner.

A noteworthy instance of the solicitude of the law for the security of all property rights is furnished by the attitude of the law to the protection of reputation. It makes a sharp distinction between reputation that means merely the "honour" of an individual and reputation that is a financial asset. In case of injury to reputation which involves only an injury to personal honour, one has recourse only to a suit for damages, while reputation which involves loyalty of workmen, patronage of customers, or the confidence of financial concerns, or is otherwise a financial asset is not regarded as sufficiently protected by the legal remedy of damages and one may bring suit in equity and have the protection of an injunction. The equity court protects rights of property but not rights of personality; it will protect a reputation only when this can be construed as a property right.[2]

[1] Beard, "An Economic Interpretation of the Constitution of the United States," 12.

[2] Pound, "Equitable Relief against Defamation and Injuries to Personality," *Harv. L. Rev.*, XXIX: 640–648, 675–680; Pound, "Interests of Personality," *Harv. L. Rev.*, XXVIII: 362, 445–452.

Another example of the solicitude of the law for the protection of property rights, as distinguished from personal rights, is furnished by the attitude of the courts to the right of privacy.[3] Even when there is a statute granting right of privacy, the court is very gingerly in its interpretation in a case where the statute conflicts with property rights. For instance, New York passed a statute prohibiting the use of a person's name or picture, without his or her written consent, " for advertising purposes or for purposes of trade." An action was brought under this statute by a woman lawyer, whose activities in fixing the guilt in a murder case had attracted the public attention, against a moving picture company which figured her in a moving picture. The picture had also been advertised on the bill-boards. But the court dismissed the case on the ground that the statute went too far in its prohibitions protecting private rights.[4]

The law has developed largely for the satisfaction of the instincts involved in the quest for property. The desire for private property is essentially instinctive. Man has an instinct to seize that which holds the attention; to defend his possession of it; and to take it to a secret place to contemplate it, or to a familiar person usually a member of the family.[5] The developed desire for property manifests itself in the instinctive impulse to acquire that to which the attention of people is directed; to go to any lengths to defend possessions; to maintain secrecy as to possessions and business affairs and to oppose laws requiring publicity; to bequeath property to the family and to support laws of bequest and inheritance. The instinct to seize and appropriate what holds the attention is closely connected with the instinct to take a thing from another and hence with the instinct to dominate or aggress another. It is connected, also, with the instinct to use what is appropriated as suits the instincts that are satisfied through the use of material things. Acquisition of property is sought, also, under the instinct of rivalry, because possession of wealth is the essential symbol of superiority in modern civilization. The use of imagination and shrewdness in the acquisition of property does not inhibit the instinctive motivation. Without analysing further the desire for property, which

[3] Roberson v. Rochester Folding Box Co. (1902), 171 N. Y., 538; 64 N. E., 442; 59 L. R. A., 478.

[4] Humiston v. Universal Film Mfg. Co. (1919, App. Div.), 178 N. Y. Supp., 752.

[5] Thorndike, "The Original Nature of Man," 50–51.

is a problem for a future volume, we see that it involves a number of strong instinctive connections in original nature in virtue of which it is exceedingly individualistic. The law of property stands for the satisfaction of this individualistic, instinctive motive. There are developments in the law on behalf of a social, rational regulation of property rights,[6] but this development is still in its infancy.

The individualistic attitude to property is essentially instinctive; the social attitude is essentially intelligent. The individualistic attitude has shaped, and hence has the endorsement of, the law of private property. The making of the alterations in the law that are suggested by intelligence on behalf of the public welfare is a very slow process. For instance, the natural resources on which the group depended for its life were originally the property of the entire group. Eventually these natural resources became private property; and the legal precedent thus established has made it impossible for civilized nations to this day to nationalize even their most important natural resources, which continue to be wastefully exploited for private profit.

While the law endorses an individualistic property right, and thereby satisfies powerful instincts, human nature has instincts that work against these legal formulations. Among some primitive peoples, men were obliged by custom to share their food and other wealth with their associates; [7] and, to satisfy this communal demand there developed, among pastoral and agricultural peoples, customs of benevolence enjoined by religion.[8] Today, while men respect legally established property rights, there is an undercurrent of feeling that those who "have more than they know what to do with" "ought to share." It is felt that a just distribution of wealth would not give one man more than he needs while many others equally deserving have less than they need. This feeling often causes those who have dealings with the wealthy to "get what they can out of them." Professional men and storekeepers charge this class a higher price for services and goods. Artisans, domestics and others employed by this class try to "get out of them" as much as possible. This attitude to the wealthy is similar to the attitude of politicians and people in general to the government.

[6] Ely, *op. cit.*, I: Pt. I, Chs. VI–VII; II:Pt. I, Ch. XX, Pt. II, Ch. V, pp. 621–623; Goodnow, "Social Reform and the Constitution," Chs. V–VIII.

[7] King, "The Development of Religion," 291–292.

[8] Westermarck, "The Origin and Development of Moral Ideals," I: 540–569.

Until comparatively recent years government was in the hands of aristocracies, and the attitude to the government as thus controlled has survived, so that the feeling is quite prevalent that any one is entitled to get what he can out of the government. "The government can stand it," it is said. The masses have not yet learned that an extravagant government injures them. While, therefore, the tendency among men is to acquiesce in legal property rights, which rest on strong instincts, other instincts act in the opposite direction. These instincts have already shown some influence on the law of private property, for instance, in supporting high taxes on luxuries and progressive taxes on incomes. The intelligent reasons for such taxes are less influential with the public than is this instinctive feeling that the wealthy "ought to share." With the spread of education this feeling doubtless will be strengthened by intelligent reasons therefor.

The individualistic idea of property is that the owner has a right to use his property for his own benefit, or to allow its use by others in production on what conditions he pleases. "Personal liberty" is the phrase used to express the attitude that has developed for the free and unhampered consumption of wealth; and "freedom of contract" is the phrase used for the attitude of unhampered use of property in production. Various secondary explanations have arisen to justify freedom of contract, which, however, existed before the justifications.[9]

The right to the individualistic use of property is assumed to continue even after the death of the owner. Those who administer a property bequeathed for a public purpose, for instance, for a college or university, often assume that they are under an obligation to run the institution along lines that would be approved by the benefactor, even to further teaching of his religious or other beliefs or, at least, not to allow the inculcation of contradictory beliefs.[10] As Professor Fisher says, the custom of bequest and inheritance, handed down to us from Ancient Rome, though justified on the ground of its social advantage, is due, in part, to respect for the property right of the dead. "I believe that it is very bad

[9] Reed, "The Morals of Monopoly and Competition," *Intern. Jour. Ethics*, Jan., 1916, 268.

[10] But while this obligation is urged by trustees of an institution of learning as a reason for disapproving of the teaching of ideas contrary to their own, it is noteworthy that the obligation is not urged when the ideas of the benefactor were contrary to those of the trustees.

public policy for the living to allow the dead so large and unregulated an influence over us. . . .

"The disposal of property by will is . . . simply a custom, . . . It is no more inviolate than the custom of the disposal of the body of the dead by burying. Just as, in the interests of the living, we are substituting cremation for burial, so — likewise in the interests of the living — we may substitute a new for a traditional method of disposal of the dead man's goods." [11]

The change from the individualistic to the social conception, in the law of property, is retarded because propertied classes exert a predominant influence over governments. This is not surprising when we realize that legislators and, especially, judges come largely from the propertied classes, wherefore their attitude prompts them to perpetuate the legal endorsement of the individualistic attitude to property. As President Goodnow observes, "Without accusing the property owning and employing classes of conscious selfishness, we may say that judges belonging by birth and association to those classes and legislatures chosen by them are apt, without being conscious of the fact, to consider that the preservation of the social system under which they live is absolutely necessary to the existence of all social order, and therefore are apt to consider that the law must be framed so as to favor the preservation of that system." [12] Professor Seager testified before the United States Commission on Industrial Relations: "I don't see how any fair-minded person can question but what our judges have shown a decided bias in favour of the employers. I would not be inclined to ascribe this so much to a class bias, although I think this is a factor, as to the antecedent training of judges. Under our legal system the principal task of the lawyer is to protect property rights, and property rights have come to be concentrated more and more into the hands of corporations, so that the successful lawyer of today, in a great majority of cases, is the corporation lawyer. His business is to protect the rights of employers and corporations. It is from the ranks of successful lawyers, for the most part, that our judges are selected, and from that results inevitably a certain angle on the part of a majority of our judges." [13]

[11] Fisher, "Economists in Public Service," *Amer. Econ. Rev.*, IX (supplement): 12.

[12] Goodnow, "The Relation of Economics to the Law," *Survey*, March 4, 1911, 935; see also Weyl, "The New Democracy," 112.

[13] Final Report of the United States Commission on Industrial Relations, 1915, 52–53.

The judges have perpetuated the individualistic, and retarded the social development of property rights through limiting the scope of the police power of the states. All states have police power, subject to the limitations of the Fourteenth Amendment. The police power is the power "to secure and promote the public welfare, and it does so by restraint and compulsion." [14] "The maxim of this power is that every individual must submit to such restraints in the exercise of his liberty or of his rights of property as may be required to remove or reduce the danger of the abuse of these rights on the part of those who are unskilful, careless or unscrupulous." [15] The police power is a power of the legislature but, through its veto power, the judiciary may decide whether any particular exercise of police power by the legislature is constitutional or not. Most of the laws passed and decisions handed down under the police power have to do with the regulation of property rights. The police power, as exercised by legislatures and courts, "is essentially the power to interpret property and especially private property and to give the concept a content at each particular period in our development which fits it to serve the general welfare." [16] As distinguished from criminal law, the legal prohibitions made under the police power do not necessarily find a response and endorsement in public opinion.[17] Their reason and necessity may not be understood by the rank and file. Hence, a wise development of law under the police power requires that the political activities of selfish propertied interests, always alert, be met by that of citizens organized for the promotion of the public welfare.

Certain constitutional formulas have been invoked by the judiciary to limit or repress the development of the social view of property under the police power, especially the Fourteenth Amendment, which provides that no state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [18] The Constitution does not state "what is liberty or what is due process of law." [19] However, the courts have used

[14] Freund, "The Police Power," 3.
[15] *Ibid.*, 6.
[16] Ely, *op. cit.*, I: 207.
[17] Freund, *op. cit.*, 21–22.
[18] Goodnow, "Principles of Constitutional Government," 328.
[19] *Ibid.*, 266.

the Amendment to limit the exercise of the police power until its scope has been so enlarged that there is now " hardly any important police legislation which is not questioned in the Supreme Court as violating the Fourteenth Amendment." [20] Through their use of it, judges have given capitalistic domination the weight of judical sanction. " A condition of what in the words of Mr. Justice Clifford of the United States Supreme Court may be called ' judicial despotism ' has been reached," [21] which, unless alleviated by a more enlightened judicial attitude, may result in profound changes in our constitutional system.[22]

The conventional and the rational judge differ as to how far the court should go in excluding legislative opinions as to what is a reasonable exercise of the police power, and in assuming for itself an exclusive dictation on that point. The conventional attitude assumes an exclusive dictation. The rational attitude maintains, in the words of Justice Brandeis, that the court " is not to decide whether the view taken by the legislature in a particular case, is a wise view, but whether a body of men could reasonably hold such a view." [23] This, as he says, is to be determined not " deductively from preconceived notions and precedents," but inductively by " reasoning from the facts." The progressive judge is guided by a rational social purpose which gives meaning to the facts. Justice Brandeis declares that property is not an end in itself but only a means; that judges often have made the preservation of the existing legal tradition the end; that this tradition, which favours the exclusive rights of employing classes, is not in accord with the spread of political democracy; that " there is felt today very widely the inconsistency in this condition of political democracy and industrial absolutism "; that the movement toward industrial democracy is bound to continue, and " it lies with our lawyers to say in what lines that action shall be expressed . . . in lines of evolution or in lines of revolution." [24]

In this class conflict over the distribution of income the essential fact is the aim of reactionary propertied interests, though a minority, to maintain their control of government, as against the non-

[20] *Ibid.*, 65.
[21] Goodnow, " Social Reform and the Constitution," 340.
[22] *Ibid.*, 358.
[23] Brandeis, " Business — A Profession," li–lvi.
[24] *Ibid.*, li–lvi.

propertied majority. The propertied minority feel they need the protection of a strong government,[25] and become uneasy when their control is threatened. It is realized that the aim of the organization of the non-propertied class into a political party is to enable it thereby to gain control of the government in order to shape the law in its own interest, and the propertied suspect and fear the intentions of a long suppressed non-propertied class.

The impulse of reactionary propertied interests to perpetuate the mastery long secured them by the law is favoured by the conservatism of law. "Law may be even more conservative than custom. . . . In all progressive societies, as Sir Henry Maine observes, social necessities and social opinion are always more or less in advance of law." [26] In the United States, though there has been a growing sentiment for legislation that will make the position of labour less vicissitudinous and more secure, the changes in the law to bring about this improvement have been behind the changes required by public opinion.[27] The employer can dismiss his workmen as he pleases, so far as the law is concerned. His is the position of security, not theirs. He can withhold work except on his own terms, and so set in operation against workmen the compelling force of want.[28] In the use of this compelling force in conflict with labour, the employer is strengthened by the fact that he is "within his rights under the written law." [29] "There is no incentive for him to violate the written law because the law agrees with him in what he desires to do." [30] "But the workers . . . feel they have a property right in the jobs they formerly held. That the law holds they have no such right . . . does not alter the situation in the minds of the workers." [31] The minds of the workers, with respect to property rights, are influenced by the same motives which determined property right in the primitive group, namely, that the right to wealth depends on creation of that wealth or on habitual use of it; whereas the owners of property rely on the power of the state to protect them in the ownership guaranteed them by the law.

[25] Adams, Bigelow, and others, "Centralization and the Law," 29–30.
[26] Westermarck, *op. cit.*, I: 166.
[27] Beard, "American Government and Politics," 631–634, 732.
[28] Grant, "The Nat'l. Erectors' Ass'n. and Intern. Ass'n. of Bridge and Structural Iron Workers," U. S. Com. on Ind. Rel., 1915, 108–109.
[29] *Ibid.*, 109.
[30] *Ibid.*, 109.
[31] *Ibid.*, 109; Ely, *op. cit.*, II: 628–634.

The workers believe that legislators, judges and other governmental officials are in sympathy with the propertied classes as against the working classes; they distrust the publicists who work for labour legislation; and they realize that politicians favour labour legislation only as a concession to the labour vote.[32]

Reformers of property right may proceed from one or the other of two points of view: They may seek such a distribution of wealth as accords with the primitive instinct to own what one has created, occupied or habitually used, or they may seek such a distribution as accords with a rational social purpose. The first point of view seems impossible to realize in the complex industrial conditions of modern life and it has not been attempted except in the case of land. In the United States, legislation concerning the public domain has implicitly or explicity professed the aim to get the land into the possession of the actual tillers of the soil.[33] The land law has been repeatedly changed with this end in view, but all to no purpose, because the legal principle has been to guarantee legal ownership of all property acquired in ways technically legal, whether or not it was acquired by evasion of the intent of the law.[34] This action of the courts has encouraged a corrupt influence of corporations over legislatures.[35] By various subterfuges, large propertied interests were able to acquire vast tracts of the best timber, mineral and arable land.[36] The acquisition of property, under modern conditions, depends less on the creation of wealth than on legal control of property, because of the advantage given by mere property ownership in securing more property. Through lucky speculation and manipulations a man can acquire a large property.[37] A large property can be acquired also by inheritance, by

[32] Beard, "American Government and Politics," 742.

[33] Hill, "The Public Domain and Democracy," 35–36.

[34] *Ibid.*, Ch. II, VII, VIII; "Report of Roosevelt Public Lands Commission," Senate Doc., No. 154, 58th. Congress, 3rd. Session, 14.

[35] "By protecting the capitalist in the possession and enjoyment of privileges unwisely and even corruptly granted, they (the courts) have greatly strengthened the motive for employing bribery and other corrupt means in securing the grant of special privileges. If the courts had all along held that any proof of fraud or corruption in obtaining a franchise or other legislative grant was sufficient to justify its revocation, the lobbyist, the bribe-giver and the 'innocent purchaser' of rights and privileges stolen from the people, would have found the traffic in legislative favors a precarious and much less profitable mode of acquiring wealth." (Smith, "The Spirit of American Government," 329–330.)

[36] California Commission of Immigration and Housing, "A Report on Large Landholdings in Southern California, with Recommendations," 1919, 7–41.

[37] King, "The Wealth and Income of the People of the United States," 218, 231;

occupying a strategic industrial and financial position,[38] and by special privileges given by governments. On the other hand the primitive instincts still persist. The non-propertied masses believe they have a right to more of what they have created than they get, a right to the use of the tools and machinery they have habitually used, and, therefore, a right to keep other workmen from taking their places in time of strike.[39] Thus the legal control of property is sharply opposed to the primitive group criteria of ownership — creation and habitual use. The legal control exercised by propertied classes is essentially an instinctive phenomenon; so are the primitive property motives that actuate the masses. This conflict of instinctive interests can be resolved only by re-shaping the law of property according to a rational social purpose.[40]

In addition to the problem of the social-psychological processes of the development of private property, there is the problem of the processes involved in the relation of private property to other lines of development. Note, for instance, the problem of the relation of private property to religion, which is intimately connected with the legal development of private property.[41] Among primitive peoples the owner sought to strengthen his claim to property by associating it with supernatural sanction, and by protecting it by magic practices.[42] Among more advanced peoples, as the Egyptians, Hebrews, Greeks, and Romans, the deity was represented as the principal source of property and as guarding property rights [43]

Davenport, "The Extent and Significance of the Unearned Increment," *Bulletin of Amer. Econ. Ass'n*, 4th. Series, No. 2, 524–526.

[38] Davenport, "Economics of Enterprise," 399–400; Youngman, "Economic Causes of Great Fortunes."

[39] "As a rule in labor disputes where there is a resort to the destruction of property, it comes only after other methods to obtain the desired results have failed. The first form of violence comes in the shape of attacks on those who take the places vacated by strikers. When that proves ineffective, when the strikers find they cannot prevent the work being done, the next step is to seek to destroy the work.

"The underlying motive is the firm conviction in the minds of the strikers that the particular work belongs to them. They may have refused to perform that work except under conditions acceptable to them. These conditions may not be acceptable to the employer. Still the workers cannot in their minds separate themselves from their jobs and they feel justified in wreaking vengeance both on those who took their places and on the employer who permitted and encouraged it." (Grant, *op. cit.*, 132–133.)

[40] Holmes, "The Common Law," 48; Ely, *op. cit.*, I: Ch. VI.

[41] Kocourek and Wigmore, "Formative Influences of Legal Development," 382–392.

[42] Veblen, "The Beginnings of Ownership," *Amer. Jour. Sociol.*, IV: 352–365; Webster, "The Influence of Superstition on the Evolution of Property Rights," *Amer. Jour. Sociol.*, XV: 794–805.

[43] Kocourek and Wigmore, *op. cit.*, 382–384.

and punishing their violation.[44] Ecclesiastics of the Christian church declared property was ordained by God, and were the last to countenance even the emancipation of slaves.[45] Christian philosophers aimed to show how the constitution of human nature, as it had come from the hand of the Creator, called for private property as a necessary and fundamental institution.[46] This support of private property by religion gave property and inheritance an authoritative endorsement.[47] This supernatural sanction of private property is maintained by the Roman Catholic Church today,[48] and has been asserted by some capitalists.[49]

Traditional Christianity — both the Greek Church and the Roman Catholic Church and Protestant sects — is bound up with the property ranks of society. Consequently, when Christian thinkers challenge the attitude of reactionary propertied interests as contrary to the Christian impulse of love,[50] and when they develop a philosophy of social relations based on love, they find themselves in conflict with ecclesiastical systems, and with the prevailing economic order. Tolstoi projected a revolution of social organization in which relations of sympathy would replace those of rivalry, domination-submission, contempt-shame; and he found himself opposed not only to the political[51] and economic[52] order but also to the ecclesiastical order,[53] and even to the prevailing artistic standards.[54] His main attack was directed against the ecclesiasti-

[44] Westermarck, *op. cit.*, II: 60–68.

[45] *Ibid.*, I: 695–704.

[46] Locke, "Two Treatises of Government," Bk. II, Chs. 2, 5, 9, 11.

[47] Kocourek and Wigmore, *op. cit.*, 388–392.

[48] K. of C., War Activities Committee, "Bolshevism — The Remedy," 5–8, 14. This pamphlet was written by Leo XIII against socialism.

[49] G. H. Baer, one of the anthracite coal operators during the great coal strike of 1902, referred to himself as one of "the Christian men to whom God in His infinite wisdom has given control of the property interests of this country." (Baer, "The Moving Spirit of the Anthracite Industry," *Review of Reviews*, XXX: 547.) The industrial engineer, William H. Smyth, compares this attitude with that of the German Kaiser as expressed in a speech during the World War: "We shall defend Alsace-Lorraine with the last drop of our blood — these provinces which belong to us and which the Almighty has entrusted to us to administer as His stewards." (Quoted by Smyth, "Efficiency," Industrial Management, Dec., 1918, 464.)

[50] Rauschenbusch, "Christianity and the Social Crisis," 295; Rauschenbusch, "A Theology for the Social Gospel," 111–117; Bishop Williams, "The Christian Ministry and Social Problems," 14–85.

[51] Maude, "The Life of Tolstoy," II: 460–463.

[52] *Ibid.*, II: 103–147, 238–283, 439.

[53] *Ibid.*, II: Ch. II.

[54] The Russian edition of his work, "What is Art?" had to pass through the hands of the Censor and he writes: "The Spiritual Censor — a priest who probably under-

cal order as that which most firmly bound the masses in subjection to the property ranks of society. He was excommunicated by the state church,[55] and was saved from exile only by his world renown. The Roman Catholic Church maintains that private property and the classes based thereon are supernaturally ordained and that, therefore, the Church alone can solve the social problem, and the best way to combat socialism, is to found society on ecclesiastical doctrine.[56]

All branches of the Christian Church have been supported by property owners as one effective institutional means of buttressing property rights. There are property owners, who, while conspicuously devout and punctilious in their religious observances, and, perhaps, conspicuous for philanthropy, are steadfastly opposed to laws limiting property rights for the sake of improving the working and living conditions of the masses.[57] In some cases the more sympathetic among the well-to-do, when they feel pity for the poor in their hard working conditions, "put their social indignation to sleep"[58] by reflecting on doctrines of Christianity that sanction the existing order, and that teach that all, including the poor, may be happy in the hereafter if they will accept the conditions of salvation laid down by the ecclesiastical system.[59] On the other hand, the history of social reform offers conspicuous instances of laymen and ecclesiastics, for instance, the Earl of Shaftesbury, Charles Kingsley, Professor Walter Rauschenbusch, and Bishop Charles D. Williams, who have stood for a limitation of property rights on behalf of the working masses. These are the men who with respect to property are true to the essential impulses that actuated the Founder of Christianity and determined His teachings.

stands art and is interested in art as much as I understand or am interested in Church services, but who gets a good salary for destroying whatever is likely to displease his superiors — struck out all that seemed to him to endanger his position and substituted his thoughts for mine wherever he considered it necessary to do so." (Maude, "The Life of Tolstoy," II:540.)

[55] *Ibid.*, II:574–582.

[56] K. of C., War Activities Committee, "Bolshevism — the Remedy."

[57] Hammond, "The Town Laborer," 1760–1832, 231; Bishop Williams, "The Christian Ministry and Social Problems," 13, 26–28.

[58] Hammond, *op cit.*, 286

[59] This was Luther's attitude: "Luther's rejection of social reform was in harmony with the fundamental Christian idea, Protestant as well as Catholic, that man's salvation is independent of his environment. It is not the business of a Christian to better the condition of the world or himself." (Schapiro, "Social Reform and the Reformation," 88.)

The devious ways of thinking by which the relation of Christianity to property usually is evaded and Christianity is made to serve the individualistic conception of property are highly interesting to the social psychologist.

We have now reviewed the foundations of political science and jurisprudence in their psychological aspects. We have seen that political scientists and jurists have emphasized law as the command of a sovereign, as the form of social order, as the expression of an organization for mutual service, as the expression of an ideal of justice. Each of these several emphases or partial views emphasizes one aspect of law, and each of these aspects has a social-psychological basis. But these bases are not mutually exclusive. For instance, law as command of a sovereign implies domination-submission; but so does law as the expression of an organization for mutual service, for unwillingness to co-operate has to be compelled; and so does law as the expression of an ideal of justice, for human wilfulness has to be restrained; and so also does law as a form of social order.[60] We believe that social psychology can aid the jurist in his task of unifying these partial conceptions in a comprehensive theory of law. In fact the most progressive jurists feel the handicap under which they work owing to the backward development of social psychology.

[60] Under the latter conception Ehrlich makes four classifications of legal rules and one of them is *domination*. The economic productivity of labour may require personal subjection, he says, so that domination-submission may depend not on the caprice of a master but on the whole economic order of the country. (Ehrlich, *op. cit.*, 73.)

BOOK III

SOCIAL PSYCHOLOGY AS RELATED TO ECONOMICS, HISTORY, AND SOCIOLOGY

CHAPTER XIX

THE RELATION OF SOCIAL PSYCHOLOGY TO ECONOMICS

ECONOMISTS have long recognized a psychological field which does not lie within the scope of their science, but an understanding of which is necessary for the development of economic principles. Economists have assumed certain psychological principles as essential in economic behaviour, which assumptions have rested on more or less superficial impressions of economic behaviour. Among German economists, Wagner was impressed with the motives of the thrifty middle class; Knies, Schmoller and Brentano with the impulse for national economic development and superiority which was becoming marked in their day; Sombart with the motives of the leaders in this national development. The assumptions were in the nature of vaguely conceived or historically elaborated theories, rather than carefully analysed and adequately formulated psychological concepts.

In offering an analysis of economic motives, Wagner accepted the traditional classification into egoistic and non-egoistic motives. The former included fear of want, the acquisitive impulse, the impulse to win public approval and to avoid disapproval, a sense of honour and pride in workmanship, the impulse of domination, and the impulse for physical and mental activity. The non-egoistic motive was the sense of duty and conscience which acts as a check on the egoistic. "Because of it, competition is not pressed to the utmost, . . . and . . . an industrial or social superior purposely refrains from making his own interest the exclusive ground of his economic conduct." [1] Nevertheless the egoistic motives are, said Wagner, overwhelmingly determinative of economic behaviour so that we may speak of self-interest as the essential economic motive. Self-interest includes an impulse to provide for the family and to acquire property for transmission to descendants. While this is a widening of the egoistic motive, it remains egoistic.[2] The indi-

[1] Wagner, "Grundlegung der politischen Oekonomie," I: Secs. 33–46.

[2] Wagner, "Systematische Nationalökonomie, Jahrbücher für Nationalökonomie und Statistik." Neue Folge. Zwoelfter Band. 1886. pp. 230–232.

vidualistic family was central in Wagner's thought. Still he did not, like Herbert Spencer, writing from the security of the British Isles, claim for this family practically unlimited freedom and decry all governmental regulation on its behalf. As early as 1871, he called for national reform with a view to an immediate improvement of the material condition of the lower classes as an intellectual and moral influence.[3]

From Wagner to the period of the World War, the impulse for national superiority increasingly influenced German economic thinking. The German economists were less scientific thinkers than publicists who supported the national impulse for superiority, with its related assumptions, by means of the learned explanations of historical disquisition. In these historical studies, the Germans worked out the group rivalry process but paid no attention to its psychological analysis, though admitting that the process is essentially psychological.[4] Where psychological explanation was necessary, they contented themselves with unanalysed psychological assumptions. Thus Schmoller, writing in 1883, described the economy of the Middle Ages as a rivalry of municipalities to increase their trade advantages and to diminish the trade advantages of rival municipalities. "Market-rights, toll-rights, and mile-rights (Meilenrecht)[5] are the weapons with which the town creates for itself both revenue and a municipal policy. The soul of that policy is the putting of fellow-citizens at an advantage, and of competitors from outside at a disadvantage. The whole complicated system of regulations as to markets and forestalling is nothing but a skilful contrivance so to regulate supply and demand between the townsman who buys and the countryman who sells, that the former may find himself in as favorable a position as possible, the latter in as unfavorable as possible, in the business of bargaining."[6] "All the resources of municipal diplomacy . . . and, in the last resort, of violence, were employed to gain control over trade-routes . . . to bring it about that as many routes as possible should lead to the town, as few as possible pass by; that

[3] Wagner, "Rede über die Social Frage," 29.

[4] Schmoller, "The Mercantile System," trans. by Ashley, 12.

[5] This was the rule which forbade craftsmen from carrying on particular industries within a certain distance of the town. Cf. the cases of York and Nottingham in respect to the manufacture of cloth, in Ashley, "Economic History," I pt. II (Amer. ed., vol. II), p. 29.

[6] Schmoller, *op. cit.*, 8–9.

through traffic, by caravan or ship, should, if possible, be made to halt there and goods *en route* exposed, and offered for sale to the burgesses." [7] "What, then, we have before our eyes in the Middle Ages are municipal and local economic centres whose whole economic life rests upon this,— that the various local interests have, for the time, worked their way into agreement, that uniform feelings and ideas have risen out of common local interests, and that the town authorities stand forward to represent these feelings with a complete array of protective measures; . . . The whole of this municipal economic policy, . . . was justified so long as the progress of civilization and of economic well-being depended primarily on the prosperity of the towns. This prosperity could rest upon no other 'mass-psychological cause-complex' than corporate selfishness: . . . So long as this selfish feeling of community . . . . brought about an energetic movement forward, it justified itself, . . . not until the system began to support an easy luxuriousness and sloth did it degenerate. It had then to be replaced by other mass-psychological elements and processes, by other social forms and organization." [8]

"Corporate selfishness" is, thus, as far as Schmoller gets, in his analysis of the "mass-psychological cause-complex." Corporate selfishness is merely a phrase to cover the ignorance as to the actual processes involved. As a matter of fact, it is impossible to know what were the motives of that group rivalry of the Middle Ages. The social psychologist of today was not there to analyse it, and observers who might have been there have left no record. We may infer what the motives might have been from an analysis of the rivalry of civic groups today, but mere inference is not scientific analysis. The analysis of civic rivalry as we see it before our eyes is difficult enough. We find, for instance, in the ambitious, growing city certain energetic business men who advocate projects of city growth avowedly from "public spirit" but really because such projects are in line with their own private interests. Landowners want the city to grow because growth will raise the price of land, storekeepers because it will increase trade, the average man because in booming his city he booms himself as a citizen. A man is proud of being a citizen of a prosperous city. It gives him prestige, gives him a bit of the thrill of superiority which he

[7] *Ibid.*, 10–11.
[8] *Ibid.*, 11–12.

would perhaps enjoy in no other way. Men who are animated by none of these motives are suggestible to the men who are, the men of superior energy, ambition and that gladdening sense of corporate superiority which we call public spirit. Is it objected that the leaders are not looking primarily for the satisfaction of their own interests but are intelligently seeking the public welfare? Why then did the merchants, in their attitude to the liquor traffic, oppose local option and no license "because it will drive trade out of the city"? Did any merchant believe that the saloon was an asset to the public welfare? He might *believe* it if it was in line with his instinctive interests, but he did not *understand* it to be so. Why does the landowner insist that a trolley company be given a perpetual franchise for nothing? Does any landowner believe it furthers the public welfare to give away valuable rights belonging to the public? He may believe it, but he does not understand it. Why do the rank and file want a growing city at any price and approve fostering the saloon and giving away public rights? Do they believe that a growing city at any price furthers the public welfare? They may believe it, but they do not understand it. That is, they may have an impulsive belief — an idea which satisfies a certain instinctive impulse — but they have no understanding of the situation. Without making a complete analysis of corporate selfishness, then, we find that it means action satisfying to profit-seeking or rivalrous instinctive impulses,[9] as opposed to a thorough understanding of the situation. If there are any who dissent from the propaganda of those leading the impulsive movement, they are unheeded in the general movement for growth at any price. This analysis of civic ambition may be tested and amplified by a study of a concrete case. But the social psychologist does not venture to draw inferences from the results of these studies of contemporary groups as to the motives of the groups of the Middle Ages. Such inferences, if made, could not be subjected to scientific test.

Schmoller describes, as far as historical data permit, how the rivalry of municipalities was restrained in the interest of rivalry between territorial states, and how this rivalry of territorial states finally developed into an international rivalry.[10] The analysis throughout is historical and not psychological. Nevertheless Schmoller assumes that the essential impulses involved in the riv-

[9] Lasker, "Bolshevik Cities," *The Survey*, June 14, 1919, 424.
[10] Schmoller, *op. cit.*, 13–68.

alry of territorial states are similar to those of the old municipalities because the external behaviour in the two instances has similar aspects.[11]

The interest of the German economists in the welfare of the working classes sprang from their interest in German national superiority. National superiority requires a highly vitalized, skilful, efficient force of working and fighting men. This, however, was not the original motive of the interest of economists in working class advancement. Schmoller sought, in early life at least, primarily the intellectual and moral development of the workingman. In an address delivered before the Verein für Socialpolitik in 1877, he urged that the Germans profit by the experience of the English and the teachings of the English economists and adopt a system of industrial freedom and free competition but, at the same time, use the regulative power of the state where necessary for the social welfare. He asserted the need of a social reform which should aim to achieve justice through the penetration of the economic life with moral ideas.[12] One contemplates with profound regret what might have been the fruition of the doctrines of these early apostles of industrial righteousness, had it not been for the increasing influence of the militaristic ideal proclaimed by Treitschke and others and endorsed by the military aristocracy and the people under their influence. Even Schmoller came more and more under the influence of the militaristic ideal. Like Knies who rejected Wagner's conception of the individualistic family on the ground that a group with complete freedom of action, whose members were entirely actuated by self-interest, never existed,[13] Schmoller helped to direct German economic thinking away from the individualism of the English economists and to imbue it with the impulse for national superiority. He ridiculed the English opinion that " only the egoism of the individual is justified, and never that of the states and nations." [14] The demand for the improvement of the welfare of the working classes for the sake of national superiority, instead of for justice and social self-realization, became more pronounced in the utterances of German economists

[11] *Ibid.*, 14, 43–50.

[12] Schmoller, "Reform der Gewerbe-Ordnung, Verhandlungen der fünften Generalversammlung des Vereins für Socialpolitik," am 8, 9, and 10 October, 1877. Shriften, XIV; 189.

[13] Knies, "Die Politische Oekonomie vom Geschichtlichen Standpuncte," 504.

[14] Schmoller, "The Mercantile System," 80.

until it reached the explicit form given it in the address of Professor Brentano to the Vereins für Socialpolitik, in 1901, when he urged the improvement of the material well being of the lower classes as essential to the power of the German Empire.[15]

The work of Sombart, who studied the causes of modern industrial development, and particularly the motives of the business man, is the logical outcome of the work of his German predecessors. Obviously, the rôle of the financial and industrial leader is fundamental in national group rivalry. Somebody must direct the placing of loans and the development of the industry of the nation; and this important task naturally falls to financiers and industrial organizers. Sombart was chiefly interested in the behaviour of these leaders, but his analysis was confined to the externals of behaviour, to the more obvious characteristics which impress the observer and can be studied in documentary sources. He at first declared psychological analysis to be of little use [16] and then used it slightly in a later work.[17] He implicitly recognized the essential nature of disposition in the explanation of economic behaviour and had much to say of the burgher spirit and the spirit of business enterprise; but he attempted no incisive psychological analysis.[18]

The methods of economics have, like those of history, developed partly in response to certain impulsive and analogical processes of thinking. As an example of impulsive processes the German economists were moved by the impulse for national superiority and developed economic conceptions in harmony with that impulse. The English economists were by no means unmoved by that impulse but were more strongly moved by the individualistic impulse for profits and considered laissez-faire [19] to be a surer means of winning national superiority than governmental regulation of industry. Analogical processes of thinking also have entered into the determination of economic method, as seen in the adoption of the methods of physical science by economists because their adoption had resulted in brilliant achievements in history.[20] The adoption

[15] Brentano, "Aufruf zur Gründung eines Vereins für Socialpolitik." Schriften, XCVIII: 2f.

[16] Sombart, "Der Moderne Kapitalismus," I: pp. XX, XXII, 378.

[17] Sombart, "Der Bourgeois," 222.

[18] *Ibid.*, 24, 69–73, 194–195, 224–226, 236; see also Sombart, "The Quintessence of Capitalism," Chs. II–IV, XI–XV.

[19] Marshall, "Principles of Economics," 757, n.

[20] "Everybody adopted it. Disciples inspired by the enthusiasm of Jacob Grimm traced the history of language. Scherer and Sainte-Beuve, renouncing dogmatic

of the methods of physical science was due also to affective processes of thinking, for a scientific method becomes attractive if it has been used with marked success by a rival group of scholars. In the absence of definite knowledge of what results a method will yield until it is tried, the affective and analogical reasoning prevails. Economists have been too prone to emulate methods which have been used brilliantly in physical science or history, without considering the difference between the subject matter and problems of physical science or history and their own. In this connection, one of the functions of social psychology is to insist that the economist does not deal entirely with matter, as does physical science; that his data do not lie principally in the past and he does not deal entirely with documentary sources as does history. He deals with human beings organized to realize their material welfare. He deals in part with material things but merely as means to the development of personality. He deals with documentary sources, but not wholly, inasmuch as the documents cannot be understood without a knowledge of the conditions under which men work and live.

Economics received its first development in England under the impetus of the interest in business enterprise stirred by the rise of the factory system with the opportunities thus opened for the making of private profits. The early English economists were interested primarily in the activity of the business man in his quest for profits rather than in the broader material welfare of the whole people; and they adopted, as their point of view, that of the business man, without any careful analysis of the motives or significance of that point of view. They did not seek to ground their conceptions on scientific principles of human nature,[21] but assumed the impulses of business men to be the essential impulses of economic behaviour, from which they developed a "pecuniary logic." The economics of these writers "deals not with the entire real man as we know him in fact, but with a simpler, imaginary man — a man answering to a pure definition from which all im-

canons, interpreted literature as the product of time and place. Baur and the Tübingen school of theology applied the principle of relativity to dogma . . . philosophers . . . turned themselves into historians and wrote histories of philosophy instead of philosophies of history." (Becker, "Some Aspects of the Influence of Social Problems and Ideas Upon the Study and Writing of History," *Amer. Jour. Sociol.*, XVIII: 647.)

[21] Mitchell, "The Rôle of Money in Economic Theory," *Amer. Econ. Rev.*, Supplement, VI, No. 1, 140–141.

pairing and conflicting elements have been fined away. The abstract man of this science is engrossed with one desire only — the desire of possessing wealth. . . ." [22] This economic method is justified by Mr. Bagehot on the ground that " The maxim of science is simply that of common sense — simple cases first; begin with seeing how the main force acts when there is as little as possible to impede it, and when you thoroughly comprehend that, add to it in succession the separate effects of each of the encumbering and interfering agencies." [23] The earlier English economists separated studies of human nature as such from economics. Thus Mill declared: " Political Economy . . . has nothing to do with the consumption of wealth, further than as the consideration of it is inseparable from that of production, or from that of distribution. We know not of any *laws* of *consumption* of wealth as the subject of a distinct science: they can be no other than the laws of human enjoyment." [24] In Mill's view, the science of human nature constituted a distinct science which he called ethology.[25] Later economists used psychological assumptions in the logical development of their principles. Thus Jevons declared that " the theory of Economics must begin with a correct theory of consumption." [26] The " ultimate qualities which we treat in Economics are Pleasure and Pains. . . ." [27] " But it is convenient to transfer our attention as soon as possible to the physical objects or actions which are the source to us of pleasures and pains." [28] Later writers, notably Edgeworth, maintained that pleasure and pain are concomitant with physical processes which may be mathematically determined, thus making possible a scientific determination of psychical processes also.[29] The inadequacy of the pleasure-pain psychology was gradually perceived, and its use passed out of economic assumptions.[30]

Nevertheless, the assumption of psychological principles has persisted in economic thinking and the psychological aspect of the science is generally recognized. Professor Fetter presents " a quite

[22] Bagehot, " Economic Studies," 74; Mill, " Unsettled Questions of Political Economy," 137–141.
[23] Bagehot, *op. cit.*, 74.
[24] " Unsettled Questions of Political Economy," 132, note.
[25] Mill, " Logic," Bk. VI, Ch. V.
[26] Jevons, " Theory of Political Economy," 40.
[27] *Ibid.*, 65.
[28] *Ibid.*, 37.
[29] Edgeworth, " Mathematical Psychics," 9, 97.
[30] For a discussion of this point see Mitchell, *op. cit.*, 144–145.

new statement of material value, more in accord with the modern volitional psychology, thus eliminating entirely the old utilitarianism and hedonism which have tainted the terms and conceptions of value ever since the days of Bentham. The basis of value is conceived to be the simple act of choice and not a calculation of utility. Even the phrase 'marginal utility' is definitely abandoned." [31] The concept of value is thus logical, with a psychological basis. It can become thoroughly explanatory only as economic assumptions meet the test of social-psychological analysis. The psychological aspect of economics is made explicit also in the work of Fisher,[32] Seligman,[33] Johnson,[34] Seager,[35] Ely [36] and others. On the other hand, Davenport disclaims all connection with psychological assumptions and states that economics "treats phenomena from the standpoint of price"; [37] that, "Purely as economists we are fortunately free from the necessity of investigating the origin of choices or any of the psychological difficulties surrounding the question. It is sufficient for us that these choices take place as human nature presents itself."[38] Davenport assumes without psychological analysis the "private and acquisitive point of view" [39] as the human nature basis of economics. Thus he differs from the economists just mentioned in that his psychological assumptions are narrower and less explicitly stated than theirs.[40] All economists, explicitly or implicitly, begin with some assumptions as to economic behaviour. The more thoroughly scientific such assumptions are, the more scientific and trustworthy will be the economic concepts; [41]

[31] Fetter, "Economic Principles," 1915, I: Preface, ix.

[32] "The result has been inevitably to lead us to a consideration of the psychic stream of events as final income, . . ." (Fisher, "The Nature of Income," 177.)

[33] Seligman, "Principles of Economics," 175.

[34] Johnson, "Introduction to Economics," 27–28.

[35] Seager, "Principles of Economics," 50–52.

[36] Ely, "Outlines of Economics," 93–95.

[37] "Economics of Enterprise," 25.

[38] *Ibid.*, 60, 98–101. See also Johnson, "Davenport's Economics and the Present Problems of Theory," *Quart. Jour. Econ.*, XXVIII: 420–421.

[39] Davenport, *op. cit.*, 517.

[40] He acknowledges that correct psychological assumptions are necessary and that this implies an intimate relation between economics and social psychology and that advances in social psychology will necessitate changes in economic assumptions. He would limit the psychological assumptions of economics as narrowly as possible in order that the development of economics may not be retarded by the backwardness of social psychology and the disagreements of psychologists. (Davenport, "Scope, Method and Psychology in Economics," *Jour. Phil. Psy. Sc. M.*, XIV: 617–622.)

[41] Hamilton, "The Institutional Approach to Economic Theory," *Amer. Econ. Rev.*, IX (supplement): 316.

hence the closeness of the relation of social psychology and economics.

The wide difference of opinion among economists as to psychological assumptions is well illustrated by comparing the views of Professor Marshall and Professor Wicksteed, who have been quite explicit in their statements. Professor Marshall assumes that economics is a quantitative science, that money "is the centre around which economic science clusters." [42] The economist is not interested in the analysis of human motives except in so far as their relative strength may be measured by the money which will call forth an effort or which a man is willing to spend in the satisfaction of a desire. He writes that "the variety of motives, the difficulties of measuring them, and the manner of overcoming those difficulties are among the chief subjects" [43] of his book. He sketches the method of measurement as follows: Economists "watch carefully the conduct of a whole class of people, sometimes the whole of a nation, sometimes only those living in a certain district, more often those engaged in some particular trade at some time and place: and by the aid of statistics, or in other ways, they ascertain how much money on the average the members of the particular group they are watching, are just willing to pay as the price of a certain thing which they desire, or how much must be offered to induce them to undergo a certain effort or abstinence that they dislike. The measurement of motive thus obtained is not indeed perfectly accurate; for if it were, economics would rank with the most advanced of the physical sciences, and not as it actually does with the least advanced." [44] Not only are such measures of motives as can be obtained inaccurate, but there are motives which cannot be measured at all. "It would perhaps be possible even now to predict with tolerable closeness the subscriptions that a population of a hundred thousand Englishmen of average wealth will give to support hospitals and chapels and missions; and, in so far as this can be done, there is a basis for an economic discussion of supply and demand with reference to the services of hospital nurses, missionaries and other religious ministers. It will, however, probably be always true that the greater part of those

[42] Marshall, "Principles of Economics," 22.
[43] *Ibid.*, 25.
[44] *Ibid.*, 26.

actions, which are due to a feeling of duty and love of one's neighbour, cannot be classed, reduced to law and measured; ....." [45] Economics is, therefore, not psychological analysis. The economist analyses " the force of a person's motives — *not* the motives themselves....." [46] The motives the force of which is measured are only generally designated and not carefully analysed. For instance, a study of the money spent by different groups for hospitals assumes certain motives to be essential in such expenditure; but the assumed motives are complex and their constituent elements cannot be measured as to their relative " force." Before we can regard any giving of money as a measurement of certain motives, we must know what are the motives which prompt the giving. Professor Marshall's conception of economics involves, therefore, the closest possible relation with social psychology.

Sharply contrasted with Professor Marshall's conception is that of Professor Wicksteed. He conceives of man as given to more or less careful choice between material things because of economic scarcity and the consequent necessity of weighing possible satisfactions.[47] To the psychologist, the choices involve various motives, but the economist cannot make this analysis of motives. Wicksteed refuses to use the term, " motive," because of its psychological connotation.[48] He goes to some length to point out the complexity of mental states which may be involved in any act of choice [49] and concludes: " The conclusion of the whole matter, so far as our diagrams are concerned, is that it is generally an abuse of the diagrammatic method to attempt to make a curve represent, with any closeness, an isolated and concrete experience. A curve must represent the *estimate formed by the consumer* of the value to him of the successive increments of the commodity, and that estimate will be formed in view of all the immediate effects and remoter reactions and implications which he is capable of appreciating." [50] Thus Professor Wicksteed assumes that psychological valuation is completed before the economic forces of the market place begin. Each man has represented his desires in terms of money or " ideal

[45] *Ibid.*, 24.
[46] *Ibid.*, 15.
[47] Wicksteed, "The Common Sense of Political Economy," 34.
[48] *Ibid.*, 167–168.
[49] *Ibid.*, 430–437.
[50] *Ibid.*, 437–438.

prices," and economics takes account of the logic of the process by which market prices result from these ideal prices. This method makes the field of economics more nearly distinct from that of social psychology than does Professor Marshall's method; but the relation of the two sciences is none the less close and their co-operation indispensable to the development of either field.

The inadequacy of economics alone to explain fundamental problems becomes evident when the economist attempts to conduct on an economic basis an inquiry into the adequacy of income. Professor Pigou's inquiry furnishes a case in point. He was obliged to begin with certain unanalysed social-psychological assumptions,[51] not a thoroughly scientific procedure but necessitated by the partly psychological nature of the problem and the lack of any science to furnish scientifically grounded assumptions. If we knew the exact income of the members of a group, we should still be unable to decide, without social psychology, as to its adequacy, for the question would arise, adequate for what? We might reply, adequate to live like self-respecting members of the community; but this means accepting the standard of a group without analysis as to its adequacy. Or we might reply, adequate for maximum economic efficiency; but this is taking the point of view of one class, the employing class. The rank and file of workmen do not admit that they live merely to work. Life is not for working but working is for life, for self-realization. For our criterion of adequacy we are forced, then, to an examination of human nature and the economic conditions of social self-realization.[52] Such an examination does not lie entirely within the scope of economics; and an economics that is a pecuniary logic will throw very little light on that part of the human problem. As Professor Pigou admits, any change in the national income will affect not merely the economic but the total welfare of the group, and " anything in the nature of rigid inference from effects on economic welfare to effects on total welfare is out

[51] Pigou, " Wealth and Welfare," 4–24.

[52] We know comparatively little of the actual standards of living of the various income groups in the United States (Meeker, " What is the American Standard of Living? ", U. S. Bureau of Labor Statistics, *Monthly Labor Review,* July, 1919, 1–13). We know still less as to what expenditures for food, clothing, housing and house furnishings, amusements, and other factors of a standard of living are required for the development of personality that is possible for the average man and woman in modern civilization.

of the question." [53] He maintains that "there is a presumption . . . that conclusions about the effect of an economic cause upon economic welfare will hold good also of the effect on total welfare." [54]

It is particularly important to bear in mind the social-psychological nature of principles of human welfare, and that economics does not supply such principles, when we turn to the interpretation of statistical studies of wealth and income. For, unless this is borne in mind, interpretations will be made according to personal or class or professional bias. Lacking scientific principles of welfare, the subconscious dispositions and attitudes direct thinking, and the interpretations are justified by secondary explanations. The state of our statistical knowledge of the distribution of wealth and income furnishes an additional reason for caution in the interpretation of statistics. Statistical studies of wealth and income in the United States give little more than a blurred impression of the distribution of income.[55] And when we pass from money income to "real or psychic income" we are told that "this particular species has successfully defied all attempts at accurate statistical measurements." [56] It would be idle, therefore, to attempt any severely scientific analysis of the welfare of the people of the United States. Such attempts as are made to interpret statistical studies of the distribution of income consist largely of reasoning from assumptions determined by the personal disposition and attitudes of thinkers, which incline them toward certain assumptions and against others. For instance, a man who, like H. G. Wells, because of sympathetic and intellectual dispositions and attitudes, assumes for the masses somewhat stronger sympathetic and intellectual capacities than they possess, would make an interpretation of one kind, while the orthodox economist would make a very different interpretation.[57] We cannot get away from this personal element in interpre-

[53] Pigou, *op. cit.*, 11.

[54] *Ibid.*, 11.

[55] Young, "Do the Statistics of the Concentration of Wealth in the United States Mean What They Are Commonly Assumed to Mean?" *Amer. Econ. Rev.*, VII (Supplement): 144; Dewey, "The Statistics of the Concentration of Wealth," *Amer. Econ. Rev.*, VII (Supplement): 172–173.

[56] King, "Desirable Additions to Statistical Data on Wealth and Income," *Amer. Econ. Rev.*, VII (Supplement): 163.

[57] Young, *op. cit.*, 144–147.

tation; and a thoroughly intellectual point of view will make explicit the fact that, in problems in connection with which the scientific data are inadequate, interpretations do depend on the personal element; and that an interpretation is not to be given undue weight just because it happens to be in accord with tradition.

Economists in the past have been more or less blind to the social-psychological basis of economic life, owing to their penchant for deductive thinking and to the persistance in "economic" assumptions of individualistic assumptions as to economic behaviour. These assumptions have survived from past ages, when they were not unqualifiedly true, and are certainly not true at the present time. They have owed their hold on the minds of economists to the fact that they assumed business conditions to be as they were represented by business men. In the absence of scientific investigations, economists, like other men, have been susceptible, subconsciously perhaps more than consciously, to the suggestions of the classes that wielded suggestive power — particularly the enterprisers —, and have not been inclined to question the representations of those classes as to economic conditions. The more rivalrous enterprisers — those who assumed to speak for their class, and who, because of a masterful personality, became subconsciously or consciously recognized as leaders of their class — have justified low wages and evil conditions of labour on the ground of the bitter competition to which they were subjected. They understood that the public approved of this competition, as the process through which prices were kept down, and realized that, by laying the palpable evils of industry to keen competition, they effectively stopped whatever public odium might be coming their way, because of those evils. They also realized that to plead the necessities of keen competition would allay suspicions of their large profits. Whatever basis in fact the economic assumption of keen competition between enterprisers may have had, and still has, it has been given added weight by the constant reiteration of enterprisers themselves, and by their influence over thinkers who had comparatively little inside knowledge.

The individualistic assumption has persisted, in spite of its inadequacy; and the manifold deviations of actual conditions from this assumption have been treated as variations from a more fundamental and permanent condition. The situation is, therefore, much the same as that already noted in the development of jurispru-

dence, in which the individualistic attitude to private property has furnished an assumption for deduction as to the constitutionality of labour legislation; the dogma of freedom of contract takes the place that ought to be taken by a scientific knowledge of industrial conditions.

Without relaxing the claim that economics must be a quantitative science, it is suggested that its human behaviour basis be widened to include all those processes through which a community seeks its material welfare,[58] instead of focusing attention on the most attention-compelling figure in economic activity — the business man. The human behaviour basis is to include adequate and accurate conceptions of the psychological nature of economic relationships, as assumptions for the logical and statistical development of economic concepts.

That this development of economics is inevitable, and that it involves the recognition of a distinct closely related science of social psychology, is at no point more evident than in connection with theories of wages. Though there are some who think that economics might dispense with a theory of value, probably there is no economist who would dispense with a theory of wages. In text-books on economics wage rates are made to depend on social-psychological conditions, particularly on the standard of living, in which there is general agreement, and on other " psychic factors," mentioned in some text-books.[59] Social-psychological inquiries are still more necessary in problems of wages under scientific management, which raises the problem of the " just " division of the profits of scientific management between employers and employés. This problem is said to have a basis in " social ethics." [60] Problems of wages where labour is organized also involve social-psychological inquiries, for " the wages of the union workmen are not determined automatically by demand and supply but by a process of bargaining." [61] To understand this process of bargaining requires a knowledge of all the psychological factors which enter into the determination of a standard of living, also a knowledge of the factors in the relations between employers and workmen. " In determining

[58] Mitchell, *op. cit.*, 159.

[59] See, for instance, Fetter, " Economic Principles," I: 202–205.

[60] Thompson, " The Relation of Scientific Management to Labor," *Quart. Jour. Econ.*, XXX: 320.

[61] Hoxie, " Trade Unionism in the United States," 11.

the outcome of this process of bargaining, the two most important factors are the normal or standard day's work and the standard of living of the workers. . . . If the employer can make it appear that under existing conditions the workers are not working or producing up to the standard day's work, he has a strong case to show . . . that more work ought to be done for the same pay, which amounts virtually to lowering the wage. If the employer further can make it appear that at the given wage rate, on the basis of the standard day's work, the workers can secure a standard of living higher than that customary in their class, he has a strong case to show that the wage rate should be lowered, or at least that it should not be increased. . . . Now, the workers have learned by long and bitter experience that if individuals among them work faster and accomplish more than the others while receiving the same wage rate, the employers tend to take the accomplishment of these workers as the standard day's work and to compare their earnings with the standard of living of the class when negotiations are on to determine wages. Thus, in the case of day work, the accomplishment of the strongest and the swiftest is the goal which is set for all, . . . Under these circumstances the increased efficiency and output of the few tend to mean less wages for all or more work for less pay. All this has taught the unionists that if they wish to prevent wage reductions they must all try to work at the same pace. . . . Their specific rule limiting speed and output is therefore seen to be primarily to establish and maintain this principle of uniform accomplishment for a given rate of wages." [62] The analysis of the causes of wage rates takes us, therefore, into an analysis of the instinctive dispositions that determine the behaviour of workmen in the course of their work. There is the instinctive disposition among workmen to rival one another in work, which results in setting a standard of work that means increasing strain for the mass of workmen, and results merely in increasing the profits of the employer. Intelligence, therefore, suggests to workmen an inhibition of this rivalrous disposition in work. This and other intelligent regulations of instinctive dispositions are working profound changes in the behaviour of workmen and in industrial relations as they affect wage rates.

The psychological reaction, among the workmen of a city, to a

[62] *Ibid.*, 11–12.

rise in wages in a certain establishment is interesting and significant for the economic student of wages. Workmen in other establishments are made discontented by the good fortune of workmen in a favoured establishment. This discontent involves a number of strong instincts. There is a dissatisfaction of the rivalrous instinct on account of inferior wages. There is instinctive resentment against employers for "beating down their workmen," as appears to the lower paid workmen must be the case; for, if another employer can afford to pay his men high wages, assuredly their employer can. This resentment of the domination of employers, and the dissatisfaction arising from a sense of inferiority to rival workmen causes a discontent that results in inefficiency in work, in a tendency to "shop for jobs," and in impulsive demands for increases in wages.[63]

The wages that will be paid to labour depend on the instinctive dispositions of employers. Because the prevailing dispositions are egoistic — the acquisitive, conforming, fearful, rivalrous and dominating dispositions —, the prevailing motive of employers, in their relations with workmen, is to get labour at least cost. For this reason workmen are paid according to their differential efficiency [64] — the more efficient the labour the smaller the supply and hence the higher the wage employers have to pay. But there are variations from this prevailing impulse to get labour at least cost, and these variations affect wages. Take this situation: A prosperous employer, a man of sympathetic disposition and brilliant ability, raised the wages of his workmen higher than other workmen of the same grade were receiving, and thereby stirred resentment among other manufacturers for "spoiling the labour market." Workmen in other factories became discontented and ultimately their employers were obliged to make some increase in their wages. This advance in wages would not have occurred at that time but for the initiative of the manufacturer above mentioned. There were no conditions that required such a rise in wages as was given by the manufacturer of sympathetic disposition.[65]

[63] Employers recognize this rivalrous instinct in workmen and assign much of the large labour turnover in many plants to "these inborn tendencies which lead the workman to 'shop for jobs.'" (Stearns, "Standardization of Occupations and Rates of Pay," U. S. Dept. of Labor, *Bulletin* 247, 37.) The remedy suggested is an agreement among employers on standard rates of pay.

[64] Moore, "Laws of Wages," 90–96.

[65] Professor Taussig writes that "large enterprises have been conducted by men of

The altruistically inclined manufacturer goes as far as he can in improving conditions of labour and still maintain his industrial position. If competition is keen in his industry he cannot go very far. "It is for this reason that labour legislation comes in to supplement good will. Competition tends to bring the advanced employers down to the level of the backward. It reduces the general level. Legislation forces the worst to come up toward the level of the more advanced and eliminates the backward. It raises the general level." [66]

There are very great differences in the profits of competing manufacturers, that is, in their ability to pay high wages and improve hours and conditions of labour; there is also a very great difference in their industrial position as regards competition. Many of them are not compelled by low profits and the stress of competition to get labour at least cost. This has been true since the rise of modern industry. Robert Owen, one hundred years ago, reduced the hours of labor in his cotton mills to ten a day and made a fortune when other employers were working their employes fifteen or sixteen hours.[67] The disposition of manufacturers is essential in determining what those who make large profits, and are in an advantageous position with respect to competition, shall do with their profits. They may use them in expenditures for display — luxurious homes, automobiles, etc. — ; or to extend their business operations and increase their power in the business world; or to improve the condition of their workmen. Robert Owen, sympathetic and intellectual in disposition, used his profits in experiments to improve the conditions of labour. Most employers use their profits for comforts and luxuries for self and family; or to increase their accumulations and extend their power and influence; or for philanthropy outside their business. For, to raise the wages of workmen incurs the odium of other manufacturers whose workmen are made discontented thereby. The manufacturer aims to stand well with other manufacturers and with the financial interests. Though the essential impulse in some cases may not be to extend business operations

strong altruism as well as of high ability, who have gathered about them a staff of managers and workmen imbued with the same spirit. Unfortunately this spirit is rare. Were it common, the whole aspect of the economic world would be changed." (Taussig, "Principles of Economics," II: 306.)

[66] Commons, "Industrial Goodwill," 28–29.

[67] Podmore, "Robert Owen," I: 162.

and increase influence, this is so often the case that business men are generally brought directly under the control of bankers, on whom they are dependent for credit to extend their business operations. Thus the control of industry tends to pass to men who seek ever greater power and influence. The social psychologist must analyse this tendency, but in his analysis he must not ignore the differences that appear in the dispositions of business men.

One of the services of social psychology to economics will be to correct the partial insights into human nature [68] which from time to time temporarily influence economic thinking. The classical economists were in error, not in assuming the prevailing motive of business enterprise to be profit-seeking, but in centring attention on the profit-seeker, in making of his rôle a dogma, and reasoning deductively therefrom as to what are inevitably the motives of employers and workmen, and the conditions of highest productivity and public welfare. Such a procedure today would ignore the results of experiments of industrial engineers which prove that profit-seeking may interfere with the highest productivity. Social psychology will help to open the way toward making the public welfare, instead of the inviolabiity of private enterprise, essential in economic thinking.

Taking the industrial situation as a whole the essential tendency seems to be toward a decreasing competition within the capitalistic class, and a decreasing competition within the working class, and an increasing rivalry between the two classes.[69] While competition continues in business, the tendency is toward agreements, for the sake of increasing profits. Among workmen, while there is rivalry for jobs, and rivalry between those on a job, rivalry for jobs is more and more subordinated to collective bargaining, and rivalry between those on a job is eliminated by union limitation of the output, or by stalling among non-union workmen. Furthermore, when employers, instead of intelligently adjusting their workmen to their jobs and to one another, maintain conditions which cause a large labour turnover, and let themselves be drawn into rivalry to entice away the more skilled workmen of other employers,[70] there results an

[68] Carver, "The Behavioristic Man," *Quart. Jour. Econ.*, XXXIII: 195–197.

[69] Hobson, "Work and Wealth," 251–254.

[70] Blackman, Clayton, Meeker, Fisher, Noyes and others, "Destructive Labor Recruiting, Proceedings Employment Managers' Conference," 1918, U. S. Dept. Labor, *Bulletin* 247, 51–88.

inefficiency due to the large labour turnover;[71] and this condition has given rise to the new function of employment management,[72] the purpose of which is to hold workmen in the employ of a company and so diminish the cost of superintendence and the expense of inefficient labour. The increasing tendency not to hire high-class workmen of other employers without the latter's consent, is increasing the workman's sense of powerlessness before his employer, his solicitude not to lose his employer's good will, so that employment management is operating, as did scientific management, to weaken the position of labour. It would seem that these developments must eventually stimulate the tendency already marked toward labour organization for the sake of gaining a voice in the management of industry. What we have, therefore, as increasingly determining factors in wages, prices and other economic adjustments, is organized labour and organized capital, which, for the national industrial efficiency, should co-operate effectively, but which, as a matter of fact, are mutually opposed and conscious of their opposition of interests; therefore a group rivalry conception would come nearer the truth, as an economic assumption, than any other.

Economists of vision long ago widened the scope of their inquiries, and certain brilliant inductive studies have discredited the traditional formulas and revealed the social-psychological assumptions. But there seems to be little agreement among economists as to the significance of the new movement. They "give no promise of arriving at even a factual and descriptive statement of what their central problem or concept objectively is."[73] If they should take as their point of departure the analysis of economic relations in their entirety with the aim of developing a theory of economic progress, the lines of inquiry in which the social psychologist could assist them would include (1) an examination of the nature of the prevailing financial and industrial relations and the formulation of correct psychological assumptions; (2) an examination of the effect of changes in motives on economic organization and of changes in

[71] "Standard Definition of Labor Turnover and Method of Computing the Percentage of Labor Turnover," U. S. Bur. Labor Statistics, 1–2.

[72] See the following addresses in the *Proceedings of the Employment Managers' Conference,* 1917: Williams, "An Actual Account of What we Have Done to Reduce our Labor Turnover"; Hubbell, "The Organization and Scope of the Employment Department"; Wolf, "Individuality in Industry."

[73] Davenport, "Scope, Method, and Psychology in Economics," *Jour. Phil. Psy. Sc. Meth.,* XIV: 617.

organization on motives;[74] (3) an examination of the effect of the elucidation of economic relations on the behaviour of the parties to those relations.[75] Investigations along these lines are difficult owing to the fact that the social scientist cannot make experiments at will, as can students of the natural sciences. He must await his opportunity. And opportunities are more apt to come to men actually in business life, as engineers or managers, than to the social scientist on the outside. Naturally, therefore, until recently the interest of economists has been largely in mechanisms. But economics cannot get away from its human nature basis. Even the most severely non-psychological economists make *some* psychological assumptions.

It is easy to assert the need of correct assumptions but difficult to state them. Without venturing to attempt this I may suggest four types of behaviour, similar to those discerned in the fields of politics and jurisprudence, which have been influential, also, in shaping economic institutions. These are: behaviour which is primarily acquisitive and individualistic; rivalrous behaviour or "free competition"; behaviour in which rivalry is developing into a struggle for domination; and co-operative behaviour. In relations between business enterprises we discern four types of behaviour. There is the great number of small merchants and manufacturers who are sufficiently satisfied with their profits to follow the traditional lines of business behaviour and to hold the maxim "Live and let live."[76] There are others who are keenly competitive and not bound by tradition, without, however, attempting to dominate competitors; they rely on close attention to business to decrease costs and to improve the quality and attractiveness of goods. Others aim to dominate competitors and control prices. This impulse to dominate may be intensified by holding a position favourable to domination. There is a difference in position "between those who own wealth enough to make it count, and those who do not."[77] The fourth type of behaviour is the co-operative. Men who are strongly moved by sympathetic and intellectual impulses see a greater complexity in economic problems than do the other types,

[74] Fite, "Moral Valuations and Economic Laws," *Jour. Phil. Psy. Sc. Meth.*, XVI: 18–19.

[75] *Ibid.*, 19–20.

[76] Veblen, "The Vested Interests and the State of the Industrial Arts," 159–160.

[77] *Ibid.*, 161.

because they look at problems from the points of view of diverse interests, and they incline to a policy of wider governmental regulation than other types. This type of behaviour is to be contrasted with the preceding types in the matter of intelligence: the first type is more conservative than intellectual; the second has a narrow shrewdness with a demand for a "square deal" that springs from the impulse of the rivalrous disposition for equality of opportunity; the third type is fostered by the development of inequality that tempts the financially powerful to dominate those who would interfere with their plans. The position of the financier may require little intelligence beyond shrewdness in the selection of a competent staff and some administrative capacity, with the knowledge an ordinary man would acquire in the course of experience in finance.[78]

The social psychologist studies the types of behaviour while the economist studies the changes in economic organization that develop, for instance, the changes due to the spreading influence of investment bankers, and the changes advocated by those who would check the growing industrial domination[79] for the sake of freer competition or of co-operation between capital and labour in management. Business managers and engineers are in close touch with the human nature basis of industry because their problem is to increase production, while the bankers have no interest in the human nature basis because they are concerned with the mechanism of credit. They regard labour as merely a commodity used in production, and demand that labourers work like well disciplined hosts, for strikes interfere with the mechanism of credit; the engineers regard labour not as a commodity but as a human force with impulses that can be appealed to in a way to increase production. To

[78] The "work of financial management has progressively taken on a character of standardized routine such as no longer calls for or admits any large measure of discretion or initiative. They (financiers) have been losing touch with the management of industrial processes, at the same time that the management of corporate business has, in effect, been shifting into the hands of a bureaucratic clerical staff. The corporation financier of popular tradition is taking on the character of a chief of bureau." (Veblen, "The Industrial System and the Captains of Industry," *The Dial,* May 31, 1919, 555.)

[79] Veblen, "Industry and the Captains of Industry," *The Dial,* May 31, 1919, 554–557; Veblen, "The Captains of Finance and the Engineers," *The Dial,* June 14, 1919, 599–606; Wolf, "Securing the Initiative of the Workman," *Amer. Econ. Rev.,* IX (supplement): 129; Fisher, "Economists in Public Services," *Amer. Econ. Rev.,* IX (supplement): 13–15; Brandeis, "Other People's Money and How the Bankers Use It"; Mitchell, "Business Cycles," 33–35; Moulton, "Principles of Banking," 455; *Report of the Committee to Investigate the Concentration of Control of Money and Credit* 1913, 145–147.

the dominating attitude of financial interests toward labour they attribute the tendency of labour to work inefficiently and to practise sabotage,[80] which results in small production.

Among consumers also we distinguish the four types of behaviour. There is the numerous class of consumers which is thrifty and largely indifferent to style; there are those who aim to "keep in style" in their consumption sufficiently to appear "up to date"; there are those who indulge an impulse to display[81] by ultra-stylish consumption; and those whose consumption is directed by a wise consideration of self and others. Manufacturers aim to stimulate the impulses to be up to date or ultra-fashionable in style because purchases for style increase consumption. Obviously their power thus to stimulate consumption for style depends on the disposition of the population. A thrifty rural population and a highly cultured community are less fruitful fields for exploiting the instinctive impulses for style than are the prosperous middle and upper classes of our villages and cities.

The four types of behaviour are seen also in relations between capital and labour. In the rural community of small farms, with its many producers, independent, indifferently competing and chiefly intent on their relation with physical nature, labourers move freely from one employer to another, share the employer's home and his table, or live on their own small plot of ground with much the same standard of living as their employer. Here the employer does not belong to an exclusive class. The same is true in many small factories and stores throughout the United States. Good feeling prevails between employers and employés, and bargaining between them goes on in the conventional way. The employés are generally satisfied when their wages are "better than they have been" or as high as the wages of other workmen of the same grade in the community. Another type of relation is found in a régime of keenly competitive business; the old personal touch between employer and employés is passing and the employer regards wages as labour cost of production — to be kept at the lowest figure. The numerous independent establishments, however, facilitate competition for jobs. Another type of relation is found in great corporations which, for

[80] Brissenden, "The I. W. W.," 277.

[81] The instinct of display is one phase of the instinct of domination. (Thorndike, "The Original Nature of Man," 94.)

several reasons, are in a very favourable position to exercise domination over workmen and to repress organized effort to improve their condition.[82] They have large financial resources; they employ a large mass of unskilled labour, which it is difficult to organize;[83] often they can transfer work to be done from a factory in which there is a strike to other factories;[84] their very size and power intimidates workmen; the policy of diminishing the output to raise the price decreases the demand for labour; the decrease in the number of establishments under a régime of combination lessens the opportunity for striking workmen to find work elsewhere. Because of the mighty dominating position of the great corporation, resistance of workmen may be long delayed. When it does come it is apt to have the force of a long smouldering resentment, and to be as determined as is the determination of the corporation to perpetuate its domination. In these industrial disputes "the essential aim of either party is, not so much to secure a particular immediate advantage, as to impress upon opponents a sense of its own power, and to instill into them a disposition to yield to reasonable demands in the future."[85] The result is very apt to be a deadlock.[86] Industrial conflict results in financial loss and worry, repeated experiences of which incline employers to relax the attitude of domination sufficiently to discuss their differences with representatives of their employés in order, if possible, to reach a peaceful settlement.[87] Finally, as a result of the fuller understanding of each other made possible through discussion, the "spirit of sympathy"[88] may develop and co-operation become possible. Beginnings of co-operation are found in those corporations where the management develops intimate relations with the employés; aims to have them

[82] Weyforth, "The Organizability of Labor," J. H. U. S. H. P. S., Series XXXV, No. 2, 200–212.

[83] Wolman, "The Extent of Trade Unionism," *Annals Amer. Acad. Pol. Soc. Sc.*, Pub. No. 1092, 6.

[84] Wolman, "The Extent of Labor Organization in the United States," *Quart. Hour. Econ.*, May, 1916, 507.

[85] Pigou, "Principles and Methods of Industrial Peace," 13–14.

[86] In this case the only way out is compulsion by the government or the mediation of some third party in whose sympathetic understanding and disinterested intelligent fairness each of the antagonists has confidence. Such a mediator is born and not made. Some of the most successful have come from the ranks of workingmen. See Fitch, "John Williams — Peace-maker," *Survey*, Jan. 18, 1919, 522.

[87] *Ibid.*, 15–16. See Wolman, "Collective Bargaining in the Glass Bottle Industry," *Amer. Econ. Rev.*, Sept., 1916, 561.

[88] Pigou, *op. cit.*, 16–17.

participate in the management of the business as far as their intelligence permits;[89] furnishes educational facilities and inducements for an increase of intelligence; takes the workmen's point of view concerning their impulses for self-realization; and co-operates with them in effectuating opportunities for self-realization both in the course of work and in hours of recreation.

The behaviour of a corporation toward competitors often follows the same principle as its behaviour toward workmen. A policy of live-and-let-live toward competitors tends to be found with a "fair wage" policy toward workmen. Corporations which are attempting to control competitors and to fix prices are apt to try, at the same time, to dominate and exploit workmen. But the large profits that result from price agreements may incline corporations to conciliate workmen and pay higher wages. Prosperity is apt to put the business man, like any other man, in an agreeable frame of mind, which expresses itself in a rise of wages and beneficent plans for workmen. Corporations which do not attempt to dominate competitors, but are keenly competitive, are apt to use the same shrewdness in their relations with workmen. They are not apt to risk a disastrous strike for the sake of satisfying the impulse of domination.

In all four of these types of industrial relations the motive of money-making is active but it is not equally essential in all. The essential motive may be to conform to the prevailing business behaviour; and, while the prevailing behaviour arises from the impulse to make money, the motive to conform may be more essential than the motive to make money. The impulse to make money becomes essential when men do the uncustomary thing in order to make money.[90] When the rivalrous instinct is aroused in connection with money-making, the essential impulse is to excel in money-making, to enlarge the business. Many men who are doing well in business are caught by the rivalrous instinct and enlarge beyond the limits suggested by business shrewdness. When the dominating instinct is aroused in connection with money-making, the essential impulse

[89] For instance, The Hart, Schaffner and Marx agreement with their workmen, now adopted practically by the whole clothing industry, "stipulates that each step which limits the authority of the employer places definite responsibility upon the employee and should not be developed faster than the capacity of the employees, through their representatives, to assume such responsibility successfully." (Howard, "Industrial Government," *The Survey*, Sept. 13, 1919, 845.)

[90] Williams, "An American Town," 28.

is to control competitors and workmen in order to make money. Sometimes a young man who inherits a business shows this impulse. Patents, bought in order to keep them from competitors, are put away and never used. The impulse seems to be to make profits by the easy way of dominating and exploiting labour; managers and foremen of a dominating disposition are congenial to the young man, and he gathers this kind around him. In the co-operative relation, the essential impulse is to deal "justly" and reasonably with competitors and workmen, though the business man may be conscious of satisfaction when it turns out that just dealing "pays." Thus, a very successful manufacturer, who has built up his enterprise from small beginnings to one of the largest in the industry, writes me: "I think many employers are coming to believe that it pays to treat their employes with justice. . . . You see, they get the general viewpoint first, then it is an application and the thing before them all the time is what is honest and fair and not, 'does it pay?' I claim thus that in their actual performances they have good motives, although back of it and out of sight may be a very selfish one, i. e., that honesty and fairness pays." This manufacturer notes that, in some instances, the honesty and fair dealing pays and in others it does not. In some cases it decreases the percentage of the labour turnover and thus saves the expense of training new workmen, in other cases it does not. He adds that the desirable results are not gained as a consequence of foreknowledge that the just treatment would pay, but that the just treatment is primarily impulsive. It springs from impulses different from those out of which have developed the prevailing business attitude, impulses to deal justly and reasonably with workmen and not to make money. However, the employer is naturally gratified when such treatment of workmen is appreciated by them, perhaps resulting in an increase of production.

It thus appears that the development of industrial institutions is determined not only by the quest for profits, but also by other and very different impulses that seek satisfaction through the industrial activity itself. Some men do "make a romance" of business instead of making it a hard profit-seeking game. The results of this idealism in business, if they turn out to be effective in profit-getting, are adopted by business men whose essential motive is profit-getting. For instance, the success of an idealist in managing workmen no

sooner attracts the attention of profit-seeking corporations than his ideas are adopted and his personal traits imitated. In this way sympathetic tend to replace dominating personalities in managing positions in which the incumbent is in close contact with workmen. Sometimes the general manager, who represents the company to the whole organization, is a person of rough and ready generosity;[91] he may be something of an idealist, with a hobby of profit-sharing as a possible future policy of the company, or something else that serves as a lure to the loyalty of subordinates. Just now the alluring hobby is " industrial democracy " in a variety of superficial forms. One of the most fascinating fields of social-psychological study is the way in which corporations whose one aim is profits incorporate in their organization features that first arose as variations in the behaviour of more or less idealistic business men.

In a profit-seeking economic system idealistic impulses may have some play, but the essential tendency is reactionary. Among the economic developments that accentuate this tendency are, first, the development of the great corporation and the fact that the men who reach the higher positions therein do so through a masterful disposition, and through a good degree of conservatism. And the corporation, with its management removed from the working force, fails to take interest in the human nature of the working force; it has no sympathy with the effort of the occasionally progressive manager to work out industrial relations that furnish opportunities for the development of personality in the course of work. This is not true in all large corporations; the situation is quite the contrary in some of them. But this is the tendency that has been marked in the development of the great corporation, until serious labour troubles have compelled attention to the human nature of the working force, when managers of intelligence and sympathy may replace dominating managers. Otherwise the tendency is to perpetuate the dominating relation of I-will-run-my-own-business-and-if-you-are-not-satisfied-get-out.

Second, there is the development of a repressive financial control of industry. Financiers make their influence felt far and wide on the directorates of corporations they are financing. And being far removed from the factories, their influence is determined by financial instead of industrial considerations. They do not understand the

[91] " Human-Being Management," *Industrial Management*, Dec., 1916, 398–400.

human nature of a working force. Consequently they assume the traditional industrial relation to be final and insist that it be followed in industrial troubles. They " sit on " managers who urge a more progressive attitude to labour. But this reactionary tendency conflicts with another: Financial corporations require a good labour record of corporations whose bond issues they float on favourable terms, and if a progressive labour policy succeeds in a corporation which does not happen to have been under the influence of reactionary financial interests, it is apt to be adopted in corporations which are. But reactionary financial interests and the corporations they dominate may long withstand a successful progressive labour policy. Even though it is financially successful, the fact that it is progressive, that it is contrary to the traditional dominating attitude stirs their distrust. " For," they say, " once take the attitude of being willing to discuss and compromise, once appear to give in and you give up your attitude of running your own business, and who can tell where it will lead? "

It is not possible for the industrial relation, under any conceivable economic system, to become one of co-operation between management and workmen on a plane of complete personal equality. Whether the employer is a manager hired by private owners or a government official or a manager elected by a co-operating group of workmen, there must be authority and subordination in the industrial relation. Those most capable of industrial leadership must direct the work of others; the directed must act according to the instructions of the directors. It is, therefore, an evidence of intelligence in industrial relations that the subordinate accepts the subordination necessary to the efficiency of the organization. Thus accepting his position, he intelligently inhibits his instinctive self-assertion. Exactly the same intelligence is required of one who occupies a position of authority. He is required to perform the duties of that position without thinking of his position as giving him authority impulsively to dominate subordinates. The elimination of this impulsive relation depends on bringing into the financial and industrial leadership the men most capable of leadership and on developing the intelligence of workmen. Intelligent workmen follow the leadership of those who show themselves able to lead, but they resent an assumption of authority without ability. Those in positions of authority who lack ability to lead tend to assume authority, that is

to dominate, assuming that the right to dominate is conferred by their position. And subordinates as instinctively resist this domination of the incompetent as they follow the leadership of the competent.

Incompetence of employers is, then, one cause of a dominating attitude of employers toward workmen. Another cause is more fundamental, being inherent in the industrial system as at present constituted. That system has developed out of the profit-seeking motive, and that motive involves the use of labour, as of raw materials, by the business man, for private profit. High productivity in a period of high prices and the lowest wages consistent therewith is the aim of the profit-seeking employer. His ultimate aim is not to increase the efficiency of labour, but to make large profits for the time being, even at the sacrifice ultimately of the vitality and morale of workmen on which productivity depends.[92] This aim to use labour for his own profit, to put labour and raw material in the same category and keep both costs at the lowest figure, regardless of the ultimate effect on productivity, makes inevitable the antagonism between capital and labour. It involves domination of labour — a subconscious attitude of domination in the ordinary course of business, a conscious attempt to dominate if workmen jointly resist and ask higher wages or improved conditions of labour. Individual employers may feel little or none of this domination toward workmen, may simply follow of necessity the prevailing business practice, and, in case of a difference of opinion, may intelligently discuss grievances with their workmen. But the system itself is based on domination-submission, or domination-resistance — mutual antagonism —, and the men who reach the positions of power and influence in the system are apt to be those who excel in dominating power. Hence the reactionary aspect of the capitalistic system. Its motive is contrary to the production of goods and services for the public welfare.[93] As Justice Higgins, President of the Australian Court of Conciliation and Arbitration, says: "There is a very real antinomy in the wages system between profits and humanity. The law of profits prescribes greater receipts and less expenditures — including expenditure on wages and on the protection of human life from deterioration. Humanity forbids that

[92] Webb, "The Restoration of Trade Union Conditions," 76.
[93] Gantt, "Organizing for Work," Ch. I.

reduction of expenditure should be obtained on such lines. Other things being equal, the more wages, the less profits: the less wages, the more profits. It is folly not to admit the fact and face it. Moreover the economies which are the easiest to adopt in expenditure tend to the waste and degradation of human life — the most valuable thing in the world; therefore so long as the wage system continues there is need of some impartial regulating authority." [94] And no man is better qualified than Justice Higgins to point out, as he does from his own experience, just how the regulating authority proceeds. As he says, no matter how far co-operation may be carried in industry there will be needed some authority to settle industrial disputes. "Even elected persons are sometimes found indifferent to the legitimate claims of a minority." [95] Whatever the form of industrial organization it is apt to produce a would-be dominant class that must be restrained in the interest of the whole.

The profit-seeking motive is contrary to the highest efficiency not only of manual labour but also of professional labour. Modern business has increasingly subordinated the professional man to business standards. Large corporations employ various kinds of professional men — chemists, all kinds of engineers, and also some physicians, statisticians, lawyers, social workers, and occasionally clergymen. Of the chemists, engineers, and other technicians, it is said: "But in no country in the world are these technical experts allowed free scope in their work. Higher authority is assigned by the money economy to another class of experts, business men who are skilled not in making goods but in making money." [96] Yet, "the men who dominate in manufacturing processes could not conduct their business for twenty-four hours without the assistance of the experts. . . . Modern industry depends upon technical knowledge; and all these gentlemen did was to manage the external features of great combinations and their financial operation, which had very little to do with the intimate skill with which the enterprises were conducted." [97] Nevertheless, "as an employe of the business man, the engineer must subordinate his interest in mechan-

[94] Higgins, "A New Province for Law and Order," II, *Harv. L. Rev.*, XXXII: 216–217.

[95] *Ibid.*, 217.

[96] Mitchell, "Business Cycles," 32.

[97] Wilson, "The New Freedom," *Master Workers Book*, 71–72.

ical efficiency to his superior's interest in profitable investment." [98] In like manner, the lawyer employed by a corporation must subordinate his interest in legal justice to his superior's interest in profitable investment. The economist and statistician employed by a corporation must accept the corporation's business attitude and promote the business interests of the corporation. The physician employed by a corporation, in his testimony as to the cause of an accident or of industrial disease, must favour the interests of the corporation as far as he plausibly can. The social worker employed by a corporation must solve the social problems of the communities of the corporation in such a way as suits the interests of the corporation. The clergyman must cherish religious attitudes among the workmen that are not contrary to corporation domination.[99] In addition to this direct control over professional men in their employ, there is the indirect social control exerted by the economic powers that be through their influence on professional standards and over educational and ecclesiastical institutions. Thus does the reactionary business attitude conflict with progressive tendencies throughout the social organization. The problems presented by this conflict constitute the essential social-psychological problems.

[98] Mitchell, *op. cit.*, 32.

[99] West, "Report on the Colorado Strike," U. S. Com. on Ind. Rel., 155–157.

CHAPTER XX

THE RELATION OF SOCIAL PSYCHOLOGY TO ECONOMICS (*concluded*)

THE purpose of the present chapter is to indicate various points of contact between economics and social psychology, in addition to those referred to in the preceding chapter. The problem of population is said to have been inadequately understood because of the failure to recognize the psychical factors.[1] Malthus recognized a prudential restraint in the matter of children, but no thorough analysis of this motive has been attempted. Nor has any analysis been made of the impulses entering into lack of restraint. Men who apparently have as large families as is biologically possible often give a reason which is probably more than a mere excuse for unrestrained passion. A middle-aged truckman, father of eight children, recently remarked, as a good reason for having so many, "If one won't take care of you when you are old, another will." The average man despairs of reaching a position of economic independence in old age, even if he had no children at all; and, being hopeless of an opportunity to rest when he is no longer able to work, the thought of having grown-up sons and daughters is comforting. There are also the parental and gregarious instincts prompting the workman and his wife, who are isolated by their poverty and, perhaps, by their foreign birth, to desire a large family. As one such father said: "One takes a lot of comfort in having children around." The nature of prudential restraint, or the lack of it, is not explained by economists. Restraint has produced most conspicuous results in the population of France which is the only exception to the rule that increase of population follows increase in means of subsistence. Dr. Thompson thinks that a careful psychological study of the French people will be necessary to ascertain the way in which economic conditions affect the attitude of the different classes toward offspring.[2]

[1] Fetter, "Economic Principles," I:408.
[2] Thompson, "Population: A Study in Malthusianism," 122.

Another section of problems, closely connected with population, which are in part psychological, are those resulting from immigration. Among the psychological aspects of these problems are the industrial qualities of immigrants and the qualities which fit or unfit them for assimilation.[3] We need to answer such queries as these: In how far do the mental characteristics of different peoples fit them for intermarriage; in how far are the diverse characteristics of different peoples apt to cause friction between native and alien labour[4]; in how far are immigrants apt to remain loyal to native land, to the extent of being disloyal to their adopted country. It is quite as important to know whether a people are truth-tellers or deceitful, industrious or lazy, as to know whether they are small or large in stature.[5] Although immigration problems are in part psychological, some writers on the subject dismiss this side of their problems with scant attention.[6]

Trade unionism, as indicated in the preceding chapter, has a psychological aspect. Says Professor Hoxie: "The social psychological view of unionism and its relation to society may be stated somewhat as follows: Modern realistic social science has pretty definitely reached the conclusion that society is made up of a great complex of interacting and interlocking social groups. Each of these groups is composed of individuals holding a common view point in regard to some vital social matter or series of such matters. For example, there is something in the nature of a general group of employers and a general group of laborers, but both the laboring and the employing groups are again split into an indefinite number of smaller groups, each with its peculiar viewpoint opposed to that of any other group. In general, each occupation and profession is likely to constitute, for certain purposes, a distinct group with a definite point of view. . . . The possession of this common viewpoint welds the individual members of such a group into a more or less permanent social force.

"Each of these groups has its own peculiar aims, social motives

[3] Commons, "Races and Immigrants in America," 127–134, 208–224.

[4] Wolfe, "Admission to American Trade Unions," *J. H. U. S. H. P. S.*, xxx, No. 3, Ch. 5.

[5] Ross, "The Old World in the New," 293.

[6] Fairchild, "Immigration," 5. Professor Ross gives more careful attention to the psychological side of immigration problems. See, "The Old World in the New," 39–45, 54–66, 83–92, 113–119. See also the great monograph by Thomas and Znaniecki, "The Polish Peasant in Europe and America."

and attitudes, social principles, theories and program of action more or less clearly formulated, which it is struggling consciously and unconsciously to realize and put into effect in society. . . . The social will and social action in regard to any matter — as, for example, wage rates, hours of labour . . . are at any moment the outcome of the struggle between these groups, each attempting to realize its own ideals and aims, subject always, of course, to the great underlying conditioning factors of physical nature and long established social institutions and conditions which . . . set the limits to what society can do." [7]

Turning from the labour to the capital side of the economic order, we find the same close relation of economic and social-psychological processes. The relations of commerce are admitted by the economist to rest on psychological processes that lie outside the field of his own science. He urges the necessity of understanding and directing these processes.[8] But his lack of understanding of social psychology is apt to incline him to the acceptance of the traditional individualistic ideal of commercial organization; wherefore his reasoning lacks the cogency that valid psychological assumptions would give it.

The mechanisms of commerce have a psychological basis. Banking operations rest on confidence. Bankers who, because of their reputation for integrity, have the confidence of depositors are said to possess a " psychological reserve." [9] The causes of the seasonal variations in the money market are said to be " in part psychological," but the economist does not analyse these psychological causes.[10] Speculation is determined by psychological causes which the economist does not analyse.[11] Uncertainty as to the supply of and demand for a particular commodity enables those who occupy the strategic points in the economic system to exploit economic changes; [12] wherefore facilities that introduce greater certainty and facilitate intelligent forecasting of supply and demand benefit the rank and file of producers.[13] The problem as to whether the

[7] Hoxie, " Trade Unionism in the United States," 6–7, 64–67.
[8] Brown, " Principles of Commerce," 189–191.
[9] Withers, " The Meaning of Money," 286.
[10] Kemmerer, " Seasonal Variations in the New York Money Market," *Amer. Econ. Rev.*, I: 35.
[11] Fisher, " Elementary Principles of Economics," 425–427, 430–432.
[12] Moore, " Forcasting the Yield and the Price of Cotton," 163–164.
[13] *Ibid.*, 2–3, 165–169.

government should not merely furnish such facilities but also regulate organized speculation requires attention to the underlying psychological processes of speculation. We must know whether regulation will diminish uncertainty in the transactions in question, and therefore diminish impulsive and facilitate intellectual behaviour.[14] The problem is the more important because trading on the New York Stock Exchange is not confined to professional speculators; owing to the opportunity to buy less than one hundred shares, "the opportunity to enter the stock market is brought within the reach of nearly everyone." [15]

Problems of insurance have a psychological aspect. Insurance centres around the motive to avoid or reduce uncertainties as to the security of property and income.[16] The motive is most pronounced in people of an intellectual disposition, because uncertainty or risk is annoying to the intellectual impulses; on the contrary, where uncertainty involves a chance of quickly winning great gain the chance is seductive to the rivalrous impulse for superiority. Insurance reduces risk to a minimum, whether risk from fire, shipwreck, burglars, or from mishap to or death of the breadwinner. There are other psychological effects of insurance, for instance, the effect of marine, fire and life insurance in causing fraudulent practices and crimes on the part of insurance companies and policy holders.[17] Health insurance results in a tendency to malingering [18] and to "morbid susceptibility," "a habit of mind ready to fall victim to disease, quick to exaggerate small symptoms to gross proportions, and to make the person ill by mere weight of thought. . . . It is very difficult, from the very nature of the evil, to estimate how far it exists. But a careful student of insurance in Germany cannot but be impressed with its existence." [19] On the other hand, a sturdy population, in which the old rural trait of stolid endurance of pain persists,[20] may suffer from lack of prompt attention to illness. If poor they are often too proud to ask for medical

[14] Brace, "The Value of Organized Speculation," 51–54, 138, 139, 149.

[15] Gerstenberg, "Materials of Corporation Finance," 430, quoting from a pamphlet, entitled "Wall Street Ways," issued by J. F. Pierson and Co., members of the New York Stock Exchange.

[16] Fisher, "Elementary Principles of Economics," 427–429.

[17] Campbell, "Insurance and Crime," Chs. III–XVIII.

[18] Gibbon, "Medical Benefit in Germany and Denmark," 17, 252, 265.

[19] *Ibid.*, 93–94.

[20] Williams, "An American Town," 40.

relief and too honest to run in debt, unless it is a case of life or death, to a doctor whom they know they can never pay. When he falls sick, the poor man worries because he "can't afford to be sick," while the well-to-do invalid may lie back and hasten his recovery by placidly surrendering to the ministrations of doctor and nurse. Thus the need of health insurance must be accepted;[21] and a system must be developed which, in view of the processes of human nature, will benefit without injuring.[22]

Problems of taxation are psychological as well as economic. Thus "the fundamental conception of faculty or ability, . . . is after all the best standard we have of the measure of general obligation to pay taxes . . ."[23] "The elements of faculty, then, are two-fold — those connected with acquisition or production, and those connected with outlay or consumption. What is the application to the topic in hand?"[24] In acquisition, the more money a man has, the more he can make.[25] In consumption, the more money he has the less satisfaction he sacrifices by giving up a given sum of money to the government.[26] Here, then, is a psychological basis of taxation. "If it does not necessarily lead to any definite scale of progression, much less can it necessarily lead to a fixed proportional taxation. But if we never can reach an ideal, there is no good reason why we should not strive to get as close to it as possible."[27] How far a government may go, at any particular time, in approximation to a progressive scale depends on the intelligence of the people. Hence not only the principle, but its application involves psychological considerations.

Corporation finance also has a social-psychological basis. Note the consolidation of financial interests in Germany, under governmental encouragement and direction, as compared with the opposition that has marked the development of consolidation in the United States. These diverse economic developments cannot be explained

[21] Fisher, "The Need for Health Insurance," *Amer. Labor Leg. Rev.*, March, 1917, 13. See also, in the same periodical, Lambert, "Medical Organization and Health Insurance," 37. See also Goldmark and Frankfurter, "Oregon Minimum Wage Cases," 127–146.

[22] Gibbon, *op. cit.*, 94; Lambert, *op. cit.*, 41.

[23] Seligman, "Progressive Taxation in Theory and Practice," 290; see also Seligman, "The Income Tax," 4–18.

[24] Seligman, "Progressive Taxation in Theory and Practice," 291.

[25] *Ibid.*, 291–292.

[26] *Ibid.*, 209–216.

[27] *Ibid.*, 292–293; see also Seligman, "The Income Tax," 31–34.

without a knowledge of the differences in national psychology. Public finance likewise has a social-psychological basis. Thus, in the United States the democratic tradition that any man, regardless of social class, may rise to any office in the government, and that these men are capable of transacting any and all governmental business has resulted in an irresponsible and inefficient system of public finance; [28] while, in England, the undemocratic tradition that a popular assembly is unfitted for the transaction of governmental business and should select the proper persons for that function, has resulted in a responsible and efficient system of public finance.[29] These different traditions rest upon different social-psychological processes; those of the democratic tradition must be understood in order to appreciate the persistence of the inefficient system of public finance in the United States.

Conditions affecting general price level are psychological. Among these conditions, Professor Fisher mentions the " extent and variety of human wants," " business confidence," " habits of the individual " as to hoarding and the giving of credit, and others.[30] These conditions are not analysed by the economist but are assumed in his logical and statistical studies.

The accumulation of capital, also, rests on psychological conditions. It is said to be due to the preference for future over present goods or services, with little attempt at analysis of the psychological nature of such preference. " Just as in the ordinary theory of prices the ratio of exchange of any two articles is based on a psychological or subjective element, — their comparative marginal utility, — so in the theory of interest the rate of interest, or the premium in exchange between present and future goods, is based on a subjective prototype, namely, the preference for present over future goods." [31] The author goes on to state that " This time-preference is the central fact in the theory of interest. It is what Rae calls the ' effective desire for accumulation,' and very nearly what Böhm-Bawerk calls the ' perspective under-valuation of the future.' " [32]

[28] Willoughby, " Budgetary Procedure in its Relation to Representative Government," *Yale Law Journal,* XXVII:747–752; Plehn, " Government Finance in the United States," 96–100.

[29] Willoughby, *op. cit.,* 744–747.

[30] Fisher, " Elementary Principles of Economics," 192–202. See also Fisher, " Why the Dollar is Shrinking," 90–92.

[31] Fisher, " The Rate of Interest," 88.

[32] *Ibid.,* 88. (Quoted without footnotes.)

In their analysis of the processes of production, economists find these to be inseparably bound up with social-psychological processes. For instance, in the study of the wool industry, the economist is obliged to make an analysis of the processes that determine the rise and dissemination of styles, because the style determines the quantity and quality of the fabrics manufactured in a given season.[33] Again, the economist shows that changes in the supply of goods produce changes in demand, according to the elasticity of the demand for the goods. The differences in the elasticity of demand can be statistically stated,[34] but the causes of these different elasticities are problems of social psychology.

Economists have, therefore, at many points implicitly or explicitly acknowledged the close relation of economics and social psychology. Yet, in reading monographs on economic problems, one is often impressed with the vagueness of the part devoted to the social-psychological factors. In monographs on labour problems one finds a vagueness in the analysis of the psychological aspects, or, to use the term more often used by economists, the " ethics " of the problem, as compared with the clear analysis of the economic factors. The deficiency is due to the lack of social-psychological training, or, more accurately, to the lack of social psychology. Sometimes economists invoke an ethical principle when there is no economic principle touching the problem. For instance economists have long sought but never found a principle according to which may be solved the problem of what constitutes a just wage in any particular instance.[35] Professor Pigou acknowledges the lack of such a principle and proposes an ethical standard which is derived from a conception of what ought to be.[36] If such a principle is ultimately attained, it will not be an ethical assumption, but a principle derived from the science of human nature. For the distribution of wealth must be such as to promote the development of personality.

There are some recent studies of economic processes which lead us to hope that, if sufficiently exhaustive researches can be made, economics may become a quantitative study of human behaviour in the achievement of material welfare. Such a monograph is

[33] Cherington, " The Wool Industry," Chs. XI–XII.
[34] Moore, " Economic Cycles, Their Law and Cause," 69.
[35] Hollander, " Abolition of Poverty," 49–50.
[36] Pigou, " Principles and Methods of Industrial Peace," 35–38.

Professor Mitchell's *Business Cycles*. He finds that the controlling factor in business cycles is " the quest of profits." " Since the quest of money profits by business enterprises is the controlling factor among the economic activities of men who live in a money economy, the whole discussion must center about the propects of profits." [37] In the description of a cycle, which begins with the revival of activity after a period of depression, he observes that " the only safe way of dating a revival is to accept the consensus of opinion among men intimately familiar with business conditions at the time." [38] The revival is due, among other causes, to the rise of certain psychological conditions which stimulate the quest of money profits.[39] Among these are the " optimism " of the prosperous individual and his influence on others.[40] " As it spreads, the epidemic of optimism helps to breed conditions which both justify and intensify it." [41] As the business activity increases, prices begin to rise. This is due to increasing prime and supplementary costs and, also, to the sellers' impulse for profits. On the intelligent regulation of this impulse depends the further course of the cycle. " There is always danger that sellers may over-reach themselves by advancing prices more rapidly than the market conditions will support. For the expansion in the volume of business, upon which rests the whole movement toward prosperity, may be checked by an ill-timed or excessive advance. Frequently one or more branches of trade receive a setback while others are reviving, because mistakes of this kind are made by leading enterprises. More rarely, the whole revival is retarded or even stopped by an over-rapid rise of the price level." [42] Throughout the course of the cycle, the essential process is the impulse for profits. The aim of the business man is to fix prices at the highest point consistent with the continued rise, to take advantage of the lack of intelligence of labourers to pay the lowest possible wage,[43] and the lowest price for loans.[44] Owing to the essentially impulsive nature of man, however, extravagant expectation prevails over careful thought.[45] The result is an accumulation of

[37] Mitchell, " Business Cycles," 450.
[38] *Ibid.*, 456.
[39] *Ibid.*, 452–453.
[40] *Ibid.*, 455.
[41] *Ibid.*, 455.
[42] *Ibid.*, 459.
[43] *Ibid.*, 465–466.
[44] *Ibid.*, 466–467.
[45] *Ibid.*, 483, 498.

conditions which eventually causes depression.[46] This in turn is intensified by the cumulative effect of apprehensive ideas upon the depression.[47] The few men who are not obsessed by these impulsive ideas because of extraordinary shrewdness, and who have the advantage of a knowledge of inside conditions, are those who reap the big fortunes.[48]

What one finds in economic monographs are logical and statistical analyses of the economic results of essential tendencies of behaviour, with no attempt at a psychological analysis of the essential tendencies. For instance, Professor Moore assumes the psychological processes of speculation — the uncertainty, the affective thinking processes, the intellective thinking processes [49]— without analysing them, and recognizes these processes only at points where they appear as alleged causes that must be proved or disproved.[50] Again, Professor Moore has proved that workmen are paid according to their differential efficiency.[51] This means that the wages of labour are subject to the law of supply and demand: the more efficient the labourers, the smaller the supply and the higher the wage. This, in turn, means that the prevailing motive of employers in their relations with labour is to get labour at least cost. The economist thus incidentally demonstrates what is the prevailing motive of the employer, but does not attempt a psychological analysis of the relation of employer and employé. He is not concerned with variations from the prevailing motive nor with the check on variant motives by the prevailing motive to get labour at least cost. All these problems of essential motives, their connections and variations, are problems for the social psychologist.

Another illustration of social-psychological assumptions of economists which require analysis is furnished by the problem of the jurisdictional disputes of trade unions. Dr. Whitney, after a careful analysis of the jurisdictional disputes of American building-trade unions, assigns several impulses of the members as causes of these disputes.[52] There is no attempt to relate these motives,

[46] *Ibid.*, 503–511.
[47] *Ibid.*, 512, 554–555.
[48] *Ibid.*, 598.
[49] Moore, "Forecasting the Yield and the Price of Cotton," 2, 3, 10, 11, 163, 164, 166.
[50] *Ibid.*, 76–78.
[51] Moore, "Laws of Wages," 90–96.
[52] Whitney, "Jurisdiction in American Building Trades," *J. H. U. S. H. P. S.*, Series XXXII, Ch. IV.

and only the vaguest hypothetical statement is made as to their relative importance. It is implicitly regarded as outside the sphere of the economist.[53] Because the motives are for the most part subconscious, and because some of them, when conscious, are not admitted by workmen, an explanation of them is not found in the documentary sources. Very careful field work among trade union men in their meetings and at their work is necessary to accumulate data for a study of their motives. This field work is one of the distinctive methods of social-psychology.[54]

We have seen that the economist deals with quantitative data, and in his interpretation of these data uses psychological assumptions. The social psychologist analyses the assumed processes, and examines their relation to the processes that are assumed by the political scientist and the student of jurisprudence.[55] Social psychology also explains the processes of human nature that economic conditions must facilitate for the development of personality. It likewise prescribes for political and juristic development. Social psychology is, therefore, a co-ordinating science, less objective, less susceptible of quantitative treatment than other social sciences, but, nevertheless, concrete, inductive, with a distinct field and method, and functioning as a further stage in the intensive analysis of social relations.

[53] For another example see Spedden's analysis of the causes of the use and failure to use the trade union label. (Spedden, "The Trade Union Label," *J. H. U. S. H. P. S.*, Series XXVIII, No. 2, 69–74.)

[54] Williams, "An American Town," Introduction.

[55] Commons, "A Sociological View of Sovereignty," *Amer. Jour. Sociol.*, V: 10.

CHAPTER XXI

SOCIAL PSYCHOLOGY AND HISTORY

IN suggesting as briefly as possible what seem to me to be some of the relations of social psychology to history, I do not want to be drawn into problems of historical reconstruction. These are problems for the historian and not for the social psychologist. The aim is, therefore, simply to state what the different attitudes of historians to alleged psychological aspects of historical method imply as to the relation of social psychology to history. I am not interested in establishing or denying any relation but seek merely to indicate aspects of the relation that seem to be implied in the statements of historians themselves. This is not saying that historians would endorse the relation suggested.

In his book, "The New History," Dr. Robinson includes the social psychologist among "The New Allies of History"; and declares that "the great and fundamental question of how mankind learns and disseminates his discoveries and misapprehensions — in short, the whole rationale of human civilization as distinguished from the life of the anthropoids — will never be understood without social psychology; . . ." [1] Since this statement was written, the social-psychological point of view has had an increasing influence in the work of some historians while others have developed a decided attitude against it.

The relation of social psychology to history involves a consideration of its relation to the criticism of historical method and to the different conceptions of the reconstruction of history. The former requires consideration first. Let us note, then, some of the ways in which social-psychological assumptions have served, or might have served, the criticism of historical method.

We note, first, that "we shall not go far astray, if we view history, as it has existed through the ages, and even down to our own day, as a branch of general literature, the object of which has been to present past events in an artistic manner, . . ." [2] The motives

[1] Robinson, "The New History," 93.
[2] Robinson, *op. cit.*, 27; see also Becker, *op. cit.*, 642.

that inspired artistic creation animated the writing of history; though, to be sure, the historian did not give his imagination such perfectly free rein as did the literary man. Essential among the motives common to both kinds of writing were impulses having their source in the rivalrous disposition of man. In the writing of history, this motive took the direction of an impulse for sectarian, national, or class superiority. Note first the action of the impulse to glorify the religious sect to which the historian belonged. Christian historians used history against paganism.[3] Catholic historians used history to endorse Catholic beliefs; Protestant historians to magnify the truth of Protestant beliefs; while anti-Christian writers, as Voltaire, used history to give authority to their contradictions of the beliefs of Christian theology; and Christian theologians used history against Voltaire.[4]

These writers allowed their sectarian impulses subconsciously or consciously to direct their reconstruction of history. This method of historical reconstruction continued down to recent times. Bancroft saw in history "the movement of the divine power which gives unity to the universe, and order and connection to events."[5] This impulsive purpose caused a lack of thoroughness in the treatment of sources and of frankness in telling the whole truth. The association of ideas was affective and not intellectual.

Another form of group rivalry that affected the writing of history was the rivalry of nations. As sectarian impulses weakened, historians wrote more and more under the impulse to glorify their own nation or some nation of antiquity.[6] Especially susceptible to such treatment is the history of ancient nations and the beginnings of the history of modern nations; for historical reconstruction here deals with the dim past where the scarcity of data gives ample play to the imagination under the direction of the rivalrous disposition. For nearly a century, the thought of students concerning the origins of institutions was determined by rivalry between Teutonic and Roman scholars, and each group magnified the influence on civilization of the institutions in which it was interested, and minimized the influence of the institutions extolled by the rival group. Teutonic

[3] Robinson, *op. cit.*, 29–32; Shotwell, "The Interpretation of History," *Amer. Hist. Rev.*, XVIII: 649–701.

[4] Robinson, *op. cit.*, 33-39; Shotwell, *op. cit.*, 702.

[5] Bancroft, "The History of the Constitution of the United States," II: 284; I: 6.

[6] Dunning, "Truth in History," *Amer. Hist. Rev.*, XIX: 221.

historians aimed to show that civilization had developed from Teutonic institutions, that wherever the Teutonic race went, it displayed certain innate qualities that made its institutions superior to Roman institutions. All this was denied by the French school which declared that the original Teutonic free group was a figment of the Teutonic imagination; that the manorial system in England could be traced back to Roman times. The tremendous and sustained interest in origins, as compared with the interest in the more immediate past, has been due, at least in part, to the mystery of the remote past and to the opportunity afforded by this mystery to make impulsive ideas impressive.

Another form of group rivalry, which has determined the association of ideas in the writing of history, has been the rivalry of political parties. This influence was particularly marked following the French revolution. "Of the questions which the revolution left unsettled, perhaps the most pressing was political in its nature. In France and Germany, if not also in England, the revolution destroyed all consensus of opinion as to the fundamental principles of government and public law. For two generations party divisions turned on this issue; and we might expect to find, as we do in fact find, that historians and statesmen, when they turned to the past, were primarily interested in its political and legal aspects: they wanted the past to tell them what law really was after all, and what kind of government would prove most stable. It was therefore an age of political historians, and each political party found support in history for its practical program." [7]

With the development of historical research under these various forms of group rivalry, historians became more exacting in their intellectual requirements. Each was bent on proving his superiority to the other in ability to marshal an abundance of detailed proofs of the theory [8] that would establish the superiority of the group he represented. There was more care in documentation, as one may see by comparing the work of earlier writers with that of Stubbs,[9] or Fustel de Coulanges.[10] But with all their painstaking accuracy, as long as historians were animated by group rivalry, their interpretations were unscientific. "To scan the past with the

[7] Becker, *op. cit.*, 642–643.
[8] Ashley, "Introduction to Fustel de Coulanges, The Origin of Property in Land," xi.
[9] Stubbs, "Constitutional History of England."
[10] Fustel de Coulanges, "Histoire des Institutions Politiques de L'Ancienne France."

hope of discovering recipes for the making of statesmen and warriors, of discrediting the pagan gods, of showing that Catholic or Protestant is right" is not scientific. None "of these motives are scientific, although they may go hand in hand with much sound scholarship." "So long as historians continued to present to the reader such conspicuous events as they thought might enlist his interest, and commented on these with a view of fortifying his virtue or patriotism or staying his faith in God, it made little difference whether they took pains to verify the facts or not. . . . But today a large part of the historian's attention is directed to the character, the reliability, or defects of his sources. The data upon which history rests have been subjected to the most searching scientific scrutiny." [11]

In view of the results, which are mentioned in the preceding paragraphs, of the functioning of group rivalry impulses in the writing of history, would not a knowledge of the social-psychological processes of group rivalry serve the critic of historical method? And would not social psychology have enabled historians who wrote under the influence of group rivalry impulses to discriminate between associations of ideas due to such impulses and intellectual associations? Will not social psychology enable the historian of today, in his reconstruction of the past, to discern in historical events the movement of group rivalry impulses? A proper appreciation of social-psychological processes widens the vision of the historian and guides the imagination in historical reconstruction, even though the reconstruction, for lack of data, cannot take place very definitely along social-psychological lines.

The associative processes of history writing were, then, once essentially affective. The associations of ideas were believed to be true because they were satisfying to group rivalry impulses. The determining impulses of the associations undoubtedly were for the most part subconscious and, where conscious, were allowed to determine thinking without criticism. They were not, however, entirely irrational. Association was determined also by the superficial reasoning processes we term analogy. All science, in its first stages, has reasoned by analogy — that is, in formulating its data has employed, more or less uncritically, the concepts of a more developed science. This procedure, also, is more or less subconscious;

[11] Robinson, *op. cit.*, 43–44.

and, where conscious, it is implicitly assumed to be justified, rather than explicitly and critically developed. The analogical method has served two functions; it has given the student of a new and unformed science hypotheses for provisional groupings of his facts; and it has given the groupings and conceptions of the incipient science the prestige of analogy with conceptions the truth of which had become generally recognized. Astronomy, physics, and biology were at first condemned because destructive of the beliefs of rivalrous sects and nations; then, as the conceptions of these sciences came to be more and more widely accepted by intellectual men and to discredit theological and other beliefs, the conceptions of natural and biological science gained prestige from their defeat of theology, and became the dominant thought of the age. Then it was that scientists in other fields aimed to give their sciences prestige by adopting the methods of, and by formulating their concepts in terms of the dominant formulas of, natural and biological science. Students of human society — historians, and sociologists, and others — have sought prestige for their conceptions by analogical use of formulations that had become famous. Thus, thought about human society has been physical and biological. When astronomy and physics were dominant, thought about society was formulated in terms of the Newtonian theory.[12] When the achievements in biology became conspicuous, philosophizing about history and man followed conceptions of organic development. For instance, Herder maintained that the same God who established laws for nature made man and ordained for him certain laws; that history is the result of the action of men in accordance with these laws; hence history as well as nature discloses certain great laws.[13] Herder's formulation was satisfying, therefore, to the impulse for sectarian superiority; he formulated the omnipotence of God in terms of an impressive scientific analogy.

The idea of organic development was applied not only to history but still more widely in other branches of knowledge of human society. Herder's idea of history as "a progressive education of humanity," "had from Lessing, is combined with the idea of Leibniz that change is evolution, by means of an internal force, of powers originally implicit in existence, and with the idea of Spinoza

[12] Wilson, "The New Freedom," "Master Workers' Book," 45–47.
[13] Robinson, *op. cit.*, 38.

of an all-comprehensive substance. This idea of organic growth was then applied to language, literature and institutions. It soon obtained reinforcement from the rising science of biology. Long before the days of Darwin or Spencer, the idea of evolution had been a commonplace of German thought with respect to everything concerning the history of humanity." [14]

Hegel accepted Herder's idea of the historical process as a working out of divine intention which he termed the world-spirit.[15] Hegel used this analogy in satisfaction of the impulse for national superiority. He maintained that the world-spirit had assumed its final form in the German nation which was to be the bearer of the Christian principle for other nations.[16] Thus connected not only with the sectarian but also with the political group rivalry impulse of the German people, this world-spirit philosophy of history had a great vogue.[17] Its influence continued up to the period of the World War. "When a recent German writer argues that for Germany to surrender any territory which it has conquered during the present war would be sacrilegious, since it would be to refuse to acknowledge the workings of God in human history, he speaks quite in the Hegelian vein." [18] "The supreme rôle assigned by Hegel to his own countrymen filled them with justifiable pride. And was not this assumption amply borne out by the glories of 'Deutschtum' in the Middle Ages,— which the romanticists were singing: and, much more recently, by the successful expulsion of the French tyrant? That all this should combine to give a distinct national and patriotic trend to historic research and writing was inevitable. The great collection of the sources for the German Middle Ages,— the 'Monumenta Germaniae Historica' . . . began to be issued in 1826. . . . Ranke, Dahn, . . . and dozens of others who began to devote themselves to German history, were all filled with a warm patriotism and enthusiasm very different from the cosmopolitan spirit of the preceding century. Throughout Europe history tended to become distinctly national, and an extraordinary impetus was given to the publication of vast collections of material." [19] In the

[14] Dewey, "German Philosophy and Politics," 112–113.
[15] Hegel, "Lectures on the Philosophy of History," trans. by Sibree, 19–23.
[16] *Ibid.*, 62–63, 475–476.
[17] Dewey, "German Philosophy and Politics," 119.
[18] *Ibid.*, 113–114.
[19] Robinson, "The New History," 41.

organization of this material, the German historian Ranke accepted the Hegelian conception of a *Zeitgeist* that determined the spirit of the nation, and which the historian should portray. " Ranke did not develop this philosophic background of history, he accepted it and worked from rather than towards it. . . . Why, therefore, should one turn aside to other devices to explain history, since it explained itself if once presented in its own light? " [20] One would have thought that, with this point of view, Ranke would have emphasized psychological processes in his reconstruction. But he trusted implicitly to the philosophers to make explicit this philosophy of history.[21] In spite of his comprehensive mind, Ranke shared the nationalistic impulses of his time,[22] and limited himself to political history.

The development of psychology ultimately gave rise in Germany to a conception of a close relation between social psychology and history. For instance, Wundt declared that " the essential content of history consists in those events which spring from the psychical motives of human conduct. Moreover, it is the nexus and change of motives underlying such conduct that lends to events the inner continuity which is universally demanded of history." [23] A philosophy of history " is a psychological account of the development of mankind." [24] But Wundt's studies of the mind of primitive peoples are more metaphysical than scientific. The same is true of Lamprecht's interpretation of German history. Lamprecht sketched the trend of the national spirit of Germany in successive periods of German history — symbolism, typism, conventionalism, individualism, subjectivism.[25] His method calls for an intensive treatment of historical processes, which is possible only for recent history. It is evident that much of his work is inspired by the organismic analogy applied to the nation — the same analogy that German political scientists applied to the interpretation of the state.

There is a justifiable use of analogy but it is extremely difficult to confine its use to justifiable limits. The reason is that the use

[20] Shotwell, *op. cit.*, 703.
[21] *Ibid.*, 704.
[22] *Ibid.*, 703.
[23] Wundt, " Elements of Folk Psychology," trans. by Schaub, 509.
[24] *Ibid.*, 522.
[25] Lamprecht, " Deutsche Geschichte "; Lamprecht, " Zur jungsten deutschen Vergangenheit "; Lamprecht, " What is History? " Translated by E. A. Andrews.

of the concepts of one science, as analogies for the framework of the thought of another, is apt to persist long after these analogies have outlived their strictly scientific usefulness. The analogy makes possible a provisional formulation of impressions, which formulation, because of the prestige of the concepts used as analogies, interests thinking people in the possibilities of the new science. The use of the analogy persists because thinkers in a new field are apt to be more or less carried away by a conception which has proved to be of great scientific value in another; and because they cling to a conception that gives their work prestige; and because assumptions, once they have become fixed, are hard to change. Thus the dominant conceptions of an age get a grip on thought in widely separated fields, and their control chokes free inquiry and severe analysis through which, alone, intellectual progress is possible.

A thoroughly intellectual attitude is rare, even among scholars, because scholars, like other men, are subject to the influence of the powers that be. The rivalrous impulses impel to thought and behaviour that will demonstrate superiority in thinking that commends the scholar to the powers that be. One way of winning this commendation has been to increase the prestige of the sect or nation by marshalling a mass of learning in support of its beliefs and prejudices, and by plausibly interpreting these in thought forms that have acquired great prestige. Thus the conception of a reign of cosmic law magnified the power of God as the great law-giver, and therefore magnified the power of the sect that claimed this God as its God; and magnified the power of the nation in which this God or World Spirit had been most fully manifested. Scholars who seek to commend themselves to the powers that be and who, in so doing, lend themselves to the use of those powers, may be unconscious of so doing. Yet those impulses will affect their thought and behaviour even more because of the unconscious nature of the influence. The control of the powers over the scholars in the main may not be deliberately or consciously exerted; but it is none the less effective. This relation to the powers that be is seen among scholars of all countries; and it was conspicuous among German scholars who lent their abilities to the national ambition for superiority. Their associations of ideas determined by these subconscious impulses were attributed by the Germans to an absolute and universal Reason, as distinguished from analytic

thought condemned by them as mere "understanding." "The appeal was not from reasonable experience, but from the analytic thought (henceforth condemned to be merely 'Understanding'—'Verstand') to an absolute and universal Reason (Vernunft) partially revealed in nature and more adequately manifested in human history as an organic process. Recourse to history was required not because of any empirical lessons it has to teach, nor yet because history bequeathes to us stubborn institutions which must be reckoned with, but because history is the dynamic and evolving realization of immanent reason... [26]

Thus clothed with divinity and glorified by association with the absolute, the impulsive movements of the imagination could serve the nationalistic ambition with an exalted fervor and without any disagreeable misgivings as to the real nature of the thought processes involved. This impulsive trend of German philosophy affected every branch of social science in Germany, even anthropology. Thus, alleged likeness of race was long given as an excuse for the national ambition for extension of sovereignty. "All countries where the names of places or of persons, the colour of the eyes, or the shape of the head denote an infiltration of Teutonic elements, are declared to be the domain of the German race. The Netherlands, the Flemish districts of Belgium and France, Alsace-Lorraine, Burgundy, Franche Comte, the Scandinavian nations, Finland, the Baltic provinces of Russia, Austria, in short, all central Europe from the North Cape to the Adriatic has been proclaimed the chosen land which is destined to become subject to the German Empire. And since race is not so easy to determine, and since the people themselves forget their true descent, the scientists must undertake the task of apprising them of their correct allegiance according to their origin. . . . These trenchant affirmations of 'competent authorities' might be harmless enough, were they not backed up by imperialist politicians, armed with the verdicts of scholarship as if with title deeds, who command the peoples to throw themselves, willing or unwilling, into the embrace of the reconstituted race. In just this fashion did the German universities prepare the way for the achievements of Bismarck and represent to their 'long lost brothers' of Alsace and Lorraine their annexation by the Empire as a return to the 'German family.' . . .

[26] Dewey, "German Philosophy and Politics," 93.

"Who does not feel the scandal and shamelessness of such sophistries? In the name of what Renan has termed the 'poor little conjectural sciences,' in the name of history, that complaisant servant of any theory, in the name of linguistics and of anthropology, yet more uncertain and still more complaisant, attempts are made to decide the fate of peoples against their will. A few degrees more or less of the cephalic index are expected to determine a frontier. Was it not Frederick the Great who, understanding his people, remarked on the eve of the partition of Poland: 'Whatever I may do, I shall always find some pedant to justify me.'" [27]

Two forms of thought that have conspicuously served to support the control of the powers that be, are the biological and psychological analogies of the state and of its historical development. The state has been viewed as an organism and as a personality. The idea of the state as organism or personality or both serves the interests of the powers that be because it ignores, glosses over and detracts attention from the class conflict. The theory of the state as a personality with one legally absolute will obviously does not regard the conception of a dominant class and of class resistance and conflict as essential in the conception of the state. The historian who assumes that the people whose history he writes have a state personality cannot consistently make class conflict an essential assumption of his work. This theory of a state personality serves the purposes of an autocracy, whose ambition for national supremacy requires that there be no class conflict within the nation. Thinkers of a nation like Germany, which had long dwelt upon projects of national supremacy and conquest, conspicuously fostered the theory of the state as a personality,[28] and regarded history as the record of the development of the state personality. A theory of state personality also serves the interests of a dominating aristocracy that frowns on the suggestion of lower class resistance implied in the conception of a class struggle. A theory that ignores class conflict and implies the undisturbed domination of an aristocracy or an autocracy commends itself to scholars who are, consciously or subconsciously, desirous to commend themselves to the powers that be.

Organismic theories of the state and of history are examples of

[27] Ruyssen, "What is a Nationality?" Intern. Council., No. 112, 13–14.
[28] Coker, "Organismic Theories of the State," 11, Chs. II-IV.

the direction of thinking processes of historians by the concepts of other sciences, and are the outcome of a sentiment for state absolutism that is fostered by an autocracy or a dominant class. Germany illustrates the first, England the second influence for solidarity. Organismic theories of the state have appealed to the English mind because there the state and other institutions are regarded by the aristocracy as the cumulative wisdom of past generations, so that changes must not affect fundamental laws and customs.[29] Mr. Bosanquet gave the English conception of state personality a formulation that appealed to the English reverence for law and custom. Just as most of the reactions of the individual are habitual, he said, so social reactions and adjustments are chiefly habits of joint action. "If the analogy is sound, which suggests itself between an individual and a community in this respect, the ideal of political nihilism is exploded. For our conception would indicate that social life is necessarily and increasingly constituted by adjustments which have become automatic, and are in a large measure withdrawn from public attention. The formation of such adjustments would then appear to be the condition of social progress. A definite habit of orderly action, which receives the *imprimatur* of the state, and is thus put beyond the range of discussion, effects an economy of attention . . . setting free the social mind for new ideas. . . .

"When we speak of the State using force or coercion upon individuals, by far the greater part of what we mean consists in the fact that each private mind is rooted in the common life by interlocking adjustments which become automatic to all. By being thus rooted its capacities and faculties are immeasurably extended," [30] just as, by the formation of habits, the capacity of the individual mind is immeasurably extended. The Germans, on the other hand, explained social solidarity as due, not merely to habitual joint action, but to the fact that traditions are vehicles of the eternal spiritual truths of the absolute and universal Reason. "The contrast of the German attitude with that of Edmund Burke is instructive. The latter had the same profound hostility to cutting loose from the past. But his objection was not that the past is an em-

[29] Coker, *op. cit.*, 11.

[30] Bosanquet, "Social Automatism and the Imitation Theory," *Mind*, N. S., VIII, 167–168.

bodiment of transcendent reason, but that its institutions are an 'inheritance' bequeathed to us from the 'collected wisdom' of our forefathers. The continuity of political life centres not about an inner revolving Idea, but about 'our hearths, our sepulchres and our altars.'" [31]

Organismic theories of the state have thrown little or no light on political or historical processes. "Rarely is the argument supported by precise definition or carried out with careful reasoning. Even among those theorists who develop their conclusion through logical deduction there is no close approach to unanimity in their major premises. Nor do those who attempt to arrive at or substantiate their thesis inductively indicate the same kinds of facts or the same points of analogy as data for their conclusions or as verifying instances of their assumptions." [32]

The Newtonian theory, with its conception of a resistless reign of law throughout the universe, was congenial to the attitudes of an age characterized by a devout sense of an omnipotent Creator, ruling according to law. The organismic theory of the state is congenial to the attitude of an age or nation characterized by an acquiescence in the control of an autocracy or an aristocracy and a solicitude for the preservation of the existing social order. The Darwinian theory with its emphasis on rivalry may be made to serve the purpose of political scientists and historians who aim to justify a struggle for domination whether between nations or between classes within a nation. It may also be made to serve the purpose of scholars who aim to justify resistance of the domination of an upper class, either an aristocracy or controlling corporate interests.[33] A Darwinian interpretation is less inapt than is a Newtonian interpretation, but Huxley long ago pointed out that Darwinism, as a formula for the interpretation of human society, does not apply in that we sympathetically preserve the unfit.[34] What truth there is in Darwinian interpretations lies in the fact that essential instincts of human nature,— acquisition, sex instincts, rivalry and domination — are also essential in the animal struggle for existence; and, because of the action of these instincts, the essential process of human history was, for an immense period, a struggle

[31] Dewey, *op. cit.*, 93.
[32] Coker, *op. cit.*, 191.
[33] Wilson, "The New Freedom," 48.
[34] Huxley, "Evolution and Ethics and Other Essays," 79–83.

for domination between groups.[35] The defect of Darwinian interpretations lies in the fact that instincts of comparatively little importance in animal behaviour are rapidly becoming more essential in human behaviour; also in the fact that through the use of language, which distinguishes man from the animals, groups developed " idea-systems " which became their distinguishing characteristics.[36] As a result of an idea-system " what we find in ' civilization ' is not the product of the primary emotions, which man shares with animals, but of some activity which he has developed in a characteristic manner." [37] As a result of this functioning of ideas, instincts which are insignificant in animal behaviour develop a rôle in human behaviour. " Thus human ' evolution ' is, fundamentally, intellectual ' evolution,' and the diversity of status in human groups at the present time is to be traced to differences in mental activity." [38]

Certain institutions common to all mankind, which have no development among animals, are determining factors in human adaptation. We may find the beginnings of property among animals, but nowhere do we find any appreciable development of property, nor any control exercised over millions of their fellow creatures by small groups who happen to have been born into the control of property. Again, among animals there are instances of compassion, but there is no development of institutional care of the weak and unfit. These institutions derive a fixity from the idea-systems that are developed to justify them, and this fixity prevents progressive changes. It " is not the physical contact of men that is of supreme importance in human advancement, but the overthrow of the dominance of the traditional system in which the individuals composing the group have been trained, and which they have unconditionally accepted; though advancement seems rarely to have been possible, in the past, save when diverse groups have been set face to face in desperate struggle." [39] This struggle is the occasion of " the mental release, of the members of a group or of a single individual, from the authority of an established system of ideas. This release has, in the past, been occasioned through the breaking down of previous idea-systems by prolonged struggles between

[35] Teggart, " The Processes of History," 151.
[36] *Ibid.*, 100–102.
[37] *Ibid.*, 103–104.
[38] *Ibid.*, 104.
[39] *Ibid.*, 150–151.

opposing groups which have been brought into conflict as a result of the involuntary movement of peoples. What follows is the building up of a new idea-system, which is not a simple cumulation of knowledge previously accepted, but the product of critical activity stirred by the perception of conflicting elements in the opposed idea-systems." [40] Thus we see that historical study requires a knowledge of social-psychological processes. It does not involve a deductive application of the concepts of any physical, biological or social science, not even of social psychology. Social psychology merely *assists,* but does not *direct* the thinking of the historical student.

The impulsive and analogical period of historical reconstruction, so marked in Germany, was followed, especially in the United States, by a criticism of the historical allusions thus spread abroad. The ascertainment of historical fact came to be emphasized above everything else; in this emphasis historians pressed the analogy of the inductive method of physical science.[41] This serious intent on the fact has finally acquired the proportions of a sentiment until " the restless quest for new facts has overshadowed every other activity of the historical student." [42] " The absorbing and relentless pursuit of the objective fact," which is "the typical function of the modern devotee of history," [43] impairs the effectiveness of historical research. " In the first place it tends greatly to limit the scope of history. Again, it tends to stress the material as compared with the spiritual or psychic forces or influences in human life. Further, it reduces to the minimum the consideration of the casual nexus, and tends to limit history to the *post hoc,* regardless of the *propter hoc.* Finally, it tends unduly to limit regard for the influence of what men believe to be true, as compared with what was true." [44]

As the German historians worked according to the essential attitude of their national character — ambition for national superiority,[45]— so American historians have worked according to the essential attitude of their national character,— ambition for per-

[40] *Ibid.,* 151–152.
[41] Hart, " Imagination in History," *Amer. Hist. Rev.,* XV: 232–234.
[42] Dunning, *op. cit.,* 226.
[43] *Ibid.,* 419.
[44] *Ibid.,* 219–220.
[45] See the chapter entitled, *The Conflict of Political Attitudes and Ideals.*

sonal superiority, which expressed itself in the impulse to excel in accuracy in the determination of historical facts and in the discovery of new facts. Again quoting Professor Dunning: "Every serious student of history knows the thrill that comes with the discovery of an unknown or a forgotten fact of the past. . . . Especially keen and spicy is the satisfaction of historical discovery when it implies the erroneousness of long-standing beliefs and enables the discoverer to proclaim the most eminent and authoritative chroniclers of the past the victims of ignorance and delusion. 'Reconstruction of history' is always in the mind of the investigator, whether consciously or unconsciously, and in the intoxication of an actual discovery of new truth he is very prone to foresee a reconstruction vastly greater than what actually takes place. The current of humanity's past obstinately continues to move before his eyes in the same old channel with but a trifling little jog, though the new revelation seems to require a great displacement all along the course.

"Why is this so? Why do the achievements of historical research, in bringing to light the truth about the individual events of the past, change so slightly the broad picture? This is the question to which I wish to devote some particular attention in this place. The answer to it cannot be a simple one, and I do not aspire to make mine complete. I would merely suggest, as in some measure, at least, influential, this fact, that the course of human history is determined no more by what is true than by what men believe to be true; and therefore that he who brings to light a past occurrence of which he is the first to have knowledge is likely to be dealing with what is no real part of history. The phenomena of social life, so far as they are determined at all by the will of man, are due in origin and sequence to conditions as they appear to contemporaries, not to conditions as revealed in their reality to the historian centuries later." [46] Professor Dunning devotes several pages to this point, and then returns to his criticism of the historian's emphasis on mere facts, and the spirit of rivalry and exultation over superiority therein. "That the critical spirit in the study of history during the nineteenth century has produced some astonishing results, is beyond all controversy. Its reconstructions of human life in the past have been no less significant than the amazing changes wrought by the physical sciences in

[46] Dunning, *op. cit.*, 219–220.

our ideas of the material universe. . . . No wonder that the restless quest for new facts has overshadowed every other activity of the historical student. . . . We are overwhelmed with the glory of our achievements in discovery and intoxicated with our superiority over the luckless generations that preceded us." [47]

That the attitude for the fact may develop beyond strictly intellectual bounds is evident to any one who has observed the effect of rivalry on the pursuit of any calling or aim. In the first place, a rivalrous impulse causes an individual to attribute more importance to a discovery than is justified. So, as Professor Dunning says, historians expect greater effects on historical reconstruction from the discovery of new facts than actually happen. Second, rivalry tends to set limits to the aims of scholarship which interfere with the free intellectual activity that is necessary for the most productive scholarship. When a group — be it of scholars or professional men — comes to recognize certain methods and mental qualifications as essential for efficient work, then these may become objects of cultivation, not for the sake of efficiency in scholarly or professional work, but for the sake of the superiority of the individual over his fellow scholars or professional associates. This impulse for superiority may be subconscious, but it gives a glamour and a fixity to the standards of mental excellence of the group that prevents their change as the mental requirements for efficient work change. What was before a means to an end now becomes an end because of rivalry and personal pride. Especially does the discovery of new facts stimulate personal rivalry. In other sciences, we find that, in the first stages, when discoveries of facts were the essential achievements, this rivalrous spirit was conspicuous. This and that investigator is proud of some discovery; and those who have won greatest distinction become, by common consent, the exemplars of the group; whereupon the group standards become less qualifications for efficiency than marks of superiority. Such a condition seriously hampers intellectual work. By enabling scholars to analyse their own subconscious processes and to realize when they are subject to non-intellectual motives and under non-intellectual influences, social psychology can perform a service for scholars in all fields.

Professor Dunning describes at length the effect of pride in the

[47] *Ibid.*, 226.

discovery of new facts on the progress of history. "No long reflection is needed to detect the dangers that flow from exaggerating the importance of new truth in history. If we impute it for unrighteousness to an age or a people that they lack the knowledge of the past that has become our profession, the age or people in question is affected with a taint that operates to obscure its own history. . . . We subconsciously feel that so ignorant a people could have had little in its own affairs to warrant the attention of respectable scholarship. . . .

"The corrective for whatever evils may be involved in the tendencies referred to lies ready to our hand. We must recognize and frankly admit that whatever a given age or people believes to be true *is* true for that age and that people. . . . The business of the historian who studies" a period "is to acertain the scope and content of the ideas that constitute the culture of that period. Whether these ideas were true or false, according to the standards of any other period, has nothing to do with the matter. That they were the ideas which underlay the activities of the men of this time, is all that concerns the work of the historian." [48] "Our pride in the attainments of our own day distorts all our judgments of the past. In vain the master-mind of a distant generation rears with matchless ingenuity a system of institutions based on the teachings of Moses or of Numa. We follow out languidly the story of his system, no matter how precisely it fitted the demands of the time. At only one point will our interest revive, where the master-mind, by some chance, hit upon a notion that has acceptance and vogue in our own day. Here we center our attention and appreciation, and in our history of the affair make the central feature, not the ingenious adaptation of the system to contemporaneous needs and environment, but the accidental fact that there was in the situation something that anticipated the thought or achievement of the wonderful twentieth century." [49]

This conception of the function of the historian brings history into the closest possible relation to social psychology. For the ideas of the culture of a people, in a certain age, are a functioning of the attitudes of the age; and these attitudes are psychological assumptions for the historical student. The reconstruction of the

[48] *Ibid.*, 227–228.
[49] *Ibid.*, 227–228.

culture of an age is facilitated, therefore, by such a knowledge of social psychology as makes possible scientific psychological assumptions.

During recent years, there has been a growing tendency to supplement the reconstruction of periods of the past with the search for lines of causation running through all periods; [50] this gives the present an added importance, in the interpretation of the past, and the past an added interest, because of its illumination of the present. This tendency may, in some cases, unduly limit interest in the past, if attention is thereby centred only on historical conditions which illuminate the present.[51] On the other hand, it is true that "Each age finds it necessary to reconsider at least some portions of the past, from points of view furnished by new conditions which reveal the influence and significance of forces not adequately known by the historians of the previous generation. Unquestionably each investigator and writer is influenced by the times in which he lives and while this fact exposes the historian to a bias, at the same time it affords him new instruments and new insight for dealing with his subject." [52] If the past is to be viewed not as a storehouse of historical allusions to stress this or that process of the present — a procedure manifestly unscientific [53] — but as something in itself worth knowing, if there is really a serious attempt to understand the processes of the past, as well as the processes of the present, and to discover lines of causation running through past and present, this view of method in history requires a marked development of social psychology, and the closest relation between that science and history.

Passing from the relation of social psychology to the criticism of historical method and turning to its relation to historical reconstruction, we repeat the suggestion that correct psychological assumptions as to the attitudes and processes of past ages is necessary for reconstruction and interpretation of the past. We have, for instance, the types of behaviour which, as we have seen, have determined political, juristic and economic ideas, one of which types may attain an extreme development in a nation in a certain period, and another in another period, or all four of which may be active

[50] Becker, *op. cit.*, 663 ff.
[51] Dunning, *op. cit.*, 227.
[52] Turner, "Social Forces in American History," *Amer. Hist. Rev.*, XVI: 225–226.
[53] *Ibid.*, 232.

at the same time, with one after another temporarily predominant. As an example of the extreme development of one type of behaviour we have described in a preceding chapter [54] the rôle of the domination-submission attitude in Germany during the autocratic period, where it determined the form of government of the German Empire, the attitude of that government toward dependent peoples, the regulation of the life and conduct of the German people by their bureaucratic government, the attitude of the head of the German family toward wife and children, the censorship of the German press, the German system of education, the thinking of the German philosophers, as well as the peculiar influence of those philosophers over the thinking people. Germany furnishes a good example of a people among whom a particular type of behaviour permeated every phase of the social organization.

An example of how all four types of behaviour may be more or less active at the same time, with one after another temporarily predominant is furnished by the history of the United States. "Read in the light of the causative facts, it may be affirmed that there is no people whose history is more consistently characterized by the display of certain dominant traits than is that of the people of the United States." [55] These traits affected both the internal and the international relations. Note, for instance, their effect on the international relations. The settlers in the United States were at first composed in the main of adventurous and enterprising emigrants from the countries of Europe who lived in the new country as isolated and economically independent families or neighbourhoods.[56] This population enthusiastically acquiesced in the policy to establish a secure national isolation. Absorbed in the exploitation of the abundant natural resources, and in the development of a national industry, enterprisers had little incentive to seek markets abroad. This sentiment for isolation has continued to the present day, but is passing. There has developed an international view, an impatience with the old sentiment for isolation, an impulse for expansion,— to become a greater and greater nation in territorial extent, financial power, and prestige, to rival other nations in the world markets.[57] In some cases this attitude has prompted an im-

[54] See the chapter entitled, *The Conflict of Political Attitudes and Ideals.*
[55] Moore, "Four Phases of American Development, 12–13.
[56] Williams, "An American Town," Pt. I.
[57] Moore, *op. cit.*, "Lecture IV"; Turner, *op. cit.*, 219–220.

pulse to dominate in international questions that affect South American states — the " imperialistic " idea.[58] Instances of imperialistic behaviour have stirred a distrust of the United States in Central and South America. And recently, as we have seen, a co-operative international relation has been suggested by American statesmen.

The problem of the causes of changes in national attitudes is evidently one in which social psychology and history are closely associated. If economic interests were the factors that determined the isolation policy, and later the expansionist and imperialistic policies, still there remains the problem as to the social-psychological processes of this control that is exercised by the economic interests. We want to analyse the individualism of the early settlers and the agrarian interests; of the newly developed, keenly competing corporate interests; of the dominating, monopolistic, transportation, financial and industrial corporations. We want to analyse the opposition between the individualistic and the social ideals that have obtained from the beginning, and to seek to understand the long ascendancy of the individualistic ideal. There have been " two ideals . . . fundamental in traditional American thought, ideals that developed in the pioneer era. One was the ideal of individual freedom to compete unrestrictedly for the resources of a continent — the squatter ideal. The other was the ideal of democracy — ' government of the people, by the people and for the people ' . . . American democracy was based on free land; these were the very conditions that shaped its growth and its fundamental traits." [59] But the other ideal prevailed; the natural resources passed into the private ownership of a small percentage of the population. And *this* economic condition is now shaping the development of the national attitudes and institutions. Both the squatter ideal and the social equality ideal of former times are contrary to the attitude of class domination-submission that has developed. We are interested to know not only the historical events in this national development, but also why the mass of the people apparently acquiesced in conditions that have caused the rise of a vast non-propertied mass, and whether we may infer that this acquiescence implies a permanent submission to the social and political control of propertied classes.

[58] Moore, *op. cit.*, 139–140; Turner, *op. cit.*, 202.
[59] Turner, *op. cit.*, 223–224.

Of the hypotheses used by historians who are seeking to trace a line of causation through history, the most fruitful has been the "economic interpretation" of history. An economic interpretation, if carried far enough, is social-psychological, though the social-psychological studies are difficult to make because of the meagreness of the historical data. The economic interpretation makes progress slowly because the motives which have been operative in historical development are not usually made explicit in the documentary sources. One reason for this is that it has been assumed by governments, both in time of peace and war, that profits and patriotism and national progress go together; that whatever governmental action satisfies and strengthens the profit-seeking class — and therefore makes them patriotic, and also those under their suggestive control —strengthens the nation. High officials who may have thought differently have lacked the courage to say so and to act upon it. Hence the economic interpretation is difficult of demonstration because of the lack of frank and full statements, in the sources, of the motives that have determined the behaviour of governmental officials in the past. These motives are given but fragmentary official expression in the documents on which the historian must rely. As officials who have the courage to speak on behalf of the public welfare become more numerous and are kept in office because the people, with the increase of popular intelligence, understand that they are speaking for the public welfare and give them their support, the documentary basis of the economic interpretation of history will undoubtedly become more ample. And it will be possible to analyse more of the psychological implications of the economic interpretation. However, economic motives, being largely egoistic, are apt to be repressed and disguised though they are the essential motives of behaviour;[60] and often, though essential, they fall in the realm of the subconscious, wherefore it is going to be very difficult to correctly estimate their importance in the historical process. The economic interpretation, in the past, has stressed the third of the four social-psychological types of behaviour already suggested,— class domination-submission;[61] but it recognizes the rôle of the others. There is, therefore, no conflict between the economic interpretation and the social-psycho-

[60] Ogburn, "The Psychological Basis for the Economic Interpretation of History," *Amer. Econ. Rev.*, IX (supplement): 299–305.

[61] Shotwell, *op. cit.*, 707.

logical point of view. The latter simply insists on adequate psychological assumptions and on intensively working out all the implications of the economic interpretation, on investigating, as far as possible, all the ramifications of the motives of the classes participating in the class conflict.

Less complicated is the problem of the motives and traits of leadership. One of the points of close contact between social psychology and history is the social psychologist's analysis of types of leadership and the historian's analysis of the traits of character of the statesman or other leader whose biography he is writing. One of our historians and biographers writes: "The basis of history is human nature, the expression of human nature is through history, . . . and therefore history must include the study of persons." [62] Professor Hart urges the necessity of a discriminating imagination in the study of great men; not the impulsive imagination of a Gibbon "who, whatever he is writing, is always describing a triumph; for his sentences rank right-forward and fours-right"; [63] but the imagination of trained students of human nature who, with imaginative insight, can establish "sympathy and understanding between themselves and the personality of men whom they never saw." [64] Obviously, social-psychological studies of leadership have the closest possible relation to the work of the biographer.

At the present time one finds among historians, as may be judged from the preceding citations, widely different attitudes toward social psychology. There are some who avow their belief in the close relation of social psychology and history; others who incline to such a belief but avoid expressing it, lest their reputation as historians be injured thereby; and others who deny any relation at all. The latter are interested mainly in "what the fact was, including the immediate conditions which gave it shape." [65] They maintain that "The field of the historian is, and must long remain, the discovery and recording of what actually happened." [66] Their indifference to the service social psychology might render history is, in some cases, at least, due not to an easy sense of the superiority and achievements of their severely factual methods, nor to the im-

[62] Hart, *op. cit.*, 238–239.
[63] *Ibid.*, 250.
[64] *Ibid.*, 249.
[65] Adams, "History and the Philosophy of History," *Amer. Hist. Rev.*, XIX: 229.
[66] *Ibid.*, 236.

patience of the conventional man with a new and disturbing point of view; but it is due to a dispositional predilection for clear thinking and an aversion to problems involving obscurity. Their aversion to the problem of the psychological forces in history does not imply a denial of the existence of a psychological field contiguous to that of history, but that this is the field of a distinct and uncultivated science which, therefore, cannot be of service in historical reconstruction. This point of view only emphasizes that social psychology is a distinct science which requires cultivation. And the social psychologist may reasonably expect that, when he has developed his field to the point of a recognized science, historians will come to recognize whatever light can be thrown by social psychology on problems of causation in history.

It will conduce to a right understanding of the relation of social psychology to history to distinguish between historical reconstruction by the historian, and the use of history by the social psychologist in the development of his science. As the historian may use psychological assumptions in his interpretation of historical facts without becoming a social psychologist, so the social psychologist, without becoming an historian,[67] may use history in the analysis of social-psychological processes. He so uses history in his study of social attitudes, which involves a comparison of the attitudes of different sections of a nation,[68] and of different nations, in a given period, and of the same nation in successive periods. In his study of processes of social suggestion, also, he uses history and biography. These are social-psychological, not historical studies. Failure to discriminate between the two has led some historians to think that social psychologists were attempting to show them how to write history. Almost any historian would admit that, where the data happen to be abundant and of the right kind, it is possible to trace psychological processes in history. But to admit that historical data permit of generalizations as to the essential psychological processes of history is another matter. Before scholars can venture that far, it must be known more definitely just what are the essential social-psychological processes. It is possible that, with the development of social psychology, and with the more

[67] Teggart, "The Processes of History," 108–109.

[68] These studies are closely connected with the historian's analysis of sectionalism. (Turner, *op. cit.*, 224.)

abundant sources for history, its cultivation will eventually become sufficiently intensive to demonstrate the essential processes of causation.

CHAPTER XXII

THE RELATION OF SOCIAL PSYCHOLOGY TO SOCIOLOGY, EUGENICS AND SOCIAL PHILOSOPHY

SOCIOLOGY began as social philosophy,[1] using psychological assumptions. Thus Comte regarded society as a psychical unity, which included unity of thought and of feeling and purpose, and considered the individual apart from society a mere abstraction.[2] He thus distinguished sociology from biology, in which the individual organism is the central fact for investigation. He conceived of the general or social mind as the result of an evolutionary process of adaptation in which the feelings impel to adaptation,[3] while the intellect determines the method. There had been, he said, three successive methods: the theological, the metaphysical, and the scientific.[4] Comte, therefore, used psychological assumptions, but his method was one of logical elaboration, not scientific analysis. He did not profess to be severely scientific but aimed to elaborate a provisional system as a stimulus and guide to more thorough scientific work.

Herbert Spencer considered social evolution as due largely to adaptation to the environment under the unconscious functioning of the instincts. While he attempted analysis of instinctive behaviour, he relied less on such analyses than on deduction from conspicuous results of instinctive behaviour in adaptation; for instance, the effect of an increase of population, of a struggle for existence, and other instinctive phenomena.[5] His chief distinction in social behaviour was between the compulsory co-operation characteristic of militarism and the voluntary co-operation characteristic of in-

[1] "Sociology began by being a social philosophy, a philosophy of history, and such it has been until very recently." Vincent, "The Development of Sociology," Congress of Arts and Science, St. Louis, 1904, V: 811.

[2] Comte, "Positive Philosophy," trans. by Martineau, II: Chs. III, V.

[3] "Feeling is not only the essential spring of true progress, but also its main end. . . ." (Comte, "System of Positive Polity," Ch. I, 56.)

[4] Comte, "Positive Philosophy," Ch. VI.

[5] Spencer, "The Principles of Sociology," I: Chs. II, IV, V, VI, VII.

dustrialism.[6] He regarded these as successive stages of social progress; the compulsory co-operation extended throughout the social organization,— the family and the industrial, as well as the political organization,— and was followed by the development of voluntary co-operation.[7] When the military struggle for existence between groups has ceased, and rivalry has become essentially economic, those groups will survive and become superior " which produce the largest number of the best individuals — individuals best adapted for life in the industrial state." [8] In voluntary co-operation, the chief aim of the individual is assertion of individuality, and the chief purpose of society should be to provide individual liberty.[9]

The different positions assigned by Comte and Spencer to the individual in his relation to society have led to a long series of attempts at reconciliation, most of which are deductive rather than inductive, and hence are of little importance to the social psychologist, except for the logical ingenuity displayed in seeking to escape the necessity of careful observation and analysis of the motives of social behaviour. It is obvious that the relation of the individual to society can be explained only by an analysis of the general mind, the collective consciousness,[10] the soul of a group,[11] the social mind, or the social interest [12] in terms of the psychological elements which enter into the processes implied by these comprehensive phrases. Because these elementary processes occur in individual minds, it does not follow that such analysis belongs to the study of the individual mind; for the analysis is not of individual reactions under the conditions of set experiment, but of social relations which permit of no set experiments.[13] The rise of the science of social psychology as a result of the more intensive development of social philosophy was, therefore, inevitable.[14]

[6] *Ibid.*, II: Chs. XVII, XVIII.

[7] *Ibid.*, II: 613.

[8] *Ibid.*, II: 610.

[9] *Ibid.*, II: 607.

[10] Durkheim, " De la Division du Travail Social," 84; Durkheim, " Les Règles de la méthode Sociologique," 127.

[11] Le Bon, " Psychology of Peoples," 14.

[12] Ratzenhofer, " Die Sociologische Erkenntnis," 56–65.

[13] I do not mean to imply a hard and fast division between individual and social psychology. The division between the two which has obtained in the past is due to the narrowness of conception and the inadequacy of method of both sciences, " thus setting up," as Dewey says, " two independent and even contradictory sciences — individual and social psychology." (Dewey, " The Need for Social Psychology," *Psy. Rev.*, XXIV, No. 4, 268.)

[14] The differentiation of the two sciences can be traced, for instance, in Professor

The development of social philosophy is marked also by a more careful analysis of all the factors that determine social behaviour in its external aspects. Students of the influence of physical conditions are chiefly interested in the effect of differences of physical conditions on group traits,[15] not in the analysis of those traits, but psychological assumptions are used in explaining the effect of physical conditions. Again, students of customs either implicitly assume certain motives to be essential in the determination of customs, while making an explicit use of biological principles of interpretation,[16] or make an explicit use of psychological principles of interpretation.[17] Both methods imply a close relation between the science which concerns itself with behaviour in its external aspects, sociology — and social psychology. A second result of the more intensive development of social philosophy has been, therefore, the rise of a more careful scientific analysis of the externals of behaviour, and the recognition of this as the field of a distinct science. This differentiation between sociology and social psychology is due to the difference between the methods used in the study of the externals of behaviour and those used in the study of motives, and to the difference in the mental faculties required in the two fields.

We are not here concerned with the distinction between biological sociology and psychological sociology — for that is the concern of the sociologist, not of the social psychologist —, except as it is necessary to recognize the distinction in defining the relation of social psychology to sociology. In my use of the term sociology, I shall imply psychological sociology, unless otherwise stated. Psychological sociology was long ago distinguished from social psychology.[18] By psychological sociology I understand merely that sociology which uses psychological assumptions, as distinguished from that sociology which uses biological, and disavows psychological assumptions, though the latter may implicitly and subconsciously use such assumptions. I suppose all sociology is, in a sense,

Giddings work: "The Principles of Sociology," "Elements of Sociology," "Inductive Sociology."

[15] Semple, "Influence of Geographic Environment"; Huntington, "The Pulse of Asia"; Huntington, "Civilization and Climate."

[16] Sumner, "Folkways"; Keller, "Societal Evolution."

[17] Boas, "The Mind of Primitive Man"; Westermarck, "The Origin and Development of Moral Ideas"; Goldenweiser, "Totemism, An Analytical Study," *Jour. Amer. Folklore*, 1910, 86–97; Teggart, "Processes in History," 108–109.

[18] Giddings, "The Psychology of Society," *Science*, Jan. 6, 1899, 16.

psychological sociology in that all sociologists explicitly or implicitly use some psychological assumptions.

The validity of the distinction between psychological sociology and social psychology is evident from the necessity for it if the further analysis and testing of the essential concepts of social philosophy is to continue fruitful. Take, for instance, the concept of group rivalry which we have from Darwin,[19] Spencer,[20] Gumplowicz,[21] and others, and which long since came to the fore in social philosophy.[22] The patent facts of group rivalry are plain without psychological analysis. We note the early intense rivalry between kinship groups, with rigorous male control of the women and youth of the group by domination and ridicule. This, as larger political groups took over from their constituent groups the more aggressive forms of group rivalry, was succeeded by family and communal relations of increasing sympathy and understanding, but with the survival of the old intolerant reactions in these and other internal relations. The rivalry of the larger political groups, with aristocratic domination of subjects, was, in turn, succeeded by the integration of such groups and the surrender to the government of this larger combination of the more aggressive functions, since political freedom in internal relations depends upon confining aggression to foreign relations and not allowing it to react upon internal relations. But within each nation, as it developed, continued the rivalry of economic interests, which is taking the form of an increasingly hostile class conflict. Such a highly abstract outline of the group rivalry process as this cannot be called scientific. It could be made much more concrete and lucid by elaboration with ethnological and historical data, but psychological assumptions would inevitably appear,[23] and to be valid these would require an analysis and an elaboration that is possible only with a knowledge of social psychology. There are those who would rest satisfied with the ethnological and historical elaboration and the implicit unanalysed assumptions. This, to be sure, takes us a long way in explaining group rivalry; how far would require a volume to explain.

[19] Darwin, "The Descent of Man," 102, 105, 108, 126, 132–135.

[20] Spencer, "Principles of Sociology," II: Chs. XVII, XVIII, XIX.

[21] Gumplowicz, "Der Rassenkampf"; Gumplowicz, "Grundriss der Soziologie."

[22] Vincent, "The Development of Sociology," Congress of Arts and Science, St. Louis, 1904, 812.

[23] See Vincent, "The Rivalry of Social Groups," *Amer. Jour. Sociol.*, Jan., 1909, for a suggestive statement of essential psychological processes.

The treatment of the externals of behaviour is the method with which the study of society begins; on the accuracy and thoroughness with which it is done depends, in part, our knowledge of society.[24] But no social process is thoroughly understood without psychological analysis. Such a conception as that of group rivalry, which involves the problem of the relation of the individual to his groups, requires that we get below externals of social process to the instinctive impulses and attitudes of social behaviour.[25]

Though distinct in subject matter and in method, psychological sociology and social psychology are intimately related. As in the case of other social sciences, so in that of sociology, owing to its intimate relation to social psychology, the backward development of social psychology has retarded the development of sociology. This is one of the reasons why sociology " is so often indefinite and even inhuman . . . because it lacks an adequate basis in concrete and comprehensive observation of actual persons and houses, of definite villages and cities." [26] The principles of the sociologist are " often mere abstractions, and therefore not verifiable generalizations at all," because of his lack of " an insistent sense of the always human reference and subject-matter of his discourse, however sheerly intellectual that discourse may have been made by elaboration and remoteness." [27] Again, sociologists who incline to the biological interpretation, and who, therefore, recognize no relation of their science to social psychology, inevitably fall into the habit of interpreting social behaviour too much as mere unconscious conformity to custom.[28]

It is in inductive studies of social groups that the distinction between psychological sociology and social psychology stands out clearly. In prefacing such a study Professor Thomas writes: When " we study the life of a concrete social group we find a certain very important side of this life which social psychology cannot adequately take into account . . . and which during the last fifty years has constituted the central sphere of interest of the various researches called *sociology*. Among the attitudes prevailing within a group

[24] Rivers, *op. cit.*, 2.

[25] *Ibid.*, 7–11.

[26] Bradford, " Interpretations and Forecasts," 389.

[27] *Ibid.*, 389–390.

[28] See the criticism of Keller's theory of legal development (Keller, " Law in Evolution," *Yale Law Journal*, XXVIII: 769–783), by Brown, " Law and Evolution," *Yale Law Journal*, XXIX: 397.

some express themselves only in individual action — uniform or multiform, isolated or combined — but only in action. But there are other attitudes — usually, though not always, the most general ones — which, besides expressing themselves directly, like the first, in actions, find also an indirect manifestation in more or less explicit and formal *rules* of behaviour by which the group tends to maintain, to regulate, and to make more general and more frequent the corresponding type of actions among its members. . . . The rules of behaviour, and the actions viewed as conforming or not conforming with these rules, constitute with regard to their objective significance a certain number of more or less connected and harmonious systems which can be generally called *social institutions,* and the totality of institutions found in a concrete social group constitutes the *social organization* of this group. . . .

"Sociology, as theory of social organization, is thus a special science of culture like economics or philosophy, and is in so far opposed to social psychology as the general science of the subjective side of culture." [29]

A word now as to the relation of social psychology to biological sociology. If the essential processes are instinctive, then the biological conception of the social process is not necessarily contrary to the psychological, inasmuch as the social psychologist regards the assumptions of the biological sociologist as subject matter for analysis.[30] But the conceptions are contrary if the biological sociologist regards his explanations as complete explanations of social process. The assumption of an instinctive causation and a Darwinian process needs to be supplemented by an analysis of the instinctive processes assumed. Problems of social evolution were at first regarded as psychological inasmuch as variations in customs as between peoples spring from certain seemingly explanable motives. As the difficulties of a psychological interpretation become apparent, owing to the fact that the sources are documentary and the motives for variations in customs are not usually recorded, so that it is impossible to understand the motives except by inference, attempts were renewed to give human evolution a biological inter-

[29] Thomas and Znaniecki, "The Polish Peasant in Europe and America," I: 31–33.

[30] "From the point of view of the psychology of behavior all psychology is either biological or social psychology, and if it still be true that man is not only an animal but a social animal, the two cannot be dissevered when we deal with man." (Dewey, "The Need for Social Psychology," *Psy. Rev.,* Vol. XXIV, No. 4, July, 1917, 276.)

pretation. These sociologists explain processes as due to variations in customs and to the selection of "tentatives," without inquiring as to the motives of variations. Professor Keller accepts as axiomatic that, in human society, the brain rather than the bodily structures, becomes the organ of adaptation,[81] and that variations are psychical[82]; he assumes that instinctive processes are essential in societal evolution, that these "unconsciously, and later to some extent consciously, throw out a series of tentatives under the stimulus of need. Certain of these tentatives cancel out at once or otherwise disappear, while others are concurred in and become characteristic of a group. They are then the folkways of that group, and when they become the object of group approval and so become the embodiment of its prosperity-policy, they become its mores. Here is where they enter into the field of societal evolution and invite the interest of the sociologist; . . ." [83] He recognizes the fundamental importance of various motives that determine the selection of variations in the mores,[84] without attempting any analysis of these motives, for he regards this problem as lying outside his field. He notes that the persistence of the mores is due not only to the force of habit, but also to the satisfaction derived from the customary behaviour,[85] without attempting any analysis of this satisfaction or of the psychological nature of customary behaviour. He distinguishes "rational" from "automatic" selection [86] without analysing any of the psychological processes implied by the use of these terms. Under Professor Keller's method, therefore, the field of the social psychologist is sharply distinct from that of the sociologist.

Students of primitive customs find an intensive psychological analysis very difficult; wherefore we find among these students two opposing attitudes: one school, excluding psychological interpretation, emphasizes explanation through association with correlative and antecedent fact; the other school seeks a more fundamental explanation through psychological assumptions.[87] The rejection of psychological interpretation does not imply a denial of the existence

[81] Keller, "Societal Evolution," 39.
[82] *Ibid.*, 51.
[83] *Ibid.*, 51.
[84] *Ibid.*, 75.
[85] *Ibid.*, 103–107.
[86] *Ibid.*, Chs. 3–6.
[87] Lowie, "Psychology and Sociology," *Amer. Jour. Sociol.*, Sept., 1915, 217–229.

of a psychological field contiguous to that of sociology but that ethnological facts are too remote to permit of psychological analysis. It implies also that social psychology is a distinct science which has not yet been cultivated to the point where it can furnish trustworthy assumptions to serve the purpose of inference in the interpretation of the beliefs and customs of primitive groups. This only emphasizes that social psychology is a distinct science that needs cultivation. Those ethnologists who use psychological interpretations emphasize the need of a " scientific " as opposed to a " popular " psychology.[38]

Summarizing our view of the relation of social psychology to sociology, we may say that sociology studies the origin and development of institutions, their inter-relations in the culture of a particular people and their variations between peoples,[39] while social psychology studies the motives of the individuals that participate in the institutional development. The two sciences are distinct in that they use different methods. Sociology uses data of ethnology and history — exploits documentary sources — while social psychology requires such an intimate contact with people as makes possible an understanding of their motives.

We see the two sciences co-operating in various departments of knowledge which heretofore have been studied under the general title of sociology. In ethnology, for instance, the ethnologist is not entitled to project psychological processes as interpretations of the behaviour of a remote society of which he has little knowledge, yet he is entitled to use processes of social psychology to assist his creative imagination in the interpretation of the behaviour of a remote society of which he has abundant and carefully analysed data. He may use current social-psychological concepts in his interpretations until such a time as there is forthcoming a more adequate knowledge of social-psychological processes.[40] His final aim must be to interpret customs and institutions, "to formulate hypothetical mechanisms by which social institutions and customs have come into existence "; and such formulations will be assisted to scientific validity by a correct understanding of social-psychological processes.[41] Again, the study of the family includes not merely an

[38] *Ibid.*, 228–229.
[39] Thomas, " Social Origins," 857.
[40] Rivers, *op. cit.*, 7–8.
[41] *Ibid.*, 8.

analysis of the customary relations of the members of the family one to another, and of the family as a whole, in its historical development, to church and state, but also an analysis of the psychology of sex, of the psychological processes of congenial, happy marital relations, and of the psychological processes of child training. Again, the phenomena of religion are both sociological and social-psychological,[42] including as they do beliefs, observances and a ritual on the one hand, and, on the other, attitudes thereto and instinctive impulses satisfied thereby. Esthetic phenomena also are sociological and social-psychological. Sociology makes a comparative study of esthetic standards and of variations therein, but "the explanation of the esthetic categories is to be sought largely in social psychology."[43] The analyses of Volkelt's great work[44] owe their defects to lack of social-psychological principles of interpretation. Both the religion and the art of a nation are now studied in connection with the political and industrial development;[45] the aim is to detect in all these particular institutional developments correlations which indicate certain underlying psychological processes.

Social psychology is closely related to the science of eugenics. First, in the matter of heredity, social psychology distinguishes certain inherited dispositions that are determining factors in the thought and behaviour of individuals throughout their lives. In the same family one sometimes sees one girl of a pronounced rivalrous disposition and another girl of a pronounced sympathetic disposition, both reared in the same home and sometimes in an isolated home in a remote region, so that environmental influences are identical. The hereditary aspect of the different instinctive dispositions constitutes a problem for the eugenist.[46] Second, social psychology studies the instincts that enter into family relations, and eugenics covers part of the same ground in its analysis of sexual selection.[47] Third, eugenics emphasizes the fundamental distinction made by social psychology between possession of social evi-

[42] Shotwell, "The Religious Revolution of Today," 93; King, "The Development of Religion"; Ames, "The Psychology of Religious Experience"; Brent, "Leadership," 239.

[43] Tufts, "The Esthetic Categories," *Phil Rev.*, XII: 1.

[44] Volkelt, "System der Ästhetik."

[45] Breasted, "A History of Egypt"; Smith, "Greek Art and National Life."

[46] Popenoe and Johnson, "Applied Eugenics," 90.

[47] *Ibid.*, Ch. XI.

dences of superiority and personal superiority. "True quality, then, should be emphasized at the expense of false standards. Money, social status, family alignment, though indicators to some degree, must not be taken too much at their face value. Emphasis is to be placed on real merit as shown by achievement, or on descent from the meritoriously eminent, whether or not such eminence has led to the accumulation of a family fortune and inclusion in an exclusive social set. In this respect, it is important that the value of a high average of ancestry should be realized. . . . When it is remembered that statistically one grandparent counts for less than one-sixteenth in the heredity of an individual, it will be obvious that the individual whose sole claim to consideration is a distinguished grandfather, is not necessarily a matrimonial prize." [48] Fourth, social psychology makes evident the need of progressive leadership in all branches of social organization, while eugenics indicates in how far this leadership depends on conditions of heredity over which we have little control and in how far the supply of such leaders can be increased by the proper public and higher education.[49] These are some of the problems in which eugenics is closely connected with social psychology, but they do not by any means exhaust the points of contact.

In our analysis of the psychological aspects of social science, we have seen that the political scientist, the student of jurisprudence, the economist, the historian, the sociologist, and the eugenist all recognize an underlying psychological science to which their sciences are more or less intimately related. Through this relation, all the social sciences are somewhat closely allied. A thorough-going solution of any fundamental problem of human society requires a knowledge of all the social sciences. Take, for instance, the problem of private property. The sociologist explains the origin and development of property,[50] and the custom as it exists throughout the world; the student of jurisprudence explains the law of private property; the political scientist explains the class struggle for the control of the government and of property; the economist accepts private property as essential in the existing economic organization, and studies the distribution of wealth and income under this

[48] *Ibid.*, 229.
[49] *Ibid.*, Ch. IV; Thorndike, "Educational Psychology," III: 304–305.
[50] Westermarck, "The Origin and Development of Moral Ideas," II: 1–71.

organization. There still remain the social-psychological problems of the motives of the origin and development of property, of the makers of the law of private property, of the classes that struggle for property, of the behaviour of men in performing the different functions of the economic system in which they seek to acquire property.[51]

Students of the institution of private property need a knowledge of social psychology in order to correct the dispositional bias which otherwise affects the course of thought on those problems. For instance, differences of disposition cause different opinions in the interpretation of the facts of the distribution of income. Economists, like other men, differ in disposition, and, lacking a knowledge of disposition and of the fundamental part it plays in determining the course of thought, they theorize in a direction satisfying to their dispositional impulses, so that the theorizing of men of opposite dispositions takes opposite directions. As the impulses are opposed, the thought is opposed, and no amount of learning or subtilty of argument will suffice to reconcile the opposite trends of thought. What is required is, therefore, a frank recognition of the affective processes in thought and such a perfection of scientific method that students shall "see straight," as Professor James puts it, in spite of differences in disposition;[52] for, as he says, a man can make no claim for the truth of beliefs "on the bare ground of his temperament."[53] The problems of human society require for their solution, in addition to a knowledge of the social sciences, such a training in social psychology as will enable the individual to become conscious of impulses that deflect his thought.

The interpretation of the principles of the social sciences for human welfare is not science, strictly speaking, but philosophy and may be called social philosophy, or it may be called sociology provided this meaning of the term is distinguished from the one already defined. If we use the term social philosophy, we must distinguish the meaning of the word, philosophy, from its meaning in the first pages of the present chapter where it was used in the sense of vague and indefinite knowledge — a sense which has abundant historical

[51] Some economists include a statement of these motives in their treatises but without indicating the relation of this statement to the rest of the subject matter of the treatise. See Seager, "Principles of Economics," 50–52; Ely, "Outline of Economics," 103–105.

[52] James, "Pragmatism," 8.

[53] *Ibid.*, 7.

justification. Such knowledge is a necessary stage in the development of thought. We have now to use the word in another sense, that of synthetic thinking[54] as distinguished from the analytical thinking which is emphasized in scientific method, though this distinction can be made for purposes of emphasis only, for thinking in one process.

We have to distinguish, also, between the social philosopher and the practical thinker, that is, the thoughtful legislator, judge, or executive. The profound thinking of one trained in the social sciences is apt to appear radical to the practical thinker. But this is the radicalism of the thinker as distinguished from the man of action. The profound thinker is often conservative in his practical attitude. Social scientists have tended to be much more conservative with regard to the possibilities of social reform than is justified by experience. A profound thinker is apt to be vividly conscious that most men are conventional thinkers, and, as far as he can see, always will be; wherefore he realizes that, when it comes to plans of action, a wise discounting of the capacity for progress of conventional human nature is essential. Very often his experience of the opposition to scientific truth of the conventional mass makes him over-cautious as a man of action. Hence, while profound thinking in the social sciences is bound to seem more or less destructive of the social order, it is not so. It is rather constructive; for the profound thinker indicates what changes and reforms are inevitable, and thus enables leaders to avoid being reactionary, and, in this way, to avoid the unrest, the industrial inefficiency, and perhaps revolution which results from a reactionary exercise of control by the governing classes.

While government officials are not usually social philosophers capable of profound thinking, their efficiency depends on their being astute and unerring practical thinkers, and this requires a knowledge of social science. Executives, legislators, and judges have a wide discretionary power in their official action,[55] and they need to be rooted and grounded in the social sciences if their executive policies, their legislation, and their decisions are to benefit the state they serve. In the United States, legislators enjoy a wide police power

[54] The word is used in this sense by John Fiske in the phrase, "cosmic philosophy." See Fiske, "Outlines of Cosmic Philosophy," I: Ch. II.

[55] Green, "Separation of Governmental Powers," *Yale Law Journal*, Feb., 1920, 369–393.

in law-making and need to be equipped to exercise that power.[56] The same is true of judges, in deciding the constitutionality of law, where they have a wide discretion between the police power granted to legislatures by the federal constitution, and liberty, under precedents interpreting the Fourteenth Amendment.[57] As to executives, "the legislature determines policies as far as is practicable, leaving to executive discretion the mode of carrying them out and the occasions on which action is required. What the executive may accomplish by action it may accomplish without exceeding the limits of executive power by order. . . . This vests the executive with power to make laws."[58] Furthermore, executive chiefs, as governors of states and the President of the United States, are more and more becoming the leaders of their party and the exponents of its legislative policy. Changes in political institutions are in line with this development,[59] and the development itself is an expression of the tendency of human nature to follow leadership, and of a majority to group itself around a man.[60] Furthermore, modern life is marked by an increase in the variety of interests that require adjustment through state action, and these interests bring pressure to bear on the executive, so that his power is increased in proportion to the failure of legislatures and courts to work out satisfactory adjustments.[61] From the municipal to the national executive, we find a tendency to vest greater discretionary power in the executive. Take, for instance, the problem of prostitution as it confronts city administrations. Though all departments of the government have their part in meeting this evil, their effective action depends on the attitude of the executive. If he is aggressive against it, the city council is apt to provide the necessary ordinances and the judge to impose the necessary heavy penalties on those found guilty. Public opinion offers the executive wide discretionary power in his treatment of prostitution. Public opinion is seldom so well organized and so ably led as to dictate the measures to be taken. It is apt to be indifferent but will support any intelligent administration

[56] Commons and Andrews, "Principles of Labor Legislation," 419–421.
[57] *Ibid.*, 422–430.
[58] Green, *op. cit.*, 383 (quoted without footnotes).
[59] Croly, "Progressive Democracy," Ch. XIV.
[60] *Ibid.*, 313.
[61] Bentley, "The Process of Government," 357.

that attempts to suppress commercialized prostitution.[62] However, executives who are not trained in the social sciences, who do not understand the conditions of civic and national well-being, are apt to let the evil alone and find excuses for so doing. The scientific training opens up possibilities of civic and national improvement along this line.

The national executive also has wide opportunities for the exercise of discretion. An executive whose disposition is sympathetic and intellectual rather than aggressively rivalrous can go a long way in safeguarding peaceful relations between nations, forming, as he goes, the indifferent or hesitant public opinion in support of his policies; on the other hand, an aggressively rivalrous executive can go a long way in the promotion of militaristic international relations, forming public opinion in that direction. While his inherent disposition will play an important part in the executive's thinking and the formation of his judgment, he will keep from dispositional extremes in thinking and action by scientific and philosophical training. Such a training of public men is precisely what is needed if democracies are to avoid the extremes in national administration which result from the rivalry for political control of conflicting class interests. Parties stand more or less decidedly for conflicting classes; and no executive can serve class interests and, at the same time, serve the people as a whole. He must be rooted and grounded in the principles of the welfare of the whole if he is to be other than a mere representative of party and class interests.[63] Given statesmen who belong to one party or another according to their dispositional inclination and training, and who at the same time are conversant with the principles of the social sciences and trained in philosophic judgment, and we may have oscillations in party control and, at the same time, a steadily progressive administration of government.

[62] Flexner, "Next Steps in Dealing with Prostitution," *Amer. Soc. Hygiene Ass'n., Pub.* No. 46, 8–9.

[63] Croly, "Progressive Democracy," 358.

BOOK IV

THE FIELD AND METHODS OF SOCIAL PSYCHOLOGY

CHAPTER XXIII

THE FIELD OF SOCIAL PSYCHOLOGY

THE purpose of the discussion of the relation of social psychology to other sciences was stated, at the beginning, to be to justify the claim of social pschology to recognition as a distinct science by showing that it has a distinct field which can be treated scientifically. The preceding chapters have shown that the assumptions of the social sciences relate to a field distinct from that of each social science. Each social science starts with certain habitual social relations and analyses the functioning of the institutions developed therefrom, while social psychology aims to explain social relations that are assumed by each science without analysis, and, perhaps, without any consciousness of the psychological significance of its assumptions. It is not the task of social psychology to formulate for any social science its particular assumptions. It is the task of social psychology, however, to analyse the psychological aspects of the assumptions of a particular social science. It does this with reference to its own problems, and not with reference to those of the particular social science; but all social scientists need a knowledge of social psychology in formulating their assumptions. This knowledge is needed also by social scientists in making their predictions or recommendations for progress. Predictions in social science, as explained in the *Introduction,* cannot pretend to the exactness of predictions in natural science. But we should not, for that reason, accept the view of sociologists who would limit the task of the social scientist to merely showing an orderly development in past and present, through use of the formulas of biological evolution.[1] This view is inevitable if the sociologist denies the assistance that social psychology may render sociology. But if he grants it, the possibilities of interpretation are immensely enlarged. It becomes possible by noting changes in social-psychological processes, to infer changes in social organization, and thereby to make recommendations as to necessary changes

[1] Keller, "Law in Evolution," *Yale Law Journal,* XXVIII: 773.

which are also predictions of inevitable changes. These predictions require a knowledge of human nature that is wider than the assumptions of any particular social science. Because of the intricate relation of all the social sciences to human nature and to one another, predictions require a knowledge of the co-ordinating science of human nature, social psychology.

Social psychology was defined as the science of the motives of the behaviour of men living in social relations. That it is possible to analyse social relations in this intensive sense and to generalize as to the motives of behaviour may seem incredible, but it is the purpose of the present chapter to show that that is what people are doing all the time, that it is inevitable that it should be done and that it needs to be done intelligently. People are doing it every day in their relations with one another, and even in their judgments of individuals and groups they never saw, — of public men, corporations and labour groups they read about. These necessary judgments are made haphazard, with little intelligence, with little thought of their significance or seriousness, and will continue so to be made until people are trained to make them more intelligently. For the impulse to judge the motives of others persists in spite of the injunction, " Judge not! " It persists with a naïve unconsciousness of its limitations. In spite of the personal element involved, and the Socratic warning, " Know thyself," the judgments tend to be made with all the cocksureness of a judgment of objective facts.

Judgments as to the motives of others are inevitable because behaviour involves self-consciousness. What we find in human society are men animated by more or less conscious motives, and their reactions to others are affected by what they believe others' motives to be. However difficult it may be to understand the motives of their associates, men do reflect as to what these are and discuss them; and they consider that their associates have the same interest in their own motives. A man's estimate of himself is determined by what others think of him, as well as, in many cases more than, by what, in his heart of hearts, he knows himself to be.[2] Only the great moral character cares supremely for the approval of the man within the breast.[3]

Because of the importance attached to another's estimate of

[2] Pillsbury, " The Psychology of Nationality and Internationalism," 220.
[3] Tarbell, " The Life of Abraham Lincoln," II: 121.

one's motives, one resents a misrepresentation of one's motives. Men differ in their reactions to misrepresentation. The reaction will depend on the disposition of the individual. In case of a misrepresentation in the press, the first annoyance for the man of intellectual disposition is that the statement is untrue. Most people will think: "How will it strike people?" Or "What was the motive of the misrepresentation?" But the first and strongest reaction in a man of intellectual disposition is that the report is false or incomplete or garbled or otherwise untrue. If he takes up a misrepresentation with another, the latter may argue: "I can't see anything in this to object to. What if it is untrue? There was evidently no malice in it because there is nothing in it which could hurt you in the community. Furthermore I can imagine how it might appreciably further your interests here." The reply of the man of intellectual disposition is apt to be, "That may all be true but is neither here nor there. The fact is, the statement is untrue and that is why I object to it." The argument may continue, but no agreement will be reached because the men are essentially different in disposition. In one, the predominating impulses are the intellectual so that he is most annoyed by the untruth; in the other, the strongest impulses are not the intellectual so that he will pass over an untruth with comparatively little feeling of annoyance unless it annoys other impulses which are strong within him, as the impulse to avoid social contempt or to gain social superiority or to satisfy some other impulse that involves a consideration of the motives of others toward him. Most men are supremely interested in the attitude of the community and particularly of associates, but the intellectual person has less of this interest. Even for him, however, these vague phenomena raise problems of adjustment; and the rank and file are not primarily intellectual. They take an impulsive interest in the motives of others, in what others are saying about them, and in its social effect. Wherefore conscious motives are an important part of the subject matter of social psychology. The social psychologist must take men as they are. Though the problem, because of its vagueness, is annoying to the intellectual impulses, yet the problem is there, fundamental, exceedingly difficult, and its analysis must be attempted.

Right at the start it is necessary to emphasize the difference between the intellectual and the non-intellectual attitude in the esti-

mate of the motives of others. Where there is an absence of that intellectual vigour and integrity that insists on scrupulous accuracy, there is a carelessness in interpreting the motives of others. It is common to misrepresent the words or worth of others, usually without any deliberate intent. It is done in satisfaction of subconscious impulses. Thus, among business and professional men the work or motives of those who are liked often are misrepresented in a "favourable light," and the work or motives of those not liked in an unfavourable light. This is often, perhaps usually, done more subconsciously than consciously. Men subconsciously satisfy the sympathetic impulse to make happy those they like, and they do so by giving them undue credit. Less often, they subconsciously satisfy the impulse to injure men they do not like, and they do so by failing to give them due credit. The one and the other are done subconsciously as well as consciously, in little reflective ways, by expression of face or by a casual word when the work of a man is mentioned; and the effect of the expression or word on others, perhaps the higher officials of the business establishment or educational institution, may be as subconscious as the stimulus. It is none the less effective. The man thus favoured by being given undue credit is not annoyed by the lack of truth, that is, the lack of *justice* in such behaviour unless he is primarily of an intellectual disposition. He is usually not far-sighted enough to realize that the same untruthful behaviour which satisfies him when he is liked, may make for his annoyance, if he becomes disliked. As opposed to this impulsive valuation of others' behaviour, we have the strictly impartial intellectual valuation; many men make it a principle of their behaviour to be just to another, whether he is liked or disliked. Only the man of intellectual disposition insists on judging others according to their merits and demerits, regardless of his likes and dislikes, and on being judged himself in the same way. The ability so to use the intellect depends on native intellectual vigour, and on the training of the intellect in a way to develop the habit of intellectual integrity as the essential attitude of character. It depends also on training in social psychology. When once our knowledge of motives has ceased to be vague intuition, men will not so naïvely ascribe to others this or that motive, and estimate their worth as suits their likes and dislikes.

While the interest of most men in each other's motives is pri-

marily impulsive, the reactions of close association necessitate a more or less intimate and certain knowledge of the character of those with whom we are associated. This necessity begets an insistence on sincerity. Men are annoyed by a profession of motives that seems insincere and strongly attracted by an associate of whose sincerity they feel absolutely certain. Sincerity is valued apart from the motives in which a man is sincere. Sometimes one hears it said of another: "He is narrow and domineering but you know where he stands. He is absolutely sincere and I like him for that." Owing to the vagueness of motives, the intellectual uncertainty in these problems is very trying, and it is with a grateful sense of relief that one feels an associate is what he appears to be. Then, too, absence of pretence is apt to show a character whose motives are so estimable that pretence is uncalled for.

Sincerity is, in the nature of the case, imperfect. "Almost all men deceive themselves as well as their associates with conventional phrases, with expressions which, though quite devoid of insincerity, yet are far from genuine." [4] In addition to this unconscious insincerity men get into the habit of saying not what they think but what they are willing to have repeated. In the exercise of this "discretion" the intellect is used to serve the instinct to avoid disapproval and win approval. Obviously any teaching into which this motive enters is worthless. It is the motive of the administrator who works with an eye to pleasing superiors and to maintaining the enthusiastic loyalty of subordinates. The different positions in society enlist different instincts, which, repeatedly stimulated, develop different types of mind and character. The problem for each individual is to ascertain what combination of instinctive reactions conduces to the highest efficiency in this and that position, and then to choose the position for which his instinctive capacities fit him. The highest efficiency means of course the state of being able to render the maximum service for the public welfare. This requires a maximum of sincerity as to motives, whatever the position. Doubtless sincerity will increase as social psychology takes a more important place in public and higher education. It has notably increased with the development of science and of political freedom.[5] But governmental censorship still continues, and there continues

[4] Taussig, "Inventors and Money-Makers," 20.

[5] Robinson, "The Threatened Eclipse of Free Speech," *Atlan. Mon.*, Dec., 1917, 815.

also the more subtle control of the expression of opinion exercised by the dominant social class and operating through fear of that class, or through the allurement of the satisfactions in the gift of that class — industrial, political, academic and ecclesiastical position, income and flattering associations. Hence the temptation to please that class or avoid displeasing it, as may be done by a plausible use of language and by discreet mental reservations. Nothing will so promote sincerity in social relations and in teaching as the training given by a thoroughly scientific study of human motives.

What are the methods of this scientific treatment? They include observation of behaviour, studies of behaviour through use of documentary sources, and inference as to the motives of behaviour. Testimony as to the motives of behaviour by itself is of little importance.[6] For instance, business men are apt to mention as causes of their success traits that commend their success, or unexpected traits that give them still greater prestige, for instance, a love of music that gave them needed recreation, or traits that will make them exemplars of the young or will endorse the old-time virtues. Their testimony may be true as far as it goes, without indicating the relative importance of the traits cited, and without including all the traits that are essential to business success. While, therefore, the statements of business men as to their motives are interesting, the prevailing motives of business behaviour must be inferred from an extensive and intensive analysis of business practices. Professed motives must be considered in the light of the actual behaviour of the business man under the conditions in which he is doing business. For instance, if a corporation professes to run its business in such a way as to enable the workman to realize his highest and best self, and yet continues to pay wages and provide working conditions that make such realization impossible, while large dividends are declared, the conclusion must be that the professed motive is not the essential one, that the essential motive is the prevailing profit-seeking motive of business enterprise.

An adequate interpretation of human behaviour requires intimate observation of typical men and groups. It must include a study of conscious motives and must be given in terms of conscious as

[6] Link, "Employment Psychology," 189–194.

well as subconscious processes. It is said that we know the motives of others only through observation of their behaviour,—of what they do " in giving us things, in writing what we may read, in speaking what we may understand," [7] that the thoughts we attribute to them are essentially our thoughts with reference to their behaviour, that we cannot have their thoughts any more than they can have our thoughts, that the best we can do, therefore, is to develop a science of behaviour without reference to conscious motives.[8] It is said that " only conduct counts. Motives derive their sole value from the conduct which they produce." [9] In answer to this we can only repeat that the members of a social group discuss, and believe that they understand each other's motives, think of each other " almost exclusively " [10] in terms of motives, estimate their own worth according to others' attitudes to them, and act according to what they believe the motives of others to be. Men and nations fear nothing more than lest damaging motives that are attributed to them become generally accredited. Whatever may be the ultimate formulas of human behaviour, therefore, the analyses and interpretations of the social psychologist cannot ignore the conscious motives.

The essential distinction in consciousness is that between focalized states and those states of which one is not clearly conscious — the marginal and subliminal states, which may be termed subconscious states. " The general contrast between the apperception by quick, total, merged, affective impressions, and the successive and separate attention to logically selected detail, falls in large measure within the contrast of the subconscious to the conscious." [11] Social experience is more largely subconscious than conscious. The instinctive consciousness is subconscious except when annoyance or satisfaction of instinctive impulses becomes intense. Instinctive annoyances may be so serious as to injure health while still subconscious, undiscriminated, and requiring psycho-analysis on the part of the physician.[12] States originally focal, in the course of experience become subconscious. For, just as we get used to seeing familiar

[7] Meyer, " The Fundamental Laws of Human Behavior," 2.
[8] *Ibid.*, 2.
[9] Carver, " Essays in Social Justice," 61.
[10] Meyer, *op. cit.*, 2.
[11] Jastrow, " The Subconscious," 112.
[12] Freud, " Psychopathology of Everyday Life," trans. by Brill.

things,[13] to hearing familiar sounds,[14] and to experiencing familiar organic sensations,[15] and as we come to react subconsciously, even though they are the most vital reactions of our lives, so we get used to our social environment, and our social reactions become subconscious.[16] Only on the withdrawal of a familiar stimulus does the idea of the stimulus and reaction rise to the focus of attention. Thus, happily married couples know that, as they grow older, they are less conscious of their love for each other than at first, though they love each other none the less, rather much more. They realize that the essential thing in their happiness is not impulse, but the more vaguely conscious attitude of affection with its feeling of contentment in each other's company. If they are separated for a time, this dimly conscious attitude becomes a vividly conscious idea. "I never know how much I love you until I go away," is a common confession of married people. Social attitudes are dimly conscious until the relation is threatened, or for the time being broken, when the removal of the habitual stimulus causes the attitude to become clearly conscious.

Because of the importance of subconscious states in social relations, the social psychologist must attend carefully to these states. The task is difficult because of the inferential aspect of social-psychological method, which is inherent in the fact that we can experience only our own motives directly; in learning the motives of others we have to infer from the reactions we *see*, the motives we do not see. The inferred, subconscious, instinctive movements are the elemental

[13] We sometimes exclaim as we see an object in a familiar environment, "Why, I never saw that before." We had seen it many times but not focally.

[14] We become accustomed to the ticking of a clock and are not aware of the ticking unless the clock stops.

[15] "In cases of lingering illness and where a pain of low intensity is an almost constant accompaniment, the sufferer will say that he is able to forget it at times, . . . 'It is always there,' he will say, 'but at times I forget it.'" (Shand, "Feeling and Thought," *Mind, N. S.*, VII:487.)

[16] "The evidence is thus varied and convincing, that the processes of perception of the external world . . . are in the ordinary use of our faculties as typically subconscious as conscious in their mode of functioning; and in virtue of this relation does it ensue that we hear and see and feel things, that guide our inferences, that enter into our associations, . . . and yet all these factors enter but feebly into the realm of conscious knowledge.

"The extension of this principle to more general acquisitions and to the practical life lies close at hand. It is apparent in all the emphasis laid upon the influence of the *milieu*, in the home and in the school. . . . It is the trend of such subconscious impressions that eventually leads to the toleration of, or insensitiveness to, all that is ugly or vulgar in the one case, and in the other to a refining discrimination . . . and to the establishment of good taste and good morals." (Jastrow, "The Subconscious," 110.)

psychological processes of the individual consciousness; but they could hardly be grasped introspectively by the individual in his own consciousness, were it not for the many reactions in his fellows that point to and assist introspection to a clearer understanding of these instinctive processes. As conscious processes, therefore, they are in a sense social before they become individual, though they occur in individual minds. They are social processes in that people generally are moved by these instinctive processes. But people are apt to be unconscious of these essential motives of behaviour, so that the social psychologist may understand the behaviour of his fellows better than they understand their own behaviour; and his inferences will very often meet with indignant denial, when his analyses are uncomplimentary.[17] Probably no individual would feel complimented with a thorough analysis of the motives of his behaviour. This is due not only to the subconscious or unconscious nature of instinctive processes but also to the fact that motives that win social approval are prominent in our consciousness, while we ignore or disavow motives that are less complimentary. Wherefore, the task of the social psychologist is a disillusioning and by no means pleasant one. No thorough psychological study of a group will please that group, and the principles of social psychology will not please society. This, together with the vague nature of the subconscious processes of society, and the apparent assumption involved in an attempt to show society itself, has, until recently, inclined social scientists to interest themselves only in the more clearly conscious motives, the motives of leaders,[18] the creditable motives of the distinguished, and to ignore those vague instinctive processes that are essential in the determination of social behaviour. The vagueness of motives does not warrant the social psychologist in eliminating them from his consideration. To be sure, " The shades of the rainbow are not so nice . . . as are all the subtle, shifting, blending forms of thought and of circumstances that go to determine the character of us and of our acts." [19] But we are not studying the subtle, shifting, blending forms of thought of the individual mind; we are studying the essential motives of social relations.

Crises bring conscious motives to the fore; this is true whether

[17] Pillsbury, " The Psychology of Nationality and Internationalism," 220.
[18] Jenks, " Principles of Politics," 24.
[19] Morley, " The Life of William Ewart Gladstone," I: 196.

the crisis arises in the relations of individuals or of groups. In a crisis, the question is raised as to the motives of those who precipitated it; and those who are involved seek to understand the motives of those who are responsible in order to formulate their attitude. For instance, on the occasion of the dismissal of Professor Scott Nearing of the University of Pennsylvania, the motives of the trustees who favoured the action were challenged by Professor Nearing's friends,[20] who were deliberating what attitude to take to this violation of freedom of teaching. Again, Rev. Henry E. Jackson says of the incident which eventually resulted in his leaving the Presbyterian Church of which he was pastor: "Two years before I left the church, a preconcerted and systematic outburst of criticism broke over me totally unexpectedly and without warning. . . . Some of the criticism was true, much of it false, and most of it foolish. This made me suspicious, for I knew that when men hide their real purpose and need to invent reasons for their actions, they naturally twist and falsify facts to such an extent as to be ridiculous." [21] The author describes the process through which he analysed the motives of his critics and concludes: "Thus, by a long process of examination and elimination, I was compelled to conclude that the reason for the disturbance was just what I believed at the beginning it must be. It was this: I differed fundamentally with two small but influential groups of men in the church on two big questions, dogma and money." [22] Again, the motives of the German government for precipitating a world war were constantly challenged and discussed in the newspapers and magazines of the United States during the first years of the war, when the United States was deliberating what attitude to take to the European conflict. Whenever habitual social relations are broken people enquire as to the motives of those who are responsible for the break. There develops a keen interest in motives. On unerring insight into motives depends social survival in a crisis, as well as the social adjustments that are required in everyday life.

Social adjustment raises questions of the just treatment of men, and just treatment requires that we discriminate the essential

[20] Witmer, "The Nearing Case," 35.
[21] Jackson, "A Community Church," 8.
[22] *Ibid.*, 17. See also Chs. II–IV.

motives of behaviour. It is precisely because of the difficulty of doing this that men often lack the capacity for patient thoughtfulness that is necessary in order to do justice to others. For instance, the failure of the courts, in interpreting the constitutional right of free speech, to give sufficient attention to the intent of those indicted has resulted in doing, as Justice Holmes put it in one case, " a great wrong " to the accused.[23] It is not true either in law or in everyday life [24] that only conduct counts. It is important to know the motives. These may not be clearly evident in the behaviour, and the rough-and-ready, easy way is to consider merely external conduct.

Just treatment of nations also requires that we consider their motives. For instance, much more important than the question as to which nation started the World War is the question as to the essential motives of the different nations that were engaged therein. A national aim is never as simple as it appears from the words of those who speak for the nation, because of the diverse interests of different classes within the nation. To ascertain the instinctive processes which constitute the undercurrents of a national purpose is a social-psychological problem of the utmost importance for just dealing between nations. The instinctive processes of a nation, which have been subconscious, may be brought by a crisis into clear consciousness. The war against Germany made us clearly conscious of the political attitude of domination-obedience as the thing fought against, and also of the democratic political attitude of resistance to domination and the preservation of liberty as the thing fought for. We awakened to the existence of domination-submission wherever it existed among us, in our industrial organization, our academic organization, even in our family organization, and in our boss-ruled political parties. A crisis brings into clear consciousness instinctive processes that are at other times subconscious.

The leaders of a nation are anxious to have other nations interpret their motives in a favourable light, and diplomacy has as one of its purposes the creation of situations that will convey an impression of commendable motives. For instance, statesmen realize that there is an instinctive antipathy toward a nation which is an aggres-

[23] Abrams v. United States, text of dissenting opinion in the *New Republic*, Nov. 26, 1919, 383.

[24] Robinson, *op. cit.*, 813–824.

sor and instinctive sympathy for a nation which is aggressed and fights in self-defense; and a wise statesman, like Lincoln [25] or Bismarck, [26] avoids a conflict until circumstances so transpire that the enemy becomes or may be made to appear the aggressor. We are familiar with the efforts made by the nations to show that the enemy was the aggressor in the World War. At the outbreak of the war, the German emperor issued a manifesto to the effect that Germany declared war against Russia because Russia was mobilizing, which meant an attack.[27] The Russian emperor then issued a manifesto declaring the war was started by the Austrians, who first attacked Servia and by the Germans, who first invaded Russia, and that the Russians were " forced by the situation " to arms.[28] The First Lord of the Admiralty of England declared that the aggressor was the Prussian military aristocracy,[29] to which the German ambassador to the United States replied that England " is known to have proposed an attack on the German fleet before the war had begun." [30] Each nation thus tried to make it appear that its fight was on the defensive. The United States was little influenced by any of these manifestos inasmuch as it was generally known that the immediate cause of the war was Austria's aggression against Servia, and that Austria was backed by Germany. The sentiment against Germany, in the United States, from the first was due, in part, to the belief that the Teutonic allies were the aggressors, which a critical survey of all the evidence shows to have been the fact.[31] Nevertheless, Germany persisted in professing the defen-

[25] Schurz writes of Lincoln's war policy: " The ways of thinking and feeling of the masses, of the plain people, were constantly present to his mind. The masses, the plain people, had to furnish the men for the fighting, if fighting was to be done. He believed that the plain people would be ready to fight when it clearly appeared necessary and that they would feel the necessity when they felt themselves attacked. He therefore waited until the enemies of the Union struck the first blow. As soon as, on the 12th of April, 1861, the first gun was fired in Charleston Harbor on the Union flag upon Fort Sumter, the call was sounded, and the Northern people rushed to arms." (Schurz, " Abraham Lincoln," 54.)

[26] One of the axioms of statesmanship, as expressed by Bismarck, in conversation with Moltke, was that success " essentially depends upon the impression which the origination of the war makes upon us and others; it is important that we should be the ones attacked." (Butler, " Bismarck," II: 101.)

[27] *Associated Press,* August 2, 1914; Stowell, " The Diplomacy of the War of 1914," 109–116, 133–146.

[28] *Associated Press,* August 4th, 1914.

[29] *Rochester Herald,* Aug. 30, 1914.

[30] *Ibid.*

[31] Smith, " Military Strategy versus Diplomacy in Bismarck's Time and Afterward," *Pol. Sc. Quart.,* XXX: 37–82; Smith, " Militarism and Statecraft," Ch. V.

sive attitude. Thus the German Chancellor said in December, 1915: "We are battling in this struggle, forced upon us, not to subjugate foreign nations, but to protect our life and freedom. This war remains for the German government what it was in the beginning and what has been maintained in every pronunciamento — a defensive war of the German nation for its future. This war can only be ended in a peace which, so far as human foresight reaches, will give us security against a recurrence. We are all united in this aim. That is our strength and shall remain so to the end." [32] When the United States entered the war, President Wilson, in his address to Congress asking for a declaration of war, said: "While we do these things, these deeply momentous things, let us be very clear, and make very clear to all the world what our motives and our objects are." [33] He then stated that the purpose of the war did not spring from antipathy for the German people: "We have no feeling towards them but one of sympathy and friendship. It was not upon their impulse that their government acted in entering this war. It was not with their previous knowledge or approval." The United States entered the war, he said, from the necessity of self-defence against the ruthless aggression and secret plotting of the German autocracy, and also for the sake of the progress of democratic government everywhere, which was menaced by that autocracy. Thus nations are solicitous as to what other nations think of their motives because nations react to other nations according to what they think the motives of others to be.

It is evident that problems of motives are by no means the merely personal problems which they have been thought to be. The behaviour of nations, as well as individuals, is determined by inferences as to the sincerity and the essential motives of the groups with reference to which the nation is called upon to act. As President Wilson said in his address to Congress, the American nation had been a long time in making up its mind as to just what were the motives and the intentions of the German government; having made up its mind, it was ready to act. This same interest in motives, with the gradual making-up of the public mind, is seen in connection with conflicts that arise within the nation. Successive revelations by governmental commissions of combinations to raise prices, result

[32] *The Independent*, December 20, 1915, 460.
[33] "President Wilson's State Papers and Addresses," 378.

in a gradual making up of the popular mind about the motives that actuate the corporations in question. The people become convinced of the greed of the corporations and this reprehensible motive causes popular support of governmental regulation. In like manner repeated newspaper stories about radical labour groups cause readers to think the behaviour of those groups is due to hatred, and, their minds thus made up, they acquiesce in repressive governmental measures.

The increasing intimacy of intra-national relations and of relations between nations is making the subject of motives not less, but more important. When a misunderstanding as to motives may lead to a disastrous strike or to a war between nations, it is evidently important to understand motives. The more intimate our relations with others the more certain we have to be as to their motives in order to behave understandingly towards them. Furthermore, the more intimate association becomes, the less easy it is to evade the question of motives or to deceive as to essential motives. This is true both between individuals and between groups, even between nations. One lesson taught by the World War was the greater difficulties than formerly that confront a nation that is intent on deceiving other nations as to its motives. Less secret diplomacy, more publicity of business transactions, are some of the lessons learned from the World War and the profiteering that accompanied and followed it. The trend of social evolution is in the direction of a more conscious and rational direction of the processes of evolution, and this involves a more accurate and thorough knowledge of its motivation.

CHAPTER XXIV

THE METHODS OF SOCIAL PSYCHOLOGY

SOCIAL psychology, like other sciences, originated in attention to unusual phenomena. Crowds, criminals, and the like first attracted the attention of the social psychologist. The human mind is so constituted as to be instinctively interested in novel stimuli. Among primitive peoples, such stimuli were "probable sources of danger, and the creature that failed to attend to them would soon have ceased to exist." [1] This interest in novel stimuli predominates in the beginning of scientific work, and scientists in the various fields have only gradually developed "the most striking traits of modern scientific method" which include "an appreciation of the overwhelming significance of the small, the common, and the obscure." [2] In its development social psychology has passed from interest in the striking phenomena of crowds, and from superficial delineations of social processes [3] to the analysis of the processes of typical social groups,[4] and of the motives of behaviour.[5]

Because our method is inductive, it is unnecessary to undertake an analysis of the conflicting theories of social mind. The differences are largely due to imperfect analysis,[6] and we shall do well to make our study primarily analytical with no preconceived theory of social mind.[7] If it is objected that our analysis has primary reference to individual behaviour, the reply is that, whenever men set out to describe the social mind, individual behaviour, with a consciousness on the part of the individuals of their like beliefs and attitudes,

[1] Titchener, "A Text-Book of Psychology," 271.

[2] Robinson, "The New History," 48.

[3] Dewey, "The Need for Social Psychology," *Psy. Rev.*, XXIV: 267.

[4] Williams, "An American Town," 1906.

[5] Cooley, "Human Nature and the Social Order," 1902; McDougall, "An Introduction to Social Psychology," 1909; Thorndike, "The Original Nature of Man," 1913.

[6] Bristol, "Social Adaptation," Chs. VII, X.

[7] "The fact is that the expression 'social mind,' and the various alternative expressions which are used as equivalents or variants of it, are scarcely fit to print in the context of exact discourse. This does not mean that there are not facts referred to by these expressions, but only that their use, is so ill-defined that it is almost impossible to discover just which facts are referred to at any given time." (Perry, "Economic Value and Moral Value," *Quart. Jour. Econ.*, May, 1916, 467–468.)

and of a common purpose, with little or no consideration of its rationality,[8] is evidently the subject matter of the description. Take, for instance, Mr. Hughes' description of the mind of the reunited Republican party: "This representative gathering . . . means the strength of reunion. It means that the party of Lincoln is restored, alert, effective. It means the unity of a common perception of paramount national needs. . . . We know that we are in a critical period, perhaps more critical than any period since the Civil War. We need a dominant sense of national unity; the exercise of our best constructive powers; the vigour and resourcefulness of a quickened America. We desire that the Republican party as a great liberal party shall be the agency of national achievement, the organ of effective expression of dominant Americanism. What do I mean by that? I mean America conscious of power, awake to obligation, erect in self-respect, prepared for every emergency . . . safeguarding both individual opportunity and the public interest, maintaining a well-ordered constitutional system adapted to local self-government without the sacrifice of essential national authority, appreciating the necessity of stability, expert knowledge and thorough organization as the indispensable conditions of security and progress; a country loved by its citizens with a patriotic fervour permitting no division in their allegiance and no rivals in their affection — I mean America first and America efficient."[9] "Dominant Americanism" means, then, dominant individuals, "conscious of power, awake to obligation, erect in self-respect, prepared for every emergency," acting together under a common purpose, united by the attitudes that characterize the party in question, and with the patriotic sense of power which comes from a sense of membership in a great party of a great nation.

The social mind evidently has no existence outside of individual minds. But it exercises a dominant influence over individual minds.[10] Rarely does the individual exist who has such a persistently critical attitude as to be beyond the influence of the prevailing ideas and attitudes. The influence of these, though untrue, is as absolute as if they were true. So much has this been so in the past that, as Professor Dunning has said, in the interpretation of history "We must recognize and frankly admit that whatever a given age

[8] Thomas and Znaniecki, "The Polish Peasant in Europe and America," I: 32–33.
[9] Hughes' Speech of Acceptance, *Associated Press* (R. D. C.), August 1, 1916.
[10] Pillsbury, "The Psychology of Nationality and Internationalism," 219–220.

or people believes to be true is true for that age and that people." [11] Only the exceptional man takes the trouble to look into the truth of the beliefs of his time and his criticisms generally have little influence on contemporaries. People act on the prevailing beliefs with even more assurance than the scientist on rational conviction.

The individual attributes beliefs to his family or nation, which, though they exist only in his mind, influence him as if they had an objective existence. In just the same way he attributes capacities to his own personality which have no existence but which influence him as if they were real. "The self of which we are proud is as much a mental construction as is the nation, yet most of our endeavors are devoted to furthering this notion of ourselves, to increasing reputation for wealth, for charity, for accomplishment in some line. When some slight is cast on a capability which we believe that we have, but really do not have, we are as much disturbed emotionally as if we were robbed of a real possession. . . . In many respects, the nation is as real as the self. Both are in large measure ideal constructions." [12] The social psychologist assumes, therefore, that processes of group consciousness constitute a distinct field for investigation. But he does not begin with a theory of social mind. His method is inductive, and this requires actual contact with the members of social groups.

The method of social psychology begins, therefore, with the study of human behaviour as observed in field-work and in documentary sources that have employed the methods of careful field-work. These include the work of those ethnologists who emphasize the necessity of intimate personal contact with the peoples they study, and who insist that the investigator must know the language of the group instead of learning through an interpreter, must live in the group as one of its members, and take part in its daily life and conversation.[13] Boas writes: "Unfortunately the descriptions of the state of mind of primitive people, such as are given by most travellers, are too superficial to be used for psychological investigation. Very few travellers understand the language of the people they visit; and how is it possible to judge a tribe solely by the

[11] Dunning, "Truth in History," *Amer. Hist. Rev.*, XIX: 227–228.

[12] Pillsbury, *op. cit.*, 220–221.

[13] Boas, "Handbook of Indian Languages," *Bur. Amer. Ethn., Bulletin* 40, Pt. I, 59–61; Fletcher, "The Hako: A Pawnee Ceremony," *Bur. Amer. Ethn.*, XXII: Pt. II, p. 13.

descriptions of interpreters or by observations of disconnected actions the incentive of which remains unknown?" [14] Furthermore, even when the language of a group is known, the relation of outsider often prevents the student from having that intimacy of communication and enjoying that perfect confidence of the group members that is necessary in order to understand their motives. "We must remember also that language is not a perfect medium of expression, that misunderstandings constantly arise among friends in common intercourse on this account, and through failure to express the idea in its context, and that this becomes a very grave source of error in our judgment of races whose mental background is totally different from our own and whose language we know at best imperfectly. Moreover the mental reservations of all groups and races are very serious. It may be a life policy to deceive the intruder." [15]

Students of the groups of civilized society similarly emphasize careful induction. Thomas and Znaniecki's great monograph, *The Polish Peasant in Europe and America,* proves that an intimate knowledge of the attitudes, customs, institutions and problems of a group is possible with a painstaking use of the inductive method. Social workers are directed in making a careful analysis of the motives of the people among whom they work,[16] — of the relations of the members of the families to one another,[17] their relations to relatives,[18] to public school teachers,[19] to employers [20] and to neighbours.[21] The care with which these directions are worked out shows the importance attached to the analysis of motives. Students of the motives of criminals live in the environments in which the delinquent children, from whom criminals develop, grow up, and cultivate friendly relations with these children and their families.[22] Those who deal understandingly with delinquents must "develop friendly co-operation with the offender and his relatives," which requires recognition of privileged communication on the part of

[14] Boas, "The Mind of Primitive Man," 99.
[15] Thomas, "Race Psychology: Standpoint and Questionnaire," *Amer. Jour. Sociol.,* XVII: 731.
[16] Richmond, "Social Diagnosis"; Cabot, "Social Work."
[17] Richmond, "Social Diagnosis," Ch. VII.
[18] *Ibid.,* Ch. IX.
[19] *Ibid.,* Ch. XI.
[20] *Ibid.,* Ch. XII.
[21] *Ibid.,* Ch. XIV.
[22] True, "The Neglected Girl," 1–3.

the courts.[23] Students of the labour problem are obliged to go behind the documentary sources and consult members of employers' associations and trade unions.[24] Students of the activity of stock and produce exchanges study the behaviour of speculators in action.[25] Students of particular industries find that the essential problems of the industry are less problems of raw material than of "the wants and habits of the buying public," [26] or of the effect of the management of the industry on the condition and attitude of the workers; and they find it necessary to do field work.[27] Students of scientific management must observe the industrial relations in the shops.[28] Students of any phase of industrial relations must come into intimate contact with the people in those relations.[29] The relative intelligence and the specific abilities of workmen can be ascertained by laboratory tests, but not their moral qualities which can be ascertained only after a prolonged acquaintance, and then only by the trained psychologist.[30] The motives of the unusual men engaged in industry cannot be ascertained by tests or from their testimony,[31] but only on intimate acquaintance with them. The motives of business men can be understood by this intimate contact with typical business men. The same methods must be used in a study of the behaviour of professional groups. The social psychologist must know typical men and women — manual workmen, business men, professional men, typical men and women of all kinds. He must understand not only their ideas but the more fundamental facts,— their dispositions and attitudes,— and must discriminate occupational from personal attitudes. Furthermore, he must learn from other men what they have learned of human nature. It is a matter of regret that the valuable knowledge of human nature which business and professional men acquire in the course of a long experience dies with them, except as it is passed

[23] Healy, "The Individual Delinquent," 30–31, 34–37. See also Healy, "Mental Conflicts and Misconduct," 4 ff; Healy, "Pathological Lying, Accusation and Swindling"; Healy and Bronner, "Youthful Offenders," *Amer. Jour. Sociol.*, July, 1916, 38–52.

[24] Hoxie, "Trade Unionism in the United States," 383; Wolman, "The Boycott in American Trades Unions," *J. H. U. S. H. P. S.*, Series XXIV, No. 1, Preface.

[25] Brace, "The Value of Organized Speculation," 51–53, 64, 150.

[26] Cherington, "The Wool Industry," Preface, viii–ix.

[27] Cherington, *op. cit.*, Preface, ix; Van Kleeck, "A Seasonal Industry; a Study of the Millinery Trade in New York," Introduction.

[28] Hoxie, "Scientific Management and Labor," Preface.

[29] "The Pittsburg Survey"; "The Cleveland Survey."

[30] Link, "Employment Psychology," Ch. XVII.

[31] *Ibid.*, 189–194.

down as oral tradition. For instance, think what a lawyer learns of human nature in the course of his adjustment of disputes or in such business as helping people make their wills. The whole range of human motives is run through on such occasions, and the situation does not permit of successful deception as to motives. Business and professional men value their knowledge of human nature as one of their chief assets. But it is vague, unanalysed, ineffective, and of little value to rising generations.

In intensive studies of social groups, mechanical tests are impossible, and direct questions are fruitless unless put with tact and with an understanding of psychology.[32] People have little clear understanding of their motives, and often conceal what they do understand. One learns the motives of people by knowing them when "off their guard," in the casual relations of daily work and recreation. Furthermore, human nature is so complex that no one motive can be understood without knowing its relations. And this understanding cannot be reached through questionnaires. One must live in the group, experience the life of the members, and analyse this experience with the aid of a thorough psychological equipment.[33] Merely recording observations does not get an investigator very far in scientific work. In their efforts to get away from personal bias, social workers have sometimes made the mistake of entering "upon case records 'nothing but the facts,' . . . in the attempt to eliminate all prejudice, they eliminated the judgment and discernment which would have given to the whole investigation unity and significance." [34] A social-psychological training is essential for the exercise of such discernment.

The documentary sources of social psychology can be ascertained from the lists of books, documents and articles which are appended to this and the five succeeding volumes, though these are only partial lists of the works cited in the texts and, therefore, do not purport to be a complete bibliography. Because we have not had a distinct science of social psychology, monographs and treatises on the other social sciences contain more or less social psychology;

[32] Richmond, "Social Diagnosis," Ch. IV.

[33] As Dewey says, we cannot "adapt the rubrics of introspective psychology to the facts of objective associated life." (Dewey, "The Need for Social Psychology," *Psy. Rev.*, Vol. XXIV, No. 4, July, 1917, 271.)

[34] Richmond, *op. cit.*, 94.

this is especially true of the newer works written since the development of the social-psychological point of view. For this reason, as well as because of the intimate relation of the other social sciences to social psychology, a knowledge of the other social sciences is necessary for the social psychologist. Furthermore, assumptions and concepts of the social sciences which are not psychological are suggestive, in that they imply general tendencies of behaviour which invite psychological analysis. For the same reason, studies in the development of language and in literary and other art criticism are suggestive.

In addition to the books, documents, and articles cited, there is an extensive field of documentary sources which the author has not exploited and which offer opportunities for monographic studies. For instance, the third volume of the social psychology which deals with the conflict of instinctive interests in social relations breaks ground in a vast and largely untilled field, which invites investigation into these conflicts. Much of this investigation must be made on the inside; and ought to be undertaken by several men collaborating in each field. A teacher of social psychology should keep in close touch with promising students who have gone into industry and business, into politics, teaching, the ministry and the professions, and should endeavour to enlist students in those different fields in an analysis of relations therein. We no longer have to go to the Malay Archipelago or into the Arctic regions to satisfy a scientific interest; we have only to open our eyes and look into the social relations of which we are a part.

Among the documentary sources for this study of economic, political, professional, educational and cultural relations are files of trade union journals and minutes of trade union meetings; files of industrial journals and magazines; state and congressional investigations of the activity of employers' associations and labour organizations; judicial decisions; congressional and state legislative records, and other publications of state and federal departments; reports of college presidents and other documents of academic institutions which throw light on academic relations; files of ecclesiastical journals and church records; files of journals of the national associations of the different professions, and the constitutions and by-laws and codes of ethics of those associations. These documentary

sources for the conflict of interests cannot be correctly interpreted by an outsider. It is necessary to read between the lines, which can be done only out of an experience on the inside.

These sources of information are to be used from the point of view of the particular problem under investigation. For instance, suppose we are working on the problem of sovereignty and want to ascertain the political attitudes of a religious sect. We find that magazines of ecclesiastical organizations are coming more and more to print articles on economic and political topics, indicative of political attitudes. In the study of papers from the point of view of the problem of sovereignty, a whole article or editorial may be just one *fact* concerning a political attitude. It is then necessary to work out a methodology through which to determine (1) what facts and what degree of frequency of facts is necessary to indicate a certain attitude; (2) what facts are indicative of attitudes of readers and what facts of attitudes of the interests behind the magazine which are trying to influence the readers.

In addition to publications that represent the attitudes of particular groups and classes, there are the critical periodicals, like *The Nation, The New Republic, The Searchlight,* and *The Survey,* which represent no group or class but aim to enlighten and guide the reader in an analysis of current events and problems. These are invaluable both for the information they give from week to week and for the changes in social attitudes that are to be inferred from their editorials and articles, which reflect, fairly accurately, different phases of the more thoughtful public opinion.

The files of newspapers are valuable documentary sources if rightly used. The files of the daily and weekly newspapers of the small cities and villages used in connection with field-work in those localities yield a more or less detailed knowledge of the social-psychological processes of their respective constituencies.[35] The value of newspapers, as sources of information, is impaired by lack of scrupulous accuracy, and by the class, sectarian and partisan bias which determines the selection and the editing of news. Monographic studies of the files of newspapers could, by the use of the comparative method, work out the class and other bias of different papers and show how this determines the selection and editing of the news. These social-psychological studies of particular newspapers

[35] Williams, "An American Town," Pt. II.

would show the extent to which newspapers vary from the standards of accuracy and candour required of trustworthy sources of information. The newspapers could then be used more intelligently as sources for social-psychological investigations.

Social psychology may eventually become quantitative. Statistical exactness is the scientific ideal. But problems of behaviour in which conscious states are determining motives possibly never can be subjected to statistical treatment, because such states " are not a direct mathematical function of any objective quantities. We cannot evade this difficulty completely by dealing with a hypothetical average man. . . . It may well prove that some measurements of satisfaction are perhaps in this category." [36] For instance, statistics of consumption have to do with the goods consumed, not with the impulses satisfied by such consumption. Take, for instance, statistics of money spent for food. The satisfaction derived from such expenditures depends on the various impulses satisfied. The intelligent house-wife satisfies her intellectual impulses in the buying and preparation of food, while the rivalrous house-wife will follow the fashion in buying and preparing. The result is a great difference in satisfaction both in preparation and consumption of the same value of food. " It is more difficult to deal with clothes even than food, and of course out of the question to measure amusements." [37] Clothes satisfy a variety of motives according to the dispositions of people. " If budgets were complete we could find the customary expenditure, and distinguish the important and frequently recurrent item, boots, from the rest. But, since people in buying dress pay attention perhaps as much to appearance as to durability (when we include both sexes), it is evidently impossible to measure the intrinsic value of clothes; . . ." [38] People in certain occupations must be well dressed but also prefer to be.[39] Often the same good satisfies one impulse in one individual and another in another. A man who would find an auto of use in his business may get along without it until his wife wants it for recreation and display. It is impossible, therefore, to analyse and measure the particular satisfactions derived from this or that good.

The statistician, when, mathematically stating the standard of

[36] Bowley, " The Measurement of Social Phenomena," 9–10.
[37] *Ibid.*, 140–141.
[38] *Ibid.*, 161.
[39] *Ibid.*, 102.

living of a class, does not, therefore, have reference to the impulses satisfied by that standard; nor when comparing the standards of two classes, does he measure the satisfaction derived by one class as compared with that of another. The social psychologist is constantly impressed with the impossibility of measuring satisfaction statistically. For instance, a Negro remarked, "The colored people may not be as well off as the white people but they *enjoy* themselves." To compare the satisfaction of that coloured family with that of an adjacent white family on a money income basis would be the veriest folly. Studies of comparative satisfaction require field-work. Satisfaction is always relative. The man with abundant means of satisfaction finds life unbearable if suddenly reduced to the living conditions of the poor man. But the poor man is not necessarily more unhappy than the wealthy man. Members of a class differ in capacity for happiness, though their standards of living may be approximately the same. "While it is natural, when . . . making measurements which describe the standard for a class, to emphasize the similarity of the members and the homogeneity of the class, it is necessary, after numerical description is given to remember that there is in reality infinite variety and that the resemblances are rather superficial. One family will live in comfort and decency on a sum which leaves another family underfed and badly clothed, even though the money is allotted in much the same way. This kind of variation is outside the sphere of statistical measurement. . . . None the less non-measurable mental habits are of the first importance to the social reformer." [40]

While social psychology cannot approach the quantitative accuracy which has been achieved in the natural sciences, still it is possible to employ statistical methods in social-psychological investigations, and doubtless these methods will be further developed. For instance, we can state statistically the relative importance of different types of impulsive behaviour of a population and compare this with a similar statistical statement of the behaviour of another population, or compare the behaviuor of the same population in successive periods of its history.[41] It is particularly important for the social scientist to aim at the highest attainable accuracy, because his subject matter is of a kind that tends to stir affective judgments

[40] *Ibid.*, 163–164.
[41] Williams, "An American Town," Part II.

— a tendency which can be overcome only by the most severely scientific methods possible. The natural scientist may be a man of social prejudices, and yet his prejudices may not interfere with his judgments about matter. But the data of the social scientist include those very attitudes and beliefs in connection with which men have the strongest prejudices. He cannot have any prejudice, political, industrial, class, religious, without it weakening him as a social scientist. Furthermore, all personal impulses other than the intellectual must be brought to heel, because, otherwise, his impulses are so readily stirrred by his data as to make trustworthy analysis impossible. Hence the need of an ideal in social science of increasing exactness in method.

We must remember that intellect itself is impulsive so far as the exercise of thought and its instinctive end is concerned.[42] The intellectual courage with which thinkers strike into new fields is impulsive and the desire for clearness is impulsive. Men seek clearness because clearness is satisfying to the intellectual impulses and they may sacrifice comprehensive analysis to clearness. The truths of exact science, because of their clearness, convince not only scientists but other thinking people; for lack of equal clearness the work of the social scientist is often condemned as not having the exactness of natural science. There are scientists who aim to give the prestige of precision and statistical accuracy to conceptions which, in the nature of the case, are incapable of such proof. Again, note the scrupulous attention in monographs on problems of industrial relations to statistical data, and the equally scrupulous avoidance of problems of motives, which, when they cannot be ignored, are dismissed with the conventional phraseology. That is, many scientists think and act primarily for the *satisfaction* of the intellectual impulse for clearness and avoid problems that involve annoyance of the intellectual impulse for clearness — where, on account of the vagueness of the data satisfying clearness is difficult or impossible. Or they simplify the problem by assumptions that make contradictory facts merely exceptions to a general rule, and reason deductively from the rule.[43] A method which makes

[42] Hocking, "Human Nature and its Remaking," 61–62.

[43] "Probably the very fact that economics is *not* an exact science strengthens the disposition to state its conclusions in exact terms. We are constantly told that its conclusions hold good only as approximations. . . . All this is not to be questioned. Nor would I for a moment question either the usefulness or the inevitableness of this mode

possible a logically clear solution gives a writer prestige as a man of intellectual achievement, and so satisfies his rivalrous disposition. Writers of this disposition are apt to avoid problems where, as in problems of motives, the possibility of exact treatment and conspicuous scientific achievement is doubtful. The intellectual adventurer in the new field of motives must, therefore, for the present deny himself the satisfaction of the intellectual impulse for clearness, as well as the satisfaction of the rivalrous disposition.

Social psychology will not only reveal the motives of prevailing social behaviour but also disclose variations from the prevailing behaviour. These variations characterize men of unusual, or of unusually strong, impulses, and men of imagination. Social psychology, if it is scientific, will detect, analyse and evaluate all motives, not merely the prevailing but also the variant motives. In the study of variations the aim is to detect the rise of what are to be new tendencies of social behaviour and to predict their effect on social organization in the hope that the predictions may make it possible to anticipate and facilitate inevitable changes. Social psychology should in this way further institutional progress in industry, politics, the professions, education and religion. It awaits the rise of variations in personality and public opinion, but suffers no variation to remain unappreciated and uninterpreted, once it has arisen. It should, therefore, be of special interest to the idealistic leader; and training in social psychology should give poise to the idealist. In the logic of events, the sphere of influence of the idealist lies in the future rather than in the present. The mistake he makes is in seeking, in the present, a sphere of influence comparable with his extraordinary capacity. Social psychology should train men and women to look to the future, rather than to the present, for the realization of their hopes. It will not make all men idealists, but it will confirm the trend in this direction of the elect; and, when it

of procedure. On other occasions, and in connection with the methodology of some typical concrete investigations, I have pointed out the unquestionable necessity which confronts the economist, of relying on deductive reasoning from the hedonistic premise. (In the volume on *Some Aspects of the Tariff Question,* pp. 155, 512.) But the explanation of such reliance is not solely that the economist must perforce do so. As a rule he also *likes* to do so. The sort of person who makes a good economist is temperamentally impatient of loose ends and rough edges. He likes results that are clean-cut. He is apt to disregard the admitted qualifying factors, and to treat the qualifications as aberrations from the truth, not modifications of his conclusions. And among the things which he is thus tempted to push aside as aberrations, negligible in the formulation of accurate results, is the influence of sympathy, or altruism, or devotion." (Taussig, "Inventors and Money-Makers," 110–112.)

has been taught for years in schools and colleges, the conformity of the masses will become less unthinking and deadening; the idealist himself will become less hesitant, more quick to discover similar growing tendencies in his fellows, more clear throughout the whole course of his intellectual vision, more ready to express the whole truth, and more detached from personal desires incompatible with intellectual integrity and independence.

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[1] Abbrevation used in the text.

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