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DECLINING LIBERTY AND OTHER PAPERS

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DECLINING LIBERTY
AND
OTHER PAPERS

BY

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TO

THE RIGHT REVEREND THOMAS JOSEPH SHAHAN, S.T.D., J.U.L., LL.D.
RECTOR OF THE CATHOLIC UNIVERSITY OF AMERICA

DEAR BISHOP SHAHAN:

I have no reason to think that you agree with all the opinions expressed in these papers. And yet, it was your urgent suggestion that moved me to make them into a book. Your generosity and thoughtfulness in this matter are characteristic. You have always upheld and encouraged reasonable liberty of thinking and publishing. Even during the hysterical days of post-war repression, academic freedom flourished at the Catholic University of America. Therefore, I have sought the honor of inscribing your name on the dedication page of a volume which carries on its title page the word "liberty," and which endeavors to defend and illustrate that priceless human prerogative. "Libertas praestantissimum naturae bonum," was the majestic phrase used by Pope Leo XIII.

Very sincerely yours,

JOHN A. RYAN.

PREFATORY NOTE

With one exception all the papers composing this volume have been published in periodicals. Some of them have been considerably revised, and a few almost entirely rewritten. They are now reprinted in the belief that they may perhaps deserve a somewhat longer life than was allotted to them in their original form. While they appear under a great variety of titles, they exhibit important affinities, and certain groups of them are concerned, each, with a single general subject. For example: the first eight deal with different aspects of liberty; the thirteenth to the sixteenth, with industrial ethics; the twenty-first to the twenty-third, with state supervision of industry.

Grateful acknowledgment of permission to reprint is extended to the publishers of: *The Catholic World,* the *Outlook,* the *Nation, America, Studies,* the *Dearborn Independent,* the *Kiwanis Magazine, LaFollette's Magazine,* the *Commonweal,* the *N. C. W. C. Bulletin,* the *Catholic Charities Review,* the *Annals of the American Academy of Political and Social Science, Labor,* the *Salesianum,* the *Social Service Bulletin,* and *Hospital Social Service.*

JOHN A. RYAN.

Washington, D. C.,
January 1, 1927.

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DECLINING LIBERTY AND OTHER PAPERS

PART I

POLITICAL

DECLINING LIBERTY AND OTHER PAPERS

I

DECLINING LIBERTY IN AMERICA

THE mutilation of liberty in Continental Europe is one of the major casualties of the Great War. At least five countries have been blessed, or cursed, with dictators. These men have diminished some important liberties and utterly destroyed others. While the losses have been greatest in the field of political liberty, there has been a serious decline in those forms of freedom which benefit the individual in his every-day activities and associations. Since all these assaults upon liberty are traceable to social and political troubles arising out of the war, there is good reason to hope that they will not continue indefinitely.

Comparatively few persons are aware that a notable diminution of liberty has occurred in the United States. As in Europe, part of it is due to the War and to the disturbances which accompanied and followed that great catastrophe. Nevertheless, the most alarming dangers and injuries to liberty in America are independent of the War and its consequences. They had begun to operate several years earlier. At most the War intensified or accelerated them.

Modern public liberty is of three principal kinds: civil, economic and political. The first affects the individual in the ordinary activities of life. It includes freedom of wor-

ship and expression, freedom to move about, to engage in a lawful occupation, to join with one's fellows in various forms of association, to make contracts and to enjoy due process of law. Economic liberty falls under the head of civil liberty in so far as it concerns the right to labor, to follow a business, to acquire property. As economic opportunity, however, it constitutes special and very important kind of liberty. In this sense, it means not merely absence of arbitrary restraint. It denotes the presence of effectual and reasonable opportunity. Obviously this is considerably more than mere freedom to enter economic contracts. For these may or may not be adequate to a reasonable kind of life. Finally, political liberty denotes the legal power of the citizen to take part in the processes of representative government. It covers chiefly membership in political associations, exercise of the electoral franchise, and holding public office.

It is no exaggeration to say that all three of these kinds of liberty are more gravely jeopardized in the United States to-day than they have been at any time since the beginning of the nineteenth century. Let us review the main facts and tendencies which support this generalization.

A. Civil Liberty

American civil liberties are substantially all expressed and guaranteed in the first ten amendments to the Federal Constitution. They comprise freedom of religious worship, of speech, of the press and of assemblage; security of person, property and residence, and immunity from unreasonable searches and seizures; protection against deprivation of life, liberty or property without due process of law; the right to a speedy and public trial, and freedom from excessive bail, excessive fines and cruel and unusual punishments. While counterpart is to be found in the constitutions of the several these guarantees restrain only the national government, their

states. Hence these rights and liberties of the individual are protected against arbitrary interference whether by private individuals, by state authorities, or by the Federal government. Nevertheless, the degree of protection which they actually receive at a given time depends to some extent upon the attitude of legislatures, executives and courts. Under the stress of an assumed present emergency, it is possible for any of the three departments of governments to diminish freedom of speech, of printing and of association. And this undermining process may be carried so far as to pervert our traditions of liberty and to encourage a dangerous attitude of popular acquiescence and indifference. Following are several instances committed by national, state and municipal authorities:

1. *National Interferences.* — About two years ago, the Secretary of State allowed a distinguished foreigner, Count Karolyi, to visit the United States only on condition that he would make no political speeches in this country; and a few months later the Secretary positively declined to permit the Countess Karolyi to land upon our shores. The only legal justification advanced for this arbitrary performance was two laws enacted to meet the exigencies of war. They were not intended nor needed for peace-time conditions. When questioned by the Senate Committee on Foreign Affairs, the Secretary of State refused to give the reasons which moved him to invoke this extraordinary legislation against the Karolyis. It is well known that the Hungarian government actively favored the suppression of the one and the exclusion of the other. Does this fact provide the explanation?

While this action by the State Department does not directly diminish the liberty of any American citizen, it is a serious indirect menace and it departs sharply from our

traditional attitude of hospitality to the foreigner and encouragement to the opponents of tyranny in other lands. Abraham Lincoln once declared that the bulwark of our liberty and independence "is in the spirit which prized liberty as the heritage of all men in all lands everywhere. Destroy this spirit," he said, "and you have planted the seeds of despotism at your own doors." If we permit administrative officers to act arbitrarily and tyrannically toward foreigners, we shall easily be tempted to acquiesce when similar treatment is meted out to the weak among our own citizens. Indeed, the indifference with which the arbitrary restriction put on Count Karolyi and the arbitrary exclusion of his wife have been received by our press and public, is disturbing evidence of the decline in our vigilant love of liberty. When we recall the fact that Charles Stewart Parnell was accorded the freedom of the floor of Congress and that many other distinguished Irishmen were given full liberty to denounce Great Britain in every important city of the United States, we realize how far our government has departed in the Karolyi cases from our glorious traditions of welcome to foreign opponents of political tyranny. Previous to the war, no American Secretary of State ever condescended to exclude any foreign defender of liberty at the behest of a foreign government. Daniel Webster not only permitted Count Kossuth to visit America and to denounce the Hungarian government of that day, but attended a dinner given in his honor.

Another arbitrary interference with liberty by the Executive Department occurs in relation to foreign loans by American bankers. Had the negotiations for funding the war debt owed to the United States by France been successful in the fall of 1925, the French government would have obtained a very large loan. When they failed the Administration made public its attitude of disfavor toward loans

contemplated by American bankers to that government. As a consequence, no such loan was made. More recently, the State Department intimated that it "would not look favorably either upon lending money directly to Russia or to other foreign countries for promoting their trade with the Soviet Republic." This attitude is based upon the refusal of the present Russian government to repay the money borrowed from the United States by the Russian government under Kerensky. These and other interferences with the freedom of American citizens to make foreign loans are the outcome of a policy thus described by the *Washington Post,* June 19, 1926:

"Early in the administration of President Harding the government decided to keep itself fully informed as to further European borrowings from the people of the United States. On May 25, 1921, the President held a conference with the leading bankers of the United States, and it was agreed that no private loans should be made to European governments until the State Department had been consulted.

"Early in 1925 the administration decided that it was against the best interests of the United States for private parties to loan money to any foreign governments that had failed to adjust their debts to the United States. This policy was justified on the ground that 'our national interest demands that our resources be not permitted to flow into countries which do not honor their obligations.' "

On very high authority, we are told that "bankers are becoming restive under the application of this policy, for they think it is an unwarranted interference with their business." Undoubtedly it is all of that. Whatever legal claim American bankers have to protection from their government in this matter should be honored, whether or not the loans are pleasing to the administration.

According to the authority to whom allusion has just been made, "bankers are beginning to feel that the government cannot simply disapprove some loans and escape the implication that it is at the same time approving others." Indeed, this very practice seems to be not unknown in the State Department. To be sure, the approval given by the Department to certain loans to some of the weak governments between Mexico and the Isthmus of Panama, is carefully declared to be merely "informal." In well-informed circles, it is a matter of common knowledge that no American banking firm would lend money to Honduras or Costa Rica or Salvador, unless the transaction had first been examined and found satisfactory by the State Department. Does this mean that the Department "informally" gives "an understanding" that the legal and military power of the government will be available to collect the interest and the principal of the "informally examined" loans? If that is not the meaning, if the government undertakes to do nothing in favor of the makers of such loans that would not be done on behalf of any other American citizen in any other country, why has this practice arisen of examining such transactions in the State Department? It looks like either an arbitrary interference with American citizens who have money to lend, or a commitment of the government to a policy of financial imperialism.[1]

A clear instance of the general decline of the spirit of

[1] Writing in *Foreign Affairs,* October, 1926, John Foster Dulles says: "Control of foreign loans involves a vast power over our national economy. . . . Any body which possesses such a power could, by the mere threat of its drastic usage, impose its will to accomplish purposes quite foreign to those which led to the original assertion of power. . . . Such considerations suggest that control over foreign loans should be limited to cases where such control is necessary to accomplish some objective of the Department of State within the field of public international relations which is of major importance and which clearly has sufficient popular support, so that Congress, if asked, would give legislative approval to the employment of economic pressure to accomplish such objective."

liberty is reflected in certain bills which were strongly supported in the Sixty-ninth Congress relating to the registration and deportation of aliens. According to the provisions of one of these measures, every alien would be required to register with the immigration authorities, to have his finger prints recorded and his photograph taken, and to provide complete information concerning himself. All this would be printed on a card which the alien must be ready to present whenever called upon by an agent of the Department of Labor or the Department of Justice. Moreover, an alien would have to repeat his registration every year and to pay a heavy fee on each occasion. This is the kind of Prussianism against which we were supposed to have fought to make the world safe for democracy. By the provisions of another bill, any alien could be deported who had served a prison sentence of one year; or who had served several terms aggregating eighteen months or more; or whose combined sentences amounted to only one year if they were imposed for offences against the prohibition laws. The latter provision indicates a peculiar disregard of liberty of which something more shall be said.

Before the year 1919, the Federal government had no constitutional authority to legislate on the subject of intoxicating liquor, except in the District of Columbia. During that year an Amendment, the Eighteenth, was added to the national constitution, which not merely empowered Congress to pass laws of this character, but itself took the form of a prohibitory statute. It made the manufacture, sale, transportation, importation and exportation of intoxicating liquors for beverage purposes illegal and unconstitutional. To Congress it left merely the authority and the obligation of enforcing the constitutional prohibition by appropriate legislation and penalties. Obviously this was a very grave restriction of individual liberty. Nevertheless, it might con-

ceivably have been justified as the only adequate method of dealing with a great social evil. In such circumstances, the prohibition of the liquor traffic would not have been a violation of natural rights. For the opportunity of the individual to buy or sell intoxicating drink in a public market is not so necessary to his welfare that it may not justly be abolished for the sake of a great public good. However, the history of our prohibition legislation, particularly in the last three years, creates a very grave doubt whether this was a necessary, or wise, or just method of meeting the drink evil or promoting social welfare.[1]

Whatever we may think about this question, and whatever may be said in defence of the Eighteenth Amendment against the charge that it unduly violates individual liberty, there is no room for reasonable doubt concerning the tyrannical character of certain provisions of the Volstead Act. This is the law which Congress enacted to put constitutional prohibition into effect. In some of its provisions it goes far beyond the Eighteenth Amendment. It not only outlaws the liquor *traffic,* but forbids the possession, manufacture, and transportation of liquor for consumption by oneself or one's friends. Of course, the object of these extraordinary interferences with personal liberty was primarily the enforcement of the law against the traffic. Nevertheless a very powerful element in the organizations and groups favoring prohibition desired to have individual drinking and treating one's friends forbidden in themselves. These persons either believe that to drink intoxicating liquor is morally wrong or that it is in some way harmful to the drinker. In either case, they believe they have a right to constitute themselves the guardians of their fellowmen through force of law. The extent of their respect for individual liberty can easily be inferred. Clearly this theory

[1] See comprehensive discussion of this question in the following paper.

and attitude are in direct conflict with individual rights and reasonable individual liberty.

If the prohibition of the liquor traffic were a necessary or the best means of dealing with the drink evil, and if outlawing individual possessions, consumption, giving away, etc., were essential to the abolition of the traffic, these drastic provisions of the Volstead Act might possibly be ethically justified. So far, however, is the second condition from realization that its exact contrary is true. A very large part of the opposition to the whole body of prohibition legislation is traceable to these tyrannical provisions. They have been a hindrance rather than a help to the enforcement of prohibition. This fact is now so generally recognized that the officials no longer make any attempt to prevent home manufacture or possession or transportation of liquor for one's own use. All the efforts of the enforcement agents are concentrated upon sales and upon manufacture and transportation for sale.

It has recently become fashionable in certain quarters to denounce certain activities of the Federal government as bureaucratic and as injurious to individual liberty. There is no warrant for this position. The general purpose of federal bureaus is the administration and carrying out of laws and legislative policies. A bureau cannot make a new law; at most, it can draw up regulations and ordinances for the specific application of the statute enacted by Congress. In general, those bureaus fall into two classes: those which are intended to promote the welfare of certain important social groups; and those which have been created to restrain economic oppression committed against the general public or a large number of persons by a comparatively small group. Examples of the first class are the Children's Bureau, the Women's Bureau and other bureaus in the Department of Labor, and several bureaus in the Department of Agri-

culture. The second class is exemplified by the Inter-State Commerce Commission and the Federal Trade Commission, whose functions are respectively to prevent the railroads from levying excessive charges and to protect honest business men and the consumers against unfair methods of competition. In reality, most of the federal bureaus increase general liberty, inasmuch as they increase the economic opportunity of the weaker classes. To be sure, the administrative rules drawn up by a bureau may sometimes be unduly inquisitorial or meddlesome, but this possibility is inherent in all administrative agencies.

Another unfounded charge that the Federal government is diminishing, or threatening to diminish, individual liberty, arises out of proposals that it should take over some of the industrial regulation which is now reserved to the several states. For example, the assertion was widely and wildly made in 1925 that the proposed child labor amendment to the Constitution would subject the family and the home to arbitrary interference by the federal agents charged with the task of enforcing a national child labor law. As a matter of fact, the interference with the home and with parental control over children involved in a Federal law would not differ from that which is involved in state legislation. There is no reason why a Federal statute or Federal enforcement agents should curtail individual liberty to a greater extent than the statutes or enforcement agencies of the states. The charge of bureaucracy and tyranny urged against Federal child labor legislation was for the most part an unreasoning inference drawn from the Volstead Act and its administration. Between the prohibition legislation and statutes for the protection of the weaker industrial classes, there is an enormous difference in spirit, scope and object. The former restricts the liberty of the great majority; protective labor laws restrict the actual liberty of a small minor-

ity in order to enlarge the genuine liberty, that is, the economic opportunity of large classes of persons.

Thus far, we have been considering restrictions of liberty by the Executive and Legislative branches of the Federal government. Even the Judicial department has made a contribution. June 8, 1925, the Supreme Court of the United States, by a majority of seven to two, upheld the constitutionality of the criminal anarchy statute enacted by the State of New York in the year 1902. The decision was rendered in the case of Benjamin Gitlow, who had been sentenced to a substantial term in prison. According to the provisions of this Act, any person is guilty of a felony who "by word of mouth or writing advocates, advises, or teaches the duty, necessity, or propriety of overthrowing or overturning organized government by force or violence." Gitlow was, and still is, a Communist. As a member of the board of managers of a Communist paper, he was responsible for the publication of a pronouncement called "The Left Wing Manifesto." Included in its exuberant verbiage were the denunciation of legislative measures as a means of bringing about Socialism, the advocacy of a Communist revolution through mass industrial revolts and revolutionary mass action, culminating in a revolutionary dictatorship of the proletariat. Counsel for Gitlow contended that this language did not constitute anarchy within the meaning of the statute, since it did not advocate the use of force or violence in specific terms, nor urge anyone to commit a specific act of violence or unlawfulness with the object of overthrowing organized government. Both the trial court and the Court of Appeals in New York State rejected this contention. When the case was appealed to the Supreme Court, the important question for decision was whether the statute and its application in the lower courts had deprived Gitlow of the liberty of expression which is

guaranteed by the "due process" clause of the Fourteenth Amendment.

The decision was against Gitlow. The Court held that his manifesto was not a mere statement of abstract doctrine, nor a mere prediction that revolutionary mass strikes are inevitable in the process of economic evolution, but that it advocated and urged revolutionary mass action for the destruction of organized parliamentary government. In the opinion of the Court, it was not necessary that Gitlow should have urged some *definite* or *immediate* act of force or violence, nor that he should have urged *immediate* execution of the *general* methods which he advocated. Nor, declared the Court, was a law which prohibited such general incitements to revolution a denial of constitutional freedom of speech. The State has a right to protect itself against danger through abuse of free speech and it is the judge of the degree of danger. "The immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen . . . A single revolutionary spark may kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration."

Justices Holmes and Brandeis did not agree with the majority of the Court. In his dissenting opinion, the former declared that the question to be decided in every such case is "whether the words used are used in such circumstances and are of such a nature as to create *a clear and present danger* that they will bring about the substantive evils that the State has a right to prevent." To the assertion of the majority that Gitlow's manifesto was more than a theory, that it was an incitement, the venerable and scholarly Justice replied: "Every idea is an indictment. Eloquence may set fire to reason. But whatever may be thought

of the redundant discourse before us, it had no chance of starting a present conflagration."

Justice Holmes admitted that constitutional freedom of speech is no bar to a statute which aims at the prevention and suppression of utterances which create a "clear and present danger" of violent revolution. He refused to concur in the condemnation of Gitlow because he saw very clearly that this man's utterances were not of that character. As a matter of fact, they were merely long distance prophecies based upon the fantastic faith that an insignificant and utterly negligible group of fanatics would some day become sufficiently powerful to bring about the overthrow of government which he ardently desired. On the other hand, the majority of the Court seems to have attributed to this wild prognostication some semblance of real danger. At any rate, the majority rejected Justice Holmes' test of "clear and present danger." The State, they held, had a right to protect itself against even remote and problematical danger. As a means to this end it was constitutionally empowered to suppress the traditional right of free speech.

In passing, it is worthy of note that the Irish labor agitator, Jim Larkin, was pardoned by Governor Smith after he had been convicted and sentenced for the same kind of utterances as those contained in the manifesto issued by Gitlow. In the message accompanying his exercise of executive clemency, Governor Smith expressed substantially the same view as that contained in Justice Holmes's dissenting opinion. The Governor's statement exemplified common sense, devotion to our traditional principles and practices relating to free speech, and a complete absence of hysterical fear for the stability of our political institutions. He likewise pardoned Gitlow shortly after the Supreme Court had confirmed the conviction and sentence.

Twenty-five years ago, or even twenty years ago, the decision in the Gitlow case would have been almost impossible. In 1925, it was rendered possible by events connected with and following the World War. The Espionage Act, completed by Congress in 1918, went further in restraining freedom of speech than any previous Federal enactment. It would not have been supported by public opinion during either the Mexican or the Civil War. Popular acceptance of this drastic war-time statute and the rather general hysteria about revolution and radical movements after the war, created an atmosphere in which the Gitlow decision was more or less to be expected. Referring to freedom of speech and of the press, Professor Holcombe declares: "Under modern conditions, it is a much less substantial right than the freedom of speech and of the press enjoyed by the men of the 19th century." [1]

2. *State Interferences.*—The New York criminal anarchy statute, under which Gitlow was convicted, was enacted in consequence of the public alarm aroused by the assassination of President McKinley, and aimed at political anarchism rather than at revolutionary economic theories. Nevertheless, all the men who have been sentenced under it were upholders of hateful economic doctrines.

Since the war, upwards of twenty states of the American union have passed what are generally known as "criminal-syndicalism laws." The designation is accurately descriptive of their origin and purpose. It refers to a very radical labor union called the "Industrial Workers of the World," —more familiarly and conveniently distinguished as the "I. W. W." Like the Communist Party, this organization discards peaceful political methods and relies upon various measures of industrial violence to bring about a régime of

[1] *The Foundations of the Modern Commonwealth,* p. 386. Cf. Appendix to this paper.

industrial syndicalism. Among the immediate practices which it advocates is industrial sabotage, that is, the destruction of machinery and the dislocation of processes in factories and industrial operations generally. To deal with this organization and its practices and to prevent the growth of a vaguely feared Bolshevism, were the objects of these criminal syndicalism statutes. They are all very similar to the New York criminal anarchy law.

The Massachusetts law of 1919 may be taken as typical. It punishes with a maximum of three years' imprisonment, or $1,000 fine, or both, anyone who by speech or document "advocates, advises, counsels or incites assault upon any public official or the killing of any person or the unlawful destruction of real or personal property or the overthrow by force or violence of the government of the commonwealth." The one instance in which the law was called into operation indicates its practical scope. Early in 1926, Anthony Bimba was convicted of violating this statute in a speech to about 200 of his fellow countrymen delivered in the Lithuanian language. The meeting was held in the Lithuanian Hall in Brockton. Following are the significant portions of the naive harangue: "We intend to overthrow the American capitalistic government by revolution in the same way that they did in Russia and to establish the same kind of government that they now have in Russia. . . . We don't believe in the ballot, we don't believe in any form of organization but the Soviet form and we shall establish the Soviet form of government here. The red flag shall fly on the capitol at Washington and there will also be one on the Lithuanian Hall at Brockton."

The likelihood that such "wild and whiring words" addressed to an insignificant number of an insignificant foreign group would, to quote the language of the Supreme

Court in the Gitlow case, "kindle a fire that, smouldering for a time, may burst into a sweeping and destructive conflagration,—" is utterly ludicrous. Nevertheless, Bimba was duly convicted. Should the conviction be appealed to the Supreme Court, that tribunal would probably feel constrained to sustain it on the basis of the precedent set by the Gitlow decision.

The doctrines proscribed by the foregoing laws are, indeed, unreasonable. No good can come to any community from preaching them. Conceivably, they might some day meet with such wide acceptance as to constitute a "clear and present danger" to social peace and welfare. Inasmuch as that day is in the remote and uncertain future, there is no good reason why such legislation should now be on our statute books. Overt criminal acts forbidden by these laws can be adequately dealt with under existing penal statutes. On the other hand, their enactment has produced certain definite evils. They can easily be abused in the process of administration, by executive officers or by the courts. A pertinent example has been provided by the operation of the Criminal Syndicalism Act of California. A prominent and cultured woman, Anita Whitney, has been sentenced to fourteen years' imprisonment for mere membership in one of the organizations against which the law was directed. She had publicly opposed the use of violence in any form. After her conviction, the author of the California statute declared that it was never meant to apply to such persons as Miss Whitney, or such situations as were presented in her case. In the second place, these laws create a dangerous precedent. If the preaching of Communist doctrine may be prohibited by law, why not also the advocacy of "radical" doctrines which are contrary to the prevailing economic opinion. The transition is easy, and there are powerful persons and organizations that would favor the enactment

of such a law. In the third place, the existence of such legislation bespeaks an unreasoning fear and a cowardly lack of faith in our institutions. These things are undignified and unworthy of Americans. Finally, such laws tend to obscure in the popular mind the main value of the constitutional guarantees of free speech; that is, the protection which it affords to unpopular and despised minorities.

3. *Interferences by Local Authorities.*—Sheriffs, police officers, and mayors have made occasional contributions to the diminution of liberty. They have prevented or dissolved public meetings without proper warrant of legality. Sometimes the action has been directly contrary to the law; at other times, it has been executed under some such specious pretense as that the hall was unsafe or the assemblage would tend to disturb the public peace. Some of the most flagrant examples of these practices occurred in 1926, in connection with a strike in Passaic, New Jersey. At one meeting, the sheriff read the riot act and thereafter acted on the assumption that martial law was automatically established for an indefinite time by this bit of vocal exercise. Leaders of the strikers were arrested and jailed on such general charges as "incitement to riot" or "utterances against the government." One man was arrested for having exclaimed, "They shall not pass!" In one case, bail for the release of the prisoner was fixed at $30,000 by the local judge, although the offence charged was of the vague and relatively trivial character just described. In due time, these petty violations of constitutional rights are nullified through appropriate action in the higher courts. Nevertheless, they produce a great deal of temporary inconvenience and suffering, and interfere seriously with the lawful conduct of a strike. Almost all these assaults upon freedom of speech have occurred in connection with industrial disputes, and they have been considerably more frequent since than before the Great War.

B. Economic Liberty

As noted above, economic liberty is partly included under civil liberty. This phase of economic liberty consists mainly of the right to engage in an occupation, to make contracts, and to acquire property. From the beginning of our history as a nation, the constitutions of the various states protected this sphere of liberty for members of the Caucasian race. Down to the Emancipation Act in 1863, the great majority of Negroes enjoyed no such protection, inasmuch as they occupied the status of chattel slaves. After the Civil War, the Fourteenth Amendment was added to the Constitution for the specific purpose of guaranteeing this form of liberty to the recently emancipated black men. In consequence of the judicial construction of the "due process" clause of the Fourteenth Amendment, this portion of economic liberty has come to enjoy the protection not only of the state constitutions, but of the Federal Constitution. Unfortunately, this development has also had the effect of lessening that other kind of economic liberty which consists of economic opportunity. Before dealing with this subject, however, we must give a brief review of the manner in which the primary economic liberty has been brought under the protection of the "due process" clause of the Fourteenth Amendment.

Although slavery and involuntary servitude were forever abolished by the Thirteenth Amendment to the Constitution in 1865, the Freedmen were prevented in several of the Southern states from exercising the ordinary civil and economic liberties enjoyed by white men. They were forbidden to appear in the towns except as menial servants; they were required to reside on and cultivate the soil without the right to purchase and own it; they were excluded

from many gainful occupations and were forbidden to make certain contracts.

To remedy this situation, Congress in 1866 passed the Civil Rights act, which forbade discrimination among the inhabitants of any state on account of race, color or previous condition of servitude, which provided that all persons should have the right to come and go at pleasure, to engage in any lawful calling, to acquire and dispose of property, to make contracts, to sue in the courts, and in general to do everything permitted to free citizens. Fearing, however, that this law was not authorized by the Constitution, Congress soon after proposed to the states the Fourteenth Amendment. This was ratified by the necessary three-fourths of the states in 1868. In so far as it applied to recently enfranchised slaves, its main provisions took the form of prohibitions applied to the states. Proclaiming that all persons born or naturalized in the United States are citizens, it forbade any state to "abridge the privileges or immunities of citizens of the United States, or to deprive any person of life, liberty or property without due process of law, or to deny to any person the equal protection of the laws."

In drawing up and proposing to the states this amendment, Congress undoubtedly intended to confer upon the black men all the civil and economic rights which had previously been enjoyed by white men under the various state constitutions. The history of the provision about "life, liberty and property" leaves no doubt, however, that these words were not intended to cover economic liberties. They are also found in the Fifth Amendment, which was adopted with the Constitution. It forbids Congress to do what the states are forbidden to do in the Fourteenth Amendment. In it the word "liberty" had always been construed as juridi-

cal liberty, as liberty of the person, the freedom to move about, freedom from physical restraint,—except in accordance with "due process of law." Undoubtedly that was the meaning which it was intended to have by the men who were responsible for the Fourteenth Amendment. They wanted to protect the Negro against the danger of being deprived of his life, his liberty, or his property without a judicial process and a fair trial. The specifically economic freedom of the newly enfranchised persons was taken care of in those clauses of the Amendment which deal with "privileges and immunities of citizens" and "the equal protection of the laws."

1. *The "Due Process" Clause.*—Nevertheless, it is not these provisions but the "due process" clause which has been construed by the courts as safeguarding a certain measure of economic liberty. In the Slaughter House cases, decided in 1873, two of the justices of the Supreme Court contended that the liberty to follow an occupation was included in the "liberty" of that provision. In later decisions, other members of the Court derived the same economic liberty from the same source. At length this construction received the sanction of the majority of the Supreme Court, in the case of *Allgeyer* v. *Louisiana,* decided in 1897.

The declaration of the Court is well worth quoting, not only because it describes fully the various forms of economic liberty which enjoy constitutional protection against the arbitrary acts of legislatures, but also because it shows how greatly the general term "liberty" has been expanded and made specific through judicial construction. In the words of the Court, the liberty of the Fourteenth Amendment means: "Not only the right of a citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties, to be

free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

As already intimated, this construction and development of the "due process" clause went far beyond the interpretation that had been put upon it down to the last quarter of the 19th century. Its traditional meaning had been merely juridical liberty,—the right to a hearing in court and a fair trial. It meant the liberty which was guaranteed in the *habeas corpus* act of 1679 in England, and which Blackstone described as the right of every person to the "free enjoyment of life, liberty, and property unless declared to be forbidden by the judgment of his peers or the law of the land." This was the liberty which the makers of the American Constitution had in mind when they drafted the Fifth Amendment, forbidding Congress to deprive any person of "life, liberty or property without due process of law." It was this liberty and this liberty alone which was attributed to this clause by American courts until they began to expand it in construing the Fourteenth Amendment.

Nevertheless, this judicial development, as finally formulated in the paragraph quoted above, has become a very important protection to the natural rights of the individual. The Oregon law which attempted to destroy private and parochial schools was declared unconstitutional under this interpretation of the "due process" clause. The Supreme Court unanimously held that this Oregon statute deprived the Sisters of the Holy Names and the Hill Military Academy of their constitutional liberty to engage in a lawful occupation or calling, namely, that of teaching. The right to carry on this occupation, said the Court, implies the right

to make contracts with parents. In other words, the right of parents to have their children educated in religious or other private schools was concluded by the Court from the right of such persons or corporations to conduct such schools.

Valuable as they are, however, all the economic liberties described in *Allgeyer* v. *Louisiana* are negative. They merely prevent interference by individuals or by the state. They protect that fundamental right which is described in the Declaration of Independence as "the pursuit of happiness." They legally authorize contracts necessary for carrying on a business, contracts for the sale of labor, and contracts for the acquisition of property; but they do not guarantee a decent income or the actual possession of property. In other words, they do not include that positive form of economic liberty which consists of economic opportunity. Adequate economic liberty would provide all who are willing to labor with those social and economic conditions which assure a reasonable livelihood and a reasonable opportunity for economic improvement. To the negative economic liberty described above, positive economic liberty adds actual and effectual opportunity.

Among the social and economic conditions necessary to assure positive economic liberty are labor unions, reasonable assistance by the state, and the legal prevention of various forms of economic oppression. Unless these conditions are protected or provided by law, there is no adequate economic liberty. There is no adequate guarantee of natural rights.

Now this kind of economic liberty not only lacks formal protection in the Constitution, but has, in considerable measure, been construed by the courts as contrary to the Constitution. This has been accomplished through judicial development of the "due process" clause. Among the liberties which the Supreme Court has derived from that pro-

vision of the Constitution, the foremost is liberty of contract.

Undoubtedly this is a great good, but it is subject to very considerable limitations. How much liberty should the individual enjoy in making economic contracts? In the Slaughter House cases, Justice Bradley asserted that the individual has a constitutional right to "reasonable" freedom of contract, while Justice Swayne declared that freedom of contract should not be restricted except by "just laws." A few years later, Justice Field interpreted the liberty contained in that phrase as the freedom to enter all contracts which do not interfere with "the equal rights of others." What is "reasonable"? What laws are "just"? What is the measure of "equal rights"? From the written opinions of these Justices, we clearly infer that these questions should be answered in terms of the eighteenth century doctrine of natural rights and the nineteenth century tenets of Utilitarianism. In other words, these and other members of the Supreme Court held a greatly exaggerated view of freedom of contract. According to their conception, the state should not restrict the liberty of the individual to make contracts unless these engagements called for the exercise of violence, or the commission of theft, or in some way denied the principle of equal freedom.

This individualistic social philosophy, this excessive freedom of contract, received the sanction of a majority of the Supreme Court in the case of *Lochner* v. *New York*. The legislature of New York State had enacted a law prohibiting the employment of bakers for more than ten hours a day. The law had been sustained by the highest court of New York but the case was appealed to the Supreme Court of the United States. There it was declared unconstitutional by a vote of 5 to 4. This was in the year 1905. In the decision written by Justice Peckham it was asserted that

the state has no right to restrict labor contracts unless this action is "a fair, reasonable and appropriate exercise of the police power of the state." A law which prevents a baker from working more than ten hours a day was held to be "an unreasonable, unnecessary and arbitrary interference with his personal liberty and his right to enter contracts." That the average baker does not care to work for more than ten hours a day, or that the "liberty" to do so is an unnecessary and injurious kind of liberty, seems to have escaped the attention of the majority of the Court. To the genuine economic liberty, the economic opportunity, which the ten-hour law accorded to bakers, the majority of the Court opposed a doctrinaire kind of liberty which meant economic hardship. Alluding to one of the sources of this mistaken theory of liberty, Justice Holmes declared in his dissenting opinion: "The Fourteenth Amendment does not enact Mr. Herbert Spencer's *Social Statics.*"

"But the opinion of the majority prevailed. Thus the Supreme Court read into the Federal Constitution an interpretation of the liberty of the due process clauses by which the Utilitarians' philosophical idea of liberty was substituted for the specific juristic liberty of the 'Founding Fathers.' *The personal liberty of Blackstone's 'Commentaries' was transmuted into the freedom of contract of Spencer's 'Principles of Sociology.'* " [1]

Several other crucial cases have been decided, always by a small majority of the Court, on the principles laid down in *Lochner* v. *New York.* In every instance, the effect of the decision was to deprive the wage-earner of some positive economic liberty, some economic opportunity which the nullified statute had sought to provide. In the name of liberty of contract, the Court empowered the economically strong to oppress the economically weak. In *Coppage* v.

[1] *The Modern Commonwealth,* by Holcombe; p. 327.

Kansas, decided in 1915, the Supreme Court pronounced unconstitutional a statute which declared unlawful the action of an employer in compelling employees to refrain from becoming or continuing members of a labor organization. Justice Pitney, who wrote the decision, declared that this law violated the "due process" clause because it denied to the employer the liberty which was already enjoyed by the employee. Since the latter has "the constitutional right to decline proffered employment unless the employer will agree not to employ any non-union man, the employer should have the same right not to take into his service a person who would not agree to stay out of the union." This is the Utilitarian principle of equal freedom. Justice Pitney did, indeed, take note of the obvious fact that employers and employees do not enjoy equal bargaining power; that "employees as a rule are not financially able to be as independent in making contracts for the sale of their labor as are employers in making a contract in purchase thereof." In other words, the Justice realized that there is no such thing as equal freedom between employers and wage earners in their mutual contracts. Instead of drawing the practical inference demanded by a realistic conception of justice, namely that wage earners need to combine with one another in order to obtain something like equality of bargaining power with their employer, Justice Pitney had recourse to the following subterfuge: "Wherever the right of private property exists, there must and will be inequality of fortune; and thus it naturally happens that parties negotiating about a contract are not equally unhampered by circumstances." Since the state may not directly, contended the Justice, destroy these inequalities of fortune, neither may it do so indirectly, as in the Kansas statute. According to this principle, the state is forbidden by the "due process" clause to enact any measure which increases in any

degree the economic opportunity of a needy class, or lessens in any degree existing economic inequalities.

In contrast with this artificial theory of equality, it is refreshing to place an extract from the dissenting opinion of Mr. Justice Day: "I think that the act now under consideration, and kindred ones, are intended to promote the same liberty of action for the employee as the employer confessedly enjoys. The law should be as zealous to protect the constitutional liberty of the employee as it is to guard that of the employer."

Precisely the same question was involved in the case of *Hitchman* v. *John Mitchell, et al.,* decided in 1916. In this case, an injunction had been granted by a lower Federal court restraining the President and officers of the United Mine Workers from attempting to organize employees who had, as a condition of employment, promised not to join a union so long as they remained on the pay roll of the Hitchman Coal and Coke Company. Appeal was taken to the Supreme Court. By a majority of 6 to 3, the Court decided that the injunction was valid, inasmuch as it aimed to prevent injury to the contract rights of the Coal Company in the matter of liberty and property. The effect of this decision was to reaffirm the doctrine of the Coppage case that an employer has the right to deny an employee membership in a labor union, and further to make guilty of contempt of court any person who induces a wage earner to disregard such a "free" contract between employer and employee.

The climax of judicial encroachment upon positive economic liberty in the name of an abstract legal freedom, was reached in the Minimum Wage case of the District of Columbia in the spring of 1923. A bare majority of the Court decided that the law which Congress had enacted to protect the livelihood of women wage earners was unconstitutional. In the particular case before the Court, the Chil-

dren's Hospital maintained that the legal minimum wage of $16.50 a week constituted a violation of the "due process" clause. To require the payment of such a wage was an unreasonable abridgement of liberty of contract. In upholding this contention, Justice Sutherland declared that the minimum wage law was invalid because it exacted from the employer "an arbitrary payment for a purpose and upon a basis having no causal connection with his business," namely, "the extraneous circumstance that the employee needs to get a prescribed sum of money to insure her subsistence, health and morals." This legal requirement, said Justice Sutherland, is an arbitrary and unreasonable interference with freedom of contract. Against this declaration, let us set the pronouncement of Pope Leo XIII, that if the contract does *not* provide a wage equivalent to a decent livelihood, the worker is made "the victim of force and injustice." Justice Sutherland asserts that the livelihood of the worker has nothing to do with the fairness of the wage; Pope Leo maintains that the livelihood of the worker is an essential element of a just labor contract.

Why did Justice Sutherland take the position that a living wage law was an arbitrary and unreasonable interference with freedom of contract and therefore forbidden by the "due process" clause? For the same reason that moved Justice Peckham to condemn a ten-hour-day law. Both accept the social and ethical philosophy of Utilitarianism. Both believe that individuals should have the freedom to do everything they like which does not interfere with the equal freedom of others. The employer desires to hire a woman wage earner for less than the equivalent of a decent livelihood. At the same time, he is willing that she should be free to refuse such a contract. Therefore, he is leaving her "equal freedom." With quite as good reason the card shark might claim the right to be free from penal restrictions in

the pursuit of his activities and in making contracts incident thereto, since he is entirely willing that his less skilled opponents should have equal freedom to cheat.

Not equal freedom, but the complete recognition of natural rights is the proper determinant of contracts, or any other action which involves relations with one's fellows. Therefore, no employer can reasonably claim the right to make a contract which ignores the natural right of the employee to a decent livelihood. A statute which renders such a contract illegal is in accord with justice, no less than with the genuine freedom of the employee.

To sum up the effect of the judicial construction of the "due process" clause: it has given us the very valuable doctrine of negative economic freedom, but it has at the same time seriously diminished positive economic freedom. In this connection, a brief quotation from the dissenting opinion of Justice Holmes in the Minimum Wage case is apposite. Referring to the "due process" clause, he says: "The earlier decisions construing this clause began within our own memory and went no farther than the unpretentious assertion of the liberty to follow the ordinary callings. Later, that inocuous generality was expanded into the dogma, liberty of contract." And the latest act in the expanding process has rendered unconstitutional and for the time being impossible any legislation by Congress or by the states to protect wage earners, even women wage earners, against being constrained to work for less than living wages. Furthermore, it is probably an effective bar to laws providing insurance against sickness and unemployment, and to all new labor legislation for the benefit of adult males.

It is one of the ironies of American history that a constitutional amendment adopted to guarantee the economic liberty of former black slaves has been perverted by judicial construction to the grave injury of the economic liberty of

both whites and blacks. And not the least lamentable feature of the process is that it has been carried on in good faith by able men, acting under the influence of erroneous political and ethical doctrines.

2. *Injunctions in Labor Disputes.*—In the summer of 1922, I listened to an address delivered by an American professor before a group of British working men at Oxford. At one point, the speaker referred rather casually to the process of injunction as used in the United States. Fearing that his auditors had not obtained a clear notion of this judicial institution, I interrupted, requesting him to describe it in more detail. He courteously complied. In the question period which followed, the majority of those participating were eager to hear more about the injunction and were frankly astounded at its nature and its prominence in American industrial disputes. Every one of them asserted that he had never known anything of the kind in Great Britain.

It is less than forty years since the first injunction in a labor case was granted by an American state court, and less than thirty-five years since the first one issued from a Federal court. In the subsequent period, they have greatly and steadily increased. To be sure, the writ of injunction is very ancient in the equity courts of Great Britain and of every other country which has adopted the British legal system. Its object is entirely reasonable and praiseworthy; that is, to prevent irreparable injury to persons or property. It is intended to supplement ordinary criminal procedure; and there are labor situations in which it is quite as reasonable and necessary as in any other emergency. The valid criticism of the injunction in labor disputes is that it has been used to prevent good as well as evil actions, to interfere with the legitimate as well as the illegitimate freedom of workers. In a very large proportion of cases, the court injunction has ordered the strikers and others to refrain

from peaceful picketing, from primary boycotting, from making known the fact of the strike, from collecting money for its prosecution, from carrying on certain kinds of strikes, and from other actions which are entirely reasonable and are not prohibited by statute. In consequence of the injunction sustained in the Hitchman case, it has become practically illegal for the mine workers in the greater part of the State of West Virginia to become members of labor organizations. In the railroad shopmen's strike some four years ago, more than 300 injunctions were issued, most of which deprived the strikers of one or other kind of reasonable freedom. In the absence of statute law governing the activities incident to a strike, American courts have applied ancient and antiquated principles of the common law to the detriment of the laboring classes. So far has this practice gone, so firmly has it become imbedded in American court practice, so deeply has it become involved in the judicial interpretation of the "due process" clause, that many legal authorities seriously question whether the legislatures any longer have the constitutional power to bring the writ of injunction under reasonable control.

3. *Monopolistic Encroachment.*—The existence and legal toleration of monopoly is an obvious injury to economic liberty. Monopoly injures independent business concerns by unfair methods of competition, and lessens the economic welfare of consumers by artificially raising prices. Single combinations controlling entire industries have declined in relative importance. By far the greater part of monopolistic power is now exercised by means of agreements or understandings among concerns which are ostensibly in active competition with one another. Nevertheless, monopolistic control of prices by agreement among separate corporations can be quite as effective and quite as harmful as control by a single great combination. It is most conspicuous and

effective when the dominating concern in an industry sets a schedule of prices which is tacitly accepted by all the competitors. Even when there is no outstanding concern, a common policy regarding prices seems to be easily adopted and maintained. So general have these practices become as to justify the assertion that never before in the world's history have the prices of goods in any country been so determined by monopoly action as they are at the present time in the United States of America.

By far the most important and the most disturbing development of monopoly power is occurring in the field of electricity. In the opinion of many authorities, electric power is destined to transform our industrial system. Some go so far as to predict that it will produce an economic revolution equal in importance to the industrial revolution which was brought about by the great mechanical inventions of the 18th century. All classes of our population will probably become dependent upon it for a great part of the necessaries and comforts of life. According to present indications, however, this great boon, this great industrial instrument, will come under the control of a single and unified group of financial interests. The power of this combination to oppress and extort has not yet been restrained by adequate governmental regulation. Whether mere regulation will suffice to curb this tremendous monopoly so as to enable consumers to obtain electric energy at reasonable prices, is extremely doubtful. At any rate, the power to extort exists. It is thus described by Governor Pinchot of Pennsylvania:

"Nothing like this gigantic monopoly has ever appeared in the history of the world. Nothing has ever been imagined before that even remotely approaches it in the thoroughgoing, intimate, unceasing control it may exercise over the daily life of every human being within the web of its

wires. It is immeasurably the greatest industrial fact of our time." [1]

C. Political Liberty

Political liberty has suffered no direct diminution in the United States. The forms and instruments of popular government have remained intact. Indeed, they have undergone some expansion, inasmuch as the electoral franchise has been extended to women and the device of proportional representation has been adopted in several of our cities. Nothing like a dictator is in sight. So far as we can see, our government will continue to be based upon universal suffrage and exercised by popularly elected representatives.

Unfortunately, however, our political liberty has suffered considerably through indirect processes and influences. Almost all of these may be described in the phrase, financial and industrial aggrandizement. This indirect decline in political liberty is obviously a counterpart of the decline in economic liberty. Ever since the Armistice, America has been in the grasp of political reaction from the rather definite though relatively slight trend toward political progressiveness which had been under way for several years before the War. No intelligent student of our political affairs doubts that the masters of Congress and the occupants of the White House for at least the last six years, have been believers, mostly serious believers, in the theory that laws affecting economic conditions should be so drawn as to be entirely satisfactory to the great business and industrial corporations. If any legislation not of this character got upon the statute books in recent years, it was of relatively small importance. No significant progressive measure, no statute considerably enlarging economic freedom, has

[1] Message of Transmittal, *Report of the Giant Power Survey Board to the General Assembly.*

been enacted by Congress in this period. The history of our state legislatures is not substantially different.

The social theory upon which our national and state governments have been acting is pretty well stated in the following extract from an address to the Alumni of Amherst College by a distinguished member of that body, President Coolidge: "We justify the greater and greater accumulations of capital because we believe that therefrom flows the support of all science, art, learning and the charities which minister to the necessities of life, all carrying their beneficent effects to the people as a whole." So long as this philosophy is accepted and implied in the legislative, executive, and judicial departments of government, the damage to political liberty will continue to be grave and alarming.

It would probably be an exaggeration to say that the majority of the people consciously accept this theory of beneficent plutocracy. All that we can be certain of at this stage is that a very large proportion of Americans prefer the political rule of the great business interests to the risk of economic evils that a dislodgement of these plutocratic forces might entail. Possibly the best illustration of this attitude was supplied by the last presidential election. Thousands upon thousands of farmers, wage earners and other ordinary citizens voted for Mr. Coolidge, not because they preferred his policies, but because they feared the economic and political power of his most prominent supporters. Rightly or wrongly, they assumed that the great financial and industrial interests of the country had the power, and might exercise it, to bring about a business depression in case Mr. Coolidge failed of election. Rather than risk this danger to their livelihood and comforts, thousands upon thousands of persons gave their political support to economic and political theories which they regarded as inimical to the American people. All these persons have lost that ines-

timable possession, a free mind. They would rather be well-fed than free. They would rather continue to be comfortable economic serfs than make some sacrifices to mitigate or end their serfdom.

Probably the most powerful instrument of the indirect decline in American political liberty is what in recent years we have come to know as "propaganda." During the War, its technique was developed to a state of efficiency undreamed of previously. Since the War, it has been carried to still higher stages of diabolical perfection. No better description of the spirit and effect of propaganda has been given than the following from the pen of John A. Hobson:

"It implies a wholesale planting of news or opinion on a contagious mind by a common method, in which there is little or no regard to the personal make-up of the recipient. Propaganda posits the herd-mind, susceptible, receptive, uncritical, and unresisting." [1] Obviously, the strength of this terrible weapon varies directly with the amount of pecuniary resources devoted to its use. In the United States, the masters of industry who are, for the time being, likewise the masters of politics, are able to command unlimited amounts of money, and consequently unlimited quantities of propaganda, particularly through the newspapers. The effectiveness of propaganda thus financed and organized, has been demonstrated over and over again in assaults upon economic and political freedom in the last five or six years. The most conspicuous instance was the adoption by Congress of the income and inheritance tax rates advocated by Secretary of the Treasury Mellon. Although these measures were frankly designed to favor the rich, and although their weaknesses had been exposed by substantially every economist who considered them, they received at least the tacit approval of the American people, in consequence of three years of contin-

[1] *Problems of a New World*, p. 76.

uous newspaper propaganda. The history of these fiscal measures exemplifies and justifies completely what Mr. Hobson says about the effect of propaganda upon "the herd-mind, suggestible, receptive, uncritical and unresisting."

Conceivably, the process of destroying political liberty by indirection could go on until the substance itself had disappeared. If this stage in our declining liberties is ever reached, the principal instrument will have been propaganda. Its evil potencies were not overstated by Sir James Bryce: "That dissemination by the printed word of untruths and fallacies and incitements to violence, which we have learned to call propaganda, has become a more potent influence among the masses in large countries than the demagogue ever was in the small countries of former days." [1] And the evil has been enormously increased by the fact that the "demagogues" of propaganda attain their ends by the use of money and the printing press in place of their vocal organs.

We have passed in review the principal phenomena in the decline of three distinct kinds of liberty. In this downward process, the economic factor outweighs by far all the other factors combined. It is the supreme factor in the diminution of both economic liberty and political liberty, and its influence is only slightly less in the decline of civil liberty. The economic factor underlies the exclusion of the Karolyis and the laws against criminal syndicalism. Nor has it been entirely absent from the prohibition legislation. The dominant white people in the Southern states and many of the prominent employers in every part of the country wanted the liquor traffic outlawed, so that they could have a better assurance of continuous and efficient service from their employees.

The injury to our civil liberty has not yet become grave nor threatening. It may be only a temporary phenomenon.

[1] *Modern Democracy*, p. 460.

On the other hand, it may grow and become permanent if the dominant economic interests can see their way to supplement the laws against criminal syndicalism by legislation against "radicalism." As regards the decline in economic and political liberty, all the signs of the present time forbid us to hope for an early termination. As we survey present conditions and the unmistakable trend of political and economic forces, we find a good deal of reason to fear that history is about to repeat itself. After more than three centuries, there approaches a return to feudalism. In the Middle Ages, feudalism was based upon military force and the ownership of land. The new feudalism is political and industrial. Not improbably it will be more or less benevolent. The lords of industry will realize, at least for some little time, that their position and profits will be more secure if they refrain from the cruder and coarser forms of injustice, and permit the dependent classes, both urban and rural, to obtain a moderate share of the products of industry. The masses will probably enjoy a slightly higher degree of economic welfare than has ever been within their reach before. But they will enjoy it at the expense of genuine freedom. They will have surrendered the right, which was once universal in America, to determine their own economic lives. They may not accept this loss of freedom with complacency, but their protests will be feeble and ineffective. The mind of the masses will have become servile. Possibly that is the kind of society that we want in America, but it is not the kind that made and kept America free.

Appendix. Freedom of Speech

Is there a right to complete liberty of expression? "It is hardly necessary to say that there can be no such right as this if it be not used in moderation, and if it pass beyond the bounds and end of all true liberty." Thus wrote Pope

Leo XIII in his Encyclical on *Human Liberty.* In the *Christian Constitution of States* he declared that unlimited liberty of thinking and of publishing "is the fountain head and origin of many evils."

The logic of the Pope's argument is unassailable. Speech and writing are not ends in themselves. They are only means to human welfare. The chief constituents of welfare are virtue and truth; the chief obstacles, vice and error. Any action or institution which exposes men to these evils is contrary to human welfare, and so far as possible should be prohibited by the state. If it is wrong to practice polygamy or industrial sabotage, it is likewise wrong to advocate the theories that support and provoke these actions. A man has no more right to say what he pleases than to do what he pleases. There is no peculiar sacredness inherent in the manipulation of the vocal organs, nor in the written or printed page.

All this is too evident to need formal statement. Why, then, are men—in modern times probably the great majority of men—such thorough believers in freedom of expression? There are four main reasons or arguments.

The first is that such freedom is among the individual's natural rights. But natural rights are only means to some rational end. Freedom to utter doctrines which are false and injurious to human welfare is not a rational freedom, since the end which it produces is irrational. Consequently, there exists no such natural right any more than there exists a natural right of a manufacturer to adulterate food.

The second argument maintains that in certain departments of thought the difficulty of distinguishing between truth and error, or between a socially beneficial and a socially harmful doctrine, is so great as to render the attempt to repress wrong opinions and teachings more productive of harm than good. In politics and industry the task of

separating truth from error is, indeed, extremely difficult. There exists no infallible authority or institution to perform this service. Nevertheless there are certain fundamental economic and political principles which every government assumes to be essential to good order and the welfare of the people. Among these are the doctrine that changes in the form of government should not be effected by force, and that industrial betterment must not be pursued by means of the destruction of property. Since actions of this sort are inadmissible, the advocacy of them is likewise improper and unjustifiable.

The third reason adduced is in some measure a corollary of the second. Since truth cannot readily be distinguished from error beforehand, all opinions should be permitted to prove themselves by the method of competition. In this contest between what is true and what is false, the former will "ultimately" triumph. The insuperable objection to this method lies in the word "ultimately." The injury done to the bodies and souls of millions of men through the unrestricted propagation of false opinions during hundreds of years is scarcely offset by the fact that in the long run these doctrines will have become discredited.

In the fourth place, unrestrained freedom of expression is defended on the ground that it is the smaller of two evils. To expose the minds and souls of men to wrong doctrine is deplorable, but to provoke continual strife by attempting to repress it is frequently a greater calamity. This is a sound practical rule. Moreover, the public repression of any beyond the obviously harmful political and economic doctrines is frequently unjust and always of doubtful justice, since it is impossible to determine with certainty whether the proscribed views are really erroneous and socially injurious. Again, it is extremely difficult to frame legal prohibitions of expression which cannot by adminis-

trative abuse be carried much further than the intentions of the lawmakers.

It is here that the extreme advocates of free speech are practically right. Their general theory is unsound, but their opposition to the applications of the correct doctrine which have recently been made and attempted, is fully justified. While a law forbidding men to advocate the overthrow of our political institutions by force would not be a violation of reasonable liberty of speech in principle, it would inevitably become so in practice. The danger lurks in the elasticity of the language of any such law, and the possibility which it would afford to administrators, judges and juries to interpret so as to punish men who had not really advocated violent revolution in any vital sense. The history of the last few years shows that it is very easy for narrow-minded and excitable officials to construe as violently revolutionary certain loose utterances which have no such definite meaning in the mind of the speaker.

There is one clear distinction between wise and unwise interferences with freedom of speech in political and economic discussion. It was emphasized by Governor Smith in the memorandum which he wrote when he pardoned Jim Larkin. The violent overthrow of government may be advocated in general terms to be accomplished in the indefinite future; or it may be advocated to begin at once, in the form of certain specific actions, such as throwing a bomb at a policeman or destroying a public building. Utterances of the former kind involve no immediate or perceptible danger to the public welfare. They are little more than long-distance prophecies. Laws which prohibit them are entirely unnecessary and are peculiarly liable to tyrannical abuse at the hands of ignorant, hysterical, or overzealous prosecuting officials. On the other hand, printed or spoken utterances of the latter kind, which incite to specific acts of vio-

lence at a definite time and place, occur very rarely and can be adequately met without the aid of such elastic and despotic statutes as the anti-syndicalist laws of California and Massachusetts.

The practical conclusion that seems to be justified is this: except in the case of a few fundamental principles which scarcely anyone questions, complete liberty of speech and writing, within the limits of public decency, should be permitted and protected in the domains of politics and economics. Here the theory of competition is correct, and to permit truth and error to contend for supremacy in the marketplace of discussion is the lesser of two evils.

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II

THE MORAL ASPECTS OF NATIONAL PROHIBITION

THE extensive violation of the Volstead Act is notorious. One can accept this proposition without agreeing with the extravagant criticisms which are frequently made by the opponents of the prohibition laws. Undoubtedly, the amount of the violations and their extent geographically and through the various social classes are considerably exaggerated by newspapers and persons who live east of the Ohio River and north of the Potomac. Nevertheless, the disregard of the law is sufficiently numerous and sufficiently serious to constitute a national scandal, and to have notably weakened the popular respect for law in general.

The volume and the nature of these illegal practices clearly imply that a considerable proportion of the people do not feel under any moral obligation to observe the provisions of the Volstead Act. It is scarcely probable that the majority of the violators are in bad faith. Probably most of them do not believe that they are committing a moral wrong. Moreover, there seems to be a very large number of persons who, for one reason or another, observe the law and yet do not regard it as binding in conscience. Still another large group is in doubt.

Evidently the extent to which any law will be observed depends very greatly upon the attitude toward it of persons who accept the general proposition that civil laws have moral validity. If all who profess this general principle extended it to the Volstead Act, the violations would be much less

frequent than they are to-day. Those who accept the general principle that civil laws are morally binding, and yet disregard the prohibition enactments, ought to give valid reasons for making this exception. Those who are in doubt concerning the obligatory force of the prohibition statutes ought to seek authoritative guidance in order to resolve their doubts. As a matter of fact, the members of the former class rarely, if ever, offer a reasoned or convincing justification of their position; while the members of the latter group would probably experience difficulty in obtaining authoritative and unhesitating guidance.

The present paper does not profess to provide a completely satisfactory solution. All that it endeavors to do is to examine the whole situation in the light of recognized moral principles, and to draw such conclusions as seem to be justified. In the deplorably unsatisfactory condition of the public mind with regard to the moral aspects of prohibition, the most urgent need is candid and adequate discussion.

It is the teaching of the Catholic Church that civil laws have genuinely moral force; in more familiar language, that they bind in conscience, that to disobey them is sinful. Of course, there are exceptions, but this is the general doctrine. It is based upon both the law of nature and the law of Revelation.

According to the natural law, civil society, or the State, is necessary for human welfare. One of the principal ways in which it promotes human welfare is through legislation. Therefore, laws are necessary for the common good. But they cannot attain this end, cannot promote the common good, unless they are observed. Hence, the members of civil society are morally bound to accept and obey them.

The revealed basis of the Church's teaching on this subject is most definitely expressed in the thirteenth chapter of

St. Paul's Epistle to the Romans: "Let every soul be subject to higher powers: for there is no power but from God: and those that are, are ordained of God. Therefore he that resisteth the power, resisteth the ordinance of God. . . . Wherefore, be subject of necessity, not only for wrath, but also for conscience' sake."

This fundamental Christian doctrine finds the following expression in the Pastoral Letter of the American Hierarchy, issued in 1920:

"The true remedy for many of the disorders with which we are troubled, is to be found in a clearer understanding of civil authority. Rulers and people alike must be guided by the truth that the State is not merely an invention of human forethought, that its power is not created by human agreement or even by nature's device. Destined as we are by our Maker to live together in social intercourse and mutual coöperation for the fulfillment of our duties, the proper development of our faculties and the adequate satisfaction of our wants, our association can be orderly and prosperous only when the wills of the many are directed by that moral power which we call authority. This is the unifying and coördinating principle of the social structure. It has its origin in God alone. In whom it shall be vested and by whom exercised, is determined in various ways, sometimes by the outcome of circumstances and providential events, sometimes by the express will of the people. But the right which it possesses to legislate, to execute and administer, is derived from God Himself."

As intimated above, the rule that civil laws are morally binding is not without exceptions. Is the prohibition legislation among the exceptions? There are two possible grounds for answering this question in the affirmative. First, the legislation exemplifies what the moralists and canonists call "purely penal" enactments; second, it is unjust

and, therefore, to quote Thomas Aquinas, "only a species of violence." Let us examine at length both these suppositions.

A. Is the Legislation "Purely Penal"?

According to the received definition, a "purely penal" law is one which does not create moral obligation directly and absolutely. It binds only hypothetically, or conditionally, or disjunctively. That is to say, it obliges the subject, or the citizen, either to observe its provisions, or to submit voluntarily to the penalty enjoined for their violation. The subject is obliged either to obey the law or to accept the punishment. Only the penalty, therefore, is of direct and absolute obligation. Hence, the designation, "purely penal."

The enactment of such a law would undoubtedly be a rational exercise of legislative power. If he thought it wise, the legislator could pass a law carrying this conditional and disjunctive sort of obligation. For the obligatory force of a law, as well as its object and scope, are within the authority of the legislator. If he thinks it better for the community to enact a "purely penal" law, he may reasonably exercise that discretion.

The important question, however, is whether our legislators do pass such peculiar laws, and whether our prohibition legislation exemplifies them.

The general question has received considerable discussion by canonists and, particularly, by moral theologians. As in many other cases, the discussion has given rise to extreme views. A few authorities assert that there never has been and never can be such an ordinance as a "purely penal" law. At the opposite extreme are those who maintain that all contemporary civil laws are of this character. Their contention is that modern legislators do not advert specifically to the moral aspect of law and, therefore, do not intend their enactments to be binding in conscience. This argument is

rejected by substantially all moral theologians, on the ground that the legislator does not need to have such a positive intention in order to make his laws morally obligatory. It is only necessary that he should intend to enact a genuine law. Such a purpose contains the *implicit* intention of binding in conscience. Unless, therefore, the legislator especially disclaims a purpose to make the law binding morally, he must be assumed to have this intention. As a matter of fact, modern legislators generally desire their enactments to have all the force that is within the realm of possibility. They are quite willing that the physical penalties which they attach to the statute should be reënforced by the consciences of the subjects.

Occasionally, however, appeal is made to the authority of moral theologians in support of the proposition that our prohibition laws are "purely penal." It has been said that the three moral theologians whose works are best known in the United States have held that our civil laws come within this category. Hence, the prohibition legislation does not affect anybody's conscience except to require him to pay his fine or go to jail in case he is caught and convicted. This sounds like a joke. To be morally obliged to refrain from doing something which the sheriff or the policeman will almost inevitably prevent one from doing, cannot be a very heavy burden upon one's conscience. At any rate, the sufficient answer to this contention is that neither Sabetti, nor Konings, nor Kenrick has been guilty of the extraordinary views attributed to him in this matter. Let anyone who doubts this statement, read for himself the pertinent declarations of these three authors.

The authority of Blackstone is sometimes invoked for the conclusion that the laws of England, and, by inference, those of the United States, are "purely penal." It is true that the great jurist attributes this character to *some* of the

laws of his country, such as "the statutes for preserving game," and those forbidding the exercise of "trades without serving an apprenticeship thereto," and, in general, those which are of such a kind that "the penalty inflicted is an adequate compensation for the civil inconvenience supposed to arise from the offense." On the other hand, he explicitly declares: "Where disobedience to the law involves in it also any degree of public mischief or private injury, there it falls within our former distinction and is also an offense against conscience."[1] Evidently our prohibition legislation is within the class of laws described in the last sentence. It is certain that the authority of Blackstone cannot properly be invoked to support the assertion that the prohibition laws are "purely penal."

Another unreliable criterion that is sometimes laid down for judging whether laws are "purely penal" is the attitude of the people. A very few theologians who lived in other conditions of law and lawmaking, held that popular *acceptation* of a civil law was necessary for its validity, but this view never has been the general Catholic teaching. The mere fact that the people do not like a law, or that they would like to have it apply only partially, or with restrictions and exceptions, does not annul its binding force, nor release the people from their obligation in conscience.

What authority has the popular attitude, as manifested through *custom?* No value at all in relation to the prohibition laws. According to the canonists and moral theologians, popular custom can create a new law or nullify an old one only by observing certain conditions. Of these conditions we need to consider only three in relation to the prohibition legislation. The first is that the custom must represent the habitual practice of the "majority" or the "more important" part, or the "saner" part, of the community.

[1] *Commentaries,* vol. I., sec. 58.

Possibly this condition has been realized in the violation of the prohibition laws. However, it is not necessary to decide this question, since the other two conditions have not been verified. The first requires that the nullifying custom should continue without interruption for ten years, while the second specifies that the custom have the consent of the legislators. As yet there is no indication of any such consent on the part of Congress.

In the theory of customary law, the last-mentioned condition is the most vital of all. Since all law derives its validity from the will of the legislator, his consent, or acquiescence, is essential to every custom that seeks to have the force of law. He may, indeed, give his consent tacitly, by not opposing the development and prevalence of the custom. So far is this condition from having become actual in the case of the prohibition legislation, that the exact contrary is the fact. The legislature not only does not consent to the customary violation, but positively and emphatically opposes it and seeks to enforce the law.

Finally, we have to consider the theory that a law may be construed by popular *interpretation.* One form of this theory would assert that whenever the people think that a law is "purely penal," or not binding in conscience, then it is of that character. This conception is entirely too simple and too easy. Moreover, it is not held by any authority, either in canon law or in theology. The authorities that assent to the theory, understand it in a much more restricted sense. According to their view, the people may sometimes become the authoritative interpreter of the *mind of the legislator.* This means that when there is doubt as to whether the legislator intends the law to be binding in conscience or to be "purely penal," the people may solve the doubt by giving the law the latter interpretation. Accordingly, it is the will of the legislator, not the will of the people, that is

taken as authoritative. The people merely interpret the legislator's will, in the absence of any more definite indication.

Even thus formulated, the theory is not as decisive as it sounds. There is a very important reservation. As distinctly specified by the authors who hold the theory, the people may not interpret a law as "purely penal" unless it is of such a character that the good which it seeks to attain will be reached as well if it is regarded as "purely penal" as though it were held to be binding in conscience. When the law is of this nature, it is a reasonable assumption that the legislator does not care whether the people regard it as morally binding, or whether they are merely affected by fear of its penalties. Of themselves, the penalties will be an adequate sanction to the law, partly because of their deterrent influence upon would-be violators, and partly because their enforcement will bring to the community a benefit equivalent to that which it would have received had the law been observed. Probably the best example of this situation and this kind of law is our protective tariff. Conceivably, the amount of money collected in penalties from smugglers might equal the amount that would be obtained if the tariff duties had been fully and faithfully paid.

As we have seen above, this is the criterion of a "purely penal" law laid down by Blackstone. It is likewise the criterion used by Kenrick, Bouquillon, Noldin, and so far as I know, the overwhelming majority of moral theologians.

The Rev. A. Vermeersch, S.J., submits a slightly different criterion. All civil laws are "purely penal" except those which cannot be thus accepted by the people without endangering the common good.[1] In this statement the common good, or general welfare, is substituted for the special

[1] *Theologia Moralis,* vol. I, no. 253.

good sought by the law that is in question. It is not improbable, however, that the two formulations are identical in meaning. Possibly Vermeersch's "common good" takes in no more than the other writers have in mind when they speak of "the end sought by the law." In any case, Vermeersch's formula does not mean that only those laws bind in conscience which are necessary for the common good. In this interpretation laws which are not strictly necessary but merely useful, are destitute of moral obligation. Were that principle generally accepted it would open the way to an amount of lax observance of laws which would be gravely detrimental to public order and public welfare. The test applied by Vermeersch is not the necessity of the law but the necessity of having it generally accepted as morally obligatory. Such a law, he says, is not "purely penal."

Judged by this test, the Eighteenth Amendment is not "purely penal." Neither the common good nor the specific end of this organic law can be adequately attained if there exists a general conviction that the Amendment does not bind in conscience. As things are, the penalties attached to it have by no means destroyed the liquor traffic nor promoted adequately the public welfare. The main reason for the widespread violation of the Amendment is that a very large part of the people does not look upon it as morally binding. Were *all* the people to adopt this view conditions would be vastly worse.

It is occasionally asserted that if all the members of Congress had voted according to their honest convictions the proposal for the Eighteenth Amendment would never have been submitted to the states for ratification nor would the statute have been enacted which bears the name of Volstead. This charge raises the question of legislative intent, but it is not specifically the question which applies to laws which are designated "purely penal." The question here

presented is not whether the legislators intended to make the law binding in conscience, but whether they intended to make any genuine law. According to the contention now before us, many Congressmen voted for the Eighteenth Amendment and for the Volstead Act solely from fear of the "prohibition lobby" and out of regard for the desires of their constituents. Had these men voted according to their honest convictions the prohibition enactments would have failed to receive the necessary majorities.

If this charge were true and if those who supported the legislation from motives of political fear had the explicit intention of not enacting a valid law, there can be no doubt that the prohibition enactments would be destitute of moral validity or moral obligation. But it is impossible to prove either hypothesis. No one can know whether the number of legislators who supported either the Amendment or the Volstead Act out of cowardice was sufficient to have defeated the legislation if they had voted unfavorably. Even were we assured that they were thus numerous we cannot be certain that they explicitly rejected in their own minds the idea and the intention of making a valid law. It is not uncommon for legislators to support measures desired by their constituents which they do not themselves approve. Nevertheless, they generally regard such enactments as genuine and valid. For all we know, the insincere supporters of the prohibition measures might have had the same general and virtual intention of enacting real laws.

In the absence of specific and adequate evidence, the presumption is entirely against the hypothesis that the prohibition legislation is invalid on account of the alleged bad faith of some of its congressional supporters.

B. Is the Amendment Unjust?

In order to discuss the matter adequately and to arrive at

accurate conclusions, we shall have to distinguish between the Eighteenth Amendment and the Volstead Act. While both of these enactments are parts of the prohibition legislation, they differ from each other in certain features which have important moral aspects.

In substance, the Eighteenth Amendment prohibits the manufacture, sale, transportation, importation, and exportation of intoxicating liquors for beverage purposes, and it gives Congress and the several States concurrent power to enforce these prohibitions. The Amendment, therefore, not only empowers Congress and the States to enact prohibition laws, but it draws the lines within which this prohibitory legislation is to operate. In other words, it lays down rather definitely the Government's prohibition policy.

From the history of the prohibition movement, from the political agitation and processes which culminated in the ratification of the Amendment, and from the language of the Amendment, it is fair to infer that the policy was directed primarily and principally at the *abuses* attendant upon the consumption of intoxicating liquors. What the Amendment makes illegal is not liquor drinking, but the liquor traffic. It outlaws the manufacture, sale, and movement of intoxicating liquors.

Is this an unjust enactment? Is it an immoral interference with the liberty of the individual? The various restrictions upon the traffic which were found on the statute books of the states, such as those defining the hours during which liquor might be sold and prohibiting sales on Sunday, were all interferences with the opportunity of the individual to buy intoxicating drink. Yet no one ever seriously contended that they constituted unjust interference. They were universally recognized as justified by considerations of the social welfare. Was the injury to social well-being by the liquor traffic sufficient to justify that further restriction upon

the liberty of the individual which is involved in total prohibition of the traffic?

Undoubtedly it was justified if there existed no other way of meeting the evil. For the right of the individual to acquire intoxicating liquor by purchase is a conditional and limited right. It is not absolute, like the right to life or the right to marry. With the exception of the right to life, all rights are means to ends. Hence, their validity and scope are determined by the ends which they serve. Now the end which is served by the right of easy access to such a consumable article as intoxicating liquor is not essential to life or self-development. At best, the consumption of alcoholic drink makes life at times more agreeable.

Therefore, legal abolition of the opportunity to obtain intoxicating liquor in an open market does not destroy any primary good of the individual. It does not abolish any of his necessary liberties. Hence it does not *necessarily* violate a natural right. While the individual has a natural right to many actions which are not indispensable to his welfare, such rights are not unlimited nor indefeasible. Both in scope and in essence they are conditioned by the welfare of one's neighbors and of society. Such rights are natural and congenital in the sense that they are not originally derived from and may not be *arbitrarily* disregarded by the State. For sufficient reason, however, they may properly be restricted, suspended or even abolished. Hence we have quarantine regulations and laws forbidding firearms to be sold to the public, or to be concealed on one's person, or exploded on the streets. No one contends that such interferences with individual liberty are a violation of natural rights.

Failure to observe the limited character of the natural right to obtain and consume intoxicants, leads to confused thinking and naïve exaggeration by extreme opponents of

prohibition. Failure to keep in mind the proper limitations of State interference leads many prohibitionists into equally grave confusion of mind and exaggeration of statement. The former lay too much emphasis upon the individual rights of the drinker. The latter overstress the welfare and rights of society. They assert that since the State may properly forbid a person to fire off a gun in a public assembly, it is justified in abolishing public liquor shops. In both cases it endeavors to protect the community against the evil results of individual freedom.

The fallacy in this illustration is obvious. It consists in ignoring entirely the *degrees* of public injury and of individual inconvenience. According to this logic the State would be justified in abolishing automobiles. Indeed, this line of argument would authorize the State to prohibit *any* social institution or *any* individual practice which caused *any* injury to society!

The correct principle may be stated in some such terms as these: a right which is not necessary for individual welfare, but merely useful, may be denied by the State for a proportionately grave reason of social welfare. What is "a proportionately grave reason?" This question cannot be answered in precise terms. It is a question of moral estimate, of human approximation. The only general answer possible is that when the evil consequences to the community from the exercise of a merely useful individual right are so great as to render this individual liberty unreasonable, the right may lawfully be suppressed.

In view of the manifold and grave evils of the liquor traffic, I think that its abolition need not have been an unreasonable interference with individual rights or liberty. While neither I nor the legislators could *prove* this proposition, the latter were not required to possess certainty. They were justified in legislating on the basis of a high degree

of probability. Any other rule would render adequate civil legislation impossible. If legislators were required to be absolutely certain of the moral goodness of proposed enactments, they would be compelled to refrain from dealing with many situations in which some kind of legislative action is necessary for the common good.

Nevertheless, the general proposition laid down at the beginning of the last paragraph is subject to two conditions: first, that national prohibition is the only adequate method of dealing with the liquor traffic; second, that it is capable of a reasonable degree of enforcement.

A very large proportion of Americans believe that the first condition has never existed in the United States. According to some, the evils of the liquor traffic could have been adequately met by better state and municipal regulation and local and state prohibition, which for many years previous to 1918 had been steadily and even rapidly spreading over the country. According to others, these measures would have sufficed in conjunction with the plan which has for several years been operating in Quebec. As applied in the United States, this arrangement would call for the manufacture and sale of intoxicants by the Federal government in all regions not having state or local prohibition.

This position is considerably strengthened when it is viewed in the light of the second condition mentioned above. Probably, the majority of those who oppose national prohibition maintain that it is not only theoretically inferior to better regulation and partial prohibition plus the Quebec plan, but that it is hopelessly inferior practically, since it is "not capable of a reasonable degree of enforcement." Not a few assert that the net results of national prohibition are worse than those flowing from the saloons that we knew before the year 1920. All of them are convinced that the evils of national prohibition as it is enforced, or capable of

enforcement, are greater than would be those resulting from better regulation and state and local prohibition combined with the Quebec plan.

With the latter part of this position I am in agreement; that is, I believe that better regulation and state and local prohibition plus the Quebec plan, constitute a better method of dealing with the liquor traffic than national prohibition. But I had no such conviction in the year 1920. At that time I had not heard of the Quebec plan, nor could I have realized the enormous difficulties and evils involved in the attempt to enforce national prohibition. Assuming that the legislators who are responsible for the Eighteenth Amendment were similarly uninformed and inconsiderate, we may properly hold that they were morally justified in adopting this measure. Just as legislators are not required to be absolutely certain that a proposed enactment does not violate individual rights, neither are they required to be absolutely certain that it is the only adequate means or the best means of dealing with the situation. Provided that the measure in question is not in itself immoral, legislators have a right to adopt it at their discretion. They have not only the duty of safeguarding the public, but the right to choose the means which to them seem best. The presumption is that their choice is a wise one. Congress chose the way of national prohibition at a time and in circumstances when there was sufficient reason to persuade a prudent man that the method was expedient and reasonable. Hence the Eighteenth Amendment was morally valid, just and obligatory at the time when it was adopted.

Six years of experience with the legislation have changed its moral aspect. There is now grave reason to doubt that the conditions necessary to justify this degree of interference with individual rights really existed. The degree of success which attended state and local prohibition prior to

the national legislation, the degree of success achieved by the Quebec system, and the degree of failure which has characterized the attempt to enforce national prohibition, constitute sufficient evidence to warrant a reasonable and prudent man in holding that the Eighteenth Amendment was an unnecessary, unwise and unjust enactment.

That is my own deliberate opinion. But I hold it as an opinion only. The evidence for it is not sufficient to generate moral certainty. Therefore, I am not justified in asserting that the Eighteenth Amendment is not binding in conscience. In these circumstances I am obliged to abide by the general principle laid down by Catholic moralists, as well as by reason and common sense. It runs thus: when the invalidity, or injustice, of a law is not morally certain, but merely doubtful, the doubt must be resolved in favor of the law. For "presumption is on the side of the law," not on the side of the doubter. On the other hand, anyone who not merely *thinks* but feels *morally certain* that the case against the Eighteenth Amendment is sufficient to render it morally invalid, is obviously justified in regarding it as carrying no moral obligation. But no prudent man will permit himself to draw this conclusion until he has carefully and conscientiously examined all the evidence.

Another way of judging the moral status of the Eighteenth Amendment is by referring it to the principle that "a law ceases to bind when it no longer attains the end for which it was enacted." However, this method brings us to the same conclusion as the argument in the preceding paragraph. Unless one feels morally certain that the Amendment has failed to achieve its purpose, one must give it the benefit of the doubt and of the favorable presumption. The presumption can, indeed, be overthrown by facts, but the sufficiency of the facts must be a matter of moral certainty. In my mind the facts produce only an opinion, albeit

a very strong one, that constitutional prohibition has failed to do what it must do in order to justify itself, namely, abolish the evils of liquor drinking to a greater extent than would any other form of legislation. Nor do I believe that it will be more effective in the future. This, too, is with me an opinion, not a morally certain conviction.

Nevertheless, my unfavorable opinion of the Eighteenth Amendment is strong enough and clear enough to enable me to state exactly what I think Congress ought to do about the awful mess. Congress should at the earliest opportunity adopt the proposal for a Constitutional amendment introduced in the Senate a few months ago by Mr. William Cabell Bruce:

"Subject to present prohibitory provisions in the constitution of any state, and to laws heretofore or hereafter enacted in pursuance thereof, so long as said provisions or laws shall respectively remain in force, the Congress shall have the exclusive power, with such enforcement aid as may be lent it by any State and be accepted by it, to regulate, but not to prohibit, or unreasonably restrict, the manufacture, sale, transportation, importation or exportation of intoxicating liquors; including the power, in its discretion, exclusively to undertake and conduct, manage and control the manufacture, sale, and distribution of such liquors; but, with the approval of a majority of the voters in any county, parish, or incorporated city or town, in any state, upon which this article shall at the time be operative at a special election, held for the purpose, the legislature of such state shall have the power to prohibit the manufacture, sale, or distribution of intoxicating liquors within the limits of such county, parish, or incorporated city or town.

"The Congress shall be empowered to enforce this article by appropriate legislation."

C. The Volstead Act

The Volstead Act is the law which Congress passed to carry out the policies of the Eighteenth Amendment. Those of its provisions which prohibit the manufacture for commercial purposes, the sale, the importation, exportation, and transportation for commercial purposes of intoxicating liquors to be used for beverage purposes, are undoubtedly fully authorized by the Eighteenth Amendment. Hence they enjoy the benefit of those presumptions of validity which have been described above. However, the Act includes other provisions which are not embraced in the terms of the Amendment. These additional restrictions prohibit the possession, manufacture, or transportation of liquor for personal use; forbid a person to give away liquor, even to his friends, for beverage purposes, unless he obtained it before February 1, 1920; define all liquor containing more than one-half of one per cent alcohol as intoxicating; and declare that the mere possession of liquor "shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title."

The first two of these provisions are undoubtedly a violation of individual rights. The third is an arbitrary contradiction of the facts concerning the capacity of alcohol to cause intoxication. The fourth is a tyrannical rule of interpretation and administration.

Why do we say that the first two of the provisions noted in the second last paragraph are an unjust interference with personal liberty? Because individual drinking of intoxicating liquor is in itself neither morally wrong nor an injury to society. The same statement is true of individual actions which are subsidiary to or closely connected with, the act

of drinking, namely, making liquor for one's own use, transporting it for one's own use, and sharing it with one's friends. Whether the benefit which the individual derives from consuming intoxicating liquor is of much or of little value, whether the satisfaction that he obtains from the practice is genuine or illusory, are questions which have no rational bearing upon the subject. So long as individual drinking, and the other acts just specified, do not interfere with public peace and order, they may not be forbidden by the State. Their prohibition cannot rightfully be made an end which the civil law seeks to attain. Such an end is beyond the legitimate province of public authority.

Nor do these provisions tell the whole story of the additions made to the Amendment by the Volstead Act. In one of its early sections, we find this remarkable language: "All the provisions of this Act shall be liberally construed to the end that the *use* of intoxicating liquor as a beverage may be prevented." This is a new declaration of policy. So far as I know, the policy here laid down, the supreme end here set forth, is neither expressly nor implicitly contained in the Eighteenth Amendment. In the sentence just quoted, the policy is announced, not merely of outlawing the liquor traffic, but of preventing all consumption of liquor as a beverage, by all persons, regardless of the moderation with which they use it, or the manner by which they obtain it, unless it came into their possession before the fatal date, February 1, 1920. In other words, it is a policy that can be justified only on the theory that the consumption of intoxicating drinks, is, in itself, legally, if not morally, wrong. The insinuation of this theory into our prohibition legislation has been responsible for many of its tyrannies and futilities.

Nor is this a full statement of the excesses embodied in the sentence quoted above. That sentence not only lays down an extreme theory concerning the propriety of consum-

ing intoxicating liquor, but enunciates a wrong and tyrannical principle for the administration of law. One finds in Blackstone the direct contrary of this. He declares without qualification: "Penal statutes must be construed strictly." [1] That is to say, laws which carry a penalty must be interpreted and administered in such a way as to inflict the minimum of inconvenience and hardship which is required by the penal provisions. In other words, the restriction upon liberty contained in the law must not be construed to include any more than the language necessarily compels one to include. This principle antedates Blackstone; it is older even than the common law. Canonists and moral theologians are familiar with it as expressed in the maxim, *"odiosa sunt restringenda."* That is, disagreeable regulations must be minimized. In flagrant contradiction of this ancient, reasonable, and humane principle, the Volstead Act deliberately enjoins that all its provisions shall be "liberally" construed; that is, that they shall be stretched to the utmost limit of which their terms are capable. Instead of being minimized, their odious and disagreeable features are to be magnified. The restriction upon individual liberty is to be made as great as possible.

This extraordinary and tyrannical principle of interpretation, together with the end at which it aims, namely the abolition of all consumption of intoxicating liquor, is apparently of profound significance for an adequate appreciation of the spirit which permeates the Volstead Act. The philosophy of the Act seems to be exposed in these two provisions. Apparently, they reflect the intolerant attitude and the false theory of the Anti-Saloon League, and of all persons who maintain that the drinking of intoxicating liquor is, in itself, morally wrong.

Let us now sum up the conclusions which emerge from

[1] *Commentaries,* vol. I, sec. 88.

the foregoing discussion. The prohibition legislation cannot be construed as morally invalid on the theory that it is "purely penal." The Eighteenth Amendment did not represent an unjust exercise of legislative power at the time of its adoption. Nevertheless, its moral validity seems to have been destroyed by subsequent events and developments. The latter proposition I hold as a reasonable opinion, as my best judgment, not as a morally certain conviction. Hence I must concede to the Amendment the recognized legal and moral presumptions. On the other hand, I have not now, nor at any time have I had the slightest doubt that certain features of the Volstead Act are neither morally binding nor morally valid.

These conclusions will not please all readers. Possibly no reader will accept all of them. The discussion was not taken up in order to please. My object has been to examine the whole subject in the light of Catholic moral principles and to ignore no conclusion which has the support of systematic argument and the apparent support of correct principles. Some of the conclusions may be wrong. It is even possible that most of them are wrong. But none of them can be overthrown by mere exclamations of impatience, or assertions of disagreement, no matter how emphatic. The conclusions can be refuted only by systematic and reasoned argument. If they will be thus overthrown, the outcome will be more pleasing to no one than to me. For my sole concern in the matter is to discover the truth.

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III

LIBERALS AND LIBERALISM

A FEW years ago, a very reactionary member of the legislature of my state professed surprise that I held what he was pleased to call "liberal views" in economics, while remaining conservative in religion; whereas, he maintained the opposite position under both heads. He was conservative where I was liberal, and liberal where I was conservative. A few months ago, someone asserted that I would be a good liberal were it not for my opposition to birth control. During the first three-quarters of the nineteenth century, the economic theories and policies which received the name of "liberalism" were distinctly and gravely injurious to the working classes. Although this economic liberalism has scarcely any followers now in Great Britain, it is still powerful in the United States. Many other illustrations might be given of the varied and puzzling comprehension of the words "liberal" and "liberalism" in politics, economics, religion, and other departments of thought and action. By some the terms are used as epithets of condemnation; by others, as honorable and praiseworthy designations.

In the following paragraphs, an attempt will be made to trace the identity of meaning which these terms bear in their most common uses and to formulate a reasonable conception of them.

According to the etymology of the word, a liberal is one who believes in liberty. Obviously, he qualifies the liberty to

which he holds by the word "rational." Quite as obviously, the person who refuses to be classed as a liberal does so because he regards the doctrine or attitude in question as irrational, or at least excessive.

The terms "liberal" and "liberalism" are frequently defined by their opposites. They are variously opposed to "conservative," "reactionary," "narrow-minded," "strict," "despotic," capitalistic," "socialistic," "prohibitionist," "authority," "law," and "obligation." Extracting the essence of all these terms, we find that it may not improperly be defined as *restraint,* provided that we understand restraint as moral or authoritarian, as well as physical. The liberal opposes the conservative because he regards the latter as too much dominated by the constraint of custom or established institutions, or ancient opinions and doctrines.

Liberalism may be conveniently applied to an attitude of mind, or a system of beliefs and principles. Under the former head, we think of the liberal man as tolerant, giving to others the presumption of sincerity, reasonable freedom of expression and reasonable opportunity in all the departments of life. Hence, no genuine liberal could be a member of the Ku Klux Klan. The liberal is open-minded toward proposed changes in systems and institutions, so long as they do not contradict necessary principles.

With regard to principles or opinions, liberalism calls for classification under several different heads. In political theory, the liberal is a democrat, that is, believes in representative government, and he is open-minded toward new democratic methods and institutions, such as proportional representation and the initiative and referendum. He rejects with impartial vigor the dictatorship of a Lenin and the dictatorship of a Mussolini.

With regard to governmental control of the individual, the liberal believes in natural rights and in the bills of rights

which form part of our state and Federal Constitutions. In his opinion, to permit a certain amount of irrational freedom of speech and printing is a lesser evil than to suppress all liberty of expression which the majority regards as unreasonable. Whether or not the liberal believes in prohibition of the liquor *traffic,* he detests those features of the Volstead Act which forbid the individual to make or to transport liquor for his own use, or to drink it in his own house or in the houses of his friends.

In the sphere of economic activities, the liberal of to-day sharply opposes the economic liberalism of the eighteenth and nineteenth centuries. According to that liberalism, government should keep its hands off industry and permit the fullest and freest competition among all persons and classes in the pursuit of economic advantage. To that liberalism, laws for the protection of labor were quite as distasteful as protective tariffs and interferences with the free movements of capital and capitalists. The present-day liberal regards this theory and practice as one-sided and destructive of genuine liberty. By giving complete liberty to all contenders in the economic struggle, it permitted the economically strong to oppress the economically weak. By giving universal freedom from governmental restriction, it deprived the weaker classes of protection against economic restraint imposed upon them under the guise of freedom of contract. The genuine liberal opposes all forms of unreasonable restraint, economic as well as political. His liberalism comprises not merely absence of political restraint, but presence of economic opportunity. Hence, he believes in many forms of labor legislation, and such restrictions upon the economically powerful as are necessary to prevent the exploitation of the weak. Even though actions of the latter kind are nominally free transactions and free contracts, they are abuses of freedom.

In education, the genuine liberal would permit all persons and classes to conduct schools and to enjoy full freedom of teaching in their schools, so long as nothing is done or taught which is contrary to the common good. On the other hand, the right-thinking liberal does not believe that any teacher in the public schools should be free to urge upon his pupils any doctrine he pleases. The men and women who claimed for young Scopes the right to teach anti-religious theories in the public high school which employed him, do, indeed, regard themselves as liberals. Nevertheless, the liberty which they claim is irrational. It would subject pupils to assaults upon their religious faith and violate the religious neutrality of the public schools. Such liberals demand the freedom to injure their fellows at the public expense.

The political acquaintance to whom I alluded at the beginning of this paper regarded himself as liberal in religion because he belonged to a denomination which has rejected some of the Christian dogmas which have come down from the past, and because he felt free from that subjection to authority which is required in the Catholic Church. His religious liberalism is opposed both to religious conservatism and religious authority. In this sense, all the Protestant denominations might be called "liberal," and those that believe the least and respect religious authority the least, might be accounted the most liberal. Whether this is a reasonable use of the word is another question.

With regard to religious doctrines in general, or the doctrines of any particular church, that person is a liberal who is inclined to enlarge freedom of belief and to restrict authority. That person is conservative who inclines to restrict freedom of belief and to extend the scope of authority. Obviously, the liberal may claim a liberty of thought or interpretation which is excessive, just as the conservative

may strive to impose upon himself or upon others a degree of obligation which is excessive.

A definition in a single sentence will take some such form as the following: a liberal is a tolerant person who is a democrat in politics, and who lays strong emphasis upon freedom in speech, in writing, in education, in theological opinion, in civil affairs and in economic opportunity for the masses. To be sure, this definition would cover excessive as well as moderate liberalism. It could be protected against that danger through the insertion of the word "reasonable" before the word "freedom"; but it would probably be no more useful nor enlightening as a result of that qualification. Every liberal regards his own brand of liberalism as reasonable. Nevertheless, the definition just given does distinguish the temper of the liberal from the temper of the conservative, and that is all that can be expected from a short descriptive statement.

Attention has been called above to the complete change which has taken place in the meaning of "economic liberalism." At the middle of the nineteenth century it signified freedom of economic activities from the restraints of civil law. To-day it indicates those measures, legislative and associational, which promote opportunity for the masses as against the encroachments of economic transactions and contracts. The old economic liberalism demanded freedom from public restraint; the new demands freedom from the restraints imposed by powerful private agencies. In order to obtain a reasonable amount of such freedom, the new economic liberalism is willing to invoke the restraints of legislation.

In his excellent answer over the radio to the question: "Can one be a Catholic and a liberal?" Rev. James M. Gillis, C.S.P., declared that "Catholics tend to the liberal side" in sociology, economics and politics, and referred to Pope

Leo's Encyclical on Labor and the Bishops' Program of Social Reconstruction as "liberal" documents. Undoubtedly, Father Gillis used the word "liberal" in the sense in which it is commonely accepted as descriptive of sociological and economic views and doctrines. That was the kind of thing that surprised my reactionary legislator acquaintance. He assumed that a conservative in religion ought also to be a conservative in economic policy. With equal logic—that is, with no logic at all—I might have retorted that he should have been a liberal in economics as well as a liberal in religion. The worst of the situation is that his mistake and confusion are not infrequently imitated by Catholics. Not a few Catholics assume that, because the Church is conservative in religion, it must take the conservative view in regard to changes in economic institutions and practices. To this fallacious reasoning, there are at least two strong replies: first, economic institutions do not enjoy the prerogative of infallibility, nor does mere age create an indestructible presumption in their favor; second, after all, the liberal economic views of Pope Leo's Encyclical and the Bishops' Program are more conservative than the views and politics to which they are opposed, for they go back in spirit and essence to the Middle Ages when, under the fostering care of the Church, the masses possessed an amount of economic freedom, economic opportunity and economic control which would be immensely distasteful to present-day adherents of economic conservatism.

When all is said, however, the terms "liberal" and "conservative" are of very doubtful value. The man who boasts that he is a liberal is very often an undiscriminating radical, while the man who boasts that he is a conservative is too often an unthinking reactionary. In every department of thought and action, the essential thing is to seek truth and justice, regardless of party names and facile shibboleths.

IV

AMERICAN LIBERALS AND MEXICAN TYRANNY

A. The Tyrannical Regulations

THE liberal elements of the American people have quite generally and quite properly denounced the destruction of Italian liberties by Mussolini. With a very few honorable exceptions, however, they have taken a different attitude toward similar assaults upon liberty by the existing Government of Mexico. Concerning the latter situation the majority of American liberals have been silent. A minority has expressed sympathy with the Mexican Government's denial of fundamental liberties, as a justifiable retaliation for the assumed opposition of the Mexican clergy to social and economic progress. Underlying the attitude of American liberals toward the present Mexican persecution there are, consequently, two assumptions, one of principle, the other of fact. Before dealing with these assumptions let me summarize briefly the provisions of the Mexican Constitution of 1917 which violate fundamental human rights and liberties, as these are understood and guaranteed in our own Federal and state constitutions. These prohibitions are all found in Articles III, V, XXIV, XXVII, and CXXX of that document.

1. *Religion.*—The ownership of churches is vested in the federal government, which reserves the right to determine which of them shall continue to be used as churches. No new place of worship may be dedicated without the per-

mission of the government. All acts of religion must be performed within the churches. Only civil marriages are valid. The legislatures of the states determine the maximum number of ministers of any creed. Under this provision one Mexican state has decreed that there shall be only one priest for each 30,000 inhabitants. In the United States the ratio is about one to 700 among Catholics and one to a very much smaller number among Protestants. Only Mexicans by birth can function as ministers of religion.

2. *Education.*—No religious corporation or clergyman may establish or conduct primary schools or institutions for scientific research or the diffusion of knowledge. All private schools are subject to official supervision. Under this constitutional provision, the Minister of Education for Mexico has recently issued regulations which prohibit in private schools the existence of altars or chapels or statues or any other objects of a religious nature, and which forbid any spiritual exercises or religious instruction.

3. *Association.*—No religious corporation or minister may establish or conduct institutions for the sick and needy or for mutual aid. Churches are not juridical persons and have no corporate rights. Religious vows, monastic orders, and convents are illegal.

4. *Property.*—Religious corporations are prohibited from owning not only churches, but bishops' residences, parochial rectories, seminaries, orphan asylums, collegiate establishments, convents, or any other building used for the purpose of a religious creed, or any kind of real estate. No clergyman may inherit property from religious or charitable associations, or from ministers of the same religious creed, or from any private individual to whom he is not related within the fourth degree of kinship.

5. *Speech and writing.*—No minister of religion may

criticize the fundamental laws, the authorities, or the government. No religious periodical may comment upon political affairs or publish anything concerning the political authorities of the country.

6. *Political action.*—No clergyman may exercise the electoral franchise or hold public office or take part in any political assembly.

7. *Due process of law.*—Presumptive proof that a church is holding property contrary to the law is sufficient for conviction. No person charged with violating any of the foregoing provisions of the Mexical Constitution may be accorded the right of trial by jury.

The first assumption underlying the tacit or explicit approval given by American liberals to these astounding violations of liberty is that they are excused, if not justified, by the conduct of the Mexican church. In other words, it is assumed that fundamental liberties may properly be destroyed in Mexico, although a similar action by state or Federal government in the United States would be intolerable and unthinkable. Obviously this is inconsistent with the principles of liberalism. All the rights which are denied in the foregoing summary are guaranteed without qualification in our American bills of rights. American liberals who attempt to justify the denial of these rights in Mexico seem to agree with the Constituent Association of Mexico which, in *The Nation* of March 31, excused the prohibition of freedom of education on the ground that the clergy had used their schools as "a weapon of propaganda against national institutions." That is precisely the argument used by those who brought about the enactment of the unconstitutional Oregon anti-private school law. If it were valid it would justify the suppression of every form of freedom of teaching and freedom of speech which was displeasing to any government or any political administration.

The assumption of fact relied upon by American liberals who defend those tyrannical provisions of the Mexican Constitution is supported by no specific evidence. No instances are cited of opposition by the Mexican church or clergy to political or social or economic reform measures undertaken by the Mexican Government. Such opposition, if it amounted to anything, would have to be manifested either in the form of pastoral letters by bishops or addresses by priests or organization of armed forces under the direction of bishops and priests. So far as I know, nothing in the nature of physical opposition has ever been charged against the Mexican clergy. Nor have I seen any pastoral letter or statement by a priest cited in proof of the general charge that the Mexican clergy have opposed the social or political reforms of the Mexican Government during the last half century. Even if the clergy had offered opposition by speech or writing, it would not, on the principles of liberalism, justify governmental denial of fundamental liberties.

B. The Unconvincing Explanations

Under the guise of revising the penal code of Mexico, President Calles promulgated June 14, 1926, a series of regulations and penalties for the enforcement of the anti-religious clauses of the Constitution of 1917. These prescriptions make no substantive addition to the Constitution itself. Some of them do little more than amplify its language. Probably their most notable feature is the extreme penalties imposed for their violation; for example, any minister of religion who advocates disobedience to the laws or to public authorities receives six years in prison and a heavy fine, while mere criticism of the authorities will bring a prison term of from one to five years. However, neither the regulations themselves nor the penalties which they include are of primary importance. They merely intensify

the situation which had been produced by the organic law They mark the determination by the government to enforce those constitutional restraints upon religion which had previously been carried into effect only in part and intermittently.

Every one of the rights which are destroyed by these provisions is not only respected in the United States, but is guarded against statutory infringement by our Federal and state constitutions. Religious activities which are matters of constitutional rights in the United States are specifically prohibited in the constitutional system of Mexico.

Why did the men who made the Mexican Constitution of 1917 insert these tyrannical prohibitions? Why is the present Mexican government carrying them into effect? Although I have read most of the answers to these questions which have been published in the last six months, I am unable to find any that is convincing. In the New York *Times* for August 1, President Calles attempts to justify both the constitutional provisions and his regulations for their enforcement. His defense is not even plausible. For example: he asserts that the regulation requiring registration of the churches with the local authorities was mainly for the purpose of "compiling statistics"; that foreign clergymen are excluded from the exercise of religious functions in the interest of "professional competency"; that the prohibition of religious services outside the churches was intended to prevent "constant political upheaval"; and that the abolition of monastic orders is not unreasonable, since these "are not indispensable to religion."

The defenses issued by other representatives of the Mexican Government are equally unconvincing. They contain plentiful references to the alleged failure of the Church to educate the Mexican people, plentiful charges that the Church has meddled in politics and a plentiful use of such terms as

"reactionary," "conservative," "stagnant," and "unprogressive" to characterize the attitude of the Mexican Church. But they cite no convincing facts. They scarcely pretend to submit evidence relating to the conduct of the Mexican Church during the last half century. It must be remembered that the present Constitution was written in the year 1917; yet its apologists cite no action of the Mexican Church or its ministers in recent years which gives even a plausible excuse for the anti-religious provisions. Occasionally the charge is somewhat vaguely made that these clauses were intended to protect the industrial and agricultural provisions of the Constitution against clerical interference. But no specific testimony is brought forward. No decent attempt is made to show that the Mexican Church opposed these economic proposals either before or after they were put into the Constitution.

Indeed, it is a fair question to ask what relation exists between economic reforms and the prohibition of religious instruction in primary schools, the ownership of churches, or any of the other anti-religious articles. Taken as a whole, these provisions clearly manifest the intention of crippling if not destroying the power and influence of the Church.

The explanations or palliations occasionally offered by American liberals are likewise lacking in cogency. In a recent address, which was in other respects not unsympathetic to the Mexican Church, the Rev. Hubert C. Herring declared that the conflict in Mexico was "between a forward-looking nation which is demanding new life and new hope and a Church that has settled down to a barren and dead conservatism which lacks social sympathy." This is a resounding mouthful of language, but in the absence of specific support it means absolutely nothing. Indeed, we may well doubt whether its author had any clear ideas in his mind which would give substance to this verbiage.

All the explanations of the persecution which I have seen offered by Catholics are similarly inconclusive. According to one Catholic authority, the Mexican politicians want to render the Church helpless so that they can with impunity steal and plunder from the state, from Mexican individuals, and from American owners of property in Mexico. This is entirely too simple. Like the general charges against the Mexican Church, it is not accompanied by a statement of specific facts. Other Catholics have suggested that the men responsible for the anti-religious clauses in the Constitution and for the present attempt to enforce them, are actuated by sheer hatred of religion. Now, hatred of religion for its own sake, independently of the actions or attitude of its ministers, is not an unknown phenomenon. Nevertheless it has been pretty rare in history, and no facts have been offered to show that it is general among the persecuting officials of Mexico. Finally, we are told that the explanation is to be found in the Communist doctrines held by the men who made the 1917 Constitution and their successors. This would be adequate if the majority or the dominant element in these groups were believers in Communism, but no convincing testimony is offered in support of the charge.

Therefore, I am still seeking a satisfactory explanation of the anti-religious clauses of the Mexican Constitution and the anti-religious persecution carried on by the Mexican Government.

What I know is that these things are contrary to all the principles of genuine liberalism. What I know is that, on the whole, American liberals have done themselves little credit in their attitude toward the unhappy situation in Mexico. The majority of them have been silent, or evasive, or false to the principles of liberalism. Prominent liberals have grudgingly conceded that the restrictions on clerical

freedom of speech and freedom of the religious press are indefensible; but they apparently see no violation of fundamental rights and liberties in that constitutional provision which compels a minister of religion to officiate in a building which the state may close at any time because it claims to be the owner thereof; or in the provisions which forbid clergymen to conduct schools and deprive parents of the right to have their children receive religious instruction in even private schools; or in the provision which empowers a state to limit the number of clergymen, under the authority of which one state permits only one priest for every thirty thousand persons; or in the provision which forbids a person to take religious vows or join with his fellows in a monastic society. Indeed, most of the American liberals who have spoken on the question show that they believe only in those individual liberties that they like to exercise themselves, namely, freedom of speech and of the press. Concerning other fundamental liberties their attitude is one of superior indifference.

C. The Questionnaire and the Replies

For the purpose of ascertaining the deliberate judgment of representative American liberals on the subject, I addressed a letter and questionnaire to eight nationally known persons who claim to be liberals and who are generally recognized as meriting that designation. In the letter I called attention to the anti-religious articles of the Mexican constitution of 1917, a copy of which I dispatched to each of the eight. Inasmuch as the whole transaction was to be kept confidential, I do not even mention the names of these persons, but observe that they include representatives of labor, literature, the law, the teaching profession, and journalism. The questions which they were requested to answer were the following:

1. Are these provisions, or a majority of them, contrary to essential principles of liberty?

2. Is suppression of these liberties ever justified?

3. Is a government justified in determining for itself when suppression is necessary?

4. If No. 3 is answered in the affirmative, on what ground can we logically condemn the suppression of civil liberty by Mussolini?

5. If No. 3 is answered in the negative, is it not a duty resting upon American liberals to express their disapproval of these provisions of the Mexican Constitution?

6. Would not this course help to bring about a cessation of the proscriptive conduct of the Mexican Government?

7. Would not such reversal of policy by the Mexican Government be likely to increase support both within and without Mexico for the government's economic policies?

Six of the eight recipients of the questionnaire sent some kind of response. Four of the answers to the questions were satisfactory. Two of these four did not include categorical answers, but they were sufficiently definite to indicate that their authors held the anti-religious provisions of the Mexican Constitution to be in conflict with the principles of liberalism. One of these two wrote as follows: "I am sending back the questionnaire and will let you fill it out as you think it should be filled out as from me, and I will stand by it." The other pleaded a lack of time to read the constitutional provisions in question, but declared: "I believe in the guarantee of the utmost freedom to talk, to write and to worship for all races, all classes and all creeds. In so far as Mexico or any other country sets aside such guarantees, I think that all genuine liberals should stand in opposition." One of the four, a distinguished lawyer, answered the questions at such length as to require fourteen typewritten pages. While his statement contained two or

three assertions that a Catholic could not approve, these were based upon a misconception of certain facts rather than upon any interpretation of principle. In fact, this particular response does great credit to its author and powerfully sustains the reputation which he had already acquired on account of his activity on behalf of more than one people and group which had been deprived of fundamental liberties under the forms of law and legality. The fourth of those who gave satisfactory responses is a very able woman who holds a high place in American literature.

Of the two men who did not feel inclined to fill out the questionnaire, one is a labor leader and the other an editor. Both would condemn outright some of the restrictions upon religious liberty contained in the Mexican Constitution. Nevertheless, both seem to take the position that there has been great provocation for this legislation in the history of the Catholic Church in Mexico. One of them writes: "I find it difficult and in a large measure unsatisfactory to answer the questionnaire with a 'yes' or 'no,' or to fairly and freely express my thoughts by confining myself to the seven questions. . . . I have been in Mexico, have met both the past and the present President and the members of their cabinet, and have associated quite freely with the leaders of the Mexican trade union movement. . . . From my contact with trade union leaders, representatives of the government and wage earners, I was impressed with the fact that they were truly religious instead of irreligious. The hostility which I encountered was not against religion, neither was it against the clerical representatives of any religious denomination. It was rather a strong opposition to the activities of clericals who were not Mexicans and who came principally from Spain. There seemed to be a conviction on the part of those I talked with that Spanish clericals in Mexico had for many years engaged in activities

of a purely political character and had in large measure given their support to those in Mexico who were opposed to the liberation of the peons and the development of free institutions."

Whether the author of these sentences regards the alleged facts which they recount as sufficient to justify the denial of fundamental religious, educational and other rights, he does not make clear. Possibly if he felt constrained to answer this question categorically, he would give the only answer that is consistent with the principles of liberalism. That is, he would have to declare that none of the grievances which he heard urged against the Mexican Church constitute adequate ground for the intolerant provisions of the Mexican Constitution. Since he is not compelled to answer by a simple "yes" or "no," he apparently prefers not to face the question. He takes refuge in silence.

The other writer whose answer was unsatisfactory, condemns several of the restrictive provisions of the Mexican Constitution, but qualifies his condemnation by the statement: "When a Church has been as closely allied with its despotic government in the past as any state Church must always have been, it is natural that a revolutionary government should act to curtail its influence by such constitutional provisions as those found in the Mexican Constitution." Here again we find an appeal to the history of the Mexican Church as presenting some kind of justification of the present persecution. But the reference is expressed in such general terms that it does not inform us just what acts are under consideration and condemnation. This defect characterizes every attempt that I have read to defend or extenuate the anti-religious clauses of the Mexican Constitution. Even if this legislation could be justified by improper activity on the part of Mexican churchmen, the

impartial and discriminating reader would feel obliged to declare that such justification has not been proved since the alleged historical facts have not been specified.

The constitutional prohibitions in question were adopted in 1917. In order that a plausible explanation should be found for them in the attitude of the Mexican Church, facts of relatively recent date would have to be brought forward. This is exactly what never takes place. The apologists for these tyrannical provisions point to things which Mexican churchmen are supposed to have done one hundred, or two hundred years ago, or seventy-five years ago. They do not show or even assert that within the last fifty years Mexican churchmen have opposed the social or political or economic welfare of the masses of the Mexicans. Why, then, did the men who made the 1917 Constitution think it necessary or wise to insert all these unjust and barbarous prohibitions? This question has not received a satisfactory answer from anyone, either friend or foe, of the present Mexican Government.

Returning to the subject of our questionnaire, I would observe that the answers to it afford, on the whole, cause for gratification. Two-thirds of the answers were all that could reasonably be desired. The other third was satisfactory to a very considerable degree. If we feel inclined to condemn two of the six writers for failing to stand upon all of the fundamental principles violated in the present Mexican Constitution, we should reflect that very few persons exhibit a thorough-going and consistent adherence to all their principles when there is question of concrete application. It is easy to give unqualified assent to principles in the abtract; it is not always easy to do so when their application bears harshly upon some cause or interest which we ourselves cherish. Some American liberals have failed to

condemn the violations of fundamental liberties in Mexico because they desire the Mexican Government to succeed in its economic program; some Catholics have failed to condemn the violation of fundamental liberties by Mussolini in Italy because they desire his government to succeed in certain other items of its program.

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V

FASCISM AS THEORY AND IN PRACTICE

A. The Theory

PROBABLY the majority of Americans who think about the subject at all regard Italian Fascism as merely political action, not political theory. They look upon it as an organization and a movement through which certain powerful and rather unscrupulous persons have got control of the government of Italy by violence, and have ruled the country with a certain degree of efficiency, but with considerable disregard of constitutional forms and of human rights and liberties. According to this view, the movement and its works are entirely pragmatic, entirely motived by expediency, without any underlying theory or doctrine or philosophy or principles.

The appearance in an English translation of "The Political Doctrine of Fascism" should tend to remove this misapprehension.[1] This document is an address delivered at Perugia, August 30, 1925, by Alfredo Rocco, Minister of Justice in the Italian government and Dean of the Faculty of Law of the University of Padua. As soon as he had read the address, Premier Mussolini wrote to Signor Rocco, congratulating him and declaring that he had "presented in a masterful way the doctrine of Fascism." Hence the discourse may confidently be regarded as authoritative.

It is able, dignified, dispassionate and fundamental. At

[1] Published by the Carnegie Endowment for International Peace. October, 1926, issue of *International Conciliation.*

the outset Signor Rocco announces his intention of exploring Fascism's "inner essence." Fascism is not merely "action and sentiment," although these are and must remain its supreme characters; "it is thought, it is doctrine." The thought and the doctrine, he maintains, are indigenous to Italy and in harmony with Italian traditions. Because of its "coherent and organic doctrine" Fascism acquires "a universal validity." Its originality "is due in great part to the autonomy of its theoretical principles."

What are these principles? Before answering this question, Signor Rocco examines and evaluates modern political doctrines from Liberalism to Socialism and Bolshevism. In his view the common basis of them all is a mechanical or atomistic concept of society which regards the end of the State as merely the "welfare and happiness of individuals." And the individuals for whom the State exists and functions are only those "of the present generation." The method by which political Liberalism expects the State to promote this end is the preservation of equal liberty and freedom of contract for all, and a general policy of non-intervention, or *laissez faire,* in economic affairs. While the methods of Socialism and Bolshevism differ from that of Liberalism and from each other, their end is the same. All three doctrines regard the State as having no other end than the furtherance of individual welfare.

Let us turn for a moment from Signor Rocco's exposition to observe that the welfare of individuals is likewise the end of the State, according to Catholic doctrine. That doctrine does not, indeed, look upon society as merely the sum of its component members, nor hold that the State is concerned only with the present generation, nor conceive the functions and methods of the State in the same way as Liberalism or Socialism or Bolshevism. According to Catholic teaching, civil society is some sort of organism,

having some kind of life of its own, and purposes which are not restricted to the interests of its present members. Its life outlasts that of any given generation. Nevertheless, all its lawful ends are centered and realized in concrete human beings. Apart from its constituent members, either of the present or of the future, civil society has no meaning; it is a mere abstraction, without reality or authority or functions. Moreover, the present generation has greater claims upon the State than the generations yet unborn.

Summarily expressed, the end of the State, according to Catholic doctrine, is the welfare of its members as a whole, as forming families, as grouped in social classes and even as individuals. In the words of Pope Leo XIII, "civil society should not only safeguard the well-being of the community, but have also at heart the interests of the individual members." Under "welfare" is comprised goods and interests of the religious, moral, intellectual, physical and economic orders. In pursuing these ends the State may use any morally good means that is effective and necessary. All the foregoing propositions are substantiated in the two Encyclicals of Pope Leo XIII entitled, "The Christian Constitution of States" and "The Condition of Labor."

To this doctrine the principles of Fascism are as fundamentally opposed as they are to Liberalism and Socialism. Signor Rocco does not discuss the Catholic teaching at all, but his description of Fascism makes abundantly clear the antagonism between the two systems. Let us return to his exposition.

Fascism "rejects entirely the theories of natural law developed in the course of the sixteenth, seventeenth and eighteenth centuries." It regards civil society "as a succession of generations and not as a collection of individuals." The social group, *i.e.,* civil society, is "the recapitulating unity of the indefinite series of generations. . . . Individ-

uals come into being, grow and die, followed by others, unceasingly; social unity remains always identical to itself." Here, then, we have civil society, the nation, the State, conceived as a quasi-eternal entity, reality, demi-god, Leviathan, distinct from and superior to the individuals of any and every generation. "For Fascism," continues Signor Rocco, "society is an end, individuals the means, and its whole life consists in using individuals as instruments for its social ends. . . . Individual rights are recognized only in so far as they are implied in the rights of the State."

Of a certainty there is nothing new in this. It is as old as Hegel, and far older. It was explicit in the political theories of the Ancient World, when, to quote Lord Acton, "the passengers existed for the sake of the ship." In the nineteenth century it was widely held by political writers and came to be known as the theory of "the Omnipotent State," sometimes as the theory of the "Kultur-Staat." From the temporary obscuration which it suffered in consequence of the World War it is now rescued by Fascism and paraded as an original discovery—or invention.

Signor Rocco next turns to "the Problems of Liberty, of Government and of Social Justice." Under each of these heads his conclusions are exactly what we should expect in view of the fundamental propositions already set forth. Fascism rejects any "bill of rights which tends to make the individual superior to the State and to empower him to act in opposition to society. . . . Like any other individual right, liberty is a concession of the State."

Democracy likewise falls under the ban. For the doctrine of popular sovereignty Fascism substitutes that of State sovereignty. It holds that ultimate political power cannot be entrusted to the masses "for the reason that the capacity to ignore individual private interests in favor of the higher demands of society and of history is a very rare gift and

the privilege of the chosen few." While the people are not to be deprived of all political influence, "it is judicious to entrust the normal control of the commonwealth to a selected élite." Unfortunately Signor Rocco neglects to give us the formula according to which the élite are to be identified and established. Is the process to be self-determination by the élite through the strong arm?

In his brief discussion of social reform, Signor Rocco declares that the problem of capital and labor is "perhaps the central one in modern life," but he rejects the solution offered by Socialism, mainly on grounds of social utility. For this reason, not for reasons of individual welfare, Fascism recognizes the right of private property. There is only one possible solution of the industrial problem: "the realization of justice among the classes by and through the State." There must be class organization and class defense, but not class *self* defense. Hence class organization, the syndicate, the trade union, "must be controlled, disciplined and subordinated by the State." The practical effect of this policy upon individual liberty and the right of economic association will be seen presently.

No small part of the practical strength of Fascism has arisen from its appeal to the sentiment of Italian nationalism. Modern nationalism, as recent events have made us painfully aware, has some of its strongest roots in national history. Hence we are not surprised to find more than one-third of Signor Rocco's discourse falling under the head, "Historical Value of the Doctrine of Fascism."

Just as the natural rights doctrine of the seventeenth and eighteenth centuries gave rise to principles which dominated political theory and practice for the last century and a half, so the Fascist doctrine "will determine the course of a new culture and a new conception of civil life. The

deliverance of the individual from the State, carried out in the eighteenth century, will be followed in the twentieth century by the rescue of the State from the individual." Nor does this mean a return to the political conceptions of the Middle Ages. Of these Fascism is "a complete negation. . . . If Fascism can be said to look back at all it is rather in the direction of ancient Rome, whose social and political traditions, at the distance of fifteen centuries, are being revived by Fascist Italy." Exactly so. The Middle Ages stressed the sacredness of the individual and his rights; ancient Rome submerged him in the Omnipotent State.

Indeed, the liberal-democratic political theory, which is to be supplanted by the Fascist theory, is closely connected, says Signor Rocco, with medieval doctrine. Therefore, it is "foreign to the Latin mind." The medieval theory resulted from "the triumph of German individualism over the political mentality of the Romans." Even in the Middle Ages, Italian political doctrine "linked itself with the great political writers of antiquity, Plato and Aristotle, who in a different manner but with an equal firmness advocated a strong State and the subordination of individuals to it. . . ."

According to Signor Rocco, the Roman political tradition finds expression in the teachings of Nicolo Machiavelli. The famous, or notorious, Florentine "is not only the greatest of modern political writers; he is also the greatest of our countrymen in full possession of a national Italian consciousness." The doctrine with which the name of Machiavelli is most notably associated, that in political affairs the end justifies the means, Signor Rocco condones if he does not accept. It is from Machiavelli, he says, that Fascism "learns not only its doctrines but its action as well."

Signor Rocco then passes in review the theories of Vico, Cuoco and Mazzini, all of whom carried on more or less faithfully the "Roman tradition." For several years before

the Great War, however, Italian political thought had become "enslaved" to foreign theories. Thanks to Fascism, the task of intellectual liberation is now being slowly accomplished, the intellectual dependence of Italy is coming to an end. "Italy again speaks to the world and the world listens to Italy. It is a great task and a great deed and it demands great efforts. To carry it through we must, each one of us, free ourselves of the dross of ideas and mental habits which two centuries of foreign intellectualistic tradition have heaped upon us; we must not only take on a new culture but create for ourselves a new soul. . . . To our work, then, fellow countrymen, for the glory of Italy!"

From Signor Rocco's exposition we are justified in drawing the following summary conclusions: Fascism contradicts the Catholic doctrine on the authority, functions, and purpose of the State, on the natural rights of the individual, and on the means which the State may rightfully use; it rejects the principles of political democracy; and it promotes a spirit of excessive nationalism which is not conducive to international peace. In other words, the Fascist theory is a pragmatic combination of Absolutism, Machiavellianism, Toryism, and Chauvinism.[1]

In evaluating the Fascist *movement,* however, we must guard against attributing undue influence to the theory. When Mussolini and his cohorts began the task of organizing the movement and formulating their plans for overturning the existing political régime and seizing the government themselves, they probably were not much moved by any formal set of principles. They were thinking only of certain practical ends which they sought to attain by certain

[1] In an allocation to the Cardinals, in the month of December, 1926, Pope Pius XI made this reference to the Fascist political theory: "We again see a conception of the State making headway which is not a Catholic conception because it makes the State an end unto itself and citizens mere means to that end, absorbing and monopolizing everything."

practical means. The theory which Signor Rocco sets forth and Premier Mussolini confirms as authoritative was compiled after the movement had reached its main objectives. The theory then became necessary, or at least very useful, to give the acts and the aims of the movement some degree of rational coherence, some semblance of rationalized authority. It was particularly needed in order to provide a systematic political creed which would give authoritative guidance for present and future action. But the creed took form as a set of generalizations from Fascist history and methods, rather than as a set of principles deriving their authority from political speculation. In origin it was narrowly empirical, even though every one of its elements may be found in previous systems. It is an eclectic compilation, adapted to the needs of Fascism in action.

B. The Practice [1]

Therefore, the practice has harmonized with the theory. This can easily be shown from a brief review of Fascist activities and achievements under the heads of methods, political liberty and civil liberty.

In the field of methods Fascism seems to have exemplified the teaching of Machiavelli, from whom, according to Signor Rocco, it has "learned not only its doctrines but its actions as well. . . . To liberate Italy and to make her more powerful he would use any means, for to his mind the holiness of the end justified the means completely." The leaders of Fascism have proved themselves apt pupils of this cynical master, if we are allowed to believe one-half of that which has been told concerning their official and unofficial exploits of violence.

The restrictions upon political liberty and self-government enacted by the Mussolini régime exemplify that element in

[1] *Op. cit.* Cf. *Monthly Labor Reiew,* March, 1926, pp. 162-167.

Fascist theory which "rejects the dogma of popular sovereignty and substitutes for it that of state sovereignty, . . . and entrusts the normal control of the commonwealth to a selected élite." Accordingly the election laws have been changed in the interest of a compact Fascist minority. In place of proportional representation, which is the fairest method yet devised of giving to all classes and interests a legislative representation in proportion to their numbers, the Fascist government has substituted an arrangement whereby the party receiving a mere plurality in a parliamentary election becomes thereby entitled to two-thirds of the members of the Chamber of Deputies. Under the authority of this election law, it will be possible for the Fascist organization to control the Italian legislature and government long after it has ceased to include a majority of the voters. Such a condition could be prevented only through the combination of all the non-Fascist political elements in a single party.

About a year ago legislation was passed greatly extending the power of the Prime Minister. He is now responsible only to the King. He can continue in office despite the opposition of the Parliament. He nominates the other cabinet ministers, determines their number and their several functions, and decides matters upon which they disagree. In case of absence or prevention from fulfilling his duties, he designates a cabinet minister as substitute.

A further extension of the Prime Minister's executive power is seen in the laws enacted in 1926 which substituted for mayors and elected councils in every town and city a governor and an advisory council, both appointed by the central government. In all the communes, towns, and cities except Rome and Naples the governor is called a Podesta. Even in these two cities home rule has been abolished. This total destruction of local self-government is defended by the Mussolini régime on the ground that the former

system was incompetent. "The reinvigoration of the communal governmental organism, therefore, can only be accomplished by the work of the State." In other words, efficiency is to be attained through despotic and benevolent compulsion rather than through the civic education of the local communities. Through these extraordinary powers the will of the Prime Minister becomes absolute in the field of local administration.

It is also exceptionally great in the province of legislation. Neither the Chamber of Deputies nor the Senate can consider any matter without his consent. He has the power to ask that any bill rejected by one of the legislative houses be voted upon again after a period of three months or that it be transferred to the other house, examined, and voted upon. His power to legislate by decree has been clearly defined and greatly expanded.

Much as we may dislike these restrictions upon political liberty, we cannot say that they are contrary to the moral law or constitute a violation of individual rights. Any form of government which promotes the common good and the welfare of individuals may be legitimate, at least, so long as it enjoys some kind of consent of the governed. There is no natural right either to vote or to hold office. Nor is there anything in the nature of human beings or in the nature of the existing Fascist constitution which prevents the proper ends of government from being attained. If the Italian people are satisfied with this kind of political constitution no rational objection can be raised by those who are not Italians.

Are the Italian people satisfied? Perhaps they are, but we have no certainty that this is the fact. We cannot rely entirely upon the favorable reports made by returning American tourists who casually observed conditions in a few Italian cities, but who failed to note the coercive power

of the Fascist militia in the background or the suppression of free speech and a free press.

According to an editorial in a recent issue of an exceptionally well-informed Catholic weekly, "the great majority of the Italian peasants and workers are opposed to the Fascist régime; but they are held down by Fascist bayonets and able to make their voices heard only with the greatest difficulty." If this statement is correct, the downfall of the Fascist government is nearer than most outside observers have considered probable.

Whatever may be the truth about the present attitude of the Italian people there is one apology for the Fascist political constitution which is devoid of solid foundation. It is that this is the kind of government that best suits the Italian people, since they are not capable of maintaining genuine democratic and representative political institutions. For centuries a similar assertion was made by apologists for British rule in Ireland. Indeed, such has been the facile excuse offered by tyrants, autocrats and tories in every age for denying self-government to any people. In view of the numerous situations in which it has been proved false, it ought never to be accepted without careful examination and specific evidence. All the indications point to the conclusion that the charge of political incapacity against the Italians is nothing short of a cruel libel upon a nation which is the equal in native intelligence of any other people in the world. Owing to events and vicissitudes in their history, which need not here be recounted, the Italian people may be less advanced than some others in political training and education. At the present time, they may be less ready for efficient self-government; but the remedy is time and education and opportunity to make and profit by their own mistakes. Any other theory assumes that they are mere children. In this democratic age it is very doubtful that a permanent or safe

political régime can be maintained on the basis of this extraordinary assumption.

However, it is not the diminution of *political* liberty which gives most concern to friends of Italy and believers in human rights. The greatest offenses committed against liberty by the Fascist government have taken place in the civic sphere. Several laws have been enacted which exactly illustrate the Fascist theory, as stated by Signor Rocco, that liberty is a concession of the State, that individuals are means to the interests of the State and that there should be no such civic institution as a bill of rights. Following are some of the enactments which have greatly curtailed important liberties of the individual in Italy.

"Whoever offends the Premier by word or act is punished with imprisonment for a term of from six to thirty months and a fine of from five hundred to three thousand lire." Does "offends by word" mean merely verbal criticism? If it does this law would seem to be unique in modern times. It aims at making impossible even constructive criticism of the Prime Minister's official acts. Its enormity can be easily grasped if we assume that a similar prohibition "protected" the President of the United States.

Something over a year ago a law was enacted providing that "all associations, organizations, and institutions . . . must communicate to the police their charters, statutes, and internal regulations, the list of their activities and of their members and all other information pertaining to their organization and actitivies whenever, in the interest of order and security, it is required by the authorities." It is well known that this measure was directed at the order of Free Masons, which through secret methods had frequently been guilty of illegal and revolutionary political activities. Obviously a government is justified in opposing and punishing such conduct and even in dissolving organizations which

are persistently guilty of it, if they refuse to reform themselves. Nevertheless, the law just mentioned seems to be unnecessarily drastic and to constitute an unjustifiable interference with freedom of association. Apparently, it would apply to the Knights of Columbus and other fraternal organizations quite as injuriously as it does to the Free Masons. At least, such societies would be affected by the part of the law which punishes by dismissal all public officials and public employees who belong to associations or institutions "which operate in part in secret." Another section of the law requires all public officials and employees to declare whether they have previously been members of any kind of organization or institution.

It is in industrial relations, however, that the right of association has suffered the greatest restrictions and injuries. While Italian wage-earners may continue to maintain their own kind of unions, they may not use them for industrial purposes. By the provisions of a law enacted in December, 1925, only legally recognized associations may make agreements with employers concerning wages or any other term or condition of employment. In each kind of establishment or industry only one employee organization and only one employer organization may receive the required legal recognition. Organizations become eligible for recognition as soon as they include, respectively, ten per cent of the workers in a given category and district and the employers of ten per cent of the employees in a given class and jurisdiction. To these recognized organizations all employees and employers, respectively, must contribute the regular dues, whether or not they are enrolled as members. In the workers' organizations all dues are collected by the simple device of deducting them from wages; in other words, by means of the "check-off." No person can become a member unless he can show "satisfactory political affiliation from a national

point of view." This is a euphemism for adhesion to the political party of Fascism. The officers of the organizations must be distinguished for their "ability, morality and national loyalty," *i.e.*, fidelity to the political administration. While the officers are elected by the members, their designation does not become effective until it is approved by the national government. Furthermore, the government may actively supervise the organizations, depose their officers and revoke their legal recognition.

Collective agreements made between recognized organizations of employers and employees are legally binding not only upon the contracting parties but upon all the employers and workers of the class and district involved. Strikes and lockouts are forbidden, and compulsory arbitration of all disputes is enforced through special labor magistrates appointed by the government.

Freedom of organization and of economic action has, therefore, been so restricted and mutilated that Italian wage-earners must support unions which are completely controlled by the government, must deal with their employers through these unions alone, must never quit work by concerted action, and must abide by the decisions of a political tribunal which is provided with no industrial code or more definite standard than a vague and elastic "equity." The arbitration body is required to "weigh the interests of the employers against those of the workers, and in each case to take into account the higher interests of production." Modern times have not produced a more effective instrument of industrial and political enslavement. It enforces consistently and completely the theory, as set forth by Signor Rocco: "Fascists make of the individual an economic instrument for the advancement of society, an instrument which they use so long as it functions and which they subordinate when no longer serviceable."

The constitution of these pseudo-labor unions is in sharp contrast with what Pope Leo XIII says about the "natural right of man to enter a private society," about the duty of the State "not to violate the rights of individuals and not to impose unreasonable regulations under the pretense of public benefit," and about the "general and lasting law, that workingmen's associations should be so organized and governed that each individual member may better his condition to the utmost in body, mind and property." Anyone who can reconcile these fundamental declarations of the great Pontiff with the form of organization imposed upon the workers by the Fascist government ought to have little difficulty in identifying white with black. As to freedom of speech, it is well known that, whether by official or unofficial means, with or without the forms of legality, the opportunity to give public expression to political opinions is all but nonexistent. To criticize the public authorities is an extremely hazardous performance.

Freedom of the press is narrowly and definitely restricted by the law promulgated December 31, 1925. Every newspaper and periodical must appoint a director who becomes responsible for the contents, and who must be registered as a professional journalist. He is also required to obtain the sanction of the State's Attorney of the Court of Appeals in whose jurisdiction the paper is published. In as much as this authorization can, apparently, be given or withheld at will by the State's Attorney, this provision is by itself an effective bar to real freedom of the press. Apparently, this official has the power to outlaw all editors and newspaper directors except those whose views are satisfactory to the government. According to another section of the law, the Prefects, who are appointees of the central government, "are empowered to seize editions of newspapers which attack the government in its foreign policy or which injure

national credit at home or abroad or which alarm the people without justification." It would not be easy to conceive a legal enactment calculated more effectively to destroy the liberty of printed expression in political matters.

The foregoing assaults upon civil liberty are either curiously overlooked or deliberately ignored by the American apologists for the Fascist régime. The majority of the apologists lay great stress upon the uncontested reforms which Mussolini has brought about in public administration, particularly in the protection of property and the enforcement of public order. In view of these achievements, they maintain that the curtailment of political liberty, of representative government, deserves very little emphasis, or perhaps should find a place on the credit side of the Fascist ledger. If the apologists were at once honest and cognizant of the facts they would realize that no evaluation of the present régime in Italy is adequate which does not give due consideration to its destruction of such fundamental civil liberties, as freedom of association, of speech, and of the press.[1]

A few of the Mussolini apologists reluctantly admit that some diminution of civil liberty, some injury to individual rights, has occurred under the régime of Fascism. But they seem not to have taken the trouble to explore its extent. If they are called upon either to defend or to condemn the laws in restraint of individual rights, they evade the issue by expressing the hope that this legislation is only temporary and will be repealed as soon as the Italian people have learned how to refrain from abusing civil liberties.

[1] The precision and thoroughness which distinguish the operation of the press censorship in Italy are neatly illustrated in the following Associated Press dispatch, dated Rome, November 2, 1926: "Twelve opposition newspapers and two magazines were suspended from publication to-day and the licenses of three others were revoked by prefectural decree. This represents the first formidable stroke in the campaign of severity against the opponents of fascism. The newspapers suspended comprise liberal, Catholic, socialist and syndicalist organs."

This pious aspiration seems to be utterly devoid of rational or experimental foundation. Its only basis is two extraordinary assumptions. According to the first, men who have a fairly long and constant tradition of liberty will, during the few years allotted to a dictatorship in the modern era, docilely learn through deprivation of liberty not to misuse liberty when it again comes into their possession. What principle of psychology and what historical instance can be adduced to give this assumption the color of probability? The second assumption seems to be even more improbable than the first. It is that politicians who have ruled despotically, as Mussolini and his associates have ruled, and who have deliberately adopted the autocratic doctrine set forth by Signor Rocco, will soon or willingly restore to the people the liberties that they have taken away. Again I ask where is the warrant for this in human history or human psychology?

Very apposite here are some words uttered at the end of March, 1925, by the brilliant priest and social reformer, Don Luigi Stuzo, who was the leader of the Italian Popular Party until he found it no longer safe to remain in his native country:

"The actual situation in Italy is very suggestive for those who, contrary to the evidence of facts, still hope that Fascism will in the end reëstablish constitutional principles. Of such illusions the political history of nations is full; and it is astonishing that men who in other respects are very intelligent, should cherish them.

"Is it likely that a political party noted for its systematic violation of civil and political liberty, which seeks to subject both the legislature and the judiciary to the executive, which proclaims individual violence to be legitimate and justifies political crimes by national ends, which imposes its authority and domination by an armed militia—in a word, is it likely

that a medley of factionalism and autocracy, of oligarchy and dictatorship, will terminate, spontaneously, by a logical and historical process, by internal necessity, in a régime of legality, morality and liberty?" [1]

All the precedents and all the probabilities seem to warn us that after Fascism will come the deluge. The reaction is likely to be worse than the evils that Fascism found when it began its violent and tyrannical course. Political communities do not learn the art of government by short cuts or by forcibly imposed instruction. After the Italian people have unlearned in turmoil and in tears all the compulsory lessons received during the Fascist régime, they will have to undertake anew the slow and painful process of education in self-government.

NOTE:—The *New York World,* November 9, 1926, editorially describes as follows the drastic laws enacted by the Italian government on account of the attempt on the life of Mussolini at the end of October:

"A Cabinet Council, dominated by Mussolini, has decreed that: there must be no opposition party to Fascism; there must be no opposition press; there must be no criticism of the Government in any form or shape; breaking the law in these matters shall result in trial by courtmartial and imprisonment, if guilty; even though they have not broken the law, 'suspects' may be given indeterminate sentences in Italy's penal colonies; and it shall be made a crime punishable by imprisonment to communicate abroad any 'exaggerated news' of anything of any sort in any part of Italy."

[1] *La Liberté en Italie,* pp. 28, 29. Paris, 1926.

VI

EQUAL RIGHTS FOR WOMEN

ABOUT a year ago I attended a session of the Conference on Women in Industry, held in Washington under the direction of the Secretary of Labor. Instead of hearing, as I had anticipated, an address by Dr. William M. Leiserson, I witnessed an extraordinary performance for which no provision had been made on the program. It was an attempt by the representatives of the National Woman's Party to obtain the opportunity of presenting their reasons for opposing the whole theory and practice of protective labor legislation for women. However, the manner in which these women argued for their proposal left one in doubt that they really expected or desired it to obtain favorable action from the Conference. They could have adequately presented their request in ten or fifteen minutes. Instead of taking this course, they made several long speeches emphasizing what they regarded as the unfairness of excluding them from the program, thus irritating and antagonizing the vast majority of the assembly. They took up more than an hour in this boisterous performance and turned the meeting into a most undignified, not to say unladylike, proceeding. Their manner was arrogant, their voices were strident, and several of them vocalized simultaneously. Profound disgust rather than sympathetic consideration, was the normal reaction. Their request was refused by a very large majority. But the tumult which they provoked received first page notice in the newspapers the following morning. In the opinion of many,

that was precisely what the Women's Party advocates desired. And they achieved it through characteristic methods.

At the evening session, two days later, an enlightening and dignified joint discussion was carried on between Woman's Party representatives and officers of the women's trade unions. The former denied the value of protective labor legislation. In this, they exhibited a distinct change of tactics. When the equal rights amendment was first proposed, its advocates strove to evade the question whether it would not nullify all existing legislation for the benefit of women workers. Now they admit that this outcome is not only probable but, from their point of view, desirable. They are opposed to laws which "discriminate" in favor of women wage earners. What are their reasons?

According to the Woman's Party, several of the protective labor laws diminish the industrial opportunities of women. Of this character are those statutes which forbid women to work at night in certain occupations and which shut them out of certain occupations. By reason of such laws, women are restrained from climbing telegraph poles, shining shoes, reading gas meters, working in coal mines or driving taxicabs. It is asserted that thousands of women lost their jobs a few years ago in New York City on account of a law prohibiting night work. As for labor laws which do not restrict working opportunities for women but are genuinely protective, they should, according to the Woman's Party, be made applicable to both sexes. Such are eight-hour laws, minimum wage laws and legal provision for health, safety and sanitation in work places. All that is necessary is to displace in such statutes the word "woman" by the word "person."

The foregoing argument is a curious mixture of exaggeration and reckless assumption. As a matter of fact, the

occupations legally forbidden to women are few, are proscribed in only a few states, and are nowhere sought by more than an insignificant number of women. The laws against night work excluded only a negligible number in the New York situation referred to above. The great majority of women employees were discharged before the law was enacted. Much has been made by Woman's Party orators of that particular statute as it affected newspaper printing plants in New York City. Only eight women were employed at night in those establishments before the enactment of the law. Since the law was amended to exempt this type of work, only three women have taken advantage of the opportunity to labor at night in newspaper printing plants. Indeed, the grievance against this sort of legislation is no greater than that which lies against any other legal enactment. No matter how beneficent a law may be, it is bound to react unfavorably upon a few exceptional persons. No law is made for the benefit of a small minority.

A quite fantastic exaggeration is implied in the objection which the Woman's Party advocates have recently raised against the eight-hour law for women. This law constitutes a discrimination against women, inasmuch as it prevents them from working overtime, while the eight-hour day enjoyed by men workers, obtained as it has been by collective bargaining, can be exceeded by agreement with the employer. Obviously, this complaint does not harmonize with the contention that the eight-hour law should be secured for men as well as for women. Consistency, however, is not a conspicuous feature of the Woman's Party arguments. As a matter of fact, organized male labor does not want the privilege of working overtime. The vast majority of women workers are even less desirous of that so-called opportunity.

"We women to-day demand all labor for our province,"

exclaims Olive Schreiner. This demand is echoed and re-echoed by the National Woman's Party. In some way which they do not make clear, these women seem to think that they are restrained by the law from entering executive positions in industry and the profitable places generally. With equal lack of clearness and logic, they seem to indulge the hope that this sort of discrimination would be prevented by their equal rights amendment to the Constitution. Of course there is no substance whatever in either of these contentions. There is no law in the United States which prevents women from occupying the higher industrial positions. According to the Director of the United States Census, "There are but few kinds of work from which the female sex is absolutely debarred, either by nature, law or custom." His statement is proved by the exceedingly small proportion of occupations in which census reports enumerate no women. If the higher industrial and commercial positions include only an insignificant number of women, if, for example, brakemen have become railroad presidents while no woman stenographer or secretary has reached that eminence, the explanation must be sought elsewhere than in the statute books.

In their campaign for the equal rights amendment, the leaders of the Woman's Party not only commit gross exaggerations, but are occasionally not averse to downright misrepresentation. A typical instance is their frequently repeated assertion that the eight-hour law in the District of Columbia caused women to be replaced by men in laundries and restaurants. The 1920 census shows that there is not a particle of truth in this bold assertion. The Woman's Party champions have made the same assertion concerning the effects of the minimum wage law of the District of Columbia. It is refuted by the pay roll records of the industrial establishments in question. Indeed, the exaggeration and the

misrepresentation by the National Woman's Party with regard to the effects of labor legislation is only one of many indications that this organization has adopted the motto that the end justifies the means. A more conspicuous illustration is seen in their consistent devotion to unconventional methods whenever these give promise of producing results.

The capacity for reckless assumption which the Woman's Party possesses is strikingly exemplified in the assertion that the labor laws which now protect women only can easily be made applicable to men. The complacency with which this theory is accepted and set forth shows what little thought the members of the Woman's Party have given to the subject, or how little they care what would happen if working women were deprived of such protective legislation. In an article in *Harper's Monthly* for February, 1926, Edna Kenton affects to rely upon the Oregon ten-hour law for men and the Florida law requiring seats for both sexes in certain kinds of establishments. These isolated cases apparently have given her child-like faith that the present Supreme Court of the United States would sustain any labor law whatever that might be enacted for men as well as for women. It is safe to say that no lawyer nor any other competent student of Supreme Court decisions would agree with her. Except in the matter of extra-hazardous occupations, our protective labor statutes apply to women only, and every one of them has been upheld by the Supreme Court on the ground that women stood in peculiar need of such legal protection. Moreover, this writer ignores the fact that the great majority of men workers do not desire the eight-hour day through legislation. They prefer to obtain it by means of their unions.

To the disagreeable facts noted in the last few sentences, some of the Woman's Party representatives reply in effect: "Very well; then let the women get the shorter work day

and all the other desirable working conditions just as the men have obtained them, through organization." This easy and cheerful disregard of the peculiar difficulty of organizing woman workers is convincing evidence that the Woman's Party champions do not know what they are talking about and probably do not very much care what happens to their wage-earning sisters. For it must be kept in mind that almost all the Woman's Party representatives and speakers belong themselves to the professional or the comfortable classes. An amusing and effective illustration of this fact was provided at the joint discussion during the Women's Industrial Conference, when the most conspicuous of the Woman's Party champions came to the platform directly from a dinner party and arrayed from top to toe in resplendent evening garments. Somehow, her address did not prove very convincing.

In view of the hard facts of woman's industrial experience, it is not surprising that among the Woman's Party participants in the joint discussion, there was no representative of a woman's labor organization or of any other important group of women wage earners. Such experienced and capable trade union leaders as Melinda Scott, Agnes Nestor, Rose Schneidermann, and Sara Conboy argued eloquently and convincingly out of the depths of their experience and thinking for the retention of protective labor laws, and against the assumption that an adequate substitute could be found in organization or in the statutory substitution of "person" for "woman." These women know what the laws have done, and they are unwilling to run the risk of having them abolished. They agree with Mary Anderson, director of the Women's Bureau of the United States Department of Labor, who declares:

"For my own part, I believe in the laws because, for one thing, I know the meaning *and the feeling* of industrial

fatigue. I know because throughout those years of my life in the factory I worked 10 hours a day, six days a week, stitching shoes; drawing $12 in my pay envelope after that amount of toil. I know how we rejoiced in our factory when the state legislature passed an eight-hour law for women factory workers in our state. This meant that the whole working force, men as well as women, went on an eight-hour schedule, because the women did."

There is considerably more validity in the complaint of the National Woman's Party against disabilities of a civil character than against those which have a direct relation to industrial employment and occupation. Under the common law, the control of women over their children, their property, their earnings, their residence, and some less important matters, was very much smaller than the control exercised by men. Particularly were married women at a disadvantage as compared with their husbands. Gradually, however, these inequalities and handicaps have been disappearing in all the states of the American union. As was to be expected, the process has gone on more rapidly in some commonwealths than in others. The extent to which the changes have been introduced in some states shows that it is only a question of time when the whole program of removing the unfair discriminations will be accomplished. There is no reason, either of justice or of prudence, why women should not have equal legal rights with men as regards control over children, property, and residence. And the proper way to make this condition universal in this country is through state legislation specifically removing the unjust disabilities.

The National Woman's Party is not satisfied with this method. It is seeking an amendment to the Constitution of the United States which will attain the desired end at one stroke, and simultaneously set up a question-

able theory of women's rights. The proposed amendment takes this form: "Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction." By this simple device, the National Woman's Party expects to "remove every artificial handicap placed upon women by law and by custom." This is the answer which the members of that party regard as adequate to many questions which are asked concerning the effect of the amendment upon some important legal privileges which women now enjoy in civil and social life. In passing, it might be observed that their simple faith in a constitutional formula recalls similar trust by other extremists in that formula which got into the Constitution as the Eighteenth Amendment.

At present, women possess certain privileges under the law which are not extended to men. Among the most important of these are regulations for the protection of wage-earning women before and after child-birth, exemption from legal penalties for seduction and rape, the right to support by the husband, and exemption from military service. If women are to enjoy equal rights with men under the proposed constitutional amendment, will they not also be charged with equal responsibilities? Will not the husband, for example, have a legal claim against the wife for support? Will not the wife be equally liable before the law with her husband for the maintenance of the children?

These questions the National Woman's Party is not only willing but eager to answer in the affirmative. The proposed amendment is to equalize responsibilities as well as rights. This attitude is not based upon the necessity of appearing fair and logical. It follows naturally from their fundamental theory of sex equality. As they demand equal rights with men, so they insist that women are capable of

bearing equal burdens. Hence, they are quite willing that the law should punish women as well as men for seduction and rape, and should compel the wife to be equally responsible with the husband for the support of the other marital partner and of their children. Possibly some of them go so far as to accept the conclusion that women should be equally subject with men to service in the navy and the army and on the battlefield.

There are some persons, however, who do not believe that the adoption of the equal rights amendment would lead to these consequences. Writing in *America*, February 6, 1926, H. V. Kane declares: "Sex has always been and very probably always will be a necessary and valid basis for special protective legislation in favor of women." In his opinion (or is it hers?) the equal rights amendment would be construed by the courts as excepting those legal privileges which have long been recognized as necessary for the particular functions and conditions of women. In support of this position, he points to a recent Wisconsin statute which gives women equality "substantially the same" as that described in the proposed amendment, and which has already been construed by the Wisconsin courts as not destroying women's special legal privileges. In other words, this writer thinks that the amendment would merely remove common law and statutory disabilities without impairing or destroying those peculiar legal perogatives which most persons regard as reasonable.

This view seems unduly optimisitic. It leaves out of account two important considerations. It assumes that because the equality conferred upon women by the Wisconsin statute is "substantially the same" as that expressed in the proposed amendment of the Federal Constitution, the latter would be interpreted by the Supreme Court as liberally as the former has been construed by the Wisconsin courts.

This is far from certain. After all, "substantially the same" is considerably different from *identical.* In the second place, if the equal rights amendment is ever adopted, its progress and history will manifest clearly the theory of complete equality which is held by its proponents. Recurring to that history and that theory, the Supreme Court will find that the equal rights amendment was designed to destroy *all* legal inequalities and privileges, even those which operated in favor of women. Indeed, the National Woman's Party is now quoting with approval a dictum of Justice Sutherland which goes far toward expressing this theory of rigid equality. It was inserted in the decision of the Minimum Wage case of the District of Columbia as a reason why women should not receive the protection of such legislation in the absence of similar protection for men. The statement reads as follows:

"We cannot accept the doctrine that women of mature age, *sui juris,* require or may be subjected to restrictions upon their liberty of contract which could not lawfully be imposed in the case of men under similar circumstances. To do so would be to ignore all the implications to be drawn from the present-day trend of legislation, as well as that of common thought and usage, by which woman is accorded emancipation from the old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationship."

Should the Equal Rights Amendment get into our organic law, it would undoubtedly carry with it all those "implications" that were in the mind of Justice Sutherland when he wrote the foregoing paragraph. All protective legislation based upon the traditional assumption that woman is either inferior to or weaker than man, would be construed by the Court as contrary to a constitutional amendment which clearly implied "emancipation from the old doctrine that she

must be given special protection or subjected to special restraint in her contractual and civil relationship."

The demand for the adoption of the Equal Rights Amendment reflects something more than a desire to remove the specific evils and inequalities under which women suffer as compared with men. It is based upon a comprehensive theory of equality between the sexes, generally known as feminism. While feminism has many degrees and has been variously defined, it always stresses freedom, independence, and equality. Of these three conceptions, the last is the most important, inasmuch as it is the basis of the other two. Nevertheless, it is superficial and false.

Women are men's equal as persons. That is to say, they possess the same essentials of human nature, the same sacredness of personality and the same moral rights to the opportunities of reasonable living. Outside this sphere of essential and moral equality, women are no more equal with men than they are equal among themselves. In other words, the sexes are equal in some respects and unequal in other respects. A law which disregarded these inequalities would be manifestly irrational. It would be unjust either to women or to men or to both. This obvious principle is ignored by the feminists and yet it was enunciated twenty-three centuries ago by Aristotle:

"What is equal appears just and is so, but not to all, only among those who are equals; and what is unequal appears just and is so, but not to all, only among those who are unequals. This relative nature of justice some people neglect and, therefore, they judge ill; and the reason of this is that they judge for themselves, and almost everyone is the worst judge in his own cause." [1]

"Judging for themselves," the advocates of the Equal Rights Amendment overlook "this relative nature of justice."

[1] *Politics*, book III, ch. IX.

Because men and women are equal as persons, the feminists assume that they are substantially equal in all respects and may be subjected in all civil and economic affairs to the operation of the same laws and regulations. They forget that social justice is proportional, not arithmetical. Laws should be adapted to the needs and capacities of each class instead of assuming complete equality among all classes. In the words of the Austrian jurist, Anton Menger, "Nothing is more unequal than to treat unequals equally."

Space is wanting for an adequate presentation of those inequalities between men and women which are ignored by the sponsors of the Equal Rights Amendment. Only one or two considerations will be submitted. According to Havelock Ellis, who is surely not an unfair witness: "The whole organism of the average woman, physical and psychic, is fundamentally unlike that of the average man. The differences may be often of a slight or subtle character, but they are none the less real and they extend to the smallest details of organic constitution." [1] With regard to the industrial sphere, Miss Frances Perkins, head of the New York State Industrial Board, writes: "The physical and biological differences between men and women are so fundamental, both in structure and in function, that they cannot be ignored in considering the life of the two groups in industry where strength and skill are for sale and used for profit. A mass of information and learned opinion has been gathered over many years showing that women are more likely than men to suffer injury from the strain of industry." Indeed, experience seems to show that there are very few industrial, or even commercial, occupations in which women can be constantly employed for a long number of years without suffering greater injury than men would suffer in similar condi-

[1] *Man and Woman*, p. 442.

tions. Of course, there are exceptions to this, as to every other social generalization.

All this the National Woman's Party disregards in its demand for the Equal Rights Amendment and for the abolition of protective labor legislation for women. The leaders of this movement act upon precisely the same doctrinaire theory as do our courts when they declare unconstitutional legislation which interferes with freedom of contract between male employees and their employers. Our courts ignore the fact that men may be equal as human beings and as citizens and yet unequal in economic power and bargaining power. The National Woman's Party ignores the fact that women may be the equals of men as persons and yet be inferior to them in economic power and in physical capacity. In both these situations, the correct principle was laid down by Pope Leo XIII. Instead of demanding identical laws for unequal economic groups, he declared that the working classes and the poor stood in need of special laws for their weaker economic condition. The same principle applies in the economic and social relations of women.

The demand for the Equal Rights Amendment proceeds not only from a false theory of equality, but from an emotional attitude which is largely identical with a spirit of resentment and a spirit of revolt.

Mrs. Carrie Chapman Catt thus defines feminism: "The world-wide movement of revolt against all artificial barriers which laws and customs have interposed between women and human freedom."

It is not an exaggeration to say that many, if not all, the leaders in the Equal Rights Movement cherish a feeling of genuine resentment and even enmity against the male sex. They believe that men have forced women into an inferior social position and an inferior position in all the important

departments of life. They frankly oppose the whole theory of protection of women. Some of them go so far as to denominate their struggle for emancipation and equality as a sex war. They hate the kind of world in which they find themselves because it seems to be entirely a "man's world." They demand economic independence, emancipation from the commonplace tasks of household management and the bearing and training of children. Only thus will they attain to that condition of equality and freedom which they believe will put them on a level with men and enable them to compete with men on equal terms.

The antisocial character of this theory is no less obvious than its menace to the genuine welfare of woman. Instead of striving to provide women with those conditions, economic, social, legislative and other which will assure them reasonable opportunities for living their lives and performing their functions as women, the feminists would have them become merely bad imitators of men. It is surprising that the leaders of this movement do not realize what would happen if their program were to be adopted. If women are to compete with men on equal terms in all departments of life, they will have to abide by the rules of the game. Now all experience and all the pertinent facts point to the conclusion that the rules of the game will continue to be made by men. Not along this way lies woman's welfare or woman's happiness. So far as the welfare of society is concerned, the triumph of the principles of the National Woman's Party would be fatal. It would mean the destruction of the family and of the race. In the words of John Martin: "Feminism is female anarchism." Like any other form of anarchism, it is incompatible with social order, social welfare, or social progress.

VII

THE TEACHING OF EVOLUTION IN THE PUBLIC SCHOOLS

THE Preamble to the famous anti-evolution law of Tennessee reads as follows: "An Act prohibiting the teaching of the evolution theory in all the high schools, normals and all other public schools of Tennessee, which are supported in whole or in part by the public school funds of the state, and to provide penalties for the violation thereof." And the statute itself forbids any instructor in a public institution, "to teach any theory that denies the story of the Divine creation of man as taught in the Bible, and to teach instead that man has descended from a lower order of animal."

In the high school of Dayton, Tennessee, Mr. John Thomas Scopes set forth the theory of evolution in such a way as to violate the terms of this statute. At the notorious trial which followed he defended his action on the ground that the law was unconstitutional. One of the clauses of the Fourteenth Amendment forbids any state to "deprive any person of life, liberty or property without due process of law." It was contended by counsel for the defense that the "liberty" which is protected against state infringement in this clause includes the liberty to teach in the public schools the kind of evolutionary doctrine that Mr. Scopes urged upon his pupils. The presiding judge overruled this argument, holding in substance that there is no constitutional liberty to teach anything contrary to the regulations prescribed by the state for the curriculum of its own schools.

Mr. Scopes was thereupon found guilty of the offense with which he had been charged, and his counsel appealed the constitutional question to the supreme court of Tennessee.

At any rate, the liberty for which he contends is unreasonable. The law which he violated is in itself reasonable. That is to say, the teaching which it forbids ought not to be permitted in public schools; for they should be, and in theory are, neutral on the subject of religion. If it is improper for a public school instructor to teach any particular form of religious belief, it is likewise improper for him to teach any doctrine which contradicts any religious belief. To tell his pupils that "the story of the Divine Creation of man as taught in the Bible" is not true, is surely a violation of the neutrality of public schools. To put before the pupils such teaching under the claim of academic freedom is to exceed the bounds of reasonable liberty of instruction. Such abuses of academic freedom constitute one of the principal reasons why we Catholics desire our young people to avoid non-Catholic and secular high schools and colleges. We are only too well aware that in the classes of history, biology, physics, sociology, and philosophy, doctrines are taught which are at variance with Catholic principles. Therefore, we maintain our own high schools and colleges.

Nevertheless, the Tennessee Anti-Evolution statute is deserving of condemnation. While the anti-religious teaching at which it was aimed ought to be kept out of the public schools, the method of preventing it by a state law is a bad method. Specific legislative regulation of the doctrines to be taught in the schools is easily liable to abuse. The teacher who is accused of violating the Anti-Evolution law may have to face a jury that is incompetent to determine whether the theory of evolution has been taught in such a way as really to contradict "the story of the Divine Creation of man as taught in the Bible." There is involved here a ques-

tion of biblical exegesis to which even the ablest scholars do not return a unanimous answer. Moreover, legislative interference with the school curriculum may easily extend into other fields than those of science and religion. If the state may prohibit the teaching of evolution, why may it not prohibit instruction which favors the coöperative principle in industry, or the ownership of the tools by the workers, or certain other industrial theories that seem to many legislators to be radical and, therefore, dangerous to the state? Furthermore, if the state may forbid certain doctrines to be taught in the public schools, why may it not prescribe the teaching of certain other doctrines? Laws requiring the Bible to be read in the schools could easily be expanded so as to provide that certain doctrines should be proposed to the pupils at the true meaning of certain biblical passages.

An editorial in the *New York World,* which strongly opposed the Tennessee law, admitted that "somebody must have the final say about what shall be taught in the public schools," but asserted that final authority must not be lodged in the legislature. "We are convinced," continued the editorial, "that no self-respecting educational system is possible in which the standards of truth are determined by electorial campaigns and the votes of a majority of legislators. Clearly there is something deeply wrong in a theory of democracy which claims that the majority shall determine not only gross questions of public policy but the results of scientific inquiry and the access of pupils to an understanding of what scholars the world over are thinking."

Nevertheless, the *World* confesses itself unable to formulate in precise terms its own "doctrine of educational independence." The writer of the editorial has in mind educational independence for the teacher. Without attempting to set forth a complete theory on the subject, we can draw certain lines, across which the public school teacher should

not carry his "educational independence." He should not teach as a fact that which is merely more or less probable theory. This rule will prevent him from inculcating evolution as an established certainty and therefore from positively denying the biblical account of creation. He should not represent any theory, or opinion, or conclusion, or doctrine as certainly true when it is merely one of several which have the support of responsible authority. This rule applies to history, philosophy, sociology, and all the physical sciences. Even when he sets forth scientific doctrines which are held to be true by substantially all educated persons, but which seem to conflict with certain interpretations of the Bible, or certain other religious beliefs, he should refrain from calling attention to the apparent disagreement. It is no part of the teacher's function to reconcile any of the disciplines in the public school curriculum with the Bible, or with religion. If a pupil calls attention to the apparent conflict and asks an explanation, the teacher should refuse to satisfy this legitimate curiosity. The pupil should be referred to his own priest, or minister or parent.

Obviously, this theory is difficult to reduce to practice. As a matter of fact, it is frequently and flagrantly disregarded. Nevertheless, the violations of religious neutrality by public school instructors could be greatly lessened. This result should be achieved, not by an enactment of the state legislature, but through the school administration. The responsible authorities and officials of the school system, or of the particular school, can lay down and enforce regulations which will attain the desired end, in so far as it is morally capable of attainment. Within certain wide limits, the problem is one for the administrative, instead of the legislative branch of the government. This policy has been adopted in California and Texas, where the state boards of education

prescribe the texts to be used in presenting the theory of evolution to public school pupils.

Does the Anti-Evolution statute in itself and necessarily hamper scientific inquiry or interfere with the proper and reasonable teaching of science? Would it be possible to teach evolution in the public schools of Tennessee without violating the statute? The teacher might set forth the evolution theory for what it really is, namely, a hypothesis which has been accepted by the majority of scientific authorities. Probably this would not be constructed as "teaching," in the sense of the statute; for to "teach" means more than to expound or set forth. It means to urge and advocate as certain and true. It seems clear that mere exposition of the doctrine, without qualifying it as "accepted by most scientific persons" would not violate the law.

Moreover, the statute would seem to permit even the "teaching" of a mitigated form of the evolutionary hypothesis. A few eminent Catholic scholars, for example, Canon de Dorlodot, and Father Wasmann, S.J., regard as probable the theory that the *body* of man was evolved from animal forms. Of course, they maintain that the soul of the first man was separately and specially created by God. It would seem that either of these great men might teach this particular form of the evolution doctrine in the high school of Dayton, Tennessee, without necessarily violating the language of the Anti-Evolution law. For this presentation of the subject would not be equivalent to the assertion "that man has descended from a lower order of animal." It would merely represent his *body* as being thus derived. Nor would it necessarily "deny the story of the Divine Creation of man as taught in the Bible."

Indeed, it would appear that Catholics can be more "liberal" on the relation of the Bible to scientific teaching than

are the Fundamentalists of Tennessee. According to the eminent Dominican biblical scholar, Father LaGrange, "There is no science in the Bible." [1] "The Bible is not intended to instruct us in modern science," declares Father Wasmann.[2] Many centuries ago, St. Augustine declared that the Sacred Writers "did not intend to teach men these things, things in no way profitable to salvation." Commenting on this passage, Pope Leo XIII, in his Encyclical on the Study of Holy Scriptures, wrote, "Hence they did not seek to penetrate the secrets of nature, but rather described and dealt with things in more or less figurative language, or in terms which were commonly used at the time, and which, in many instances, are in daily use at this day, even by the most eminent men of science." [3]

[1] *Historical Criticism and the Old Testament,* p. 181.

[2] *The Problem of Evolution,* p. 17.

[3] The Supreme Court of Tennessee, January 15, 1927, by a vote of three to one, declared the Anti-Evolution Law constitutional. The dissenting justice held the statute to be too vague, while one of the affirming justices uttered a dictum to the effect that the law permitted the teaching of a theory of evolution which would not exclude God.

VIII

THE SUPREME COURT AND THE OREGON SCHOOL CASE

A LARGE proportion of the Supreme Court decisions contain, in addition to the declarations of law on the case under consideration, other important statements known as *obiter dicta.* While these are no necessary part of the decision, or even of the supporting argument, they have considerable weight as revealing the mind of the Court. They indicate, with a high degree of probability, what the decision of the Court would be if certain related issues were up for decision. Sometimes they embody important legal *principles.*

The written opinion of the Court in the Oregon school case exemplifies this practice. It contains a very important *obiter dictum.* Curiously enough, it is this part of the Court's declaration which has been most frequently appealed to and quoted by Catholic speakers and writers. It reads as follows: "The fundamental theory of liberty upon which all Governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."

These sentences were written in reply to the assertion of counsel that Oregon could abolish private and parochial schools for the sake of public welfare. They are not an

integral part of the decision. They cannot be cited as a final interpretation of the constitutional rights of parents. That question was not before the Court. These sentences do, indeed, tell us how the Court, at least as now constituted, would construe the Constitution with regard to the educational rights of parents if that issue were brought before it for authoritative and formal adjudication. While we may properly and confidently appeal to them, we ought to keep in mind their limited and informal character. They do not constitute the letter of the law, but they do embody its spirit.

The distinction between the *obiter dicta* and the formal decision is easily drawn as soon as we ascertain the precise issue before the Court. In the Oregon case, the issue was not the educational rights of parents, but the property and occupational rights of private teaching corporations. No parent, as such, nor any child was a contending party. No parent, as such, nor any child was represented before either the lower court or the Supreme Court. No judicial proceeding could have been instituted on behalf of either parents or children against the Oregon Anti-Private School law before the date when the law was to become effective, September, 1926. No person can bring an action in the courts to have a law declared unconstitutional unless he can show that he is suffering actual or imminent injury. Obviously, no parent or child in Oregon could make such a showing until the law had begun to deprive him of the freedom to patronize private or parochial schools.

Therefore, the legal action, the plea for an injunction restraining the State of Oregon from putting the law into operation, was brought on behalf of the persons who conducted private and parochial schools. These were the Catholic sisters, a corporation conducting parochial schools, and the Hill Military Academy, a corporation which maintains a private school. They were able to attack the law in the

courts because their property rights had already begun to suffer injury, more than three years before the law was to go into effect. Their plea for an injucntion against the State of Oregon was based on the claim that their business, occupation, property, were already injured through the action of some of their patrons in discontinuing support, and because of their inability to make long-time contracts. These conditions and effects were already operative and were clearly traceable to the enactment of the law. This claim of actual and present injury was accepted as valid by both the district court and the Supreme Court. In the words of the latter, the injury was "very real, not a mere possibility in the remote future," and if relief were not given "prior to the effective date of the Act, the injury would have become irreparable."

The complaining corporations maintained that these injuries were a violation of the "due process" clause of the Fourteenth Amendment. That clause forbids a State to "deprive any person of life, liberty or property without due process of law." On behalf of the Sisters and the Hill Military Academy, it was contended that the injury done to their occupation violated both their property rights, and their rights of liberty. Both contentions were upheld by the district court and by the Supreme Court. That the constitutional rights of the appellees as regards property were violated by the law is sufficiently clear; that their constitutional rights of liberty were violated is not immediately clear to anyone who is not acquainted with previous decisions of the Supreme Court.

Among the earliest interpretations of the word "liberty" in the "due process" clause was that which construed it as including the liberty to follow any of the ordinary callings. One such calling is that of teaching the young. Hence, in the case of *Meyer* v. *Nebraska,* decided in 1923, the Court

declared unconstitutional a law which forbade teaching German in a private school. The Court held that the liberty to teach a useful subject was part of the liberty guaranteed by the Fourteenth Amendment. In the Oregon case, it re-affirmed this interpretation and declared that the two corporations before it had a right under the "due process" clause to carry on their educational occupation. In passing, it may be observed that the Fourteenth Amendment was adopted to protect the personal rights of the recently enfranchised negroes, who had been deprived by some states in the South of the liberty to move about and make their living in the ordinary ways.

In one short paragraph of its written opinion, the Supreme Court upholds by inference the right of parents to determine the schools in which their children shall be taught. "Under the doctrine of *Meyer* v. *Nebraska,* we think it entirely plain that the act of 1922 (the Oregon law) unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control." In the case of *Meyer* v. *Nebraska,* the Supreme Court had said "His right thus to teach and the right of parents to engage him so to instruct their children, we think are within the liberty of the Amendment." Neither in this case nor in the Oregon case were the rights of parents formally and explicitly before the Court for adjudication. In both cases, therefore, the rights of the parents seem to have been drawn as a necessary inference from the right of the teacher to pursue his calling. Teaching children implies making contracts with parents. Therefore, the right of a private person or corporation to teach children implies the right of parents to send children to private schools. This particular declaration of the Supreme Court seems to be something more than an *obiter dictum.* It describes a necessary implication of the law as construed in the precise issue before the Court.

To sum up: What the decision in the Oregon school case formally settled was that the right to conduct private and parochial schools is guaranteed by the Constitution and, therefore, that the right of parents and children to patronize such schools likewise enjoys constitutional protection. This is quite sufficient for all the interests and purposes of educational freedom, as regards the maintenance and choice of schools. The ethical and political philosophy which finds expression in the citation about the right of the child against the State, is not an integral part of the decision. It is an *obiter dictum*. Nevertheless, it has great practical value.

IX

AMERICAN CATHOLICS AND AMERICAN CITIZENSHIP

A. The Civic Loyalty of Catholics

THE editor of a very influential religious journal declares that there are "millions of good Americans who would under no conceivable circumstances vote for a Roman Catholic for President." He defends this stand on the ground that the Catholic Church "sets the Hierarchy above the law of the land and compels its adherents to surrender the keeping of their conscience to their Church," that the Pope "still claims to be a temporal sovereign," and that a Catholic in the White House might find his allegiance to Rome in conflict with his oath of office.

On the other hand, the Reverend S. Parkes Cadman writes: "To-day multitudes of Protestants realize that there is a higher love of democracy, a greater commandment than that of the State; a nobler obedience and a purer service than any political rule can rightly demand." This is taken from Dr. Cadman's volume, *Christianity and the State.*

The fundamental question which the editor raises is whether the citizen is obliged to obey all civil laws no matter how offensive they may be to his moral or religious principles. Dr. Cadman answers that question as it was answered by Saint Paul and the Apostles: "We ought to obey God rather than men." How can any believer in the New Testament accept the State or the civil law as the supreme determinant of morals? Yet this is precisely the

position that must be taken by anyone who maintains that the civil law is always to be obeyed, even when it violates the moral law and comes into conflict with the conscience of the citizen.

The only essential difference between the staunch Catholic and the staunch Protestant on this question of the civil law versus the moral law is that the former accepts the guidance of his Church, while the latter may possibly rely upon his individual conscience, unmoved by the authority of his particular religious denomination. The editor intimates that the Catholic citizen would set the Hierarchy above the law of the land, but the Protestant who believes in the New Testament would set his conscience above the law of the land. The latter no less than the former denies the absolute supremacy of the civil law when it involves the violation of the moral law.

Nevertheless, the editor's argument implies that there is a difference between the position of the Catholic citizen and that of the Protestant citizen. He intimates that refusal of civil obedience is a more serious danger in the case of the Catholic than in that of the Protestant, inasmuch as the former accepts guidance from the Pope, who "claims to be a temporal sovereign." To be sure, if the Pope were to command all the Catholics of the United States to disobey a certain law, that action might be more effective than the unorganized and individual actions of a group of Protestants who regarded a certain law as contrary to good morals. On the other hand, the decision of the authorities of the Methodist church, or the Episcopal church, or any other Protestant denomination, would have considerable effect upon the consciences of their individual followers on the question of the morality of a civil statute. And we know that these church bodies do make such decisions. Hamline University in St. Paul is a Methodist institution. Suppose

the State of Minnesota were to enact a law requiring all collegiate studies to be pursued in the State university. Would not the authorities of the Methodist church in that State have to decide what attitude they should take toward that law? If they decided to resist would they not be putting the church above the State, and would not their action have considerable effect upon individual Methodists?

The reference to the Pope as a temporal sovereign is entirely irrelevant. Catholics in the United States owe him no allegiance as a temporal sovereign. Their obedience to him is entirely in the spiritual order. Indeed, I might go further and say that reference to the Pope in any capacity is irrelevant. If any ecclesiastical command should ever come to American Catholics to disregard or disobey a civil law, it probably would come from the individual Bishops to their flocks in the particular localities affected by the law. Hence, there is a rather close parallel between the action of a Methodist conference with reference to an obnoxious law and the action of the Catholic ecclesiastical authorities.

Since this nation was founded, many Catholics have occupied responsible and powerful positions in several of our cities and states. There is no evidence that any of them ever received orders from his ecclesiastical superiors to disobey laws or to neglect their enforcement. Why, then, should it be assumed that anything of this sort is likely to happen? The presumptions are all the other way. The supposition that a Catholic President of the United States might find his allegiance to Rome in conflict with his oath of office is utterly unreal. If *per impossibile* a Catholic President found himself in such a dilemma he would have only two possible courses to follow. If he were conscientious he would resign in order not to violate the oath which he took as President; if he were not conscientious he would

disregard his religious affiliations and obligations and enforce the law. In either case, the country would be safe.

B. The Civic Rights of Catholics

My good friend, Father X, has made public a statement which is unfortunately typical. That is, it represents an attitude which is taken by a considerable proportion of Catholics among the laity as well as among the clergy. In brief, his contention is that Catholic rights are to-day subject to grave danger in our legislative assemblies; that our only security is in the United States Supreme Court; and therefore that all attempts to restrict the power of the Court should be opposed by loyal and intelligent Catholics.

Every one of these propositions is subject to serious doubt. Father X declares that "there is a growing disposition in many states to deprive Catholics of elemental rights," that he does not see "how Catholics can trust their future destinies to politicians or office holders," and that "almost anything may happen in a state legislature or in Congress." These are sweeping generalizations which Father X could not have expressed had he taken the trouble to analyze and weigh accurately all the pertinent facts. "A disposition" to deprive Catholics of their rights may mean much, or little, or nothing; everything depends on the political strength of the forces which manifest the disposition. The outstanding fact of the situation which Father X deplores is that just one state, only one, has enacted legislation detrimental to Catholic rights and welfare. That is the State of Oregon, which by popular vote adopted the notorious anti-parochial school law. This happened in the year 1922, when the anti-Catholic movement was strongly organized in that state; nevertheless, the measure had in its favor a majority of only 8,000. Had it been resubmitted to the voters at the 1924 election, there is no doubt that it would have been

repealed. At least, this seems to be the general opinion of all persons competent to judge. Moreover, there are many who maintain that the proposal might have been defeated in 1922 if the opposition had been better organized and more effectively directed.

Here, then, is the solitary instance of injury done to Catholic rights by an American legislative authority, the authority in this case being the people enacting a law through the instrumentality of the initiative. It is true that in several other states attempts have been made to bring about the same kind of hostile legislation. But all of them have failed. What does Father X expect? That in a country so overwhelmingly non-Catholic as ours is there should be no bigots, or at least that none of them should get into a state legislature or distribute an anti-Catholic petition among voters? It is not the bare fact but the magnitude and effectiveness of anti-Catholic political activities that are important Moreover, Father X seems to ignore the very great benefit which the Catholic cause may derive from opposition of this sort. When a bill aiming to injure Catholic schools, for example, is introduced in a state legislature, it provides opportunity for correcting misunderstanding and disseminating information with regard to the Catholic school system and Catholic aims and interests generally. This is one way of dispelling ignorance and spreading the light. Does Father X think it would be better if no such opportunities existed, if we were never required to explain or defend our position, and if we were to remain always undisturbed, in a condition of stagnant security?

If we turn now to Congress, we find that the assumption of a great increase in the political menace to Catholic interests has even less foundation than when it is predicated of the state legislatures. Congress has not enacted, nor has it shown any tendency to enact, any measure that is harmful

to Catholic interests. I am not forgetting the bill for Federal aid to education, formerly known as the Smith-Towner Bill. The efforts of a minority in Congress to have such a measure passed do not as yet show any indication of ultimate success, whereas the discussion provoked by these efforts has been of immense value in educating the public to the menace involved in such legislation, and in making known the educational position of the Church as well as the capacity of Catholics to defend their rights.

It would seem, then, that we are justified in rejecting entirely Father X's major premise, namely, that the danger to Catholic interests from hostile legislation is too great to be successfully met in our legislative chambers. By the exercise of a reasonable amount of vigilance and political activity, we can render this danger, such as it is, so remote that it need cause us no great disquiet.

Father X likewise exaggerates the danger involved in proposals to limit the power of the Supreme Court over legislation. He fears that if Senator La Follette's plan for a constitutional amendment which would empower Congress to repass a Federal law, declared unconstitutional by the Supreme Court, should be adopted, some other political leader might successfully "clip other powers of the Court and so on indefinitely." Anyone who takes the trouble to study the matter in all its bearings will realize that even if the La Follette proposal should become a part of our organic law (something that is quite unlikely to happen within the next twenty-five years) it could not effect Catholic schools or any other Catholic interest, since it would not apply to laws enacted by the states. As for the danger that this plan, if adopted, would easily lead to future reductions in the power of the Supreme Court, it is sufficient to point out that this objection can be made and always has been made to any proposal for the reform of any political institution.

To oppose necessary changes just because they may lead to future and undesirable changes has always proved a losing policy. It is the policy of the stand-patter and the bourbon. It will not be used by any far-seeing person. While pointing out this obvious lesson of political history, I wish, nevertheless, to say that I do not believe in the La Follette proposal. All that I am concerned with in this place is to emphasize the bad policy of opposing a political change on the ground that it may lead to other and worse changes.

The case stands thus: Father X exaggerates the dangers to Catholic interests both from the side of legislation and from the side of a certain proposal to curb the Supreme Court. These evils seem to him so great that he would have the Catholic voter disregard entirely the important and fundamental economic reforms advocated by Senator La Follette. Greater opportunity for labor, relief for the farmers, the abolition of monopolistic exactions which inflict injury upon the whole people, are of no importance as compared with perils which are unreal and hypothetical. The Catholic citizen is called upon to bear with grave evils rather than run the risk of imaginary ones. This judgment betrays a deplorable lack of a sense of due proportion.

To be sure, there are times when a Catholic voter ought to disregard his economic interests for the sake of his religious interests. If any party were proposing and had the power to enact a law abolishing parochial schools, no amount of beneficent economic proposals would be an off-set. It would be the plain duty of the Catholic citizen to vote against the candidates of such a party. In the campaign of 1924 no such alternatives confronted the Catholic voter. If he believed in the economic program of the Progressives, he was entirely justified in supporting it because the menace to Catholic interests involved in their Supreme Court suggestion was so intangible and remote as to be virtually nonexistent.

Indeed, the recent manifestation of anti-Catholic prejudice, which Father X deplores, is due in no small measure to precisely the political policy which he advocates. Again and again in the last few years I have heard from non-Catholics the complaint that our Catholic citizens hold themselves a class apart from the rest of the community; that they too frequently vote as Catholics, not as citizens; that they appear before legislative committees only to oppose some real or fancied attack upon Catholic interests; and that they hardly ever join with their non-Catholic fellow citizens in advocating before legislative committees measures of general welfare with which they, as well as their non-Catholic fellows, ought to have a deep and intelligent concern. While there is much exaggeration in this charge, we have to admit that it contains a considerable element of truth. In any case, it is the part of wisdom in a political campaign not to assume lightly and rashly that Catholic interests are threatened by certain party proposals, and not to treat important economic proposals as negligible.

Even if the menace to our educational or other interests were as great as Father X assumes and fears, his exclusive reliance upon the Supreme Court is a mistake. If he were better acquainted with the recent history of Supreme Court decisions construing the "due process" clauses of the Constitution, and if he had a larger comprehension of the opposition which has been provoked by these decisions, he would realize that some restriction on the power of the Court in this field is inevitable. Within a space of forty years the Supreme Court has read into the words "liberty and property" in the Fifth and Fourteenth Amendments a new meaning, namely, an excessive and unjust freedom of contract. Owing to this process of amending the Constitution by judicial construction, eight-hour laws, minimum wage laws, and other legislation for the protection of labor have been

nullified. So profound and far-reaching has been the effect of these decisions that Professor Arthur N. Holcome of Harvard feels justified in describing the change in these terms: "Thus the Supreme Court read into the Federal Constitution an interpretation of the liberty of the due process clauses by which the Utilitarians' philosophical idea of liberty was substituted for the specific juristic liberty of the men who wrote the Constitution." [1]

"The Utilitarians' philosophical idea of liberty" to which Professor Holcome refers, is the same as that held by Herbert Spencer. In Spencer's phrase, "every man is free to do that which he wills, provided he infringes not the equal freedom of any other man." Now this pagan theory of individual rights and individual liberty is denounced and refuted in every manual of Catholic ethics and moral theology. It is directly contrary to the teaching of Pope Leo XIII as laid down in more than one encyclical. It would authorize and justify the gravest acts of economic injustice under the specious plea that the powerful oppressor leaves to the oppressed the same freedom of action which he claims for himself. According to this theory, employers in the District of Columbia have a right to pay girls less than living wages; and the law of Congress which requires them to pay living wages was declared unconstitutional by the Supreme Court as an arbitrary interference with freedom of contract.

This decision is the latest of several through which the immoral Utilitarian doctrine of individual liberty has been read into the Constitution by the Supreme Court.

Just how this judicial process of legalizing economic oppression under the guise of safeguarding individual liberty can be most effectively checked need not be discussed here. The important point is that the grievance exists and that a continually increasing number of persons believe that

[1] *The Foundations of the Modern Commonwealth*, p. 327.

the process must be checked. The history of American politics and the history of the Supreme Court warn us that in these circumstances the process complained of will not be tolerated indefinitely. Mr. Dooley indulged in some exaggeration when he declared that the Supreme Court "follows the election returns," but anyone who will read such a historical survey of the Supreme Court as Brooks Adams' *The Theory of Social Revolutions,* will realize that sooner or later the Court gets into line with the settled and proponderate opinion of the country.

It is, therefore, a great mistake to rely exclusively upon the Supreme Court for the protection of Catholic interests. Such an attitude recalls unpleasantly other times and other countries, when Catholics were too prone to appeal from the legislature to the king, and when they opposed reasonable projects for lessening the power of the king and increasing that of the parliament. In the final outcome it proved a losing policy and it wrought great evil to Catholic welfare. There is some danger that history may repeat itself.

It is true that, as a minority, Catholics must rely to a considerable extent, as all other minorities, upon the authority of the Supreme Court to protect their fundamental rights. But if the Catholic minority should consistently and continuously oppose every proposal to deprive the Supreme Court of the power to nullify necessary social and labor legislation, it will find itself in time not merely a minority, but an almost entirely isolated minority. It will find itself allied with the beneficiaries of economic injustice who will be numerically small, and will find itself alienated from the majority of the population. In that situation, it will find that the Supreme Court can no longer give it adequate protection. Such, at any rate, seems to be the lesson of history.

On the other hand, if we ally ourselves with the political and social forces in our country that are aiming at wider

social justice, we shall be able to win for our religious and educational interests a sympathetic hearing and to prevent as effectively as a minority can ever hope to prevent, legislation against our welfare.

X

"IF I WERE PRESIDENT"

IF I were President of the United States (which, happily for the country and for me, will never happen) I should be guided by three main considerations: the presidential powers, as described in the Constitution; the rational end and functions of government, and the most urgent needs of the people.

The end of government is the common good. More specifically, it is the welfare of the people (a) as a whole, (b) as grouped in families, and (c) as forming social classes. The functions of government extend to those acts and processes which effectively promote man's temporal welfare. In his Encyclical on the *Condition of Labor,* Pope Leo XIII declared: "Whenever the general interest, or any particular class, suffers or is threatened with injury which can in no way be met or prevented, it is the duty of the public authority to intervene." Government should act when, and only when, private action is inadequate; and it should protect and promote the legitimate interests, not only of the whole community, but of all important social classes.

Which are the most urgent and conspicuous needs of our time which the President should endeavor to satisfy? In the spiritual field, they are: a revival of religion and a return to the old-fashioned principles of morality; in the political field: the improvement of our legislative, administrative, and judicial institutions; in the economic field: the abolition of those conditions which enable a small proportion of the industrial population to obtain exorbitant and unnecessary

rates of interest and profit and exercise a harmful influence upon government; and the abolition of those conditions which deny to a large proportion of the people the opportunity to live decent and secure lives; in the international field, the establishment of enduring peace.

As described in Article II of the Constitution, the most important functions of the President are: to act as Commander-in-Chief of the army and navy of the United States; to make treaties; to nominate officials; to recommend legislation and to enforce laws.

In describing the various things that I should try to do if I were President, I shall follow the order of needs, as set forth in the second last paragraph.

I. In the Spiritual Field. Here the President possesses no constitutional or official authority. According to traditional practice, however, he annually designates a day of public thanksgiving to Almighty God. On this and other appropriate occasions, the Presidents of the United States have given public expression to religious and moral sentiments. This tradition I should continue, being careful not to violate, in letter or in spirit, the guarantee of religious freedom contained in the Constitution. As strongly and as frequently as the proprieties would permit, I should emphasize the necessity of submission to the Divine Ruler, and of loyalty to those principles of morality which form part of our heritage as a nation.

There is, indeed, one official action which the President might take in the field of public morals. It is to consider carefully whether he ought not to recommend the adoption of a constitutional amendment which would give to Congress concurrent power with the states to regulate marriage and divorce. The possible benefits of a uniform divorce law are obvious. Among them are: reduction of the legal causes for and, therefore, the number of divorces, and the

diminution of marriages which are recognized in one state and not in another state. Inconveniences arising from the variety of state regulations concerning the marriage contract could likewise be abolished. However, there is one reservation which should be attached to the congressional power over divorce: the states should be allowed to retain the power to enact stricter divorce laws than those passed by Congress, and also the power to abolish divorce entirely. On the other hand, no state should be permitted to have a more lax divorce statute than that enacted by Congress.

II. In the Political Field. This province comprises the administration of law and the election of law makers. Under the former head comes the authority of the President over the civil service, and his power to appoint public officials. The following groups of government employees and officials ought to be placed in the classified civil service: all in the Post Office Department, except the Postmaster General and one or two of his immediate subordinates; in general, all administrative employees, except those who have a part in formulating policies and administrative by-laws. If I were President, I should make these reforms immediately, so far as permitted by existing legislation, and ask Congress for the necessary additional authorization.

More important for law administration than even civil service regulations is the character of those selected by the President as heads of Departments, members of Federal Commissions, and of the Federal Judiciary. If I were President, I should seek for the Cabinet men who were not merely honest and efficient, but who conceived public welfare as including social justice. For the position of Attorney General, I should select a man who believed that private monopoly is socially injurious, and who would deliberately, consistently, and persistently enforce the anti-trust laws.

No such person has ever yet presided over the Department of Justice. As heads of the Departments of Commerce and Labor, I should want men who would endeavor to promote the interests of both business and labor, but who recognized that neither current business ethics and practice, nor current labor ethics and practice are always consistent with social justice and social welfare.

As members of the Federal Trade Commission, I should nominate no person who did not detest monopoly and all unfair methods of competition. On the Tariff Commission, I should put no person who was not competent and willing to set forth the truth about the nature and effects of the tariff schedules. To the Interstate Commerce Commission, I should call only men who, in addition to technical competence, believed that the owners of railroads are, as a rule, entitled to only the competitive rate of interest on their actual investment. To some extent, however, actual investment should be supplemented by other factors as determinants of value. This point will receive elucidation in a later paragraph.

Although the Judiciary does not come under the rubric of law administration, it may conveniently be considered in this place. I should nominate no person to the Supreme Court, nor to any of the other Federal courts, who was handicapped by a wrong social philosophy. Owing to such a philosophy, the Federal courts have declared necessary labor legislation unconstitutional, and have inflicted grave injustice upon wage earners in equity cases. Conspicuous among such judicial acts were: the decision of the Supreme Court in *Lochner* v. *New York; Coppage* v. *Kansas; The Hitchman Coal and Coke Co.* v. *Mitchell, et al.;* and the District of Columbia Minimum Wage case. In all these decisions, the majority of the court acted upon an individualistic theory which is out of harmony with the facts of industry and the

needs and rights of the weaker economic classes. They assumed that substantially complete freedom of contract should be permitted between employer and employee. Hence, they held that laws which forbid bakers to be employed for more than ten hours a day, which prohibited employers to discharge employees for membership in a labor union, and which forbade women to be employed at less than living wages, were unconstitutional, as depriving persons of that "liberty" which is guaranteed by the Fourteenth and Fifth Amendments. They also held that the power to require an employee to stay out of a labor union was protected by the same constitutional guarantee of "liberty." Because of their false social philosophy, the majority of the justices failed to perceive that this sort of "liberty" in labor contract means the liberty of the strong to oppress the weak. In all four cases a minority of the Court filed vigorous dissenting opinions. The differences between the majority and the minority were not based upon legal or constitutional issues but upon different views of ethics and social philosophy. Owing to such differences, the majority and the minority attached diverse meanings to identical words and phrases in the Constitution.

With regard to the Federal representative system, I should recommend to Congress the adoption of the Hare Plan of proportional representation for elections to the lower branch of Congress. This would require that Congressional districts be converted into multi-member constituencies. Each district would elect a group of Congressmen, say three, four, or five. If each district were confined within a single state, this arrangement would not conflict with the Constitution. Even those few states which elect only one representative would derive some advantage from the Hare System, inasmuch as it would require the successful candidate to obtain a majority, instead of a mere plurality, of the ballots.

Minorities would receive adequate representation, while every important social interest or class could be certain of some representation. Let us suppose two districts, each of which sends five members to Congress. In one, the electors divide along party lines alone, three-fifths being Republicans and two-fifths Democrats. Under the Hare System, the latter would be assured of two representatives. In the other district, the majority of the citizens, we will assume, vote according to their occupational or class interests. Two-fifths are farmers; one-fifth wage earners; one-fifth business and professional men; while the remaining one-fifth have no pronounced occupational or class affiliation. The congressional delegation from that district would consist of two farmers, one wage earner, one business or professional man, and one "general citizen." In both districts, every group would be represented in proportion to its numbers.

With one of the two houses of Congress thus constituted, there would be a great gain for political realism and political honesty, as well as for social and economic justice. Under the present system, the majority of congressmen profess, or pretend, or attempt, to represent many groups with whose needs they have neither acquaintance nor genuine sympathy.

III. In the Economic Field. Among my first recommendations to Congress would be the abolition of the protective tariff. A great many commodities could be put on the free list immediately, without substantial injury to any class, and with much benefit to the majority. Conspicuous among these articles would be farm machinery, and all other goods which are purchased mainly by farmers. All goods not immediately placed on the free list should be subjected to a twenty per cent reduction of tariff rates annually for five years. In this way, industries which could not function without tariff protection (they are not very numerous) would pass out of existence with a minimum of hardship

to owners and employees. It is no more rational nor economic for the United States to maintain an industry which cannot produce goods as cheaply as they can be obtained from abroad than it would be for Massachusetts or New Jersey to raise its supply of bananas in hothouses, instead of importing them from Florida. In the latter, as in the former situation, "employment would be given to capital and labor."

In fiscal affairs I should favor the retention of the progressive tax on incomes, with no immediate changes except some increase in the sur-taxes and an increase to five thousand dollars in the exemption allowed married persons.

The estate tax rates which prevailed before the enactment of the existing law ought to be restored. The so-called "nuisance taxes" and all Federal taxes on production which are passed on to the consumer, I should want to see abolished. As an offset both to this change and to the decline in revenue from the tariff duties, I should strongly recommend the restoration of the excess-profits tax, which is one of the most scientific and most equitable methods of taxation that have ever been devised.

The depressed condition of agriculture calls urgently for relief. Nevertheless, the principles underlying the McNary-Haugen bill, and similar proposals, seem to be unsound. No such measure should be enacted without a provision which would effectively check any tendency to increase the volume of agricultural products. The fundamental evil of the agricultural industry at present is excessive production. Among the reliable remedies are: the tariff changes suggested above; some reduction of railroad freight rates; and a generous amount of Federal encouragement and aid to agricultural coöperative associations.

Owing to constitutional limitations, Congress has little power over labor conditions. However, it could and should

make the following enactments: require Federal public works, so far as feasible, to be constructed in times of industrial depression; establish a comprehensive system of labor agencies, coördinated with state and municipal employment agencies; extend the anti-injunction provisions of the Clayton Act so as to protect fully the reasonable liberty of the wage earners; formally declare the so-called "yellow dog" contracts to be against public policy and beyond the cognizance of the Federal courts; and establish a general system of conciliation and arbitration boards, to operate under an industrial code, such as that suggested a few years ago by Senator Kenyon, but without any provision for compulsory arbitration. Should a constitutional amendment be found necessary to enable Congress to enact such an industrial code I should recommend that such an amendment be proposed to the states.

The coal industries. I should recommend to Congress Federal ownership of the anthracite mines and coal lands, with Federal operation of the mines and distribution of the product under a board of directors comprising representatives of the government, the employees and the consumers. The employment relations should be governed by an industrial code, or bill of rights. For the bituminous industry Congress should provide legislation requiring all mining companies which ship coal across interstate lines to take out a Federal license. Among the requirements of this license should be an industrial code and operation of the mines for a certain minimum number of days per year, together with unemployment insurance for whatever portion of that period the mines failed to continue in operation. These provisions would automatically eliminate the two major evils of the bituminous industry, namely, an excess of mines in operation and an excess of workers trying to find employment. Mining companies unable to meet these con-

ditions should be given the option of selling their properties to the Federal government at a fair price. The surplus mine employees should receive assistance in moving to other localities and finding other jobs.

While fair competition should be enforced by law in all economically competitive industries, public utilities of national scope should be treated as natural monopolies. Since no man, nor any group of men, can be trusted to use monopolistic power justly, national public utilities should be either adequately regulated, or owned and operated by the Federal Government. In general, I should prefer the latter policy, inasmuch as experience has amply shown that the former is incapable of protecting the public interest as regards charges and service, nor of providing the most efficient and economical operation. The most conspicuous example of these failures is found in the relations between the Interstate Commerce Commission and the railroads.

Since Federal ownership of all the national public utilities would require a long time for completion, the immediate action which I should recommend would be a comprehensive declaration of policy. It should include the following objects and provisions: Federal ownership, as soon as practicable, of the railroads and telegraphs; Federal operation of each of these two industries by a board of directors which should include representatives of the employees and of the consumers, or patrons, thus eliminating the danger of Federal bureaucracy; Federal ownership in conjunction, so far as practicable, with states, cities, and coöperative societies, of telephones and concerns for the production, transmission, and distribution of electric power—a giant power system; Federal operation of these instrumentalities by boards containing employee and consumer representation, as in the case of the railroads and the telegraphs, and in conjunction with states, cities and coöperative associations.

Federal operation of the power and fertilizer plants at Muscle Shoals and Federal construction and operation of the proposed dam at Boulder Canyon should be undertaken immediately. So far as possible, the distribution of power from both sources and the distribution of water from the latter should be conducted in coöperation with the authorities of the States and localities most vitally interested. These two projects should become the beginning of a giant power system, based upon the water and coal resources owned by the Federal government. Not the least beneficial function of such a system would be to check the monopolistic excesses of the power systems owned by private corporations.

Both for immediate guidance in rate making, and for ultimate guidance in government purchase, the problems connected with railroad valuation should be finally solved at the earliest possible moment. Since the Supreme Court has declared that "the rate making power is a legislative power," Congress ought to enact rules for determining both fair value and the fair rate of return. The latter should be defined, substantially, as, "that rate which is sufficient to insure continued investment of capital in railroads." Fair value should be defined as "actual and prudent investment." This would be the normal measure of fair value and, therefore, the exclusive rule of valuation for all future railway construction, and all future additions to present construction. To the existing situation the rule should be applied with certain modifications. Original cost alone would be as unfair to the railroads as reproductive cost alone would be to the public. Hence, I should recommend to Congress the proposal made in his book, *Effective Regulation of Public Utilities,* by Dr. John Bauer: "Add to original cost one-half the amount obtained by multiplying the stockholders' portion of the original investment by the per cent of subsequent increase in the general price level." In other words, the

stockholders would get the benefit of one-half the rise which had taken place in prices since they put their money into railway property.

That the stockholders should be allowed something on account of the increase in the price level is only fair, since they were not notified to the contrary when they made their investment. That they should not reap the whole benefit of the price increase is equally fair, since they have always been aware that their investment was not a purely private one, and since they would continue to enjoy the benefit of the valuation thus fixed, even though prices should subsequently fall.

In view of the preponderant Supreme Court decisions, the foregoing rules of railroad valuation would seem to be, not only equitable, but practically prudent and necessary. And I should recommend their application to all other public utilities under the jurisdiction of Congress.

IV. International Relations. As Commander-in-Chief of the Army and Navy, I should do all in my power under the Constitution to keep in check the militaristic activities of army and navy officials, and their efforts to obtain unnecessary increase in our armaments. Realizing the immense and unique opportunities now open to our country for the promotion of international peace, I should strive to bring about the outlawry of war and disarmament by international agreement. In order to hasten these processes, I should ask for authority to appoint immediately a commission to ascertain whether the economic and political interests of America, and all the other great nations, might not be promoted by a universal cancellation of public international war debts and reparations. Then I should take the necessary steps to call an international conference to determine and establish agreements and institutions for international economic readjustment and the maintenance of international peace.

XI

CANCELLATIONS OF WAR DEBTS AND REPARATIONS

At the beginning of the year 1920, the distinguished British economist and financial authority, John Maynard Keynes, proposed that all inter-Allied debts be canceled and that the total amount of Germany's reparation obligations be reduced to $7,500,000,000. The suggestion received considerable approval in Great Britain but practically none in the United States. President Wilson informed Lloyd-George that it was highly improbable that Congress would agree to any reduction of the money owed the United States by Great Britain or any other of our Associates in the late war. In 1922, Congress passed the Debt Funding Act which called for an interest rate of 4.25 per cent, required full payment within twenty-five years, and made no allowance for incapacity to pay. The same year our government addressed a firm but courteous note to the British Foreign Office demanding payment of the accrued interest and funding of the British debt. In consequence of this demand the funding transaction was completed in June, 1923. Later in that year, President Coolidge formally recommended that the war debts should not be reduced or canceled. This statement was received by the listening members of the Senate and House of Representatives with "great applause." Undoubtedly, the vast majority of the American people likewise applauded this view.

We have made some progress since those days of confu-

sion and ignorance. Early in 1923 Congress revised the Debt Funding Act, thereby authorizing the Debt Funding Commission to lengthen the period of payment from twenty-five to sixty-two years, and to reduce the rate of interest from 4.25 to 3 and 3.5 per cent. Both these changes, particularly the first, constitute implicit recognition of capacity to pay. In 1925 the Debt Funding Commission gave to that principle formal and explicit recognition. In the settlements every one of our debtors is allowed sixty-two years to complete its payments and none of them is required to pay interest at the rate of 4.25 per cent. The average rate specified in these agreements exceeded in no case 3.3 per cent and in one instance it is only .4 of one per cent. Obviously this is partial cancellation. On the average the reduction amounts to 43 per cent of the total amount owed us by the Allies before the debts were funded. Great Britain's debt was reduced by 19 per cent. Italy received the benefit of 75 per cent cancellation, while the average for all the Continental countries is 58 per cent.[1]

There is one plea for cancellation which should not be heeded. In substance, it contends that the United States owes the Allies even more than it lent them, because they saved us from assault by a victorious Germany, particularly in those months immediately after the loans were made and before any considerable number of American soldiers had arrived upon the battlefields. That danger is purely imaginary. Even if Germany had won a complete victory she would not have attacked the United States. It is also urged that our loans were not more than an adequate return for the money and lives that we saved through our inability to get our troops to the front for several months after we had

[1] Most of the statistical statements in this paper are based upon *The World War Debt Settlements*, by Moulton and Pasvolsky. (The Macmillan Co., 1926.)

entered the war. Undoubtedly, both these forms of saving were real. Nevertheless, the obligation of paying for them by debt cancellation cannot be regarded as one of strict justice. We made no contract to that effect. There may be an obligation in equity, but when we get into that field we easily find obligations which run in our favor and which might well offset any that favor the Allies.

The debts ought to be cancelled in order to prevent European ill-will; because the debt payment arrangements are unreal; because the debts cannot be paid; because we really do not want them paid; because the economic sacrifice involved in cancellation is negligible; and because of the great advantages to be derived from cancellation.

1. *European Ill-Will.* It is currently and frequently asserted that our late Associates in the war are embittered toward us and characterize our insistence upon repayment of the debts as the act of a Shylock. It is reported that a large part of British and French opinion does not admit that our assistance was of any importance in deciding the issue of the Great War. At the present time we seem to be better liked by the peoples of Austria, Germany, and Hungary than by the Allies. However unjust we may regard these attitudes and developments, we cannot view them with serene indifference. They contain grave possibilities of military and economic injury. Should this distrust and enmity increase they would not improbably compel the United States to enlarge its military and naval equipment; and they might bring about a European economic league which would gravely injure our European trade. That such a program of united economic action is not impossible or improbable is indicated by the recent declaration of European bankers concerning free trade. On good authority it is asserted that the opposition of the French parliament and people to the Mellon-Berenger Debt Funding Agreement is

mainly based upon the fear that it would mean vast investments of American capital in the industries of France. They look upon this contingency as the beginning of economic serfdom to the United States. Finally, it is worth our while calmly to visualize the attitude of the nations as they continue for sixty-two years to pay foreigners for debts contracted to carry on a war ended in 1918.

2. *The Unreality of the Debt Payment Arrangements.* History provides no precedent for such enormous loans among nations nor for repayment over such a long period of time. Nor do commercial loans and debts afford anything like an exact parallel. Few, if any, loans between private persons or corporations cover sixty-two years or are subject to such uncertain or so many unpredicable contingencies. As Secretary Mellon has well said: "The capacity of a nation to pay over a long period of time is not subject to mathematical determination. It is and must be largely a matter of opinion." Even though we were absolutely certain that the annual installments of the debts would be forthcoming until the process is completed, we are not as vitally interested in the transaction as we have uncritically permitted ourselves to assume. More than half the total of the British obligations will be unpaid at the beginning of the year 1955; more than half the French debt, should the Mellon-Berenger agreement be ratified, will be unpaid at the beginning of 1960; more than half the amount owed us by Italy will be still due at the beginning of 1969. Of what real interest to this generation is the question whether the United States shall still be collecting these debts thirty or forty years hence? When the Debt Funding Commission yielded to the realities of the situation and allowed sixty-two years for maturity of the debts instead of the twenty-five years required by Congress, it seems to have been indulging the vague hope that conditions might be more favorable in the

distant uncertain years than they are to-day. To use a colloquialism, the Commission seems to have "passed the buck" to future generations. I repeat the question asked above: can you visualize nations continuing to pay debts to another nation during such a long period? This hypothesis seems to me to be unthinkable, even under the most favorable economic conditions. Suppose conditions continue to be, as they are now, distinctly unfavorable for most of the debtor countries. In the opinion of competent economic authorities, France will be unable to balance her budget or begin to pay her war debt to the United States and Great Britain, until she reduces the rate of interest due her domestic bondholders to two per cent. Is any Amercian so naïve as to assume that any French government would seriously consider the proposal to reduce interest payments to its own citizens in order to pay interest and debts to foreign nations?

3. *Our Debtors Have Not the Means to Pay.* The Debt Funding Agreements with all of our thirteen European debtors contemplate relatively small annual payments during the first five years. After that period they rise, gradually in the case of Great Britain and rapidly in the case of all the other countries. Obviously this feature indicates present difficulties and reflects indefinite hopes in the uncertain future. Nevertheless, it is practically certain that with the exception of Great Britain none of our debtors is or will be economically able to pay the required installments during the next ten years. That is to say, none of them will be able to provide a surplus of exports over imports and, therefore, to pay in the only way that one nation can pay another. The Continental countries which have begun to make payments on their foreign war obligations are able to go through the motions of the transactions because they have previously borrowed the money, mostly from the United States. As soon as Italy had agreed to the funding arrangement, it bor-

rowed from American bankers four times the total amount of its debt payments for the next five years. Many of these states have not even balanced their budgets. According to John Foster Dulles, the debtor countries will have to borrow from the American people twenty-two billion dollars in order to obtain the means of paying the twenty-two billions which are due from their governments to ours in the next sixty-two years. This means that our government receives the war debt payments from our own citizens who take the place of the government as creditors to our foreign debtors. It is all but certain that the debtor countries will for a long time remain unable to obtain the money through taxation. The plight of France is little if any worse than that of several of the others. In 1925, that country expended fifteen billion francs in excess of its revenues. Nevertheless, it was collecting in taxes 20 per cent of the national income as against 18½ per cent in Great Britain and 11½ per cent in the United States. The national income of France is $195 per capita as compared with $395 in Great Britain and $605 in our own country. If these countries, through devices not now apparent, do succeed in making the annual debt payments by producing a surplus of exports over imports, they will have to lower still further the deplorably low living standards of their people.

4. *In Reality We Do Not Want the Debts to be Paid.* The annual interest and sinking fund payments which our thirteen European debtor countries have agreed to pay (assuming that the Mellon-Berenger agreement will be ratified) aggregate an average of $242,000,000 annually for the next ten years. Add to this, $600,000,000 yearly interest on the eleven billions of commercial loans made by citizens of the United States in foreign countries and you have a total of approximately $850,000,000 which we can receive only in the form of imports. That would represent our

unfavorable balance of trade if we made no more loans to foreign countries. This condition would scarcely satisfy those among us who desire to continue indefinitely an excess of exports over imports. In the annual report of the Director of the Bureau of Foreign and Domestic Commerce, for the year ending June 30, 1926, we read: "So long as we continue each year to send vast sums of capital to foreign countries we can maintain an excess of exports." It is only through continued borrowing from us that foreign countries can continue to take from us more goods than they send us. According to Mr. John Foster Dulles, our commercial loans to foreign countries will not improbably continue at such a rate that in fifty years they will reach the astounding figure of seventy-five billions of dollars.

Hence, we are confronted by a dilemma. If we want the war debts paid we shall have to discontinue or discourage the practice of indefinite lending abroad; if we do this we shall have to curtail our exports and, therefore, our production, at least of certain kinds of goods. A further complication is introduced by our high protective tariff. Unless this is lowered we cannot accept sufficient foreign goods to provide the annual sums due from debtor nations. As a consequence we are witnessing a distinct and growing cleavage between two classes of American business men. On the one side are the industrialists who want a high tariff; on the other side are the bankers who desire a low tariff in order that the interest due them from foreign countries can be paid by the only possible method, namely, in goods, in imports. Naturally the former would rather have the debts cancelled than the tariff lowered. Probably the majority of the bankers are equally favorable to cancellation, inasmuch as that action would render their own loans more secure and the regular receipt of interest payments more probable.

5. *The Economic Sacrifice Involved.* The assertion is

frequently made that cancellation would inflict great hardships upon American tax payers. They would have to provide all the money to pay the interest on the Liberty Bonds, whereas, a part of the necessary funds is now obtained from our foreign debtors. Let us see just how oppressive would be this burden, as applied to personal income taxes. The Federal tax collections from individual incomes in 1925 was $879,000,000, while the installments of principal and interest on the war debts was $168,160,322. Had these not been received the personal income tax collection for 1925 would have been $1,047,160,322, or an increase of 19 per cent. For the four million tax payers this burden would have amounted to $42 per capita. Of course, it would have been very much less than that for the great majority, and very much more for a small minority.

Six of our European debtors paid us nothing in 1925. When they begin to remit the importance of the war debts to our tax payers will be somewhat greater. The average yearly amounts due for the ten-year period, 1926-1935, is $242,000,000. On the assumption that the tax collection is to be the same in 1930 as it was in 1925, namely, $879,000,000, the burden of cancellation in 1930 will be an increase of twenty-seven and one-half per cent in the personal income taxes. With the number of tax-payers the same, the burden will average $60.50 per capita.

The situation is comparable with that involved in President Coolidge's recent proposal to rebate ten to fifteen per cent of the income taxes paid in 1926. According to the New York *World,* November 9, 1926, this action would have enriched ninety per cent of the tax payers by less than two dollars each, and the majority of them by about thirty-three cents. The burden imposed by cancellation would in 1930 be about twice the benefit proposed by the President; that is, twenty-seven and one-half per cent, as against ten

to fifteen per cent. In other words, it would cost ninety per cent of the tax payers less than four dollars each and the majority of them about sixty-six cents.

Having thus translated the "burden" of debt cancellation into concrete terms, we are prepared to give a sympathetic ear to Secretary Mellon's statement: "The entire foreign debt is not worth as much to the American people in dollars and cents as a prosperous Europe as a customer." [1]

6. *Advantages of Cancellation.* These are very great, incalculable in fact, if cancellation takes place subject to two conditions. The first is the wiping out of German reparation indebtedness; the second is the agreement of all the nations upon a policy of disarmament, outlawry of war and some revisions of the Treaty of Versailles.

The first condition should be easy of fulfillment. The British policy was expressed more than four years ago in the Balfour Note, to the effect that the British share of German reparations would be surrendered upon cancellation of the whole body of inter-Allied indebtedness. It should be kept in mind that Great Britain lent about twice as much to its Allies as it borrowed from the United States. France borrowed about seven billions of dollars more than it loaned. Italy and all our other European debtors would have everything to gain and nothing to lose through cancellation. So far as German reparations are concerned, France would, indeed, be a loser, but her share of the reparations, estimated on the basis of the Dawes Plan Annuities, is at most only five billion dollars. Therefore, France would obtain a net gain of two billion dollars through cancellation.

Conceivably, some persons who are still dominated by war psychology and war hatred will balk at the thought of freeing Germany from further reparation payments. They

[1] Discussion of the Italian Debt settlement before the Ways and Means Committee of the House of Representatives.

will contend that a decent respect for the moral law requires Germany to repair the damages inflicted by her military and naval forces in France and elsewhere. Even so, the amount of such damages has been estimated by John Maynard Keynes at only nine billion dollars. Included in this sum are one and one-half billion dollars on account of Belgian debts to the United States, Great Britain and France. The reparations assessed against Germany under head of pensions and allowances may be summarily set aside as having no sounder basis than brute force and brazen injustice. Let us assume then that Germany ought to pay nine billion dollars by way of reparations. How much had she paid already? According to the German economist, Lujo Bretano, she had paid ten and a half billion dollars in 1923. At the opposite extreme is the estimate of the Reparations Commission which credited Germany with two billions at the end of 1922. Since then she has paid something over half a billion under the Dawes Plan. In their authoritative work, *Germany's Capacity to Pay,* Moulton and McGuire estimate German payments, properly creditable to reparations, up to the end of September, 1922, at six and one-half billion dollars. Adding to this amount the Dawes Plan payments, we have a total of over seven billions. This leaves only two billions unpaid.

Inasmuch as France is entitled to only 52 per cent of the reparation payments, the benefits she would receive from compelling Germany to pay the last just farthing are insignificant in comparison with those which she would receive through the cancellation of her seven billion net indebtedness to her Associates in the war. Moreover, these reparation benefits are highly conjectural. In all probability, the Dawes Plan will not produce the two and one-half billion marks which it calls for annually, beginning September, 1928. All the payments thus far have been derived from money bor-

rowed in the United States. As Mr. Keynes expresses it: "The United States lends money to Germany; Germany transfers its equivalent to the Allies; the Allies pay it back to the United States government. Nothing real passes—no one is a penny the worse. The engravers' dies, the printers' forms are busier." Indeed, this description can be applied quite as accurately to payments made or likely to be made to the United States by the debtor nations, with the exception of Great Britain.

The other condition preliminary to all-round cancellation of war debts is the agreement of all the nations involved in the Great War to adopt certain definite measures for the stabilization of peace. The negotiations looking to these ends should take place at a conference called by the President of the United States and held in Washington. Speaking as a representative of the American people he would say, in effect, to the countries of Europe: "We are ready to cancel all the war debts owed us by you, provided that you cancel the like debts owed by you to one another, and erase the entire obligations of Germany and your other late enemies under the head of reparations; provided, further, that you are willing to do your utmost to come to an agreement for thorough-going universal disarmament, for outlawry of war as a method of settling international disputes, and for a revision of the most flagrantly unjust articles of the Treaty of Versailles." Only when these objects had been attained at the conference in Washington should the act of debt cancellation be formally concluded.

No profound knowledge of economics or politics nor any unusual flights of imagination are needed to realize the benefits that such an achievement would bring to all the nations of the Western world, particularly to those directly involved in the transaction. Even greater would be the advantages through relief from the burden of armaments, the increase

of international trade and the stabilization of economic and fiscal systems. Immeasurably greater would be the benefits to all the nations of the world from the assurance of peace and the creation of a new international spirit. In comparison with the quality and quantity of these benefits, the paltry sum of twenty-two billion conjectural dollars, which it is nominated in the bond that we should receive during a period which is much longer than the average term of human life and which matures only after the vast majority of Americans now living shall have passed to a place or places where dollars do not count—is not only negligible but deserving of complete and utter contempt.

One of the main counts in the indictment against Germany during the World War was that her government had, for a long time, accepted and acted upon the false principle that nations are not bound by moral law; that they are, in fact, above moral law. No such doctrine has ever obtained acceptance among the people of America. We believe that nations, like individuals, are bound to one another by the principles of right. We insist that our own country shall always treat foreign countries with justice. Well, the precept of charity, or love, is likewise a part of the moral law. And it is higher than the precept of justice. If America desires to be guided in its international relations by the whole of the moral law, it cannot ignore the claims of international charity. If it accepts the principle of international charity in theory, it ought to apply it in practice. If there ever was a time when the precept of charity demanded something from one nation to other nations, that time is surely the present, that nation is the United States, and that duty of charity is to bring about the cancellation of war debts and reparations. And this would prove to be not only good morals, but good policy.

XII

CHRISTIAN PRINCIPLES OF WAR AND PEACE

CHRISTIAN principles would make peace secure and war impossible. For Catholics this is a truism. We recommend it unceasingly to statesmen and peoples. Not infrequently, however, our manner of stating this proposition suggests the inference that we expect Christian principles to operate automatically. We seem to attribute to the phrase, "Christian principles," something like the intrinsic efficacy which the magician pretends to ascribe to his words of incantation. We speak as though a formal profession of Christian principles in the abstract would of itself bring in a reign of peace.

Obviously, no intelligent Catholic intends to convey this impression. The Christian principles of international conduct are not self-operating, any more than the Christian principles which relate to the family or to industry. A husband may think that he loves his wife and yet put upon her uncharitable burdens; an employer may think that he is just to his employees and yet deny them the rights proclaimed by Pope Leo XIII. Peoples and their rulers may assume that they are observing the precepts of justice and charity in their intercourse with foreigners, all the while they are violating both.

Two conditions are prerequisite to the efficacious working of Christian principles in the promotion of international peace. The first is specific and detailed application of the principles; the second is such long-continued inculcation that

they will have become imbedded in man's emotional as well as his intellectual nature. The general principles must be brought down from the lofty abstract regions of the mind and made a part of the individual's practical thinking; and they must become an integral element in his training, a part of that mental furniture which is readily available for use in everyday life.

How can we perform this task of specific and persistent application of Christian principles? Let us first examine to what extent our authoritative teachers have in the comparatively recent past fulfilled the duty of enunciating and applying the Christian principles which relate to peace and war.

The Supreme Pontiffs have during the last half century repeatedly proclaimed the moral obligations of the nations to one another. Pope Leo XIII expounded the Christian doctrine of international relations in more than one majestic encyclical. One of the last acts of Pius X was to warn and rebuke the Emperor of Austria on account of his government's treatment of Serbia. At the outset of his pontificate Benedict XV recalled to the minds of the belligerents the principles of international justice; later on he offered them a practical program for ending the war and setting up a stable peace. Pius XI condemned the French invasion of the Ruhr and on other occasions has urged the nations of Europe to abandon force in favor of the methods of Christianity.

None of the subordinate exponents or teachers has an equally creditable record. Our text books of moral theology and moral philosophy are lamentably inadequate in their exposition of the ethical principles of peace and war. My examination of these manuals has brought to light only one which states clearly the very important moral truth that any and every war, taken as a whole, as a two-sided process, is

always immoral. At least one of the belligerents is always in the wrong. In his *Institutiones Juris Naturalis,* Theodore Meyer, S.J., declares: *Bellum nequit esse, objective loquendo, ex utraque parte formaliter et materialiter justum.* In substantially all the other moral texts that I have consulted, the emphasis is placed upon the lawfulness of war and the duty of opposing unjust aggression, rather than upon the immorality of war and the duty of averting it by negotiation and conciliation. War is represented as more or less natural, normal and inevitable. With the exception of Meyer and Cathrein none of the authors adequately stresses the obligation of exhausting all peaceful methods before resorting even to a war of defense. Scarcely any of them calls attention to the obvious fact that if states gave due attention to this duty of exploring methods of conciliation, wars would have been rare occurrences. Had all the involved States sincerely observed this condition in 1914, there would have been no Great War.

Of lamentable significance is the fact that none of the manuals contains in its index the word, "peace." The word does not occur in the indices because the subject receives no formal treatment in the text. Neither the blessings of peace nor the Christian principles concerning it are submitted to systematic discussion.

In other fields of instruction, the situation is no better. In schools, in religious periodicals and occasionally in the pulpit, a doctrine of patriotism is taught which is profoundly unbalanced. The declaration of the pagan poet, *Dulce et decorum est pro patria mori,* is quoted without qualification and generally with complete approval. Seldom is it pointed out either to pupils in the schools or to audiences that to die for one's country is neither sweet nor becoming if one's country is engaged upon a war of aggression. Indeed, the virtue of patriotism is frequently taught in such a way as

to convey the impression that it is identical with willingness to fight and die for one's country. Undue emphasis is placed upon the lawfulness of supporting just war and opposing unjust aggression.

Not long ago a study was made by three American college professors of twenty-four history texts and twenty-four supplementary readers, in order to ascertain the extent to which war is emphasized or favored in these school manuals. The investigation showed: an excessive amount of space devoted to war; the amount devoted to peace almost negligible; the discussion of war nationalistic, biased, and in many cases flamboyant; the war illustrations reflecting only the glorified imaginings of the artists; very little telling of the real truths about war; and the great military leaders receiving vastly more attention than the conspicuous leaders in the arts of peace. An examination which I have made of eight history texts widely used in Catholic parochial schools discloses the same perverse emphasis. The proportion of space given to war varies from 16 per cent to thirty-five per cent, while the number of pages devoted to peace describe a descending scale from four to none.

In consequence of the excessive emphasis upon narrow patriotism in the schools, in the newspapers and on public platforms, and owing to the absence of specific and systematic instruction concerning the rights and claims of foreign peoples, the majority of persons, Catholics as well as non-Catholics, are disposed to assume that their own country is always in the right when it engages in war and that there is no other effective method of defending national welfare. The few courageous souls that now and again undertake to point out the violations of justice or of charity committed in the name of their country, are commonly denounced as unpatriotic. This applies even to national wars which are so far in the past that they ought not longer to arouse

patriotic emotions. For example, the American war against Spain in 1898 was utterly unjust and immoral, inasmuch as the latter country had conceded everything for which America was contending. Although in full possession of this fact, President McKinley went before Congress and asked for a declaration of war. The documents which prove this disgraceful transaction have been known to historians and certain other persons for more than twenty years. The story is set forth in more than one standard work on United States history. Nevertheless, it is probably not known by one American in one thousand. The few who are aware of the facts hesitate to mention them from fear of being condemned as disloyal to our glorious military traditions.[1]

Although the Catholic Church is international, the inculcation of Catholic principles on international relations has been so inadequate and so faulty that the masses of Catholics in every country are almost, if not quite, as greatly misled as their non-Catholic neighbors by the false theories of one-sided patriotism and excessive nationalism. "They drink in the false doctrines of the jingo press; they are misled by the fallacy of abstraction into conceiving vast nations as single entities; they do not realize that to hate or malign a whole people is just as sinful as to hate or malign an individual. Their patriotism has lost sight of the necessary limits imposed by their Christianity." [2]

In a word, the excesses and defects of our actual instruction on international affairs have exposed us to the imminent danger of accepting the creed of modern Nationalism. Now modern Nationalism has in more than one country assumed many of the characters of a religion. "Nationalism as a religion inculcates neither charity nor justice; it is proud,

[1] *History of the United States,* by James Ford Rhodes; volume on the "Administrations of McKinley and Roosevelt."

[2] Rev. Joseph Keating, S.J., in *The Month,* November, 1923.

not humble; and it signally fails to universalize human aims. It repudiates the revolutionary message of St. Paul and proclaims anew the primitive doctrine that there shall be Jew and Greek, only that now there shall be Jew and Greek more quintessentially than ever. Nationalism's kingdom is frankly of this world, and its attainment involves tribal selfishness and vainglory, a particularly ignorant and tyrannical intolerance—and war." [1]

While I have made no formal investigation of the subject, I feel safe in asserting that the number of pastorals on peace published by European bishops in the critical years and months before the Great War might be counted on the fingers of one hand. Although the peoples of many European countries greatly feared and dreaded the coming of war during a quarter of a century before 1914, no international Catholic peace organization was established as an effort to prevent that great catastrophe.

It is not an easy nor a simple task to apply the moral principles of Christianity to international affairs. There must be both individual instruction and political instruction. Under the first head the religious teacher must declare, expound, interpret, illustrate and make concrete Christ's commandment of love and the divine precept of justice. This teaching must be imparted to all groups and classes: in theological seminaries, in colleges and schools; in the pulpit and in catechetical instructions; in religious books and periodicals. The individual must be taught a right attitude of mind toward all foreigners. It is not enough to declare that "every human being is my neighbor." The obligations which are implicit in this phrase must be made explicit. They must be set forth in detail with regard to foreign races and nations. Men must be reminded that "every human being" includes Frenchmen, Germans, Ital-

[1] *Essays on Nationalism*, by Carlton J. H. Hayes, p. 125

ians, Englishmen, Japanese, Chinese, and all other divisions of the human family. And this doctrine should be repeated and reiterated. Effective teaching and adequate assimilation depend largely upon the simple process of repetition. The duties of patriotism must be expounded in a more restrained and balanced way than that which has been followed heretofore. Men must be taught that it is not "sweet and becoming to die for one's country" if one's country is fighting for that which is unjust. Without denying or weakening the sentiment of national patriotism, we can set forth that wider and higher patriotism which takes in all the peoples of the earth. And we should bring about a profound shifting of emphasis in explaining the conditions which justify war. Instead of laying stress upon the lawfulness of engaging in war, we should clearly and continuously point out that all the conditions which are necessary to make war morally lawful have rarely existed together in history. We should strive to concentrate attention upon the obligation of preventing war through negotiation and conciliation, rather than upon its lawfulness.

The mental attitude of the people must likewise be changed and reformed with regard to the possibility of establishing permanent peace. One of the greatest obstacles to peace has always been the lazy assumption that wars must come, that there will always be war while men are men. So long as this pessimism prevails, the majority of persons will not assert themselves in the cause of peace. World peace is largely, if not mainly, a matter of human faith. If the majority of people believe that peace can be established and secured, peace will be established and secured. Therefore, we must strive to make the people think peace and talk peace. We must incessantly declare the feasibility of a reign of peace until this idea and this faith become a dominating and effective element in the habitual thinking

of the average man and woman. To be sure, no human being knows whether war can be forever banished from the earth. Only God knows. What we do know is that war may be made more and more remote through human action aided by the grace of God. To make war remote, to push it into the indefinite future, is a practical and a sufficient program.

So much for the specific application of right principles with regard to individuals. Were this achieved to the extent that is readily possible, it would not be sufficient. It must be supplemented by effective political action. In its final stage the process of attaining world peace must be carried through by states and governments. In that field also, Christian principles must find specific and detailed application.

A fundamental method is adequate preaching of the principles of international morality. The grossly immoral doctrine that states are above the moral law is not so frequently uttered or defended to-day as it was before the Great War. Nevertheless, it is still implicitly or explicitly accepted and acted upon by statesmen in more than one country. Even where it is not held, there is need of outspoken and frequent declaration of the truth that nations, as well as individuals, are subject to the moral law, particularly to the precepts of justice and charity.

Besides the general preaching of the doctrine that political and international actions are governed by the moral law, its precepts must be applied to particular events, policies and proposals. Moral teaching of this sort must be addressed not only to the people but in an especial manner to statesmen. This is, indeed, a difficult task. It is not easy to determine how far contemporary international actions or policies are contrary to either justice or charity. Even when the moral aspect of the situation is clear, the question may

arise whether religious teachers are not bound to remain silent from motives of Christian prudence.

As we now realize, many features of the Triple Alliance and of the Triple Entente and many of the policies adopted under these agreements, were contrary to the principles of Christian morality. Should the authoritative religious teachers of Germany, Austria and Italy, of England, France and Russian have denounced these things at the time they occurred? Should they have condemned the war-provoking policy of competitive armaments? Obviously this was a very delicate situation. Nevertheless, it does seem to us now that the religious teachers in all these countries could have done something to check these disastrous courses.

Whatever we may think about the past, we can see some duties fairly clear in the present. All the leading states of the world are morally bound to labor earnestly for the establishment of peace. The methods which seem likely to promote the attainment of this end should command the active interest and approval of all religious authorities. We should oppose the doctrine of indefinite preparedness as a means of preventing war. Mindful of what competitive armaments have done to provoke war, we ought to emphasize that fact and to point out its moral implications. With entire propriety we can urge the people to study deeply and faithfully all the positive proposals that have been brought forward in recent years for the prevention of war. These are the League of Nations, the World Court, the outlawry of war, compulsory international arbitration and universal disarmament. One or more of these methods do not appeal to all of us, but that is to be expected. All of them are deserving of study and consideration and the ideals underlying them are in harmony with the principles of Christianity.

Indeed, the Catholics of the world, both the clergy and the laity, have received specific and authoritative guidance

concerning practical measures for the establishment of peace. In his address to the Belligerents, August 1, 1917, Pope Benedict XV proposed that:

Moral right be substituted for the material force of arms in the reciprocal dealings of nations; the nations enter upon a just agreement for the simultaneous and reciprocal reduction of armaments; armed force be replaced by "the noble and peaceful institution of arbitration," with the provision that penalties be imposed upon any state which should refuse either to submit a national question to such a tribunal, or to accept the arbitral decision.

In his letter to the American people on the last day of the 1918, the same Pontiff expressed a fervent desire for an international organization which, "by abolishing conscription will reduce armaments; by establishing international tribunals will eliminate or settle disputes; and by placing peace on a solid foundation will guarantee to all independence and equality of rights."

It is worth noting that all these recommendations of Pope Benedict XV became embodied in the Protocol for the Pacific Settlement of International Disputes, adopted by the League of Nations Assembly at Geneva, in October, 1924. They likewise constitute the essence of the treaties concluded at Locarno. Therefore, any Catholic who desires to accept and advocate the essential provisions of the Protocol or of the Locarno agreements, can obtain comfort and encouragement from the reflection that he is in accord with the mind of the Holy See. He can properly favor universal disarmament, the abolition of compulsory military service, the adoption of compulsory and complete international arbitration, the outlawry of war, the World Court, and the League of Nations. Any Catholic who opposes any of these things on grounds of selfish nationalism or international hatred is out of harmony with the mind of the Holy See.

To be sure, a good Catholic is justified in rejecting any or all of these proposals and institutions, if he honestly thinks that they are or would be harmful to legitimate national welfare or to any other important legitimate cause or interest. But he should take this stand only after careful and impartial consideration and after he has cleared his mind of all jingoism and all hatred of foreign nations. In a word, he should examine the whole situation in the light of objective evidence and in the spirit of Christian charity which knows neither Jew nor Gentile, neither barbarian nor Greek.

In the movement for world peace, American Catholics have, moreover, the active leadership of their own bishops. In the Pastoral Letter issued by the Archbishops and Bishops of the United States assembled in conference at the Catholic University of America, September 26, 1919, we find these sentences:

"One of the most effective means by which States can assist one another is the organization of international peace. The need of this is more generally felt at the present time when the meaning of war is so plainly before us."

On February 2, 1922, the Administrative Committee of the National Catholic Welfare Council declared:

"As Catholics—brothers of the Prince of Peace—and as Americans, we have the spiritual responsibility of promoting peace not only in our own country but throughout the world."

On May 2, 1924, the Administrative Committee of the National Catholic Welfare Conference gave out another statement on peace which included the following sentences:

"We should, individually and through organizations, earnestly study to preserve the peace of the world. Our thoughts, our aims, should be in the path of peace. Peace should be our goal."

PART II

ECONOMIC

XIII

FROM CHRISTIAN TO PAGAN INDUSTRIAL ETHICS [1]

"WHEN the age of the Reformation begins, economics is still a branch of ethics, and ethics, of theology; . . . the legitimacy of economic transactions is tried by reference less to the movements of the market than to moral standards derived from the traditional teaching of the Christian Church; the Church itself is regarded as a society wielding theoretical and sometimes practical authority in social affairs." By the beginning of the eighteenth century, however, "the idea of a rule of right is replaced by economic expediency as the arbiter of policy and the criterion of conduct."

These sentences from the latest book of the distinguished author of *The Acquisitive Society* and other works in economic history, sum up the revolution in economic-ethical thought which occurred within the space of two centuries. The present work describes how the change took place. With great patience and thoroughness the author has examined the documents which exhibit the attitudes held by Lutherans, Calvinists and Anglicans toward the relation between religion and industry in the two centuries immediately following the Reformation. It is a fascinating story on its own account and it illustrates the general experience of mankind in the endeavor to curb the spirit of avarice.

The first chapter presents an accurate statement of the

[1] *Religion and the Rise of Capitalsm,* by R. H. Tawney. New York, Harcourt, Brace & Co.

Catholic medieval teaching on the morality of economic relations and a judicial account of the extent to which it was observed. Goods and services should not be sold at any price except that which was fair to both buyer and seller; the seller had a right to such prices as would enable him to live with decent conformity to the standards of his class; labor and risk were the principal titles to rewards or gains; interest taking was prohibited and profits were justified only as compensation for labor and expenses or as a return for genuine service to the community. Substantially all these principles were retained for a time by the leaders of the Reformation.

"Where questions of social morality were involved, men whose names are a symbol of religious revolution stood with hardly an exception in the ancient ways, and appealed to medieval authorities and reproduced in popular languages the doctrines of the Schoolmen."

Luther denounced the oppression of the poor and other economic injustices of his day in vigorous and violent language, but he deprived himself and his sect of all ethical authority when he declared that it was not the business of the Christian Church to lay down systematic rules of conduct either in the economic field or anywhere else, but that each Christian could find sufficient guidance for himself in the Bible and in his own conscience. This was a very convenient rule for all those who were inclined to covetousness, injustice and uncharity. Neither the well-disposed nor the evil-disposed were able to obtain any systematic or authoritative guidance from the Lutheran Church on the ethics of economic activities. Moral rules for economic transactions, like all other moral rules, were handed over to the keeping and interpretation of the State.

On the other hand, Calvin drew up a very comprehensive body of discipline for the instruction and government of his

followers in their economic relations. The contents of this program, says Mr. Tawney, "were thoroughly medieval." In England and Scotland, no less than in Geneva, the attempt to apply moral rules to economic transactions was maintained by the Calvinistic bodies for more than a century. After the civil war (1688), however, the dominant view among English Puritans was that economic activities constituted a separate department of life with which religion and ethical rules had little or nothing to do, at least by way of condemnation. Indeed, the principal economic virtues such as thrift, frugality, hard work, austere living, came to be looked upon as the chief virtues of a Christian. The good Christian was exhorted above all things to be faithful to the duties of his "calling," and success in one's calling came to be regarded as the best proof that one was numbered among the elect. Right conduct was not a means to salvation, but an assurance of salvation; and right conduct meant the exercise of those economic virtues which were most effective in promoting business success. "Practical success is at once the sign and the reward of ethical superiority." Once this doctrine had become dominant, denunciation of economic injustice became practically impossible in Puritan pulpits. Puritanism became the darling religion of capitalism.

In the Church of England, the medieval precepts of economic morality were still accepted and taught during the greater part of the sixteenth century. "The Bible, the Fathers and the Schoolmen, the Decretals, Church Councils and commentators on the Canon Law—all of these and not only the first, continued to be quoted as decisive on questions of economic ethics by men to whom the theology and government of the medieval Church were an abomination." Before the end of the century, however, the English Church had handed over to the State the function of applying and enforcing the precepts of economic morality. In due time, "the

social teaching of the Church had ceased to count because the Church itself had ceased to think." By the beginning of the eighteenth century, the Anglican establishment had abdicated as a teacher of economic morality and had left that function to Parliament and to individualistic writers who taught that property rights were the most sacred of all rights. Thus, the way was prepared for the advocacy by the economists of unlimited competition, unlimited freedom of contract, and the doctrines that all free contracts are fair contracts, and that ethics has nothing to do with economics. Speaking of the surprise which has sometimes been expressed that the English Church gave no guidance to society during the period of the Industrial Revolution, Mr. Tawney declares: "It did not give it because it did not possess it. . . . The very idea that the Church possessed an independent standard of values to which social institutions were amenable had been abandoned. The surrender had been made long before the battle began."

The divorce between economic practices and moral rules which persisted throughout the eighteenth and nineteenth centuries was due in part to other causes than those described by Mr. Tawney. Chief among them were the individualistic political doctrines of the eighteenth century, the *laissez faire* economics and the utilitarian ethics of the nineteenth century, together with the vast expansion of human avarice under the greatly increased opportunities of pecuniary gain. In all probability, however, none of these causes was as influential as the failure of the Protestant churches to apply to economic life the rules of morality which were part of their Christian heritage. The story of their gradual apostasy in the field of social ethics is adequately told for the first time in English in *Religion and the Rise of Capitalism.*

Probably the chapter which will appear the most fascinating to the majority of readers is that entitled "The Puritan

Movement." In this section of the book, the thoughtful American, as well as the thoughtful English reader, will find the answer to many questions that have puzzled him in connection with the code of social ethics held by members of the Presbyterian, Congregational and other denominations which contain a large infiltration of Puritanism. Unfriendly critics sometimes accuse of hypocrisy, or at least of Pharisaism, financially successful pillars of the Presbyterian Church or the Congregational Church who are notorious oppressors of labor, drivers of sharp bargains, and followers of tortuous ways in their competitive business activities. Such men often enjoy not only a status of high respectability among their fellow church members, but also the naïve and sincere approval of their own consciences. Mr. Tawney's analysis of the later attitude of Puritanism toward business explains clearly this contradiction between Christian morality and Christian professions. According to the later Puritan code, the godly man is the man who is faithful to his calling; faithfulness to one's calling consists in exercising the qualities of thrift, industry and the avoidance of extravagance; these qualities are frequently rewarded by commercial success; therefore, commercial success is an evidence of truly Christian conduct. Hence, they are a proof that the successful man is among the predestined. "Puritanism in its later phases added a halo of ethical sanctification to the appeal of economic expediency and offered a moral creed in which the duties of religion and the calls of business ended their long estrangement in an unanticipated reconciliation."

In his letter to Cardinal Mundelein on the occasion of the Eucharistic Congress at Chicago, President Coolidge declared that "material prosperity cannot be secured unless it rests upon spiritual realities," since the virtues necessary for business success are precisely the virtues enjoined by religion. The religious life of a nation, he said, is impor-

tant because it inculcates those virtues which promote prosperity and make secure our political institutions. President Coolidge is a Congregationalist and a faithful exponent and follower of the Puritan tradition. Anyone who reads carefully Mr. Tawney's pages under the heading, "The Triumph of the Economic Virtues" will have a satisfactory explanation of the social and religious philosophy which constantly appears in President Coolidge's addresses. This philosophy is deeply imbedded and widely distributed in American social and ethical thinking. It goes far to explain the many contradictions which we find between the benevolent professions of our successful men and their practices in relation to wages, employment conditions, profits, and the treatment of competitors and consumers. Not only has Puritanism fostered before all else the economic virtues, but it is largely responsible for the absurd tenet of capitalism that production for its own sake is the end of industrial society. As Mr. Tawney expresses it: "The urge of production and ever greater production—the slavish drudgery of the millionaire and his unhappy servants—was to be hallowed by the precepts of the same compelling creed."

XIV

THE CHURCH AND ECONOMIC LIFE

"We should decline to concede the right of the Pope to pronounce on matters that did not enter into the substance of faith; . . . and our historical experience of the Church, whether Catholic or Protestant, does not encourage us to take the view that it holds the final key of social and economic salvation. Its own special mission is the creation of the moral and spiritual conditions of worthy and adequate social change; and its pronouncements for or against any particular theory of economic order are neither here nor there."

"We are willing to accept the pronouncements of the Bishops when they tell us our duty in matters of religion, but we do not recognize their authority to instruct us in matters of business and industry, as they have attempted to do in the 'Program of Social Reconstruction.'"

These two statements agree in rejecting the right of the Church to lay down principles, issue instructions, make laws, concerning economic relations or industrial systems. Yet the first was written by a Protestant clergyman while the second was uttered by a Catholic business man. To an intelligent Catholic the error in the first paragraph is easily detected, easily explained, and easily refuted. It is an echo of the Protestant doctrine that salvation comes by faith alone, that the Church is not primarily concerned with a comprehensive system of moral

principles, and therefore that the Church has no authority to define the morality of men's industrial actions. The second statement avoids the error concerning salvation without works, but limits the province of the Church as a moral teacher. The measure of agreement between the two statements is extremely significant, even though it is caused by different viewpoints and different motives.

Against the theory enunciated by this Protestant clergyman and this Catholic business man, let us cite the words of Pope Leo XIII. At the beginning of that part of the encyclical, "On the Condition of Labor," in which he discusses remedies for the economic ills of society, the great Pontiff declares:

"We approach the subject with confidence, and *in the exercise of rights which manifestly appertain to us;* for no practical solution of this question will be found apart from the intervention of religion and of the Church."

How far the position of Pope Leo is from the position of our Protestant clergyman and our Catholic business man can be seen from the particular matters with which he deals in this encyclical. Among them are: the duties of the employer; the duties of the employee; the limitations of ownership; labor unions; employers' associations; diffusion of ownership among the masses; strikes; leisure for the workers; the length of the working day; woman and child labor; a living wage; rapacious usury; and the intervention of the State in industry.

Some ten years later, Pope Leo reaffirmed the general principle of the Church's concern in economic matters in his encyclical on "Christian Democracy":

"It is the opinion of some, and the error is already very common, that the social question is merely an economic one, whereas in point of fact, it is first of all a moral and religious matter, and for that reason its settlement is to be sought

mainly in the moral law and the pronouncements of religion."

The declarations of Pope Leo XIII on this subject have been reaffirmed by both his successors, and have been emphasized in pastoral letter of the American Hierarchy.

This statement of the authoritative Catholic teaching should be sufficient to show our Catholic business man that he is utterly mistaken in his assumption that the Church and the Bishops "have nothing to do with business matters." If he is a loyal Catholic he will admit that the Popes are better judges than he concerning the authority of the Church over industrial subjects and arrangements. Nevertheless, it will be helpful to recall and recount briefly the reasons why economic matters and the mutual relations of economic classes come within the field of Catholic teaching. This will be particularly pertinent to the criticisms which have been directed by some Catholic business men against the Bishops' "Program of Social Reconstruction."

The mission of the Church is to teach and help men to save their souls, to make men fit for the Kingdom of Heaven. They save their souls not alone by faith (the Protestant notion) but by works, by conduct. They must not only believe correctly but live righteously. Now righteous living takes in the whole field of human action. It is not confined to those of man's actions which affect merely himself and his God, nor to those which relate to his family. It concerns those actions which have an economic character, such as, theft, fraud, extortion, slothful performance of labor, oppression of the laborer, violence against property, etc., etc. In a word, all free human actions, whether without or within the field of industry, come under the control of the moral law; and the teaching and application of the moral law is the business of the Church. The notion that business actions and business relations are somehow an

exempt territory, free from regulation by the moral law, neither morally good nor morally bad, is a heritage partly from the Protestant Reformation, partly from the false liberalism of the early English economists, and partly from the commercialized ethical code which came into practice owing to the failure of the state or any other powerful social authority to apply and enforce the principles of justice in the province of industry. It never has been and never can be the Catholic doctrine.

Having reasserted the Catholic doctrine and reasoning about the authority of the Church over industrial and business relations, let us see whether there is anything at all that can be said for the viewpoint expressed by our Catholic business man. To answer this question it will be helpful to distinguish between *principles* and *methods*.

The Pope and the Bishops have authority to lay down the moral *principles* which govern industrial relations. Under this head come Pope Leo's declarations concerning the right of labor to a living wage, the duty of labor to perform a fair day's work, the duty of employers to refrain from overburdening their employees, the right of the State to intervene in the affairs of industry whenever there exist no other means of remedying great abuses, and a host of other specific pronouncements. All these are merely applications of general moral principles to particular economic conditions.

It is conceivable that the Pope and the Bishops should go further, and pronounce judgment upon particular *methods* by which the particular moral principles may be or might be made operative. For example, Pope Leo XIII passed judgment upon and against Socialism as a method of effectuating the principles of justice in the industrial order. Incidentally, one is tempted to observe that the condemnation of Socialism, whether by Pope, Bishop, or priest, is never

complained of by Catholic business man as an improper interference in matters of business. However, let that pass. The Pope might declare that a minimum wage law would or would not be a morally lawful method of making effective the doctrine of a living wage. As a matter of fact, no Pope has made any declaration on this subject, but such a declaration would be an entirely proper exercise of the Pope's authority to apply the general principles of morality to particular industrial situations.

There is a further step which may be taken by the authorities of the Church in their dealing with the moral problems of industry. It consists in not merely pronouncing certain concrete methods morally lawful, but in advocating the adoption of such methods. Pope Leo's great encyclical, "On the Condition of Labor," contains a good number of such specific recommendations; for example concerning the multiplication of property owners by the State; the means by which the State should prevent strikes, the various kinds of associations that ought to be formed by workers and employers, etc., etc. In their "Program of Social Reconstruction" the Bishops who constituted the Administrative Committee of the National Catholic War Council, advocated many specific measures, such as the legal minimum wage, labor participation in management, and so on.

These, then, are the three principal ways in which the authorities of the Church may properly make pronouncements concerning business and industrial relations: by applying the general principles of morality to particular economic practices; by passing judgment upon the morality of particular methods or measures of reform; and by advocating and urging the adoption of certain methods and measures. All the great encyclicals and other declarations of the Popes on the social question exemplify all three of these forms of "intervention."

Obviously the last of the three forms will not have as much official authority as the first two, since it involves questions of practical expediency as well as the question of moral principle. Nevertheless, it is quite natural and eminently desirable that the authorities of the Church should on opportune occasions urge the adoption of particular methods of reform which they know to be morally right and which they believe to be actually expedient. It is quite unnatural and not at all desirable that they should maintain a specious attitude of "neutrality."

XV

CATHOLIC TEACHING ON INDUSTRIAL RELATIONS

THE principles which underlie the teaching of the Church on industrial relations are found in the Gospel of Christ and in the moral law of nature. One of these is the principle of justice. Its basis is Christ's teaching on personality. Every human being has intrinsic worth, has been redeemed by Christ, and is destined for everlasting union with God. In the eyes of God all persons are of equal importance. Neither in industry nor in any other department of life may one man be used as a mere instrument to the advantage of other men. Industrial, no less than other relations, must be so conducted as to safeguard personality and afford to all persons the means and conditions of life as children of God. The principle of charity or love is even more conspicuous in the teaching of Christ. If it were honestly and adequately applied in the dealings of employer with employee there would be no unsolved problem of industrial relations.

It is beyond the scope of this paper to describe the extent to which these two great principles have been developed and applied in the various forms of industrial relations since the beginning of the Christian era. By way of historical summary it will be sufficient to recall that the doctrine of the Catholic Church on this subject has exhibited great consistency and continuity throughout the whole period. The discouragement of slavery and serfdom, the insistence upon

risk and labor as the chief claims to economic rewards, the doctrine of the just price, the regulations and ideals of the guilds concerning labor organization, good workmanship, reasonable hours, provision against sickness, etc., were the medieval expression of the traditional doctrine. Its first systematic adaptation to the conditions of modern capitalism occurs in the labor program of Bishop Ketteler. In this program we find demands for the prohibition of child labor, of unsuitable woman labor, of unsanitary labor and of Sunday labor; for the legal regulation of working hours; for insurance against sickness, accidents and old age; for state factory inspectors; for general increases in wages; for the legal protection of workingmen's coöperative associations; and for several other industrial reforms. More than once Bishop Kettler declared that there was nothing new in his industrial views and proposals, that he had drawn them all from the storehouse of patristic and medieval doctrine.

Less than fourteen years after the death of Bishop Ketteler, Pope Leo XIII issued his great encyclical, "On the Condition of Labor" (*Rerum Novarum,* May 15, 1891). Previously he had referred to Bishop Ketteler as, "my great precursor." The principles which the illustrious Bishop of Mainz enunciated and applied, Pope Leo reiterated, developed, systematized and brought into more specific relation to current industrial conditions, practices and institutions. While two of his three successors (Pius X and Benedict XV) have made pronouncements upon various phases of industrial relations, they have both expressly disclaimed the intention of adding anything essential. Therefore, the authoritative teaching of the Catholic Church on this subject can all be found in the encyclical "On the Condition of Labor." In that document we find not only the general principles but a considerable measure of application.

Having rejected and condemned Socialism as a remedy for industrial ills, the Pope explicitly asserts his right and authority to lay down principles for the guidance of the two great industrial classes, "for no practical solution of this question will be found apart from the intervention of religion and the Church." This is a clear challenge to and condemnation of all those selfishly interested persons and all those sincerely ignorant persons who say or think that "the Church ought to keep to spiritual matters and not meddle with business or with industrial matters."

The Pope then takes up the social principles of the Gospel. Equality of human conditions is impossible. No kind of social organization can drive pain and hardship out of life. Capital and labor are not necessarily hostile to each other, but are mutually dependent. Religion teaches the laborer to "carry out fairly and honestly all equitable agreements," to refrain from injuring persons or property, and to avoid men of evil principles. Religion teaches the employer to respect the dignity of his employees as men and Christians, to refrain from treating them as "chattels for the making of money," to pay them fair wages, to give them sufficient time for religious duties and not to impose tasks unsuited to sex, age or strength. Those who are rich should regard themselves as stewards, charged with the duty of making a right use of their wealth for themselves and others. Those who are poor should realize that their condition was adopted and blessed by Christ Himself, and that the true worth of man lies not in his material possession but in his moral qualities. Both classes should always bear in mind that they are children of the common Father and heirs of the common heavenly kingdom.

So much for the general Christian principles. The man who considers them fairly and adequately will be compelled to answer in the affirmative the question with which Pope

Leo closes this part of the encyclical: "Would it not seem that, were society penetrated with ideas like these, strife must quickly cease?" The process of "penetration" is, however, retarded by two very formidable obstacles. The first is wholly moral; the second, partly moral and partly intellectual. The practice of justice and charity in industrial relations is greatly and frequently prevented and impeded by deliberate selfishness and flagrant bad faith. More often, perhaps, the current injustice and uncharity are due to culpable or inculpable ignorance. Many men accept the principles of justice and charity as applicable to industrial relations, but do not realize that they are violating the principles in their industrial practices. For example, an employer admits the obligation of paying "fair wages," but refuses to exceed the inadequate rate that is frequently determined by the unmoral forces of supply and demand. An employee is willing to carry out "equitable agreements," but "loafs on the job" because he thinks that his wage contract is not equitable. An employer admits that the precept of brotherly love is as pertinent to the employment relation as to the neighborhood relations, yet he exploits little children for profit or maintains an unsanitary workshop. An employee clamors for the application of the Golden Rule to industry, but does not scruple to cause his employer great inconvenience by absenting himself from work for a trivial reason. Such ignorance of the practical application and practical obligations of moral principles in the field of industrial relations is sometimes quite unconscious and unsuspected by the person whom it affects and afflicts. Sometimes it is culpable, at least to this extent: the misguided person suspects that his conduct is not entirely consistent with the general principles of justice and charity, but he fails to investigate its moral aspects because he is indifferent, or because he is afraid that the results might disturb his conscience.

This condition and this need Pope Leo meets by a fairly specific application of general principles to particular situations. "Fairly specific," because many of these declarations are somewhat general in character. However, this was unavoidable in a document which was written for the industrial conditions of all countries, and which endeavored to treat all the great moral problems of industry within the compass of an encyclical letter. Nevertheless, the Pope's pronouncements on the most important phases and the most acute problems of industrial relations are sufficiently specific to provide clear and adequate guidance to all men of good will. The other kind of men are beyond the reach of instruction and argument. They can be moved only by fear. They will respond only to the denunciation of the prophet, or the coercive power of the State.

The specific teaching of the encyclical can be summarized under the heads of wages, labor organization, state intervention and private property. Each of these topics will be dealt with briefly.

Wages.—Justice in this matter is not realized through mere freedom of contract. While worker and employer "should, as a rule, make free agreements concerning wages, there is a dictate of nature more imperious and more ancient than any bargain between man and man, namely, that the remuneration must be sufficient to support the wage earner in reasonable and frugal comfort. If through necessity or fear of a worse evil the workman accept harder conditions because an employer will give him no better, he is made the victim of force and *injustice.*"

This is the doctrine of the living wage. Pope Leo does not say that it represents complete justice. It is merely the minimum of justice, the amount that is ethically due to every wage earner by the mere fact that he is a human being, with a life to maintain, and a personality to develop. The special

qualifications and claims which entitle men to more than the minimum of justice, such as skill, hazard, responsibility, cost of training, etc., are not formally considered in the Pope's discussion. The living wage that he has in mind is an amount sufficient not merely for the worker himself, but also for the proper maintenance of his family. Such is the law of nature, and such is the interpretation evidently put upon the phrase by Pope Leo himself.

Labor Organization.—The Catholic Church has always regarded organization, whether of employees or of employers, as the normal condition. She has never accepted the philosophy of individualism and unlimited competition. Pope Leo deplores the disappearance of the ancient guilds, and expresses gratification over the existence of various forms of workmen's associations; "but it were greatly to be desired that they should become more numerous and more efficient." Men have a natural right to enter them, a right which cannot be annulled by the State. "We may," says the Pope, "lay it down as a general and lasting law, that workingmen's associations should be so organized and governed as to furnish the best and most suitable means for attaining what is aimed at, that is to say, for helping each individual member to better his condition to the utmost in body, mind and property." On the other hand, Pope Leo denounces those societies which "are in the hands of secret leaders, . . . who do their utmost to get within their grasp the whole field of labor, and force workingmen either to join them or to starve."

The first of the two passages just quoted implicitly, yet unmistakably, condemns the insidious "open shop" campaign, and every other movement which seeks to render the unions ineffective, by denying the right of adequate collective bargaining. In the words of the Pastoral Letter of the American Hierarchy, the workers have a right "to form

and maintain the kind of organization that is necessary and that will be most effective in securing their welfare."

Pope Leo makes more than one reference to joint associations of employers and employees, "which draw the two classes more closely together." The underlying principle is exemplified in joint conferences for the establishment of trade agreements, and in shop committees, works councils and other arrangements for increasing the control of labor over employment conditions and industrial operations. Upon the application and extension of this principle and these methods depends to a very great extent the attainment of industrial peace.

The Function of the State.—Under this head Pope Leo lays down one general principle and several specific applications. "Whenever the general interest or any particular class suffers or is threatened with injury which can in no other way be met or prevented, it is the duty of the public authority to intervene." No more comprehensive authorization of State intervention could be reasonably desired. Applying the principle to industrial relations, Pope Leo declares that the poor "have no resources of their own to fall back upon, and must chiefly depend upon the assistance of the State." Continuing in more particular terms, he says that the law should forestall strikes by removing the unjust conditions which provoke them; protect the worker's spiritual welfare, and his right to Sunday rest; restrict the length of the working day, so that men's labor will not "stupefy their minds and wear out their bodies"; prohibit the employment of children "in workshops and factories until their bodies and minds are sufficiently developed"; prevent the entrance of women into occupations for which they are not fitted; and provide all classes of workers with "proper rest for soul and body." While the Pope does not explicitly declare that the State should enforce a living

wage, he clearly indicates that such action should be taken in default of effective voluntary arrangements.

Diffusion of Property.—Those students and thinkers who believe that industrial relations will not be stabilized nor industrial peace assured until the wage earners become to a great extent participants in the ownership of industry, will find considerable encouragement in Pope Leo's declarations on private property. To represent these as merely a condemnation of Socialism, as merely concerned with the *institution* of ownership and not with its *distribution,* is highly misleading. The whole argument of the Pope on this subject manifests a strong appreciation of the benefits which private property brings to the individual workingman. Hence the policy of the State should be "to induce as many as possible of the humbler class to become owners." As a consequence, "property will become more equitably divided," and "the gulf between vast wealth and sheer poverty will be bridged over."

The Pope's observations on this subject afford little comfort to the defenders of industrial autocracy. He deplores the division of industrial society into two classes, one of which "holds power because it holds wealth; which has in its grasp the whole of labor and trade; which manipulates for its own benefit and its own purposes all the sources of supply, and which is even represented in the councils of the State itself."

Referring to the wide extension of ownership in the later Middle Ages, the Pastoral Letter of the American Hierarchy declares: "Though the economic arrangements of that time cannot be restored, the underlying principle is of permanent application, and is the only one that will give stability to industrial society. It should be applied to our present system as rapidly as conditions will permit."

To sum up: Now as always the Catholic Church conceives

her mission as that of saving souls. Men save their souls by conducting themselves righteously in all the relations of life. Among the most important of these relations are those that we call industrial. If the Church did not provide guidance in this field she would neglect one of her most important duties. If the principles and proposals of the encyclical, "On the Condition of Labor," were carried into effect our industrial society would be improved immeasurably.

XVI

THE DIGNITY OF LABOR AND THE DUTY OF THE STATE

PROBABLY the most influential and far-reaching of the many important declarations in Pope Leo's Encyclical on Labor are those which describe the human dignity of the laborer and his claim upon the State for protection. No small part of the influence exercised by these declarations is due to their conflict with the social principles which dominated modern industry for upwards of one hundred years following the industrial revolution in the last half of the eighteenth century. These two principles of Pope Leo are far-reaching because they afford a basis and justification for all the remedies that are required to meet the just grievances of labor.

When the industrial revolution, the factory system and the age of machinery appeared in England, society was dominated by certain theories which resulted in grave injustice to the wage-earners. These theories prevailed in Great Britain down to the middle of the nineteenth century and they have been more or less powerful in every important industrial country. Their influence was still dominant in the industrial relations of most countries when Pope Leo published his great Encyclical. In no country has their sway been greater or lasted longer than in the United States.

These industrial principles may be summed up, as follows: labor is a commodity like corn or cotton; therefore, it is completely subject to the law of supply and demand, and it should be completely determined by free competition.

Wages and all other conditions of labor should be determined by the free play of economic forces. Labor relations, like all the other relations of industry, are ruled by economic forces which cannot be modified or resisted, for they are as inexorable as the laws of physical nature. Hence, the labor contract is independent of ethical rules. Attempts to interfere with it by labor organizations or by the State will necessarily be futile and productive of more harm than good. These inhuman doctrines had several causes in the ideas of the times.

In their recent book on the *Rise of Modern Industry,* J. L. and Barbara Hammond point out the relation of the British slave trade and the British slave market in the West Indies to the degradation of British labor in the period of the industrial revolution and for many years afterward. "An age that thought of the African negro, not as a person with a human life, but as so much labor power to be used in the service of a master or a system, came naturally to think of the poor at home in the same way. . . . The new industrial system was placed on this fatal foundation. . . . In the early nineteenth century the workers as a class were looked upon as so much labor power to be used at the discretion and under conditions imposed by their masters; not as men and women who are entitled to some voice in the arrangement of their life and work." (p. 196.)

In *Religion and the Rise of Capitalism,* R. H. Tawney shows that in the Puritan code of ethics "practical success becomes at once the sign and the reward of ethical superiority." In this code, all business practices which made for success were justified and sanctified. Success in business was a proof of predestination. One's place among the elect was not dependent upon good works either toward the laborer or toward anyone else. And the State should keep its hands off industry and labor relations.

Another bad influence was the ethical doctrine of the Jtilitarians. According to them, each person should pursue is own interest, his own happiness. The result will be the reatest happiness of the greatest number. In pursuing his wn interest, every man should be left free, should be permitted by the State, to do everything that he wishes, proided that he gives his neighbors equal freedom. This doctrine would justify every kind of extortion, so long as it /as practiced under the guise of a free contract.

In economics, the doctrine prevailed that the State should efrain from interfering with industrial relations and that ull scope should be given to what Adam Smith called "the imple and obvious system of natural liberty." According o Smith, the selfish man is led by an "invisible hand" to romote the welfare of the whole country. So general /ere these theories of unfettered competition, non-interfernce by the State, and the automatic social benefits of indiidual selfishness adopted by the English economists and by nany economists in other countries that their ethical doctrines concerning labor and industry have been thus summed p by Henry Sidgwick: "The teaching of political economy ointed to the conclusion that a free contract is always a air contract."

Against this hideously immoral body of doctrine, Pope .eo urged his two great principles concerning the dignity of abor and the duty of the State. "No man may outrage /ith impunity that human dignity which God Himself treats /ith reverence. . . . It is shameful and inhuman to treat nen like chattels, to make money by, or to look upon them nerely as so much muscle or physical power. . . . To exerise pressure for the sake of gain upon the indigent and destitute, and to make one's profit out of the need of another s condemned by all laws, human and divine." In opposition o the doctrine that labor is a commodity subject only to

the laws of supply and demand, Pope Leo emphasized the great truth of human dignity and human personality. Since he is a human being, the laborer has a soul as well as a body; he is made in the image and likeness of God, has been redeemed by Christ, and is called to an eternal existence in the presence of God. He is a person possessed of intrinsic worth and sacredness. In relation to other persons, he is an end in himself, not a mere instrument to the welfare of any other person or any industrial system. He has the duty of developing his personality and all his faculties, mental and spiritual as well as physical. Any industrial contracts or industrial arrangements which deprive him of this opportunity are immoral.

This principle of human dignity underlies all that Pope Leo has to say concerning the right of the laborer to Sunday rest, to opportunity for recreation, to sanitary working conditions, to a reasonably short working day, to decent wages, to the means of becoming a property owner. It likewise is the basis of the Pope's condemnation of child labor, of improper woman labor, and all the other inhumanities which he saw in the industrial system.

Pope Leo's teaching on wages is the most important application of his doctrine concerning the human dignity of the laborer. He takes up the widely accepted opinion that wages should be fixed by free contract between the parties and not interfered with by the State or by any other outside agency. He condemns it on the ground that it leaves out of account the fact that his wages are the one means by which the laborer must live. Therefore, declares Pope Leo, his wages ought to be at least sufficient to enable him to obtain a decent livelihood. They ought to be adequate to this end because the laborer is a person, because he is a being endowed with rights, not a mere instrument of production. The Pope goes so far as to say that if a laborer is con-

strained to make a contract which calls for less than this minimum decent wage, he is "the victim of force and injustice."

It is not too much to say that this interpretation of the human dignity of the laborer as demanding a living wage regardless of free contract, or the law of supply and demand, or any other false philosophy, has proved the most revolutionary idea that has been injected into modern economic life. It does not imply complete justice for the working class. No such claim was made for it by Pope Leo XIII. He set forth the living wage merely as the *minimum* of justice. But it implies so vast an improvement in the wage scales that have actually prevailed since the Encyclical was written that its influence for good has been incalculable. The rule that wages should be at least sufficient for decent living has come to be, if not generally, at least very widely adopted in all wage agreements except those which are made under the complete domination of the employer. Indeed, there are very few employers who do not profess to accept the living wage in principle at least.

A remarkable circumstance connected with this living wage doctrine is that it is now pretty generally recognized as in harmony with the best interests of industry and of the whole community. Our natural resources and our productive equipment are to-day capable of turning out a considerably greater amount of goods than the people seem able to consume. The only way in which industrial operations can be made continuous is through an increase in the purchasing power of the masses. Such an increase can come only through higher wages. A great part of the higher wages and the increased purchasing power could be provided through a rise in the pay of those who are getting less than living wages. Justice to the laborer would be at the same

time to the advantage of industry and the welfare of the community.

It is noteworthy that Pope Leo lays down the right of the laborer to a living wage without any qualification in favor of economic conditions. Of course he was well aware that some employers in some industries could not afford to pay living wages. But he says nothing on this point. He was concerned only with the general ethical principle and he rightly left to industry and to the State the burden of finding ways and means to put the principle into effect. The dignity and the welfare of the laborer were more important in his eyes than the claims of incompetent or badly organized industrial establishments of industrial systems.

As we have seen, the generally accepted theory throughout the nineteenth century among business men, economists and politicians was that the State should give free scope to industry and industrial contracts. Against this doctrine of *laissez faire,* Pope Leo laid down a general principle and several specific applications. This is the general principle: "Whenever the general interest or any particular class suffers or is threatened with evils which can in no other way be met or prevented, the public authority must intervene. This is sufficiently comprehensive to take in labor relations as well as every other kind of social relation. Most significantly, however, it proclaims the duty of the State to care for the welfare not only of the community as a whole, but of particular classes. Illustrating this statement a little further on, Pope Leo declares that the rich have many ways of protecting themselves and stand less in need of help from the State, whereas wage earners, having no resources of their own to fall back upon, should be especially cared for and protected by the commonwealth. This principle would authorize and justify all the labor legislation that American

trade unionists have ever contended for and more. It would justify the enactment of minimum wage laws both for men and women whenever such legislation might become a necessary means of obtaining decent remuneration for any considerable number. It would certainly justify the minimum wage laws which were enacted in several of our States for the benefit of women and children. Likewise, it would surely justify a legal eight-hour day and social insurance against accidents, sickness, unemployment and old age.

In the United States, the principle of the human dignity of the laborer is more widely accepted than that which Pope Leo laid down concerning the obligation of the State. A very large proportion of Americans still cling to the false principle of no class legislation. This is one of the most shallow political principles that has ever been adopted by any considerable number of persons. Even if it were morally right, it is practically unworkable. Inasmuch as most economic legislation affects different economic classes differently, it is more favorable to some classes than to others. Therefore, it is class legislation. The theory of no class legislation is morally wrong since it violates distributive justice, as enunciated by Pope Leo XIII: "Among the many and grave duties of rulers, the first and chief is to act with strict justice—with that justice which is called in the schools distributive—toward each and every class."

The most recent illustration of American opposition to reasonable legislation in favor of the working class is contained in the decision of the Supreme Court which declared unconstitutional the minimum wage laws of the District of Columbia. Pope Leo's statements on the living wage and the duty of the State in that connection clearly justifies this sort of legislation. He rejects the opinion of those who say that the State has no other concern with the wage contract except to see that it is fulfilled and he declared that the wage

is not just unless it provides the means of a decent livelihood. The Supreme Court declared that the establishment of a legal minimum wage is an unconstitutional exercise of legislative power. Such a law is unconstitutional because it is an arbitrary and unfair interference with freedom of contract It is arbitrary and unfair because it makes the wage dependent upon the worker's need of a decent livelihood. The Supreme Court asserts that the livelihood of the worker has nothing to do with the fairness of the wage; Pope Leo declares that the livelihood of the worker has everything to do with the fairness of the wage, or at least is the dominant factor in determining whether the wage is just.

These statements are at once mutually antagonistic and exactly representative of the two diverse ethical doctrines which we have been discussing. The opinion of the Supreme Court, which Justice Sutherland wrote, is in the direct line of that individualisitic and utilitarian philosophy which emphasized freedom of contract and a "hands-off" policy on the part of the State. Pope Leo sets forth the doctrine of the human dignity of the laborer and the moral duty of the State to protect his human dignity.

Leo's two great principles concerning the human dignity of the laborer and the duty of the State to safeguard that dignity, are still far from general realization in our industrial system. Nevertheless, great progress has been made since May 15, 1891. The old bad doctrines have been pretty generally discredited. Rarely does anyone possessing "a decent respect for the opinions of mankind" dare to assert publicly that the condition of labor should be governed exclusively by the law of supply and demand, or that the State has no obligation to protect the rights and welfare of the toiling masses in their industrial relations. Even the lawyers who studied and expressed their opinion of the decision of the Supreme Court in the Minimum Wage case rejected both

the law and the ethics of that deplorable decision. Finally, the most important implications of the principle that the laborer is endowed with the sacredness of personality are likewise pretty generally recognized. The human dignity of the laborer is generally understood as involving his equal rights with all other persons, his equal claim upon the bounty of the earth for a livelihood, his equal right to join his fellows in organizations for the betterment of his economic condition, and his right in a great democracy like ours to seek an industrial status in which he will enjoy an ever-increasing share in determining not only his conditions of employment, but the operations of the industry in which he is engaged.

XVII

THE INJUNCTION IN LABOR DISPUTES

A FEW years ago I listened to a lecture at Oxford, delivered by a professor of Columbia University to the students of a workingmen's summer school. The subject of the address was "The Labor Movement in the United States." At one point the speaker mentioned the opposition of American labor to the process of judicial injunction. As his reference to the subject seemed much too brief to convey an adequate idea to his hearers, I interrupted him with the request that he amplify his remarks on the subject. He courteously complied, and thereby provided matter for an hour's discussion after he had finished his address. The great majority of his auditors were frankly amazed at the nature and extent of the injunction process as employed in labor disputes in the United States. They had never heard of such a thing in England, and they did not hesitate to contrast the freedom enjoyed by English wage earners with the restrictions put by the judiciary upon trade union activity in the United States.

Nevertheless, the writ of injunction has been employed in British labor disputes. True, it was never used to any great extent and it has been entirely unknown for the last eighteen years. In the year 1900 a British court issued an injunction restraining a certain group of striking railroad employees from interfering with the workers who had taken their vacated jobs. This extraordinary exercise of judicial power created such resentment and political activity in labor

circles that in 1906 a law was enacted making a repetition of such action impossible. This law is known as the British Trades Disputes Act. In brief, it provides that an act done by two or more persons in combination cannot be judicially enjoined nor legally prosecuted unless the act would be subject to legal or judicial action if performed in the absence of a combination; that peaceful picketing is legal; and that an act done "in furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break his contract of employment. . . ."

In consequence of this law, the judicial injunction has become obsolete in British labor disputes. Its history in the United States has been diametrically different inasmuch as its use has steadily and continuously increased during the last thirty-five years. In his address before the American Bar Association, July 8, 1924, Senator Pepper pointed out that the first injunction in an American labor case was issued by a State court in the year 1888, and by a Federal court in the year 1891. "To-day," said Senator Pepper, "such injunctions have become a recognized exercise of Federal equity power." Nearly 300 Federal injunctions were issued in the railway shopmen's strike two years ago. Although Senator Pepper is classed as a conservative on most political and economic issues, he strongly intimated in the address that labor has a valid case against the use of the injunction by our State and Federal courts.

As employed in labor disputes, the writ of injunction is arbitrary and oppressive because it restrains actions which are not forbidden by statute law, but which are merely contrary to what the court regards as fair dealing. The injunction is issued to prevent what seems to the court to be an unlawful or unreasonable injury done by a combination of laborers to an employer. When is such injury unlawful or unreasonable? Any strike injures the employer to some

extent; yet the courts do not enjoin every strike. Out of the somewhat varying attitudes of the courts toward industrial disputes one general principle seems to have emerged. It is that when the injury done to the employer is *direct, primary* and *intentional,* and the benefit to the members of the labor combination is *remote, trivial* or *indefinite,* the combination is an illegal conspiracy. Against it the writ of injunction may properly be issued.

While this principle is fair enough on its face, it is hopelessly vague, and liable to varied interpretations when applied to particular industrial disputes. Moved by an inadequate knowledge of the facts, or by prejudices derived from his social and legal environment, one judge may think that the injury which is done to an employer by a strike for the closed shop is direct, primary and intentional. Owing to wider knowledge and more fortunate associations, another judge may regard the same injury in a different light.

As Senator Pepper intimates, it is unreasonable to put upon the courts a burden of this sort. The business of the courts is to interpret and apply laws, not general principles of fairness. It is for legislatures to declare what actions are to be prohibited and regarded as illegal in labor disputes.

The average person of the middle class is totally ignorant of this situation. When he hears of an injunction being issued to prevent picketing by strikers, or a boycott, or a certain kind of strike, he is likely to assume that this action is taken because the workers have violated or are threatening to violate "the law." In truth there is no *law* involved. All that is involved is a general principle of fairness about which honest men, including judges, may disagree. When the courts issue writs of injunction based upon their interpretation of such principles, they become virtually law-makers. Their orders constitute nothing more or less than judge-made laws. This is not the proper province of the courts.

One of the most far-reaching and damaging injunctions based upon general principles of fairness was that affirmed by the Supreme Court of the United States in *Hitchman Coal and Coke Co.* v. *Mitchell et al.*, Dec. 10, 1917. In this case the Court affirmed the decision of lower Federal courts which had restrained the officers of the United Mine Workers of America from attempting to organize the employees of the Hitchman Coal and Coke Co. This concern had required its employees to sign a promise not to join a labor union while in its employ. The injunctions granted by the lower courts were affirmed by six of the nine Justices of the Supreme Court, the three dissenting being Justices Brandeis, Holmes, and Pitney. In the written opinion of the majority, we find this citation from the Mogul Steamship case: "Intentionally to do that which is calculated in the ordinary course of events to damage, and which does, in fact, damage another in that other person's property or trade, is actionable if done without just cause or excuse."

The last five words cited reveal the essential evil of the injunction process when based upon general principles of fairness. What is "just cause or excuse"? Every strike causes some damage to the employer's trade, but every strike is not subject to the process of injunction. Why? Because the courts do not regard every strike as taking place "without just cause or excuse." In the Hitchman case the majority of the Justices regarded the attempt to organize employees who had promised not to join a labor organization as damage inflicted without "justification or excuse." In the words of the majority of the Court, the organization of those employees was "sought to be attained by unfair methods." Earlier in the written opinion, the Court dealt with the supposed right of collective bargaining, declaring that "it is not bargaining at all in any just sense, unless it is voluntary on both sides." According to the

Court, a bargain which would require the employer to permit his employees to join a union would not be "voluntary on both sides," since it would compel the employer to do something which he would rather not do. It does not seem to have occurred to the Court that the bargain actually made with the Hitchman concern was not voluntary on the part of the employees, since it compelled them to promise not to join a union when they would prefer to do so.

The harsh alternative of a strike seemed to the Court an unreasonable one to threaten the employer with in case he refused to permit the men to be unionized. The harsh alternative of going without employment, or seeking it elsewhere, did not seem to the Court an unreasonable one for the employer to use against the workers. To any one who realizes the comparative hardships involved in the two situations, the judgment of the Court will not seem convincing. The consent not to join a labor union will seem at least as involuntary on the part of the employee as the consent on the part of the employer to permit such action.

Nevertheless, this curious misconception of the actual facts of industrial life was quoted with approval by the Supreme Court of Massachusetts about six years ago when it sustained an injunction which restrained the Union of Shoe Workers in Salem from carrying on a strike for the purpose of compelling a certain corporation to discontinue the practice of making individual contracts with its employees. In other words, the highest court of the State of Massachusetts, like the Supreme Court of the United States, regarded as unfair the attempt of a labor union to compel an employer to make a collective contract, but did not see any unfairness in the employer's attempt to compel his employees to make individual contracts. The inconvenience of dealing with the union was looked upon by both courts as an infliction of unreasonable damage upon the

employer; to deprive the workers of union protection did not seem to the courts to be unreasonable damage inflicted upon the wage earners.

How is the situation to be remedied? How shall the legal status of labor be made to conform with the principles of justice? For a long time labor leaders had indulged the hope that Section 20 of the Clayton Act provided labor unions with all the protection necessary to carry on their legitimate activities. The decision of the Supreme Court in the Duplex Printing case gave them a sad shock of disillusionment. They found that the restrictions placed upon Federal injunctions by that section of the Clayton law could not be held to prevent a court from enjoining the secondary boycott. What was fondly imagined by the officials of the labor unions to be labor's "Bill of Rights," has turned out to contain only a small measure of protection against the unjust exercise of the writ of injunction.

The simple, logical and adequate remedy would be to deprive the courts of the power to issue injunctions in labor disputes. Congress should enact such a law governing the Federal courts and the State legislatures should do likewise for the courts under their several jurisdictions. To put it in another way, the essential provisions of the British Trades Disputes Act of 1906 should become the law in the United States. If it be objected that to abolish the power of issuing injunctions would make possible the perpetration of actions which ought to be prohibited, for example the secondary boycott, and certain varieties of the sympathetic strike, the reply is that these actions should be prohibited by acts of the legislature. As Senator Pepper intimated in the address referred to above, the courts ought not to be required to carry a burden which should properly rest upon the shoulders of the lawmakers.

XVIII

THE OPEN SHOP FRAUD

THE "open shop" about which we have heard so much since the year 1919, is not a new movement. One can find in the printed proceedings of the 1905 meeting of the American Economic Association, upwards of seventy-five pages under the general heading, "The Open Shop Versus the Union Shop." Among those who contributed papers or speeches to the discussion were Professors John R. Commons and John Graham Brooks; and the President of the National Metal Trades Association and the President of a national trade union. The reader of these pages will find that most of the arguments with which he has become familiar during the last eight years were anticipated by those who participated in that meeting of the American Economic Association nearly twenty years ago. Then, as now, there was an active campaign in favor of the "open shop," and its advocates were already exploiting some of the dishonest shibboleths that its present day champions now flaunt as clever new discoveries. For example, there was much insistence upon the "Americanism" of the "open shop," and much talk of the "constitutional right to work."

The "open shop" as advocated since 1919 is a fraud for several reasons. First, because its champions do not tell the full truth about it. In their printed and spoken descriptions, its scope and purpose are not frankly and fully set forth. Its principal aims and effects are concealed. In the "declaration of principles" adopted by the Employers' Asso-

ciation in Detroit several years ago, we find this summary description of the "open shop:" "No discrimination shall be made against any man because of his membership in any society or organization." This is substantially the representation of the "open shop" which is made by all its advocates, and all those who put it into operation. Such phrases and programs are, on their face, persuasive and fair-minded.

But they are only half statements or half truths, and we know that "a truth that is only half a truth is ever the worst of lies." A shop or establishment in which employees are permitted to retain their membership in the unon, is not necessarily a satisfactory place to work, nor is it necessarily fair to the union. The important thing is not the employment of union members, but the attitude of the employer toward the union itself, and toward the object for which the union exists. Association of employees in a union enables the members to act more effectively in calling and continuing a strike. But striking is not the main purpose of the union. By far its most important object is the process known as collective bargaining. Its members desire to act as a unit in dealing with the employer with regard to wages, hours, and other conditions of employment. They wish to make a collective bargain for the whole group, instead of each member negotiating individually with the employer and entering an individual contract. Collective bargaining is carried on by the employer on the one hand, and representatives of the organized group on the other. Unless the employer permits and enters upon this kind of negotiation and this kind of contract, the union is deprived of nine-tenths of its possible effectiveness and benefit to the employees. Indeed, the average wage earner cannot easily be persuaded that it is worth his while to enter and pay dues to a union which is unable to engage in collective bargaining.

Now the "open shop" as contemplated and operated does not include collective bargaining. While permitting men to retain membership in the union, it deprives them of the principle advantage which the union is intended to bring them. But this feature of the "open shop" is scarcely ever frankly avowed by its advocates. Almost never do they tell the public this most important fact. Their language gives the average reader or hearer no hint that the "open shop" is really intended to cripple the union. Therefore, it is no exaggeration to say that the "open shop" is a fraud.

It is also a fraud because of the dishonest use of the phrase, "American plan," and kindred expressions. Its champions use this term on the pretense that the kind of industrial arrangement which they advocate gives a wide measure of opportunity and freedom to all workers. Both the opportunity and the freedom are deceptive, and in reality, are contrary to American ideals. Genuine opportunity implies that the employee shall have an adequate voice in determining the conditions of employment. The "open shop" denies him this adequate voice because it deprives him of the power to make a collective bargain. He is compelled to oppose his individual bargaining power to the vastly greater bargaining power of the employer. This is not Americanism; indeed, it is the exact contrary. The so-called freedom of the "open shop" is equally un-American, for it is the freedom to injure oneself by submitting to unfair conditions of employment.

The kind of freedom and opportunity in which the "open shoppers" believe is well illustrated by the following paragraph taken from a laudatory article entitled, "Detroit and the Open Shop" in *Barron's Financial Weekly,* January 7, 1924: "The 1920 plumbers' strike was strenuous, but the open shop won out. When a projected building contract appeared to be falling into the hands of a closed shop con-

tractor or architect, the association got busy with the property owner or the builder. If this failed they brought pressure to bear on the banker or the material supply people." If it were not so brazen, this would be delightfully naïve. When tactics of this kind are adopted by labor unions, they are "un-American," but when carried out by an employers' association in the interests of the "open shop," they are of the essence of patriotism.

Finally, the "open shop" is a fraud because its advocates invariably represent it as the only alternative to the closed shop. This is misrepresentation. A person may reject the "open shop" without accepting the closed shop as universally necessary or even desirable. Such a person may believe that membership in a union should not be required as a condition of employment and may, with equal earnestness, believe that the employer ought to deal with the union through its chosen representatives. Such an arrangement would be an open shop, but it would not be the "open shop" that is currently advocated. The manager of such a shop might engage in collective bargaining with the union. pay the union scale of wages, and in all other respects maintain satisfactory relations with the union, and yet not require all his employees to be members. This would not be a closed shop, but it would be poles distant from the "open shop" which has been exploited since 1919. Were this kind of open shop recommended and contemplated, neither the labor movement nor its friends would have any reason for alarm.

XIX

A NEW TASK FOR THE LABOR UNIONS [1]

LABOR day and its observance are concrete testimony to the gains achieved in the last half century by those who work for wages. In all the industrial cities of the United States and in many other communities Labor Day is as widely observed as the Fourth of July. Not only wage earners but substantially all other classes rest from their ordinary occupations. This general observance of the day indicates the greatly increased power and social importance of the wage earning classes. It has contributed greatly to their self-respect and it gives them occasion to express their aspirations for the future.

Labor Day belongs in a very special sense to *organized* labor. The improvements in the conditions of the toilers which have brought about this holiday are due in greater measure to the labor union than to any other single cause. By way of summary proof one need only recall the wide adoption of the eight-hour day in industry and the wage increases which can be traced to the union; for example, in the building and printing trades and in the coal mines. The protective legislation which has been enacted for the workers would have been impossible without the initiative and constant activity of labor organizations.

The American Labor movement is sometimes criticised on the ground that its policy is exclusively selfish. It is said

[1] Address delivered at Labor Sunday Meeting, Carnegie Hall, New York, Sept. 5, 1926.

to pursue no other aims than higher wages, shorter hours and better working conditions. It is charged with being merely a fighting movement, not a coöperative movement. While these assertions include a large element of truth, it is truth of which the labor movement need not be ashamed. In the past labor has not obtained a fair share of the product of industry. Even to-day those wage earners who receive just remuneration are less numerous than those who do not. So long as this condition obtains, labor unions will properly and necessarily continue to demand higher wages and those other benefits which are necessary for decent and reasonable life. So long as the union cannot secure these gains without using aggressive methods (within the law, of course) it will perforce continue to be a fighting organization. So long as the majority of wage earners remain unorganized and therefore a continuous menace to the standards won by the organized workers, the union will have to maintain a militant attitude. No social group has ever improved its position without the willingness and the ability to assert itself against those social groups and forces that were antagonistic.

Nevertheless, the time has come when the militant attitude and the policy of demanding more and ever more in the matter of wages and working conditions, should be supplemented by a policy of coöperation with the employer and studied attention to the welfare of industry and the community. This does not mean that the labor movement should acquiesce in the shallow and false theory that the interests of labor and capital are identical. Their interests never will be identical while they remain separate classes performing distinct functions. Labor and capital are both interested in the continuous operation of industry, in the largest possible industrial product and in the utmost measure of mutual good feeling. Even this proposition is subject to exceptions; for example, when the workers find it to their

advantage to interrupt industrial operations by going on strike, or when the employer believes that he will be benefited by a lock-out. At any rate, all the common interests of the two classes are connected with the process of turning out the product. As regards the division of the product their interests are diametrically opposed. If labor gets more capital will get less.

To be sure, there are exceptions to this rule, as in the case of payment by piece work and situations in which an increase in wages will bring more than a proportionate increase in the product; but these exceptions operate within a rather narrow field. The general condition is that when employer and employee are making the bargain the former is unwilling to pay the highest price which the latter demands, while labor does not wish to accept the first price offered by the employer. The outcome is either a compromise between the desires of the two parties or a victory for one of them.

The problem then is not to eliminate this antagonism of interests, for that is simply impossible. It is rather to find means of reducing the antagonism to its lowest possible degree. What is wanted is a shifting of emphasis. At present, the major emphasis is placed by each party upon its particular interest rather than upon the interest which is common to both. When the representatives of a labor union meet the representatives of a corporation for the purpose of making a contract about wages, hours and other working conditions their minds are not fixed upon their common interest. The union representatives try to get as much as they can; the employers' representatives to give as little as they must. These attitudes will probably continue as long as the wage system lasts. Nevertheless, they need not dominate the relations of the two parties to the same extent as they do to-day. It is entirely feasible for both parties to place greater emphasis upon those features of their rela-

tions which are mutual, upon those interests which are common. If right methods are employed this increased emphasis upon common interests and coöperation and the decreased emphasis upon class interest and mutual opposition, will be beneficial to employee, to employer, and to the community.

Just how can this change of emphasis be effected? In general, any practice or policy which brings employee and employer closer together, which enables them to know each other better, would be helpful. Hence the various services and advantages provided by employers under the name of welfare work, personal interest shown in their employees, frank information given by the former to the latter on the condition of the business, the mere increase of personal and friendly contact between the two classes, would all contribute toward reducing mutual antagonism and increasing mutual coöperation. Nevertheless, some of these methods, particularly the first mentioned, can be used in such a way as to lessen the workers' sense of self-reliance and self-dependence. Something more specific will be said on this point presently:

Better than any and all other methods for securing coöperation is the practice rather loosely described as "labor sharing in management." Owing to the great variation in industrial processes, it is not easy to define this phrase in terms that are at once sufficiently general and sufficiently concrete. Labor sharing in management does not mean that labor should immediately take part in either the commercial or the financial operations of a business. Such activities as the purchase of materials, the marketing of the product, the borrowing of money and many others of a commercial and financial character are at present beyond the competence of a great majority of wage earners. On the other hand, labor

sharing in management means something more than participation in determining the conditions of the labor contract. That is already a recognised function of labor unions.

In a general way, the phrase denotes participation by labor in the productive side of industrial management. Men who spend their entire working time in a factory or shop or store or mine or on a railroad, naturally and necessarily come to know something about the processes upon which they are engaged. If they have ordinary intelligence they sometimes desire to exercise some control over these processes, to suggest improvements, to recommend ways of eliminating waste. After all, the vast majority of persons would like to determine their immediate environment. In every normal human being there exists some directive, initiative, creative capacity. Those who are engaged in industry are not sharply divided into two classes, the one possessing all the directive ability, the other being unable to do anything but carry out orders. The wage earners have some directive ability, some capacity for becoming something more than animated instruments of production.

This is the psychological and technical basis of the proposal for labor sharing in management. It was well expressed, several years ago, by Dr. Royal Meeker, at that time Commissioner of the United States Bureau of Labor Statistics: "I insist that the management, even scientific management, has not a monopoly of all the brains in an establishment. . . . . As a worker and a student, I feel that there is a tremendous latent, creative force in the workers of to-day, which is not being utilized at all. . . . . Here is a vast source of industrial power, which has been cut off, isolated, by the transformation of little business into big business. It will be difficult to tap this source, but tap it we must, if we are to continue anything resembling the

present organization with its large scale production. The good will of the workers is a much more potent force in making for industrial efficiency than all the scientific management formulas and systems of production."

A considerable number of industrial concerns has adopted under one form of another the principle of labor sharing in management. Some of them are frankly paternalistic, operated by the employer through a "company union" or some other kind of organization dominated by himself. Others exemplify equality of coöperation between employer and employee. Some have achieved considerable success; others have failed. In this place, only one such enterprise will be set forth in any degree of detail. This is the plan which has been in operation for more than three years in the shops of the Baltimore and Ohio Railroad, and which has more recently been adopted by three other roads, namely, the Canadian National Railways, the Chicago and Northwestern Railroad and the Chesapeake and Ohio Railroad. Three fourths of a million railway employees have endorsed this form of employer and employee coöperation. Mr. William Green, President of the American Federation of Labor, gave it his approval in a recent address.

Space is wanting for an adequate description of the things which labor does in this arrangement. Some idea of the reality of labor's participation may be obtained from the fact that on three of the railroads concerned some 20,000 suggestions relating to shop operations have been made at the bi-weekly meetings of the joint committees of workers and management. A very large proportion of these came from the employees. A fundamentally important feature of the arrangement is that it recognizes the established unions of the workers. The labor members of the joint committees are chosen by the regular shop unions. Among the matters and problems considered by the joint committees

are: employee grievances, employee responsibility for the prosperity of the railroad, employee welfare, employee training, better conditions of employment in respect to working facilities, sanitation, lighting, and safety, conservation of materials, increased output, improved workmanship, recruiting employees, stabilizing employment, and participation by the employees in the gains due to coöperation.

Definite progress has been recorded with regard to most of these objects. Improvement has taken place in the relation of management and men; improvement in tools and work conditions has resulted in an increased output of better quality; considerable progress has been made in stabilizing employment and thus increasing wages, great progress has been made in developing an understanding of the coöperative idea among employees and officers, the causes which produce grievances have been greatly reduced and the settlement of grievances greatly expedited.

While neither the management nor the employees call this plan "labor sharing in management," that phrase is properly applicable. Although most of the activities of the joint committees deal with what might be regarded as minor matters, they have a real bearing on the productive side of industrial management. The longer the arrangement is in operation the more is it likely to become extended to matters which may not have been in the minds of either employer or employee at the beginning. Indeed, one of the greatest merits of the plan is that it began with the simpler problems and, therefore, has enabled the employees to introduce themselves gradually to the more difficult and more responsible phases of management.

The principles and methods of the B. and O. Plan can be applied to every variety of industry. Of course modification of detail will be necessary to meet the needs of the particular industry into which the arrangement is introduced.

In every case where sincere and sustained effort is made to give the plan a fair trial the following gains may reasonably be expected; the workers will have greater consciousness of their dignity, greater self-respect, greater interest in their work, and a feeling of responsibility for the results of their work; the merely business relation between employer and employee will be supplanted by a human relation which will cause the employee to look upon himself more as a partner than as a hireling, while both the employer and community will be benefited through a larger and better product.

The complaint is frequently made that the average wage earner today is not interested in his work. Sometimes this charge is met by the question, "why should he be interested, since the amount of his remuneration will not be affected by the prosperity of the concern which employs him?" Whatever our opinion may be about either the complaint or the reply, we must realize that the worker who has no hope of any share in the product beyond that which is arranged beforehand in his fixed wage, cannot be expected to have the same interest in his work as the person who owns the product and therefore desires it to be as large as possible. That would be the ideal arrangement for any industrial society. For a long time to come, however, it will not be within the reach of the great majority of the working class. In the meantime, the B. and O. Plan is capable of giving to the workers a very considerable interest in their tasks and in the welfare of the employing concern. Moreover, the interest can be based not merely upon the exercise of the workers' directive faculties but also upon that increased remuneration which is made possible by the plan.

Here, then, is a great task for the American labor movement. Let it continue to seek better wages and better work-

ing conditions for its members; let it continue and even greatly increase its efforts to bring into the unions the vast numbers of wage earners who are still unorganized; let it continue the campaign for protective labor legislation, particularly for relief from judicial abuse of the writ of injunction, but let it in addition systematically and earnestly set about the task of establishing as rapidly as possible arrangements for labor sharing in management such as are exemplified in the B. and O. Plan of union-management coöperation. The benefits under the heads of more pleasant employment relations, satisfaction of the employees with their work, better remuneration, and advantages to the employer and the community, have been sufficiently sketched above. There is another advantage which no agency is so well fitted to bring about as the labor union. That is education of the workers in self-respect, in the conviction that they are fitted to be something more than mere instruments of production, and in the capacity to take a gradually and indefinitely increasing share in the management and operation of industry. Through this process of training the wage earners will in due time be able to demand a share in the surplus profits and a share in determining all the policies of the industrial concern, and will become fitted to carry on coöperative industries and to sit on the directing boards of publicly owned and democratically managed industrial enterprises. It will be a sad day not only for the workers but for American society when the masses of our wage earners become congealed in a distinct and dependent class. No beneficent condition of wages, hours, or other working arrangements can compensate for this loss of dignity and democracy. We do not want to become a nation of hired men. If the American working class is to be saved from this deplorable status, the task must be performed by the labor unions. And the first

step in the process is to establish the practiceof labor sharing in management.[1]

This policy would seem to be particularly appropriate at the present time. In a recent issue of a widely-read magazine there appeared an article which had for its thesis the proposition that the American trade union movement is falling into a very noticeable decline, owing to the establishment of industrial welfare services by the great employing corporations. According to this writer, a great number, if not the majority, of large corporations are diligently striving to conciliate and satisfy their employees through various forms of welfare work in the shops, and particularly through group life insurance and employee stock ownership. The writer asserts that these efforts on the part of employing concerns are met at least half way by their employees. The interest of the later in their unions is decreasing accordingly. The welfare services are accepted as a substitute for one of the three great objects of the union, namely, suitable working conditions. Another of the three ends, the shorter work day, has been attained to such an extent that it arouses no great interest in the majority of wage earners. As for the main object, higher wages, the majority of union members have become relatively indifferent. They are tolerably satisfied with the part which they are obtaining in the present condition of alleged general prosperity. As a consequence the members do not attend the meetings of their unions and the proceedings are devoid of interest and constructive discussion. The leaders are unable to show that the union is a vital necessity. The final and

[1] At the annual convention of the American Federation of Labor held in Detroit, October, 1926, the delegates unanimously adopted the following resolution:

"The time is ripe for the American labor movement to work progressively for the substitution of union-management coöperation for company unions, to substitute voluntary democratic organization of trade unions for employer-controlled company unions or shop representative plans."

most significant result is that the workers are becoming more and more satisfied with things as they are and more and more dependent upon the good will of their employers.

Obviously this condition is little more than a benevolent serfdom. Under it the mind of the workers will become a slave mind. If they are to be rescued from this danger they must be made to realize that they have capacities for something better and higher. They must be enabled to regain their lost self-respect, their native desire to exercise other human faculties in addition to the faculty of carrying out orders. The practice of sharing in industrial management seems to be the most suitable means of beginning this task of rescue. And the labor union is the only agency that is capable of putting the means into operation.

XX

DEMOCRATIZING INDUSTRY

ONE of the traditional assumptions of American industrial life is that almost all, if not all, of the workers may confidently hope to become business men. When we speak of America as the "land of opportunity," we mean not merely that our country offers to the masses greater opportunities than do other lands, but also that our industrial conditions are such that the great majority may rise from the lower social and industrial levels and become in some measure directors of industry. The theory is that almost all men who work hard and save their money have a genuine opportunity of becoming economically independent, as factory owners, storekeepers, farmers, bankers, or as the owners and directors of some other kind of business. Until quite recently, most of us have assumed that very few working men need remain wage earners all their lives.

When the late John Mitchell declared a few years ago that 90 per cent of American wage earners had no expectation of ever becoming anything else, his statement was denounced by many of our newspapers as un-American. Yet all who know the facts of our industrial system, and who are willing to look the facts in the face, are aware that he spoke the simple truth. We know that in urban industries the overwhelming majority of the workers must remain wage earners all their working days. The first reason is that the industrial unit, the single business enterprise, has

become so large that the total number of business concerns is far too small to permit the majority of the working population to become individual owners. A complementary reason is found in the fact that the typical industrial unit is too costly to be owned by a single individual. Therefore, the supply of business concerns is far too small to go around, and the amount of capital required for the larger business enterprises is so great that only an insignificant fraction of the wage earners can ever hope to accumulate that amount of capital. Even in rural life substantially the same condition exists. Although the typical farm has not grown in size, as is the case with the typical industrial concern in the city, the cost of acquiring a farm has vastly increased. There are no more farms to be had merely by pre-empting them, or by paying for them at the rate of $1.25 an acre. Even the difficulty of becoming a tenant farmer has increased, owing to the greater amount of capital, especially in the form of machinery, which is required to operate a farm. On the one hand, it is becoming more and more difficult for a tenant farmer to become a farm owner; on the other hand, for a farm laborer to become even a tenant farmer is almost impossible.

The general situation, therefore, is that the vast majority of men who begin life as employees must resign themselves to dependence upon wages or salaries for their livelihood until the end of their working days. And the complement of this situation is that, so far at least as urban industry is concerned, the functions of ownership and direction are performed by a small minority. The users of the tools of production form one closs; the owners of the tools of production form another class.

This is industrial autocracy, or, at best, industrial feudalism. Nevertheless it is frankly and cheerfully accepted by the majority of our great captains of industry. Indeed, a

large proportion of men in the professions and of our newspapers seem to see in this industrial system nothing abnormal or undesirable. It is true that the autocratic element in the system varies to some extent in the minds of the great employers. The more despotic of them would like to fix wages and all other conditions of employment according to their own pleasure. These do not believe that employees should enjoy even that modicum of control which is exercised by a strong labor union. They would have their industrial reign unmodified and unlimited. A less autocratic and more benevolent group of employers would permit labor unions to exist and to carry on the process of collective bargaining. Moreover, they would admit that the workers should enjoy a minimum of decent and humane conditions of labour and of living. Nevertheless both these classes of capitalists reject the theory that the wage earners should have any share in the management of industry, in its surplus profits, or in ownership of the tools of production. Both varieties of the doctrine of industrial autocracy assume that the functions of management, profit-taking and ownership belong to the few, and that the mass of the wage earners should have the status of a dependent and directed class. In other words, the great majority of the captains of industry accept and welcome the Servile State.

The fundamental defect of such an industrial condition is that the diversity of interests between capital and labor is too strongly emphasized, while their community of interests is minimised or ignored. In this condition the workers have no adequate incentive to turn out a reasonable amount of product. Indeed, large groups of them may find it profitable to reduce their industrial output. This situation is un-American, inefficient, opposed to the social good and directly conducive to agitation for Socialism.

It is un-American, because it is contrary to the American

industrial tradition, to the Democratic genius of America, and because it means a denial of that distribution of opportunity which has always been associated with the history of America.

It is inefficient, because it keeps the two great industrial classes in a state of continual conflict. The interests of capital and those of labor are in part common, and in part mutually opposed. They are common, inasmuch as both factors should desire the largest possible product in order that the share of each may be increased to the highest degree. Their interests are mutually opposed as regards the division of the product, the length of the working day, and the provision of safe, sanitary and pleasant conditions in the workshop. As our industrial system is now operated, the attention of the workers is concentrated almost entirely upon the division of the product rather than upon its maximum amount. At any given time and place the amount of wages that labor is able to secure depends only slightly and remotely upon the size of the product. Practically, it depends almost entirely upon the share of the product that labor can secure by means of a bargain made at the present moment. In a word, the attitude of the workers toward the size of the product is exactly opposite to that of the employers. The share of the latter is directly determined by, and dependent upon the amount of product that will be finally turned out, while the share of the workers is directly determined (except where the piecework system prevails) on the basis of time, without any reference to the product out of which wages are to come. When he makes a bargain for wages on this basis, the worker assumes that somehow the product will be large enough to provide the stipulated compensation. He has no serious fear that his wages will not be forthcoming if he fails to perform a reasonable amount of daily labor. His demands for shorter

hours and better working conditions are likewise unaffected by any apprehension concerning the bad effect which the satisfaction of these demands might have upon the total amount of product.

It is not the fact of opposition between the interests of the two classes that is of importance; for there is opposition between the interests of many other economic classes, and yet these are able to coöperate without undue friction for their common benefit. The diversity of interests between the housewife and the corner grocer is outweighed by their community of interests. Therefore, neither of them desires the removal of the other. The evil feature of the present relation between capital and labor is that their mutual diversity of interests occupies the attention of both almost exclusively, or at any rate to the great detriment of those interests which they have in common. It is quite easy, indeed, to prove that this disregard of a sufficient product must prove harmful to labor in general, and in "the long run." Such proof, however, leaves the laborer unmoved and practically unconvinced. Like the rest of us, he is not deeply concerned about "the long run." His vision takes in only the present and the immediate future, and he knows that during this "short-run" period the size of the product will have very little influence in determining either the rate of his wages or the other conditions of his employment. The sum of the matter, then, is that the attention of the laborer is directed almost entirely to his portion of the product, and only slightly, if at all, to the size of the total product. Therefore, he places practically all the emphasis upon that part of his interests which are opposed to the interests of capital. And capital naturally fights back and in turn stresses the diversity of interests between itself and labor.

The present arrangement is injurious to the social good

because it tends directly to a diminished product and to industrial friction which interferes with the satisfaction of social wants. It is futile for well-meaning members of the public, the so-called third class or third element in the industrial community, to strive to remedy the situation by moral exhortation. To urge upon the worker the duty of performing a fair day's labor in return for a fair day's pay, will have only feeble efficacy. Even the more conscientious wage earners believe at present that a diminished daily output constitutes a fair day's work in view of the enormous profits obtained by the employer.

The emphasis now laid upon the opposing interests of capital and labor, and the very general conviction among the wage earners that they must constantly and continuously fight the employer in order to obtain what they regard as a fair share of the product, tends directly to promote the doctrines and spirit of Socialism; for it keeps in the foreground what is perhaps the most powerful of all the theories of Socialism, namely, the doctrine of class conflict. Thousands and thousands of workers who are not yet Socialists are drawn insensibly toward the Socialist philosophy and the Socialist movement by their conviction that the capitalist is a constant obstacle to their endeavor to obtain what they regard as the full product of their labor. Gradually the capitalist appears in the minds of such men as an unnecessary factor in the industrial system. From this position to the position of Socialism the transition is easy.

It is evident that there can be only one fundamental remedy for this evil situation. The remedy must be such that it will exactly apply to the evil. As we have just seen, the great evil of present industrial relations is the fact that the diversity of interests of capital and labor are magnified in the minds of both parties, while their common interests are minimized or ignored. Therefore, some way must be found

to enable and compel both labor and capital to place greater stress upon their common interests. The direct and obvious way is to put labor in such a position that it will participate in the benefits of ownership. After all, the traditional American philosophy is fundamentally sound. The majority of men should be given the opportunity to become directors of industry. It is true that each cannot hope to become the sole owner and manager of a business, inasmuch as the number of business concerns is too small, and the cost of purchasing them too great. That feature of the traditional theory must be abandoned, at least with reference to urban industries. Nevertheless the essential elements of the theory are still practicable. It is still possible for the majority to become business men. The method by which this can be achieved is industrial coöperation. And the process will necessarily be gradual.

When we analyse the position and functions of the business man, we find that it includes three fairly distinct and very important advantages. The first is the direction of industrial operations; the second is the possibility of obtaining indefinitely large gains as the reward of hard work and industrial efficiency; the third is the consciousness of independence, security and self-respect, and the possession of a degree of social and political power which the propertyless man, other things being equal, can never hope to obtain.

Now it is still possible for the majority of wage earners to secure for themselves by gradual processes all three of these advantages. The first, namely, direction of industrial operations, can be obtained through the method of labor participation in management. It is not necessary here to describe in detail the full meaning and implications of this phrase. We have heard a great deal about it during the last ten years, enough to enable us to grasp its main outlines. In general, it means that through their repre-

sentatives the workers in an establishment should have something to say about the industrial side of the management; for example, concerning wages, hours, shop conditions, shop discipline, disposition of the employees, application of shop rules, working agreements, welfare activity, shortage of work, installing of new machinery, improvement of industrial processes and organization, apprentices, industrial experiments and scientific management. The general principle is, that the workers should take part in all those phases of industrial management which concern them directly, and about which they have some knowledge to contribute. By these means the wage earners will be enabled to exercise to some degree the desire which they share with all other human beings, the desire to exercise some control over the material conditions in which they live and work. They will obtain the opportunity to exercise their directive faculties, as well as their obedient faculties, and to become something more than instruments of production. It is not a good thing, either for the workers or for society, to permit these directive faculties to become atrophied.

In a word, participation in management will introduce the worker to the first of the advantages of the business man, will make him vastly more interested both in his task and in the establishment in which he works, will convince him that he has more in common with the employer than he had previously thought, and therefore will induce him to turn out a larger product.

The second element in the position of the employer, namely, the hope of obtaining indefinitely large gains as the reward of efficiency and success, can be brought within the reach of the wage earners through profit-sharing. In a sense this second advantage of the business man may be regarded as the most vital element in the system of private capital and industry. The business man is not restricted, at

least in competitive industries, to any fixed per cent or amount of profit. The theory is that when men enter into intensive competition with one another, attracted by the lure of indefinite gains, their energy and inventiveness will be aroused to such an extent that they will find and apply new methods of production and of labor organization, with the result that the cost of production will be constantly lowered. In this way the whole community will be benefited. Until competition became so widely supplanted by combination, this theory was verified in practice. To the extent that competition prevails, and will continue to prevail in industry, the theory is sound. Now the method of profit-sharing by the employees simply extends this general principle of indefinite gains to the wage-earning classes. If it is desirable to permit the directors of industry to obtain indefinitely large gains as a result of hard work and efficiency, why is it not equally desirable to hold out this hope to the rank and file of the workers So far as the principle of the thing is concerned, its wisdom seems to be beyond controversy.

Profit-sharing gives to the workers, in addition to their wages, a part of the *surplus* profits. So long as the régime of private capital obtains, the owners of capital will have to be assured the prevailing rate of interest. Therefore, it is not feasible to give any part of the profits of a concern to the workers until the owners of capital have obtained this prevailing rate. If 6 per cent, for example, is the rate of interest that can generally be obtained on investments of normal security, then the owners of the capital in a concern should be guaranteed that amount before the process of profit-sharing is put into operation. After that, and after all other expenses of the business have been paid, including wages, what remains, the surplus profits, should be divided among the wage earners, the management and the owners of capital in some definite proportion.

Most of the profit-sharing schemes in the United States have either failed entirely or accomplished very little. The principal reason was that they were not undertaken in good faith. Some of them were designed to keep the workers out of labor unions; others to serve as a substitute for reasonable wages, while most of those that were honestly undertaken gave to the workers such insignificant sums that they did not stimulate either efficiency or goodwill. Any profit-sharing plan that is to be a success must not antagonise labor unions, nor be a substitute for standard wages. On the other hand, it must provide for complete frankness and publicity as regards the amount of profits actually available, and must give to the workers a larger share of the surplus than has been customary in the great majority of profit-sharing schemes heretofore.

It has been stated above that a part of the surplus profits should go to the owners of capital. Undoubtedly that will be the only possible arrangement for many years to come. Nevertheless, it is not ideal and it is not scientific. The owners of capital who perform no work in the operation of a business, as the vast majority of the stockholders in a corporation, ought to be restricted to the prevailing rate of interest on their capital. Why should they receive any part of a surplus, to the production of which they have contributed neither time nor thought nor labor? No one proposes that the bond holders of a corporation should share in the surplus profits. With the exception of the board of directors, executive officers, and a few others, the stockholders are in substantially the same position as the bond holders. If matters are so arranged that they are certain to receive the prevailing rate of interest each year, and if a sufficient reserve is set aside to protect them against losses through the failure of the concern, they are receiving all that seems to be fair and all that is necessary to induce

men to invest their money in a concern of this sort. Therefore, the surplus profits should all be distributed among those who perform any function in the industry, from the president of the company down to the office boy. And the distribution should be in proportion to their respective salaries and wages.

The advantages of this arrangement would be to give to the workers that interest in the industry which is created by the hope of profits dependent upon their own efficiency, and to provide the community with a larger product.

The third element in the position of the business man is the possession of personal security and social power. These are derived from ownership itself. As we have already seen, it is no longer possible for the majority of workers in urban industries to become each the owner of an individual business. But they can become individual owners through coöperation. The history and experience of the coöperative movement throughout the world, especially in Europe, shows that the workers are capable of coöperatively owning and managing stores, banks, factories, and a great variety of other business concerns. While they have been less successful in the field of production than in that of merchandizing and banking, there is no inherent reason why they should not carry on productive concerns. The difficulties are greater in the latter province, but they are not insuperable.

Coöperative ownership and management would end the unnatural divorce that now exists between the owners of capital on the one hand and the users of it on the other. It would be the most effective obstacle to and preventive of Socialism. The instinct which urges men into the Socialist movement is entirely natural, for it is based upon the fundamental fact that in a democratic society men will not be content to be mere executers of the orders issued by feudal

lords of industry. This instinct can be satisfied to a greater degree and in a much more beneficial way for society through coöperation than through Socialism. In coöperative ownership each person is the owner of a definite amount of property which he holds exclusively, and not merely as a member of society. The difference between the two forms of ownership is the difference between a man's proprietorship of his front lawn and his interest in a public park. Through coöperative ownership and production the workers would be compelled to develop their own powers of self-control and management, instead of trusting to a mere social and industrial mechanism. They individually and collectively would have to bear the responsibility for the success or failure of a coöperative enterprise. The influence of this condition in contributing to the development of the individual is obvious. A society in which the majority of the workers were owners of capital, as well as wage-earners, would be an infinitely more progressive and more enlightened society than either Socialism or modern capitalism.

The problem of bringing to the landless agricultural workers the advantages of ownership has two principal aspects. One concerns the tenant farmers, the other the rural wage-earners. Even now the former class occupy the position of business men; for they own a certain amount of capital and direct its operations. The only thing wanting to make them business men in the complete sense of that phrase as it applies to agriculture is ownership of land. During the last quarter of a century tenant farmers have increased so much more rapidly than farm proprietors, that tenancy is universally recognized as one of the gravest of our social problems. The solution of it will require many different methods. Chief among these are land banks and other credit institutions which will enable the tenants to borrow money for the purchase of land on much more easy terms than are now

available; and probably certain drastic changes in our laws of taxation, such as an extra heavy tax on agricultural land which is operated by others than the owners or their near relatives. The problem of enabling the agricultural laborer to become a business man is even more difficult. However, it is not insoluble. One means is to provide him with a house and a small plot of ground, so that he will have a fixed interest in the community, and be in a position to marry and lead a normal human life. Through the land banks and credit institutions mentioned above, the transition from this position to that of tenant farmer, and even to that of farm owner, would not be excessively difficult for those who possess a fair amount of energy and willingness to work.

From the viewpoint of transforming the wage earner into a business man, the situation in agriculture is much more satisfactory than in urban industry. In the former the economic unit of business operation is still small and probably will always remain small. Therefore, it is possible for the individual to own and manage a farming business by himself, or at any rate with only slight coöperation with other farmers. The problem of coöperation in ownership does not exist, but coöperation in marketing and in purchasing is, of course, desirable and very beneficial.

Our industrial system as now constituted is well nigh bankrupt. It is fast becoming an industrial feudalism, and the day of feudalism, whether in politics or in industry, has gone by forever. There are only two conceivable alternatives: one is Socialism; the other is coöperative control and ownership by the workers of the greater part of industry. Reforms which will merely better the conditions of life and labor of the wage earner, leaving him in his present position of entire industrial dependence, with no participation either in management, profits or ownership, will have no permanent value. What the worker needs is a change of status.

In the days of slavery there were many masters who gave to their slaves all the advantages of humane living except economic freedom. Yet that status was not normal, and was not satisfactory. The status of industrial dependence cannot endure permanently no matter how well off the worker may be in the material conditions of existence.

The modifications in our industrial system which have been described and defended in this paper are in thorough harmony with the traditional social doctrines and social practice of the Catholic Church. When the Church exercised her greatest social power, the majority of the workers, both in the towns and in the rural regions, where owners of the instruments of production, and to a great extent of the land. This is the goal toward which the Catholic doctrine of private property points, and always has pointed. Capitalism as we now have it is not the fruit of Catholic social doctrine or practice, but of contrary doctrines which came into vogue only after the Protestant Reformation. One of the most discouraging facts of our time is the widespread acceptance of the present industrial system as the only possible arrangement, and the refusal to believe that the masses of the workers are capable of becoming anything else than hewers of wood and drawers of water—animated instruments of production. For this deplorable assumption, this pessimistic social outlook, the Catholic Church is nowise responsible.

Undoubtedly the changes called for in the foregoing pages must be brought about gradually. The element of time is not important. What is important is to recognize that some such changes are indispensable and inevitable. When our society recognizes this fact and becomes permeated with this spirit, the problem of ways and means of effecting the change will become comparatively simple.

There was a time when men believed that only a few persons, the supermen of that day, were capable of managing

political government. That belief no longer survives. Its counterpart in the world of industry, the theory that the functions of owning and directing economic institutions must be performed by a few supermen, is equally false and equally doomed to disappear.

XXI

A CONSTITUTIONAL AMENDMENT FOR LABOR LEGISLATION

In his great Encyclical on the "Condition of Labor," Pope Leo XIII did not lay down a complete statement of justice for industrial relations. He confined himself to declarations describing the minimum, the lowest requirements of justice. Hence, we do not find in that great document a rule, for example, of completely just wages; we find only a definition of the minimum just wage, namely, a living wage.

All moderate and realistic social reformers have adopted the same method. They realize that the problem of *complete* industrial justice, if not insoluble, is at least so difficult that discussion of it is of very little practical value. What they do see clearly and advocate strongly is the practicability of certain minimum standards of life and labor. These represent the lowest or poorest conditions which are compatible with justice and human welfare.

All the proposals set forth by moderate reformers for the betterment of labor conditions may be grouped under the heads of *sufficiency* and *security*. The workers are morally entitled to sufficient wages, sufficient provision for safety and sanitation in work places, and a sufficiently short working day, to provide them with a decent human existence. They are likewise morally entitled to that amount of provision against old age and the other important contingencies of life which will make their future reasonably secure. In a country as rich as America, it is clear that no worker need be

deprived of this minimum amount of sufficiency and security and, therefore, that this measure of welfare ought to be provided by our social institutions.

Since it is the duty of the State to protect all natural rights, the State ought to make this minimum of welfare available to the workers through appropriate legislation. Not by taking charge of industry nor by guaranteeing wages, but by regulating the conditions and relations of industry and industrial functionaries. In the words of Pope Leo XIII: "The foremost duty of the rulers of the State should be to make sure that the laws and institutions, the general character and administration of the commonwealth, shall be such as of themselves to realize public well-being and private prosperity." The State should provide the conditions necessary for at least the minimum of industrial justice.

It comes to us as a shock to realize that American governments have not at present the power to provide these minimum requirements of sufficiency and security for the wage earners. Minimum wage laws for women and eight-hour day laws for men have been declared by our courts to be in conflict with the Federal Constitution. In all probability laws providing for compulsory insurance against unemployment, sickness, and old age, would meet the same fate. That which can be done by any other modern government in the world cannot be constitutionally accomplished by the American Government at the present time.

The obvious remedy is an addition to the Federal Constitution which will enable our governments, both state and national, to fulfill this primary duty of the civil power; that is, to enact legislation providing this minimum of sufficiency and security for the working classes. The desired amendment would take substantially the following form:

"The Congress and the several states shall have power to pass laws fixing minimum standards of welfare for the em-

ployment of workers, including hours of labor, wages, safety and sanitation, and provision for social insurance against sickness, accident, old age, and unemployment. Provided, that the power granted to Congress by this section shall not be construed to prevent any state from enacting higher standards for the employment of labor within its borders than those established by the Congress."

The subjects covered by the proposed amendment include all upon which legislation is necessary to accord the workers a just minimum of welfare. Were this provision a part of the Federal Constitution, Congress would be entitled to enact a minimum wage law, a law limiting the hours of the working day to eight or nine, or whatever minimum were regarded as reasonable, to set up standards of safety and sanitation in work places, and to establish compulsory social insurance to protect the workers against sickness, accidents, unemployment, and old age. These measures could be made applicable to men as well as to women and children. While applying to the whole country, the laws and standards could be sufficiently elastic to take account of varying conditions; for example, differences in the cost of living in different sections of the country.

It cannot be made too plain that the amendment here advocated makes possible the enactment of *minimum* standards only. Under its provisions neither Congress nor the state legislatures would have power to fix maximum wage rates, nor a minimum length of working day, nor maximum requirements for sanitation and safety, nor maximum provisions for social insurance. The legislative authorities would be empowered to say that wages should not fall below a certain level; they would not be able to set any upper limit. They could prohibit the employment of workers for more than eight hours a day, but not for less than eight hours a day. They would be able to require provisions for safety and

sanitation in work places to be at least up to a certain standard; they could not prohibit provisions which would be better than this standard. They could ordain that insurance payments against sickness, accidents, old age, and unemployment, should reach at least certain schedules of figures, but they could not render larger payments illegal.

Still another important observation concerning the proposed amendment is that it would be merely an enabling act, not statute law. In this respect it would differ radically from the Eighteenth Amendment. It would not change existing labor legislation nor enact new legislation. It would merely authorize Congress and the states to pass one or more laws covering the subjects described in the preceding paragraphs. Such legislation might be enacted immediately after the amendment became a part of the Federal Constitution; or it might be delayed for several years; or it might never be enacted. All that the amendment contemplates is to confer upon Congress and the states legislative powers which are possessed by all other enlightened governments.

The proposed amendment would authorize both Congress and the several states to set up these minimum standards of welfare for the protection of wage-earners. In the opinion of some persons who believe in this kind of legislation, it should be enacted by the Federal Government alone. Others hold that such laws should be within the exclusive competence of the states. A brief consideration will show that both these opinions are incorrect.

There are three principal reasons why Congress should not have exclusive jurisdiction to enact industrial legislation, particularly labor legislation. The first is that the Federal Government should not restrict the legislative power of the states, except to the extent that is necessary for the common good. Now the common good does not require that the states should be forbidden to pass any laws whatever con-

cerning wages, hours of labor, or any of the other subjects specified in the proposed amendment. The second reason is found in the fact that a Federal law on any of these subjects would necessarily provide only fairly moderate standards. For example, the provisions of the two Federal child labor laws declared unconstitutional by the United States Supreme Court, afforded a smaller measure of protection, contained lower age limits and lower provisions in other respects, than already existed in the statutes of some of the more progressive states. Undoubtedly a similar inferiority would obtain in a Federal minimum wage law or maximum hours law. Hence, the power should be left to any state to enact better employment standards and better provisions for social insurance than those contained in the Federal statutes. In the third place, the states should retain some power over this kind of legislation because one or more of them are much more likely to take the lead in improving a law than is the national government. The legislature of a progressive state is much more prompt than Congress to take the initiative in advancing toward higher standards of legislation. Its example would be gradually followed by other states and finally by the national legislature. The states rather than Congress are the natural laboratories of experiment in social legislation. Such has been the method of progress in the past, and there is no reason to suppose that it will be different in the future.

Those who contend that the states should enjoy the exclusive power to pass labor laws, ignore the national character of our great industries and of our industrial relations. If the labor laws of one state did not greatly and directly affect industrial conditions in other states, it would probably be well to leave all such legislation to the several states. However, the actual situation is quite different. For example, a poor and weak child labor law in

South Carolina subjects very many employers in Massachusetts to an unfair kind of competition. In both states there are many textile mills; the mill owners of South Carolina are able to employ cheap child labor, while their competitors in Massachusetts are prevented from so doing by a more strict child labor law. Whenever the legislature of any state contemplates better protective legislation for labor, employers of that state object on the ground that the proposed enactment will put them at a disadvantage with their competitors in states which have lower legislative standards. Such protests are entirely reasonable in principle, even though they may sometimes contain an exaggerated statement of the facts.

The general principle which describes the reasonable policy for Federal legislative power would seem to be about as follows: Any matter which cannot be regulated by a single state without directly and greatly affecting the welfare of the inhabitants of other states or without subjecting the inhabitants of that state iself to unfair conditions of competition, is a matter for Federal regulation. In other words, it is a matter of national concern. Of this character are all the major conditions of our industrial system. Hence, the necessity of uniform minimum standards of employment, and these can be established only by Congress.

On the other hand, any state that is willing to undergo the risks and the possible inconveniences involved in the enactment of higher employment standards than its neighbors or than the Federal government, should have the constitutional power to go as far as it likes in that direction. This is a legitimate field for local self-government. But no state should have the power to enact lower standards than those contained in the uniform Federal laws; for such standards affect the people of other state jurisdictions and subject them to unfair competition.

The wage earners of the United States have a right to minimum standards of welfare in the form of a living wage, a reasonable working day, reasonable safety and sanitation in work places, and a reasonable measure of security in the form of social insurance against the hardships of sickness, accidents, old age, and unemployment. In the case of the vast majority, these rights and benefits cannot be obtained and maintained without appropriate legislation. This is an industrial fact obvious to any competent student of our industrial experience, industrial conditions, and industrial probabilities. To enact laws which will provide this minimum and reasonable amount of welfare is undoubtedly one of the most important duties and functions of government. Such is the conclusion that is unavoidable from the declarations of Pope Leo XIII, and from the traditional Catholic teaching on the functions of the state.

Nevertheless, our American governments are unable at present to pass these necessary laws. They can obtain the necessary power and authority only through an amendment to the Federal Constitution. This is true both of the state legislatures and of Congress. How comes it that American legislative bodies do not enjoy the power which is possessed by all other legislative chambers?

The answer must be stated in different terms for the states and the national government. Congress has no power to enact labor legislation of any sort for non-public employments because no such authority is granted in the Federal Constitution. Our national government is one of "enumerated powers," or limited powers; that is to say, it can enact only such laws, and in general exercise only such functions, as are specifically described in the Federal Constitution. All other governmental powers are expressly reserved by the Constitution "to the states or to the people."

The principal reason for this restriction of national power

is to be found in the political conditions and convictions existing in the original thirteen states when the Constitution was drawn up and adopted. Before the Revolution each of the thirteen colonies enjoyed separate local authority, subject only to the superior authority of Great Britain. None of them was directly associated with, or dependent upon, any other colony. During the Revolution, indeed, they all did unite into a single political combination for the defense of their several rights and for common resistance to British aggression. When the war of liberation had reached a successful end, the new states tried to operate as a national unit under the authority of a written document called Articles of Confederation. This organic political instrument proved to be inadequate and unworkable, mainly because it conferred upon the national Government utterly inadequate power. While this defect was corrected in the Constitution drawn up in 1787, and happily still operating, the men who composed that document were still jealous of the rights and prerogatives of the several states which they represented. Hence, they conceded to the Federal government only that amount of authority which they regarded as absolutely essential. So far as the Legislative Department of the Federal government is concerned, all these powers are described in Article I, Section VIII, of the Federal Constitution. All other legislative powers were retained for the several states. In the section just referred to, there is no mention of power to regulate industry or labor conditions, or to provide for the welfare of the working classes.

In addition to their jealousy for state prerogatives and their distrust of a powerful central government, the founders of the Constitution had another important reason for failing to authorize Congress to enact industrial or labor legislation. This was the conditions of industrial technique and industrial life obtaining at that time. The Constitution

was written in 1787; the first cotton factory in the United States was erected three years later. In 1787, there existed no great factories, no great industrial establishments of any kind, and no industrial concerns that were affected by interstate competition. The principal industry was agriculture; there were no railroads, and the only town industries were small stores, workshops, and banks. The great mechanical inventions which have revolutionized industry had not yet made their appearance in the United States. In these circumstances it is not surprising that the writers of the Constitution saw no necessity of inserting a provision authorizing Congress to regulate industry, or to enact labor laws. Probably the thought never occurred to them.

Even if the United States had possessed at that time large national industries, it is improbable that the men who drew up the Constitution would have written into it the kind of enabling act that we are here discussing and advocating. For they were all imbued with the doctrines of individualism and governmental nonintervention which were universally held at that time, not only in America, but in Great Britain and France. It was the general conviction of that day among politicians, statesmen, economists, and publicists of all kinds that industry and industrial relations should be subjected to as little legal regulation as possible. The general worship of liberty and the prevailing reaction against excessive and irritating governmental interference with industry, had led the authoritative thinkers of the time to this easy and simple conclusion. The persuasion was quite general that if autocratic and meddlesome governments would keep hands off the substantial equality, both physical and mental, obtaining among individuals, would enable each man to take care of himself in economic competition with his fellows. It is easily understood how this doctrine of individual capacity and individual freedom was especially

popular and plausible in a country possessing the history, the economic conditions, and the opportunities which then characterized the United States of America.

For more than half a century after the adoption of the Constitution, there was no labor legislation of any sort passed in any of the states. The members of state legislatures saw no necessity for such laws and did not believe in them. When legislation did come, gradually, intermittently, and grudgingly, it came in response to the cry of specific and glaring evils, such as the excessively long hours of women in factories and the cruel exploitation of young children. Such protective legislation was looked upon merely as a necessary exception to the general principle that industry and the persons in industry are better off when not regulated by law. Nevertheless, many states have within the last half-century enacted a great variety of labor laws.

Some of these statutes go so far as to fix minimum wages for women and minors, to restrict the hours of labor for men as well as for women, and to compel insurance against accidents. Conceivably this process might go on until the states had enacted into law all the provisions that we have described as the necessary minimum of welfare for the working classes.

However, this theoretically possible action is at present practically impossible, owing to the construction which our courts, including the Supreme Court of the United States, have put upon the "due process" clauses of the Federal Constitution. The Supreme Court has decided that neither Congress nor the states have the constitutional authority to enact a minimum wage law for women. In most instances the state courts have nullified laws restricting the hours of labor for adult males. One of the reasons why no state has attempted to pass a minimum wage law for men was the general belief that such a statute would not stand the judicial

test of constitutionality. And there has always existed a grave doubt whether the courts would uphold a law providing for compulsory social insurance against sickness, old age or unemployment.[1]

To this proposal for amending the Constitution, numerous objections have been, and will continue to be, raised. Many of those most frequently heard are without merit because based upon a lack of analysis and careful consideration. In the opinion of some persons, the Constitution as it was originally written, or at any rate as it has been amended up to the present, is the last word in political wisdom and should not be subjected to any change, either by subtraction or addition. This is a palpably irrational position. Other objectors point to the immense number of proposals which in late years have appeared for amending the Constitution. These persons are moved by fear lest any effort to bring about meritorious amendments might strengthen the movement for foolish and bad ones. A little reflection would show how groundless is this fear. Ninety-five per cent of the proposed changes appearing in Congress get no consideration whatever from that body. However, the best reliance against hasty and unmeritorious amendments lies in the long process and the immense difficulties which must be overcome before an amendment is finally adopted. The policy of opposing even good amendments through fear of bad ones is not only irrational, but is liable to bring about a reaction which will let in some of the amendments which are in fact undesirable.

The essential contention of those who believe in the amendment advocated in this paper is that the Constitution should be brought up to date in the matter of necessary labor legislation. The condition of the recently enfran-

[1] See the first paper in this volume for an account of the judicial development and expansion of the "due process" clause

chised negroes after the Civil War was such that three amendments, the Thirteenth, Fourteenth, and Fifteenth, had to be made to the Federal Constitution for the protection of the elementary, natural, and political rights of the emancipated. Exactly the same principle is involved in the present industrial situation. The Constitution should be enlarged in order to afford adequate legislative protection to the wage-earners in the new conditions of industry. The founders of the Constitution did authorize Congress to regulate industry in one particular respect. Because of the restrictions which some of the States were putting or had threatened to put upon the economic activities of other states, the Constitution empowered Congress to regulate interstate and foreign commerce. Under the authority of this provision, Congress has enacted a great variety of laws, for example, anti-trust statutes, which restrict the processes of industry and commerce. The founders of the Constitution saw that such legislative power was needed by Congress in their day. Why should we not follow their example by amending the Constitution in order to meet the industrial conditions and needs of our own time?

XXII

THE STATE AND INDUSTRY

THE extreme form of State control of industry would be Socialism. In this system the State would own and operate all the instruments of production; it would be the employer of substantially all labor, and the seller of substantially all commodities. At the opposite extreme would be a system of *laissez faire* or non-intervention. In such a régime the State would neither own nor operate any industrial concern or public service, nor regulate the conditions of labor, or business, or industry. Neither of these systems has ever prevailed in any country for any considerable length of time. For three or four years the Russian Soviet State substantially exemplified a Socialist organization of industry, but it does so no longer. In the first quarter of the nineteenth century, Great Britain approached rather closely the conditions of a system of no State intervention in industry; since that period it has traveled very far in the opposite direction.

Today, the Socialist movement is weaker in every country, except Russia, than it has been at any time in the last quarter of a century. Its decline has been particularly striking in the United States. At one time the Socialist Party in this country had upwards of 125,000 members in good standing, and at one election (1912) its candidates for President and Vice-President received almost 1,000,000 votes. At the present time the party membership is probably less than 5,000, while the votes polled by its candidates in recent elections have been insignificant.

Despite these easily ascertainable facts, there are still persons of importance in this country who talk about the danger of Socialism, and who denounce certain legislative measures and proposals as "socialistic." For example, the Fitzgerald Bill for workmen's accident compensation in the District of Columbia is denounced by men within and without Congress as "socialistic" because it would compel employers to insure their risks through a public fund collected and administered by the government. The exclusion of private companies from this particular field of insurance is condemned as contrary to American principles, and to the correct doctrine of government functions. Legislation for the relief of the farmers is likewise stigmatized as "paternalistic" and "socialistic." Such laws for the weaker classes of the laboring population as minimum wage statutes and provisions for insurance against sickness and unemployment, are frequently characterized by the same epithets. Not long ago, a Socialist objector found fault with a statement of mine to the effect that government ownership of the railroads would not be Socialism. In his opinion, any extension of State functions in industry should be thus classified.

According to the logic of such persons, both reactionaries and Socialists, our state governments and our national Government have already gone as far in the regulation of industry as they can go without becoming Socialist, or at least socialistic. Government ownership and management of the postoffice and municipal ownership and operation of water works are not socialistic; but government ownership and operation of the railroads and municipal ownership and operation of street cars would properly be so denominated. Obviously, this is no logic at all. No principle, whether of politics, of economics, or of ethics, can be adduced to show that the first of these kinds of government activity is and the second is not, socialistic.

No such illogical or artificial distinction of functions is to be found in the Catholic doctrine on the State. The State exists for the common good. Therefore, it may properly undertake any task which promotes the physical, moral, or intellectual welfare of the community. To be sure, the State may sometimes attempt to do things which seem to promote the common welfare but which, in the long run, do more harm than good. Evidently such activities are not within the true province of the State. In general, however, there is no more definite rule or limit to the activities of the State than that which is set up by the common welfare at a given time and place.

With regard to industrial matters, the functions of the State have been very clearly set forth by Pope Leo XIII in the following statement: "Whenever the general interest or any particular class suffers or is threatened with injury which can in no other way be met or prevented, it is the duty of the State to intervene." Even the most cursory examination will show that this principle is very comprehensive. Moreover, it justifies not merely State activity on behalf of the whole people ("the general interest"), but also what is sometimes called by way of condemnation "class legislation." Nor was Pope Leo content with the sanction of legislation for particular classes which is contained in this sentence. In the second paragraph which follows (Encyclical on the "Condition of Labor") he has these two sentences: "The richer population have many ways of protecting themselves, and stand less in need of help from the State; those who are badly off have no resources of their own to fall back upon, and must chiefly rely upon the assistance of the State. And for this reason that wage earners, who are undoubtedly among the weak and necessitous, should be specially cared for and protected by the commonwealth."

These are the summary principles of Catholic doctrine con-

cerning the industrial functions of the State. They are the most sane and conclusive refutation that could be desired of the nonsense frequently uttered in criticism of legislation for the restraint of economic power and the welfare of the weaker economic classes. It is too bad that so many Catholics who utter hastly and shallow sentiments on this subject do not inform themselves about the authoritative Catholic teaching, which is so easily available in these passages from the Encyclical on the "Condition of Labor." Let us try to apply this teaching to the legislative proposals which are to-day most frequently called "socialistic."

These proposals can be all comprised in two classes: public regulation and public ownership. Under the former head come the legal minimum wage and social insurance. Public ownership includes State ownership and operation of such public utilities as railroads, telegraphs and telephones, municipal transportation, water power and electric power, coal mines, and lighting. Social insurance is a general term to cover insurance of the working classes against accident, sickness, unemployment, and old age.

Not one of these activities can logically or properly be called socialistic. In several countries, one or more of them is carried on by the State. If the national government, the state governments, and the municipalities of our country were to undertake these activities to-morrow, so that not one of them would be under private ownership and operation, we should not have a socialistic State. Socialism means the public ownership and operation of *all* the instruments of production. Public ownership of railroads is no more socialistic than public ownership of the post office. Whether extension of governmental activity over the whole field just mentioned would be a step in the direction of Socialism, is mainly a matter of language. Those who believe that this course would lead or impel the State toward

Socialism, will answer in the affirmative; those who believe that it would check the movement toward Socialism, will answer in the negative. At any rate, applying the term "socialistic" as an epithet to public ownership of railroads, or social insurance, or any other new exercise of State activity, does not answer the question whether such activities are wise and legitimate. Calling names settles nothing, disposes of nothing. The only rational question to ask is whether these proposals are necessary or useful for the common good, or for any considerable class of the population.

Attempting an answer to this question with regard to the first class of legislative proposals, we find very good reason for the belief that a minimum wage law would be a good thing, and that social insurance would be a good thing. Whatever may be the ultimate solution of the great and baffling questions of justice concerned with the distribution of the product of industry, this much is certain: in a society as rich as ours every wage earner has a moral right to at least the minimum conditions of decent living in the present, and to reasonable security against the contingencies of the future. In other words, he has a right to a wage sufficient for a decent living for himself and his family, and to the assurance of protection against accident, sickness, unemployment, and old age. If any considerable proportion of the wage-earning population are unable to secure living wages through their own efforts, they are justified in asking the State to enforce such a minimum level of wages. If any considerable proportion are unable to save sufficient amounts from their wages to provide funds for their needs in case of accident, sickness, unemployment, and old age, they have a right to expect that the State will establish such provision, and will place the burden of maintaining it upon industry. The man who gives all his working time to the service of industry has a right to receive from industry the means of

supplying all his life needs. Inasmuch as thousands upon thousands of wage earners are unable of themselves to command this minimum amount of economic sufficiency and economic security, their claim upon the State to make it available through legislation is quite as clear as their claim to protection by the policeman against the thug or the thief. We have here a clear case for application of Pope Leo's principle that whenever any particular class suffers, the State must come to its assistance, since no other recourse is available; and for his more particular statement that the wage earners "should be specially cared for and protected by the commonwealth."

If any person who calls such governmental activity "socialistic" can show that the millions of the weaker classes who lack sufficient provision for the present and sufficient security for the future can come into possession of these goods within a reasonable time through their own efforts, he will be in a position logically to object to the use of Pope Leo's words in this connection. Until such a person can show this to be true, he is logically debarred from opposing these measures in the name of Catholic principles or principles of any other sort, except those which are frankly set forth in the interest of the economically strong.

The second class of State activities in industry can be disposed of in a few words. If government ownership and operation of the railroads, or the coal mines, or electric power, or street railways is of considerable benefit to the people as compared with private ownership and operation, it can easily be reconciled with Catholic social teaching, and particularly with the general principle enunciated by Pope Leo XIII. In any particular case, all that is necessary is to show that the proposed extension of government ownership would, all things considered, be better for the community than private ownership. It is upon that principle

that public ownership and management of the post office is justified. What is true of the post office might easily become true of the railroads or electric power. The determining question is one of economic fact.

The sum of the matter is that the Catholic doctrine on the industrial functions of the State is determined solely by the needs of the community and its various classes. Its aim is the welfare of human beings and justice to all classes.

XXIII

PUBLIC OWNERSHIP VERSUS SOCIALISM

AN editorial in a recent issue of the *Providence Visitor* expressed curiosity as to the reasoning by which a news letter of the Social Action Department "came to the conclusion that Muscle Shoals ought to be operated by the government." By way of answer to its own question, the editorial hazarded the theory that the conclusion was reached through the device of pulling straws. In the opinion of the writer of the editorial, the choice is between two evils, so balanced that no decisive or reliable reason exists for embracing one rather than the other. Government ownership would be "a long stride toward Socialism"; private ownership would enable "the banks and the power combines to keep for themselves the choicest fish that come over the Wilson dam." Having made clear his conviction that the selection of either alternative can be made only through guess work, the writer concludes his editorial with an expression of regret that our economic system is not so arranged and that property is not so distributed "as to insure to all of us a fair share of the profits, no matter who gets the dam."

With the last sentence I am in hearty agreement. It is a better solution than either public or private ownership. It means coöperative ownership of the power plant at Muscle Shoals, and of the instrumentalities involved in producing and distributing electric power and nitrates. Both consumers and producers should participate in the coöperative

ownership and management. Owing to consumer's participation, the purchasers of electric power and of nitrates would be assured fair prices; inasmuch as the workers shared in the ownership, labor would have the assurance of fair wages and fair working conditions. That would be the ideal system. And it is an ideal which is not beyond the realm of practical achievement. It has been substantially realized in several British industries.

Nevertheless, the project of coöperative ownership and management is impracticable at the present time for Muscle Shoals. Neither in Congress, nor among the consumers, nor among the workers have the principles and practices of coöperation been sufficiently made known and exercised to warrant the hope that this arrangement will be seriously considered in the near future. A long process of education is a necessary prerequisite. The immediate question, then, is between public ownership and operation and private ownership and operation. Let us concede, although the language is somewhat too strong, that what confronts us is a choice between two evils.

In my opinion, the evil of private ownership and operation is by far the greater. Space is wanting for an adequate presentation of the reasons for this judgment. All that can be done is to submit a few important considerations.

It is well understood that the corporation which gets the lease of Muscle Shoals will not operate in conditions of competition. It will have a monopoly of the production of electric power, because it will be affiliated with, if not an integral part of, the great power trust. Consequently, there is no hope that competition will protect the public against extortionate charges. Protection must come, if at all, from government regulation.

Whatever may be expected of government regulation from the viewpoint of abstract theory, practical experience has

proved over and over again that this expectation is a delusion. The theory of government regulation assumes that a privately owned utility can be so regulated that it will yield only a fair rate of interest on its investment. The defect in this assumption is that it is too simple. It supposes that "a fair rate of interest" and "investment" are easily ascertainable and determinable. This is contrary to the facts as disclosed by experience. The "investment" upon which a fair return is to be paid must be translated into terms of "value." What is a fair valuation of the investment or property of a privately owned utility, whether it be a railroad, a gas plant, or a power producing concern? Is it the actual amount of money invested, or the cost of reproduction at any given time? These are only two of the questions involved. What is a fair rate of interest on this uncertain investment? Is it 6, or 7, or 8, or 10 per cent? The final answer to all these questions rests with the courts; but the answers coming from that source have not yet assumed anything like a satisfactory degree of definiteness or uniformity. The net result is that, up to the present, the public has not received adequate protection in the matter of prices and charges through government regulation.

A multitude of illustrations might be adduced in support of this statement. Only one will be submitted. While it is extreme in its terms, it is fairly typical of the difficulties and defects of government regulation. A private corporation in Cleveland was engaged in the business of providing electric lights and electric power to the people of that city at the price of 10c a kilowatt-hour. The regulatory commission ordered a reduction of that rate on the ground that it was unfairly high. The company appealed to the courts of Ohio against the order of the commission and was successful in having it set aside. In the judgment of the court, the company had demonstrated mathematically that to reduce

the price below 10c would plunge the concern into bankruptcy. A little later, however, the city of Cleveland established a municipal lighting plant in competition with the private concern. The city cut the 10c rate in two and the private plant was obliged to follow suit. Yet the latter did not go into bankruptcy; it is still doing business and making profits on the basis of a rate which the final authority in the mechanism of government regulation had pronounced to be confiscatory and disastrous.

Let us turn now to public ownership. The only specific reason given in the editorial for condemning public ownership is that it would be "a long stride toward Socialism." On the other hand, a recent letter from Rev. Leo O'Hea, S.J., President of the Catholic Labor College at Oxford, contains the following: "I am glad to see that you are speaking in favor of the nationalization of Muscle Shoals and super-power. So many people here imagine the Church is against nationalization of anything!"

To assert that any new venture of the government into the field of industrial ownership is "a step toward Socialism" is but to darken counsel. Such statements are neither precise nor illuminating. They are too easily accepted as conclusive without thought or analysis.

Apparently, there are at least three significations which may be attached to the phrase, "a step toward Socialism." It may mean that those who are promoting a particular project of government ownership intend to utilize it in the interest of complete Socialism. This is not true of any prominent advocate of the proposal that the government should own and operate the plants at Muscle Shoals.

The really important question is whether government ownership and operation of this enterprise would, of itself and necessarily, bring the country nearer to Socialism. This is the second sense in which the quoted phrase can be

and is sometimes used. Now it is quite possible that this exercise of government activity would check rather than promote any movement that exists toward Socialism, by removing some of the criticisms and complaints made by opponents of the existing industrial system. At any rate, government ownership of not merely Muscle Shoals but the whole super-power system of the country would not constitute Socialism, nor necessarily aid in bringing it any nearer. Government ownership of super-power has had no such effect or tendency in the Province of Ontario. Many countries have for many years had government ownership of railroads, but none of them has found that this enterprise created or increased the likelihood of lapsing into Socialism.

In the third place, "a step toward Socialism" may mean nothing more than that government ownership and operation of Muscle Shoals would be included in a Socialist organization of society. Obviously, it would; but so would the post office, and municipal water systems, and municipal lighting plants, and municipal street railways, and many other utilities that are now publicly owned. Yet no one thinks of transferring the post office or any of the other public services mentioned to private ownership and operation just because they would form a part of governmental activity under Socialism. According to the logic of the interpretation that we are now considering, no government can escape the imputation of being Socialistic so long as it conducts any business or service which might conceivably be carried on by private corporations.

Indeed, the assertion that government ownership and operation of a super-power system is a step toward Socialism has as little justification as the statement that such a governmental enterprise is socialistic. Government operation of *all* the instruments of production is Socialism; government operation of one or more public utilities is not Socialism.

How far could government proceed in the ownership and operation of industry before it would come dangerously near to Socialism, or before it would be violating the right of private property? No authoritative answer to this question has come from the Church. Individuals are free to give their own interpretation, provided always that they safeguard the right of private property. Possibly as good an answer as any other is that given by Rev. Dr. Cronin in the second volume of his "Science of Ethics," page 279. It is that nationalization of industry should never go so far as to deprive individuals of ample opportunities of investing their money in productive enterprises. He continues: "To a very large extent, state monopolies may be set up in any country without really affecting a person's right of private enterprise and investment." Among the industries which might be nationalized for the public good, he mentions railways, the milk supply, and coal mines. It is quite clear that not only Muscle Shoals, but every other source of electric power might be owned by the government and the systems of power distribution might be so owned, without depriving the citizens of adequate opportunities of investment.

To be sure, the fact that government ownership and operation of Muscle Shoals would not be Socialism, nor socialistic, nor even "a step toward Socialism" in any intelligible sense of the phrase, is not a proof that the plant should be retained by the government rather than handed over to a private corporation. The most important question, indeed, the only important question, is whether government operation would be better for the people than private operation. In this connection, the editorial in the *Providence Visitor* is not quite fair to the news letter of the Social Action Department. For the letter did cite some evidence for the conclusion that government operation would be superior. Attention was called to the Hydro-Electric System of Ontario and to muni-

cipal electric power concerns in the United States. However, the record made by these two classes of publicly owned concerns was not set forth adequately. In the remainder of this article, the attempt will be made to supply that deficiency.

The Hydro-Electric System of Ontario is a public corporation, comprising more than two hundred municipalities of that Province. It is, in effect, a partnership of cities and towns, rather than an enterprise carried on by the Provincial Government. In a sense, it exemplifies consumers' coöperation. That is, the electric power system is owned by the people who purchase and use its products. The difference between it and the ordinary consumers' coöperative society is that its stock, or shares, are owned by the municipalities instead of by individuals. In other words, the enterprise is owned and operated by the consumers in their political capacity as members of municipalities rather than as individuals. If the plant at Muscle Shoals and the system therewith connected for the distribution of electric power were owned and operated by the cities of the South the arrangement would be exactly the same as that which exists in Ontario.

The most important facts concerning the Ontario enterprise are the following: It has steadily and greatly reduced the cost of electric power; for example, in 1913 it charged the people of London, Ontario, 4.5c per kilowatt-hour, while in 1922 the cost was only 1.8c. Its charges are very much less than those exacted by private companies in the United States; for example, the average monthly cost in 1921 for lights on the Canadian end of the International Railway Bridge over the Niagara River was $8.43, while on the American side it was $43.10. The source of power for both sets of lights is the same, namely, Niagara Falls, but the American system is owned and operated by a private

corporation. A multitude of similar comparisons might be cited, showing that where all other conditions are the same, the Ontario system provides electric power at very much lower rates than the privately owned systems in the United States. In forty American cities, the rates charged by private corporations are from 40 to 150 per cent higher than the rates collected in forty Canadian cities for the same classes of service by the Ontario system. And this statement covers all classes of electric energy, for domestic use, for commercial lighting, and for industrial power purposes; for small users and for large users. The Ontario concern is maintained on strictly business principles, including the provision of a sinking fund which will wipe out all its bonded indebtedness in thirty years. The depreciation, reserve and surplus combined are equal to 43 per cent of the value of the concern.

Of course, it is possible to object that the American people are less capable of maintaining an efficient public utility system than the Canadians. That assertion is easier made than proved. There is no basis of fact upon which to establish the proposition that a combination of American municipalities could not do what has been done by the municipalities of Ontario. Nor is there any valid reason for assuming that a Federal commission, created by the Congress of the United States, could not operate Muscle Shoals as efficiently as the Ontario concern has operated the Niagara plant and its distributing adjuncts. The managing commission ought to include representatives of labor and representatives of the consumers.

The record of municipal electric systems in the United States is a convincing refutation of the theory that private operation is more beneficial to the people than public operation. We have already seen how the municipal plant in Cleveland caused a 50 per cent reduction to the consumers

of electric power in that city. In his speech in the Senate December 13, 1924, Senator Howell gave several other instances of the same kind from other cities. In some cases the prices exacted by the privately owned plants were 400 per cent higher than those charged by public plants. Cities in Alabama served by a private company which has the advantage of water power production have to pay about one and one-half as much as the consumers in cities which have publicly owned plants, and where the cost of producing the power is much greater since it has to be done by steam. The only reply which any senator could make to Senator Howell's argument was that the private plants paid taxes to the community, while the municipal plants were tax-free. But Senator Howell was able to show that some of the public concerns put into the hands of the city treasurer a sinking fund equal to the taxes they would pay if they were privately owned. In any case, the saving to the consumers through lower charges for electric power is much greater than the amount that would be paid to the city in the form of taxes by a private company.

This fact is especially striking in relation to the Hydro-Electric System of Ontario. The loss to that Province on account of the tax-free Hydro-Electric Corporation was, according to critics of the system, in 1920, $762,120; but the consumers of electric power in the Province saved at least $10,000,000. In other words, the people of Ontario lost $1.00 in taxes and saved $13.00 in their expenditures for electric power. A recent critic of the Ontario System declares that ten per cent of the prices paid for electric service by the people of the United States is turned into the public treasuries by the private companies in the form of taxes. On that basis, Ontario lost $3,000,000 in taxes in 1923, but the people of that Province saved $16,500,000 in lower rates for the electricity they used.

My conclusion, then, is that public ownership and operation of Muscle Shoals would not be an evil under the head of Socialism, and that on the basis of experience it would be a very small evil, indeed, compared with private ownership and operation.

XXIV

FAIR VALUATION OF PUBLIC UTILITIES

PUBLIC ownership of public utilities implies for the most part public purchase of existing concerns. Occasionally a city establishes a new system, such as the municipal street railway in San Francisco, or the municipal lighting concerns which several cities have set up in competition with those privately owned; but this method is costly and wasteful, and undesirable, except as the smaller of two grave evils. If public ownership is to obtain any considerable extension it should take place through purchase, and the price should be just; that is, it should be fair to both the utilities and the public. This raises the question of the method by which a fair price is to be determined. In other words, it is a question of valuation.

The value of a public utility is not and cannot be determined in the same way as the value of a house, a factory, or any other article which is the subject of frequent purchase and sale. Goods of the latter kind have a constant market value which is determined immediately by earning power and ultimately by competition. The value of a public utility is immediately determined by its earning power whenever there is question of purchase by private persons or corporations; but the earning power is dependent, not upon competition, but upon the charges fixed by the public authority. These are regulated by the public valuation. In brief, the value of a non-public utility depends ultimately upon competition, while the value of the public utility

depends ultimately upon the valuation which the public commissions and the courts regard as fair. Hence, the value of a public utility is primarily an ethical concept; the value of other property, at least as the term is commonly used, is primarily economic.

Valuation of a utility for the purpose of fixing a purchase price is not quite the same thing as valuation with a view to determining charges for the service performed by the utility. "Rate-making values property not to determine a price to be paid for the property itself, but to fix the reasonable cost of the service it helps to render. Condemnation proceedings value property to estimate the reasonable price to be paid for the property itself." [1] That is to say, the two kinds of valuation are differently regarded and estimated in legal theory and practice. If a city were to take possession of a privately owned street railway by condemnation proceedings it would be required to pay for increases in the value of the land and also for the franchise value, in case the franchise had not expired. In rate-making valuations public service commissions have generally, and the courts sometimes, ignored both these elements. Nevertheless, the decisions of the courts with regard to valuation in rate-making cases are applicable to the majority of the problems which would arise in connection with valuation for purchase.

The ethical differences between the two kinds of valuation are even less important than the legal and judicial differences. If a man has a moral right to interest on a certain amount of investment, or sum of value, he has likewise a right to payment for that amount of value when the State acquires his property. But there is no good reason for contending that he has a right to more than this.

It is not necessary to explain the importance, legally, economically, and ethically, of the valuation problem. It

[1] Hartman, *Fair Value*, p. 71.

involves millions upon millions of dollars. If the rules and the reasoning underlying the decision of the Supreme Court in *McCardle vs. Indianapolis Water Company* (Nov. 22, 1926) should ultimately be applied to the railroads the valuation likely to be fixed for them by the Interstate Commerce Commission (about $22,500,000,000) would be raised to at least $34,000,000,000. In the same hypothesis the valuation of urban utilities and electric light and power concerns would undergo enormous increases. The consequent increase in service rates and charges upon the consumer is an exceedingly disturbing thing to contemplate.

The final authoritative decision of this question will, of course, be rendered by the courts. Nevertheless, it is desirable that the courts of justice should render just judgments. Hence, they ought to receive all the assistance and enlightenment that can be obtained from any honest and competent source. The assumption that the courts are susceptible to education in this field is antecedently reasonable and has the support of experience. In the *Munn* case, decided in 1876, the attorneys for the utilities contended that the "due process" clause of the Fourteenth Amendment was applicable to rate-making and gave the corporation protection against unduly low rates. The United States Supreme Court flatly denied this claim, holding that reasonable compensation for the use of property and reasonable rates were not judicial but legislative questions. A few years later the Supreme Court again rejected this argument and reaffirmed the supremacy of the legislature. Nevertheless, the doctrine then advanced by the utility lawyers has since become the doctrine of the courts.

This bit of history is adduced, not to criticise the change in judicial attitude nor the present judicial application of the "due process" clause to rate-making, but to show the possibilities of judicial education. The advocates of public own-

ership should not neglect these possibilities. They ought to make known to the courts and to support with adequate argument their views concerning the fair value of public utility properties.

Both in the formation and in the advocacy of their views on valuation, the champions of public ownership should strive to be scrupulously just to the corporations as well as to the public. "Strive" to be just, because the attainment of exact justice even in one's opinions, is beyond the finite and fallible powers of human begins. The best that we can do is honestly to seek an impartial attitude through patient and painstaking study of all the relevant facts.

The outstanding difference between most of the advocates of public ownership on the one hand and the utility owners on the other with regard to the fair value of these properties, arises from the theories of valuation which they respectively defend. At the present time, the former generally adhere to the theory of original cost, while the latter generally prefer that of present reproduction cost. Formerly their positions were reversed. "The adoption of present value of the utilities property as the rate base," says Justice Brandeis in his dissenting opinion in the *Southwestern Bell Telephone Company* case, "was urged in 1893 on behalf of the community; and it was adopted by the courts largely as a protection against inflated claims based on what were then deemed inflated prices of the past." In other words, the public authorities then advocated reproduction cost because it was lower than original cost. Owing to the rise in prices which has taken place since 1914, reproduction cost is now higher than original cost in the case of all public utilities established before that date. Hence, we find the champions of the public and the advocates of public ownership defending a measure of valuation which they formerly rejected, and rejecting the one which they formerly defended. This change is some-

times characterized in terms of reproach. On the other hand, the public utility corporations have undergone a corresponding reversal of positions, and for a similar reason. They now advocate present reproduction cost because it would give their property a higher valuation than original cost. Human nature being what it is, the changed attitude of both parties is entirely natural. No more criticism is due to one than to the other.

The question who is for or who is against either theory of valuation, is entirely irrelevant. From the viewpoint of ethics, the important question and the only important question is, which theory is just? Or, whether justice requires that both methods be used in arriving at the proper valuation of a public utility.

Let us see what light has been thrown upon these questions by the decisions of our courts. Reference is, of course, to the courts of the United States. While we are unwilling to concede that the voice of the court is the infallible voice of justice, we have to accept three important facts. First, our courts have, by a gradual development of legal doctrine in the last forty years, accepted the authority and responsibility of giving final judgments concerning the fair and reasonable valuation of public utilities. Second, the ethical pronouncements of the courts on this subject do deserve a considerable amount of respect, even though they are obviously not infallible. Third, since the final determination of the fair value of public utilities has become the unquestioned function of the courts, that legal situation has to be accepted unless and until it be changed by an amendment to the Constitution.

At present, and probably for several years to come, the judicial measure of fair valuation is that complex rule laid down in the case of *Smyth* v. *Ames.* (1898.) "And in order to ascertain that value, the original cost of construc-

tion, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property."

In this enumeration by far the most important factors are the original cost of construction and the present cost of construction. Both of these "are to be given such weight as may be just and right in each case." How much weight is just and right? Neither in *Smyth* v. *Ames* nor in any subsequent decision has the Supreme Court set up any definite rule, test, or standard by which this question can be answered. One thing is certain, full weight cannot be given either original cost or reproduction cost when they are expressed by different figures. In the *Bluefield Water Works* case, decided by the Supreme Court June 11, 1923, the present reproduction cost of the utility was almost twice as great as its original cost. Obviously, both figures could not be accepted as describing the fair value of the property. One must be taken to the exclusion of the other, or some figure between the two must be accepted. The latter choice is the one that seems to be suggested by the language of *Smyth* v. *Ames* and apparently it is the one that has been most frequently followed in subsequent decisions. To give "such weight as may be just and right" to original cost and to reproduction cost, means in practice therefore to arrive at some kind of compromise between these two factors.

At what point the compromise will be effected, whether midway, or nearer to original cost, or nearer to reproduction cost, cannot be determined beforehand. Neither by any

formal rule nor by any general practice has the court indicated an answer to this question. All that we can say with certainty is that the court will give some weight to reproduction cost when it differs from original cost. This is clear from several decisions subsequent to *Smyth* v. *Ames*. In *Willcox* v. *Consolidated Gas Co.* (1900), the court said: "If the property, which legally enters into the consideration of the question of rates, has increased in value since it was acquired, the company is entitled to the benefit of such increase." In the *Minnesota Rate* cases (1913), it was held that "the making of a just return for the use of the property involves the recognition of its fair value if it be more than its cost." Here is a clear intimation that the original cost may be less than the fair value. Three cases recently decided by the Supreme Court exemplify the same doctrine. In the *Southwestern Bell Telephone* case (May 21, 1923), a majority of the court set aside the valuation made by the Public Service Commission of Missouri because no weight had been given to reproduction cost. Similar action was taken in the case of *Bluefield Water Works* v. *West Virginia,* (June 11, 1923). In the Telephone case the court allowed a valuation much less than the full cost of reproduction. In the West Virginia case it refrained from fixing any valuation, merely declaring original cost insufficient. In another case, decided June 11, 1923, *Georgia Railway and Power Co.* v. *Railroad Commission of Georgia,* a majority of the court refused to reverse a decision of the Federal District Court which had allowed for the rise in the value of land, but had made no allowance for the increase in the cost of artificial materials. The decision in the *Indianapolis Water Company* case goes far beyond any previous decision in the weight which it gives to cost of reproduction. At least seventy per cent of the increase in prices, that is, of the difference between actual cost and

reproduction cost is included in the valuation sustained by the Supreme Court.

From the viewpoint of exact and objective justice, original cost cannot be condemned as an adequate measure of value and method of valuation. Suppose that it were adopted by a city and inserted as a condition in every new public utility franchise. Suppose that the dividend rate were legally guaranteed and made sufficiently high to attract investors. The corporation and stockholders that would establish, say, a lighting concern subject to this condition, would regard the stipulated rate of interest upon such a valuation as a fair return on their investment. Otherwise, they would not accept the condition and the franchise. If the contract also included a clause empowering the city to purchase the utility for its original cost, the members of the corporation would have no reason to complain of injustice. Now if such an arrangement would be just when stipulated beforehand, would it not be equally just if enforced in the case of an already existing concern? If the original cost measure of value can be made sufficiently attractive to induce men to put their money into a new utility, why is it not fair to men whose money is already invested? The rule is equally just to the public, for the public ought not to reap gains at the expense of the investors.

There are only two possible objections to the proposal. In the first place, the investors in existing concerns were permitted to hope for an increase in the value of their property, at least in so far as it consists of land. They were not warned by public authority that the city or the nation would claim all increases in value, and would fix both rates and purchase price on the basis of original cost. A sufficient reply to this contention is suggested by the fact that for many years cities and states and the nation permitted investors in public utilities to cherish the hope that they

would be able to reap all the rewards they could get, free from any such troublesome restriction as rate regulation. Nevertheless, rate fixing became universal, and reduced both the profits and the capital value of many public utility corporations. And the courts upheld this restriction, this interference with profits and values, on the ground that these concerns were not private property in the ordinary sense, but were "affected with a public interest." Therefore, the investors were obliged to submit to restrictions which would not be legal in the case of other kinds of property. To introduce the further restriction of confining value to original cost would be merely to extend the same legal principle.

The second objection has much more worth. It is that many public utilities have not received every year the rate of interest that would be necessary to induce men to invest in a new public utility subject to the rule of original cost. The objection can be fairly met only by conceding what the anthracite mine workers have called the "principle of net sacrifice." That is to say, the aggregate amount of money by which the total interest receipts of the public utility have fallen short of the total amount which it would have received on the basis of a fair and adequate rate of interest every year, should now be added to its valuation. At this valuation the property would be purchased. Through this arrangement the investors in existing utilities would obtain the same terms as the men who put money into new concerns subject to the original cost stipulation. It would seem to be quite as fair in the one case as in the other.

On the other hand, reproduction cost is sometimes unfair to the public and sometimes unfair to the investors. The public should not be required to purchase property at a price higher than its cost to the private owners. The latter should not be required to sell their property to the public below

cost merely because the prices of materials have diminished since the utility was constructed.

So much for abstract justice. Original cost is confronted by two practical difficulties. The first is the fact that it cannot always be ascertained as a matter of historical record. The brief presented to the Interstate Commerce Commission by Harleigh H. Hartman, July 5th, 1923, gives several examples of this difficulty in relation to railroads. However, they are on the whole, exceptional. And they have very little application to municipal public utilities. In practically all such cases it is possible to obtain the actual original cost or a substantially accurate estimate.

The other obstacle to the adoption of the original cost measure of valuation is the fact that the courts of the United States have apparently committed themselves to the rule that some consideration must be given to the cost of reproduction. In this situation the most that the advocates of original cost can expect is to get it accepted by the courts as the dominant measure.[1]

Allusion has been made above to the proposal of the United Mine Workers that capital in the anthracite coal industry should be restricted to a guaranteed fair rate of interest. The coal operators reject this proposed arrangement on the ground that it is an assault upon the most important element of private property. In their opinion, this element is the opportunity of obtaining increases in value.[2]

[1] As noted above the most recent decision of the Supreme Court (*McCardle* vs. *Indianapolis Water Company*) gives the dominant weight to reproduction cost. The proposal made in paper X of this volume seems to be fair to the utility owners. It is that the portion of the property which corresponds to their investment should be increased in the valuation by fifty per cent of the increase which has taken place in the general level of prices since the investment was made.

[2] In a brief for reproduction cost as the proper measure of value, Mr. Charles McLean, a Dubuque attorney, asserts that "the right to any increment in value the property may acquire is the most essential quality of property right in anything!" (*Public Utilities*, p. 7.)

This opportunity would obviously cease in the coal industry if returns on capital were restricted to a reasonable and moderate rate of interest. Now it is not too much to say that this contention of the mine owners represents a deplorable perversion of the concept of private property. It is directly contrary to the truth. Private property is desirable for two main purposes: First, as a means or tool by which man may apply his labor advantageously; second, as a source of income supplementary to labor income, particularly for those contingencies in life when the owner is unable to perform remunerative labor. Private property as a means of getting profit through mere increase in value, encourages the spirit of speculation and gambling, the desire to get something for nothing, to live without working, to reap where one has not sown, to levy a toll upon the labor of one's fellow. For social as well as for ethical reasons, this particular "advantage" of private property ought to be reduced to a minimum.

The adoption of original cost as the measure of public utility values, both for purchase and for rate-making, would have considerable influence in discouraging this perverted notion of private property. The investors in public utilities would be assured of a reasonable return on their capital, a return sufficient to induce them to invest. In case of sale to the public, they would be certain of getting back all the money that they put in. The profits that might arise from the efficient private operation of a public utility could go to those who created them, namely, to the workers and the management. No part of these profits should go to the stockholders as such, either in the form of increased dividends or enhanced capital value. This arrangement would stimulate and encourage labor, both physical and mental, and restrain the excesses of speculation. It would not fatten the anti-social desire to get something for nothing. In

a word, it would provide an immense stimulus to efficiency and make rewards dependent upon achievements.

Incidentally, the original cost rule would tend to diminish attacks upon the institution of private property. In a great majority of cases these are directed not at private property as such, nor even at profits as such, but at their abuses. Very few critics begrudge a reasonable rate of interest or a reasonable guarantee of property values. What they object to is exorbitant and unnecessarily high rates of interest at the expense of labor, and expansions of value which represent no labor on the part of the beneficiaries.

The propositions discussed and defended in the foregoing paragraphs may be thus summarily stated. The value of a public utility is primarily an ethical estimate determined by public authority, while the value of other goods is primarily economic and determined by competition. The differences between the valuation of a public utility for rate-making and its valuation for purchase, are mainly legal, but have little ethical importance. Although the courts will render the ultimate decision about fair value, they are not immune to enlightenment from without, and this fact should be noted and utilized by the advocates of public ownership. The principal disagreement between the friends of public ownership and the owners of public utilities as regards valuation, is that the former contend for original cost, while the latter favor reproduction cost. The present position of the United States Supreme Court demands that some weight, how much is not clear, should be given to reproduction cost in all valuation cases. Nevertheless, original cost is ethically preferable to reproduction cost. It is not unfair to the public and it is entirely just to the utilities, provided that they receive the adjustment proposed in the first footnote on page 277 above. This would be ample compensation both for past

losses and past expectations. The contention that public utilities should necessarily increase in value to their owners is a perversion of the principle of private property and in practice tends to encourage an anti-social speculative spirit, and to discourage labor and efficiency.

XXV

ANTHRACITE PROFITS AND ANTHRACITE PRICES

In its Report on the Anthracite Industry, the United States Coal Commission declared: "The fundamental fact in the anthracite coal problem is that heretofore these limited and exhaustible natural deposits have been in the absolute private possession of their legal owners, to be developed or withheld at will, to be leased for such royalties as could be exacted, to be transported and distributed at such rates and in such manner as a double-headed railroad and coal combination might find most advantageous from the point of view of private profit, to be sold at such prices as could be maintained by the restriction of output and the elimination of independent competitors." Summing up its discussion of the gains obtained by the anthracite operators and owners from these conditions in the industry, the Commission reports: "The profits are increasing. Total net income is increasing; dividends are increasing; and surpluses are increasing, earned surpluses as well as surpluses arising through revaluations. The margin per ton is increasing."

The operators' margin means the difference between the cost of production and the amount for which the coal is sold at the mine. In 1921, the margins varied from a loss to $1.74 a ton. On 41 per cent of the coal mined, the margin was less than 80 cents. While margin figures in any given year do not give any direct indication of profits

for that year, the variation over a series of years does provide important information on the movement of profits. From 1913 to 1923, the margins were multiplied more than three times. With this may be compared the increase in wages, as reflected in the cost of labor per ton of output. At the beginning of 1923 wages were less than two-and-three-quarters times as great as in 1913.

Profits are ordinarily stated in terms of a certain per cent on the investment. Generally speaking, if we know the amount of net profits in dollars obtained by any business concern, we can determinte what the profit is in terms of per cent. In the anthracite industry, however, the great obstacle to any such simple translation of dollars into percentages is the lack of an agreed-upon measure of investment. In its statement on this subject, the United States Coal Commission announced itself as confronted with conflicting claims as to the basis upon which the rate of income should be reckoned. One claim is that the current market value is the proper measure of value. Another is that the income should be reckoned on original cost; another that it should be determined with reference to the cost of reproduction. Assuming that the valuation of anthracite is akin to the valuation of public utilities, the Commission, nevertheless, refrained from adopting any measure or rule, on the ground that the courts have failed to do so with regard to public utilities.

The cost of reproduction as a measure of investment is obviously inapplicable to the coal mines, although it could be used in valuing the underground development and the equipment above ground. Market value is even more unacceptable, because it depends upon actual profits. If it be taken as the measure of value, the rate of profit will always be only average or normal; for market value is generally determined by dividing the actual profits by such a

figure. What we are seeking is a measure of investment with which actual profits can be compared, in order to ascertain whether the rate of profit is high or low. Original cost does provide such a rule or measure, provided that it could be ascertained, or provided that we could agree upon some one of the prices at which the property was bought, subsequent to the original purchase. Does the original cost of an anthracite mine mean what was paid for it by the first person who purchased it, say from the Indians or from the Government? Or does it mean the cost of the mine to its present proprietors?

The only practical method of measuring investment seems to be that suggested by the United States Coal Commission. It is to take the present "book value," that is, the value of the mining property as carried on the books of the various companies. According to the Commission, the book value of the anthracite mines is about $600,000,000.

Of this amount, some $226,000,000, at least, consists of revaluations made in their book records by the companies between 1913 and 1922. This amount represents not new money put into the industry, but increments of value, occurring for the most part before 1913. Hence, this $226,000,000 is a clear indication of the increasing profitableness and profits of anthracite mining.

Nor is this the whole story. The engineering experts employed by the United States Coal Commission, made an estimate of the current market value of the anthracite investment. As is customary in such valuations, the basis was present and estimated future earnings. Upon this basis, the engineers estimated the current market value of the anthracite mines at $989,900,000, or almost $400,000,000 more than their book value. This enormous increase in value reflects large profits and large increases in profits.

The foregoing paragraphs on investment margins and

valuations all point to the conclusion that profits in the anthracite industry are large and are ever growing larger. But they do not give us any idea of the actual rates of profits, whether the average is 6, 10, 15, 25, or any other specific per cent. Happily, the United States Coal Commission has computed two distinct sets of figures on rates of profit. The first provides the percentage of return for eight of the nine "railroad" companies for the year 1921. These companies produced by far the greater part of the anthracite coal mined in that year. The measure of investment taken by the Commission was the book values of the various companies, including the enormous revaluations noticed above. On this basis, their rates of profit varied from 2.11 per cent to 30 per cent, the majority being over 10 per cent. Bear in mind that this measure of investment, the book value, exceeds by many millions of dollars the amounts of money which the companies actually put into their properties. Hence, the average profit on the actual investment was considerably higher than that indicated by the figures just mentioned.

The second estimate furnished by the Coal Commission is the per cent of profit on the capital stock; in other words, the dividends paid to the stockholders. For the ten-year period, 1913-1922, the average annual dividends paid by seven of the nine "railroad" coal companies varied from 8 per cent to 72 per cent, the majority paying over 31 per cent. Two of the "railroad" companies yielded no dividends, but one of them is very small and the other, the Philadelphia & Reading Coal and Iron Company, was unable to do so because of its very large investment in excess reserves of coal land. Assuming that the capital stock of these seven companies represents all the money that they expended for their properties, we are justified in asserting that their profits during this ten-year period were enormous. Moreover,

some of the companies provided their shareholders with handsome stock dividends during that period.

The conclusion seems warranted that the profits on by far the greater part of the anthracite coal which is brought into the market constitute an extraordinarily high rate of return on the money actually put into the mining industry by the present owners. The operators who produce this portion of the supply could well afford to pay some increase in wages or to make some reduction in prices. How much they could do in either of these fields is a question that will be considered later.

The profits obtained by the distributors of anthracite enter into the price which must be paid by the consumer. Apparently, the consumer can reasonably expect very little relief from high prices in a modification of either the wholesalers' or the retailers' profits. The wholesale dealers reporting to the United States Coal Commission showed an average return on their investment of 22 per cent per annum in the period 1913-1922. While this is a very high rate, it represented an average profit of only 8.6 cents per ton. Cut the profit rate in half, and the price to the consumer would be lowered by only 4.3 cents per ton. The retail dealers investigated by the Commission averaged 15.75 per cent annually on their investment during the period of 1918-1922. This rate reflected an average profit of 48 cents per ton. If the rate were reduced by half, it would mean a saving of only 24 cents per ton to the consumer. Consequently, the utmost reduction in price conceivably obtainable through lowering of distributors' profits, would be less than 30 cents per ton. To be sure, it is probable that the average retailer's cost of handling coal could be considerably reduced by better organization, particularly by elimination of a large proportion of those now in the retail business. The average cost per ton to the retailers of han-

dling anthracite in the years 1918-1922 was $2.41. This seems very much higher than should be necessary. And the wholesale levy could be eliminated entirely.

The cost of distribution could be lowered considerably in either of three ways: The operators could combine to make the distribution themselves from the top of the mine to the cellar of the consumer; or the local authorities, state and municipal, could undertake the task of distribution; or the consumers could form coöperative organizations and purchase coal directly from the operators. For the present wasteful and costly system of distribution, the consumers, or the public, are much more responsible than the miners.

Are the present selling prices of anthracite fair to the consumer? As a general proposition, prices are just if they equal, but do not exceed, fair remuneration for all the agents of production. This means fair wages to labor; a fair rate of interest on capital, and fair profits to the active directors of the industry. The profits received by the distributors of anthracite, as set forth in the last paragraph, give no clear ground for the assumption that they could be or ought to be reduced substantially in the interest of the consumer. With the distributing industry as at present organized, it is not clear that the consumer suffers any notable degree of injustice on account of that proportion of the price which goes to the wholesalers and retailers. As regards the operators, it is certain that the profits of a certain group are unreasonably high. Nevertheless, these operators cannot be held responsible. If they were to reduce the prices on their output sufficiently to yield them only reasonable profits, their example would not be imitated by the other operators. For the latter must charge present prices in order to cover their higher costs of production. Inasmuch as their portion of the total output is necessary to meet the demands of the market, it exemplifies the general economic law that the price

of any commodity which is produced in conditions of competition must be high enough to cover the most costly portion of the necessary supply. Were the fortunately situated operators to reduce prices below the level necessary for the high-cost operators, the benefit would not be reaped by the consumers, but by the distributors, the wholesale and retail dealers. Were the low-cost operators to eliminate all middlemen and sell their coal directly to the consumers at a lower price than that which the high-cost operators require, the result would be that the more vigilant and opulent consumers would obtain anthracite at a lower price than those who, for one reason or another, would be compelled to take that part of the supply which is produced by the high-cost operators. This is scarcely practicable.

Nevertheless, the existing situation is irrational and intolerable. The price ought not to be determined by the production costs of the poorest mines. It should be regulated by the *average* costs. The expenses of production in all the mines should be pooled. For example, in one mine it costs $4.00 to produce a ton of anthracite; in another, $6.00. It costs $8.00 to bring the coal to the consumer. In present conditions he must pay $14.00 a ton for both lots; for the price is uniform and it must be high enough to cover the most expensive portion of the necessary supply. If the two mines were operated as a unit and the expenses of production pooled, the output of both could be sold at $13.00 per ton; for the average cost of production is $5.00. Were this method applied to all the anthracite mines, the cost to the consumer could be lowered, while the profits of the operators would be fairly uniform. None of them would receive exorbitant profits. The blame for continuing the present bad organization of anthracite production, like that relating to distribution, rests obviously upon the public and the operators, not upon the miners. The latter can justly maintain

that they are not obliged to refrain from efforts to raise the standard of living in order to permit the public or the consumers to continue shirking a responsibility and failing to help themselves.

The United States Coal Commission recognized the evil of permitting the low-cost operators to enjoy their present enormous advantages, but the remedy which it recommended is much less desirable than that of pooling the expenses of production. For the proposal of the Commission would benefit the taxpayers, not labor or the consumer. Following is the recommendation of the Commission:

"In order to permit the public as a whole to share in the good fortune of the low-cost, high-profit operator, we recommend that differential taxation shall be applied to differential advantage. Sweeping horizonal cuts cannot be made in present mine prices and margins without serious injury to many high-cost operators, whose output is needed. Taxes falling lightly on the low-profit operator and more heavily on the high-profit operator in proportion to his ability to pay, will benefit the consumer indirectly through lightening the tax burden elsewhere and will accomplish this without raising prices."

Unified operation and pooling of expenses could be brought about in one of two ways: by private or by public operation. In the former case, one corporation would operate all the anthracite coal mines, paying a rental or royalty to the mine owners and selling the product subject to price fixing by public authority. In order to prevent excessive royalties, and the indefinite increase of royalties on particularly rich coal deposits, the annual payments by the operating company to the owners should take the form of a certain fair per cent upon a fixed valuation of the coal lands. It is suggested that the total valuation should be

that which the United States Coal Commission estimated as the book value in 1913, namely, about $600,000,000. Since this amount includes re-valuations to the extent of $226,000,000, which represent merely increments of value, not money put into the properties, the land owners would receive generous treatment through such a valuation. The estimate of present value made by the engineers of the Coal Commission and amounting to approximately $990,000,000 could fairly be disregarded. The difference between this figure and $600,000,000 is mainly due, as the Commission pointed out, to the monopoly character of the anthracite industry. The consumers should not be required to pay interest on monopoly-created values.

For two reasons, however, unified private operation would be inferior to public operation. The first is that the producing company could not be trusted to sell coal at fair prices. These would have to be fixed by public authority and we know that this is a difficult task which is very rarely performed with satisfaction to all parties. In the second place, private operation would not prevent the owners of the coal lands from claiming the benefit of future increases in value of the coal deposits. They would demand an increase in royalties every few years.

The sane and logical solution would be public ownership and operation. And a generous purchase price would be the "book value" mentioned above, namely, $600,000,000. All future increases of value above this figure would go to the community. And the price of coal could readily be made fair to both the public and the consumers. In view of the national or semi-national interest in anthracite, it would seem that the appropriate public authority to own and operate the anthracite mines would be the Federal government. On the other hand, all these mines are within the

State of Pennsylvania. Other things being equal, State operation is preferable to Federal operation. Besides, it would offer fewer legal and constitutional difficulties.

How great is the reduction in the price of anthracite that might reasonably be expected through unified operation of the mines? On the basis of present costs of production, and present differences in production costs, the reduction could reasonably be placed at 75 or 85 cents per ton. Moreover, unified operation might well be expected to reduce considerably existing costs of production. The economies of large-scale production and the elimination of competitive wastes and other obvious wastes are among the possibilities that readily suggest themselves.

The reduction in price through better organization of anthracite distribution could easily reach $1.00 per ton. As pointed out above, the improved organization could be effected through distribution by the producing concerns, through State and municipal distributive agencies, or through coöperative purchasing societies conducted by the consumers.

Some of the suggestions and solutions set forth in the last few paragraphs may appear fantastic. Perhaps they are, but they at least have the merit of going to the root of the anthracite problem. They seem to indicate the lines along which, and along which only, any lasting solution can be found. No remedy which does not directly grapple with the evils of increasing coal land values, enormous differences in production costs and profits, and excessive charges for the distribution of anthracite, will ever be effective in satisfying either laborer or consumer. Until the consumers and the public make some serious and systematic effort to deal with these evils, anthracite labor will be justified in using its economic power for its own progressive betterment. It can give good reasons for refusing to accept any responsibility for the unnecessarily high price of anthracite.

The conclusions reached in the foregoing discussion may be summarized as follows: The profits received by those mining companies which produce the greater part of the anthracite supply are unusually, even excessively, high. Without a reorganization of production, however, these profits cannot be shared either with the laborer or the consumer. The fundamental needs of the industry are unified operation and the pooling of operating expenses, preferably under public ownership and direction, and a more efficient system of getting the coal from the mine to the consumer.

PART III

SOCIAL

XXVI

DIVORCE LEGISLATION IN THE UNITED STATES

THIS paper does not pretend to be an adequate study of the topic with which it deals. All that is here attempted is to present in outline the most interesting and important facts concerning divorce in the United States.

During the colonial period, divorces were granted by the courts only in those areas which composed New England. In one or two of the other colonies the bond of matrimony could be dissolved by the legislature, but this power was very rarely exercised. The Constitution of the United States does not give the Federal government any general power over the subject of divorce. The Congress of the United States can legislate concerning marriage and divorce only for those parts of the country which have not become States. At present there are only two such jurisdictions, the Territory of Alaska and the Federal District of Columbia. All the states of the Union have enacted divorce laws. with the single exception of South Carolina.

The statutes of the various states differ very greatly one from the other. At one extreme is New York which permits dissolution of the marriage bond for only two causes, adultery and a continuous desertion of five years; at the other extreme is the State of New Hampshire, with fourteen causes. The State of Washington recognizes nine, the last of which reads substantially as follows: "or any other cause which the court may in its discretion regard as sufficient."

In the great majority of states the recognized causes are six: adultery, bigamy, conviction of crimes in certain classes of cases, intolerable cruelty, wilful desertion for two years, habitual drunkenness. In all cases of absolute divorce re-marriage is permitted, but in a few states that privilege is denied to the guilty party.

The *theory* of the law in all the states is that marriage is a permanent status to be ended only by the death of one of the parties. But the theory also provides that this permanent status can be changed by divorce when its purpose has been thwarted by the fault of the guilty party to such an extent that greater evil will follow from maintaining than from terminating the marriage relation. In theory, divorce is granted only for such causes as are sufficient to defeat the ends for which the marriage was contracted. Almost every element of this curious theory has been set at naught in our state divorce statutes; for some of them refuse to regard as sufficient causes which others assume to be destructive of the purpose of marriage. At any rate, the variation among the states in recognizing causes for divorce is an interesting commentary on the different judgments of legislative bodies concerning the "permanence" of the marriage status. As the theory has been applied, it does not include the proposition that marriage is a *permanent* status, but only that it is *more or less* permanent.

The increase in both the absolute and the proportional number of divorces which has taken place in the United States in the last two decades is notorious. Here are some of the oustanding figures:

In 1890 there were 53 divorces per 100,000 of population.
In 1916 there were 112 divorces per 100,000 of population.
In 1922 there were 136 divorces per 100,000 of population.

To state the increase in another way:

In 1890 there were 13 marriages for each divorce.

In 1916 there were 9.3 marriages for each divorce.

In 1922 there were 7.3 marriages for each divorce.

As we might expect, the divorce rate varies greatly among the different states. In 1922 Nevada had only .9 of a marriage for each divorce; the ratio in Oregon was 2.6; Wyoming, 3.9; Kansas, 5.7; Indiana, 5.4; New Hampshire, 7.5; Kentucky, 6.7; Illinois, 6.8. The best record, or rather the least deplorable, is held by the District of Columbia with 35.8 marriages to one divorce Turning our attention for a moment to smaller political divisions, we find that in 1921 four counties in Oregon had more divorces than marriages, and one of these maintained that condition for four years.

At one time Japan had the highest divorce rate in the world, namely, 140 per 100,000 of population. This was only 4 per 100,000 above the figure which was attained in the United States in 1922. In view of the increase which took place in the United States between 1916 and 1922 (from 112 to 136) it is safe to say that divorce rate in the year 1926 was worse than the worst record of Japan.

It may be of interest to compare the rate in the United States with that of some countries where divorce is rare. In 1904 the rate in England was 2 per 100,000 of population; in France, 28; in Germany, 18; in Norway, 8; in Finland, 5.

Some other statistics are worth noting. In the United States the proportions of divorces granted to the husband and wife, respectively, have not varied greatly in the last forty years. In 1889 almost 65 per cent were obtained by the wife. That proportion has increased slightly but rather steadily until to-day it is about 70 per cent. These figures directly contradict the assumption sometimes made that the institution of divorce is to the advantage of the stronger sex. That assumption may be true when all the incidents, the long-run effects as well as the immediate circumstances,

are considered. Nevertheless, it is quite clear that the women take advantage much oftener of the opportunities presented by our divorce laws for dissolution of their matrimonial relations. Possibly the husbands are more often to blame than the wives for the creation of those conditions which the law recognizes as sufficient for divorce. There is, however, another explanation: "In this country, in recent years, a feeling has undoubtedly grown up that if the separation of husband and wife becomes imperative, chivalrous motives should prompt the husband to permit the wife to institute divorce proceedings. It is realized that, socially speaking, a man who appears as defendant in a divorce case is injured far less than a woman is, and the general acceptance of this idea has had a great influence on litigation." [1]

Another interesting statistical statement is that 62 per cent of the divorced couples in the United States had no children. This seems to be important testimony to the effect that children have in preventing parents from seeking to annul the marriage bond. Probably it also testifies to the intention of many couples at the time of the marriage to get a divorce upon slight provocation. Hence, they took care not to be encumbered with children. The economic independence of women is shown in the fact that in 1916 about three-fourths of those who were granted divorces did not ask for alimony: that is, sought no support from the husbands. Among the causes of divorce in that year drunkenness was least, operating in 3 per cent of the cases; "neglect to provide" was accountable for 6 per cent, while the two causes which ranked highest were "cruelty" at 33 per cent and desertion at 37 per cent. The last cause does not stand in need of explanation, but "cruelty" receives a very elastic interpretation in the divorce courts, being in the most instances synonymous with "incompatibility of temper."

[1] William E. Carson, *The Marriage Revolt*, p. 141.

Despite the laxity and even frivolity which characterize many of our state divorce statutes, and despite the fact that the law does not recognize matrimony as a sacrament, the marriage relation is not a mere civil contract. A civil contract can generally be ended by mutual consent. In none of our states is this possible with marriage. In fact, all our divorce proceedings assume that one of the parties opposes the suit brought by the other. Hence where "collusion" comes to the notice of the court, that is, when it becomes evident that the party against whom the action is brought is somehow coöperating with the plaintiff, the court generally refuses to grant the divorce. The difference between the marriage relation and that of a contract is thus summarized by a prominent legal authority:

"Because the parties cannot mutually dissolve it; because an act of God incapacitating one to discharge its duties will not release it; because there is no accepted performance that will end it; because a minor of marriageable age can no more recede from it than an adult; because it is not dissolved by failure of the original consideration; because no suit for damages will lie for the non-fulfillment of its duties; because legislation may annul it at pleasure; and because none of its other elements are those of contract, but are all of status."

What is the attitude of the American people toward our scandalous divorce theories, laws, and practices? What may be called the "social" attitude seems to be accurately described in the following paragraph by a well-known woman author, in the *Atlantic Monthly,* October, 1923:

"I fancy it is still true that, in most sections of America, the fact that a man or a woman has been divorced—especially if he or she has remarried—is something to be set down, until further information comes in, on the debit side of the account. In some American worlds, people have

achieved a state of mind in which one's divorce is of no more moral significance than the color of one's eyes; but these worlds are still few, and in comparison, small. The prejudice is lessening all the time; and I wonder if there is left any group of individuals, large enough to count as a social group, which does not know and receive and like certain divorced and remarried people. I fancy not. Yet it can still be said, I think, that divorce, as such, is looked at askance. Most people, if pinned down, would probably say that in their opinion certain circumstances justified divorce absolutely, but that promiscuous and light-minded divorcing shocked them. A good many people, too (apart from Roman Catholics, I mean), draw a definite distinction between a divorce which is a mere legal separation and a divorce with remarriage."

The attitude of the churches is pretty well known, at least in its more general phases. The Catholic Church, of course, opposes all divorce. The Protestant Episcopal denomination clings fairly well to the traditional Anglican position that divorce should be granted only for adultery. Sometimes a clergyman of that denomination disregards the tradition and performs a marriage ceremony where one of the parties has been divorced for some other cause. But such conduct is generally condemned by the church authorities. All the other denominations approve, or at least permit, annulment of the marriage bond for more than one cause, and as a rule their ministers do not hesitate to officiate at marriages, one of the parties to which has obtained a legal divorce in any State for any cause recognized as valid in that State. It is true that a considerable number, apparently an increasing number, of non-Catholic clergymen are raising their voices against the divorce evil; but I am not aware that any of the non-Catholic denominations, outside

of the Protestant Episcopal, has taken a very decisive official stand. So far as I know, none of them has officially defined or proposed a list of causes much smaller in number than those recognized in our more lax statutes.

Of course, there is a great number of persons outside of the Catholic Church who are alarmed by the great increase in divorces. These include clergymen, lawyers, physicians, social workers and representatives of other important groups in our population. Perhaps the most significant manifestations of this general feeling of alarm are seen in the proposal for a uniform divorce law, drawn up by the Conference of Commissioners on Uniform State Laws some five years ago, and in the proposal for an amendment to the Federal Constitution giving Congress exclusive legislative power over marriage and divorce. A bill for a constitutional amendment was introduced in Congress a few years ago. A Senate Committee held some public hearings, at which a considerable number of prominent persons spoke in favor of the proposal. However, it is not likely that the amendment will become a part of the Constitution within the next ten or fifteen years.

The most significant aspect of the proposed uniform law for all the states is the number of causes which it sets forth as sufficient for divorce. It is to be kept in mind that those who drew up this uniform bill were eager to reduce, so far as practicable, the causes for and number of divorces in the country. Nevertheless, they thought it necessary, or desirable, to include five causes, namely—adultery, extreme cruelty, habitual drunkenness, whether arising from drugs or drink, conviction of felony, and continuous desertion for a number of years which the Committee did not agree upon. The same causes are apparently approved by the advocates of a constitutional amendment. Should the amendment be

adopted and Congress proceed to enact a divorce law for the whole country the legislation would, in all probability, include all these causes.

Summing up the public attitude towards divorce in the United States, we may say that while the evil is arousing a steadily increasing amount of attention and concern, it has not yet so alarmed the dominant element of the population that anything like considerable reform or a rigid divorce law is within the realm of probability. A uniform law permitting divorce for the five causes specified above would still produce the highest divorce rate in the world except that of Japan.

The Committee which drew up the proposed uniform law for the States included in its recommendations some important improvements in procedure. They recommended that no divorce should be granted to any person who had not been a resident of the state in which the action was brought for a considerably longer time than is now sufficient in some of our more lax jurisdictions. Another recommendation was that no divorce should be granted unless the defendant actually appeared in court. On the other hand, the Committee failed to recommend for all cases a waiting period between the granting of a divorce and the re-marriage of either party. This failure is very significant testimony to the laxity of the public attitude on the whole subject of divorce. A few of the state laws forbid a second marriage within one year after the divorce. This is obviously a considerable discouragement to a certain class desiring to sever the marriage bond. Yet the Committee did not feel justified in urging its adoption upon all the states.

Undoubtedly the main reason for the infrequency of divorces in England is the very high cost of judicial process. An undefended divorce suit entails an expense of about 50 pounds, while in an action which is opposed the cost

ranges from 70 pounds to 500 pounds. In recent years there has been considerable agitation in Great Britain for cheaper divorce proceedings in the interest of the poor. In the United States there is little or no complaint on that score. A divorce action is relatively no more costly to the poor person than it is to the rich person. That is to say, the poor person is at no greater disadvantage as compared with the rich person in a divorce action than in any other court proceeding.

The effects of our lax divorce laws and procedure constitute obviously a most interesting and important subject. Nevertheless, they are extremely difficult to describe either accurately or concretely. Here is one example of a concrete statement. In the year 1921, 30 per cent of the children who were brought into the Juvenile Court of Portland, Oregon on account of misconduct, were the offspring of divorced parents. This percentage seems to be several times as great as it should have been, when we consider the proportion which divorces bear to marriages and the proportion of divorced couples who have no children. Probably the figure given above does not differ materially from that which obtains in most of our large cities. Its significance as an evil effect of divorce is somewhat lessened, however, when we reflect that the children of parents judicially separated, not absolutely divorced, would probably be in an equally bad condition. Hence the Portland experience is equally valid as an argument against limited separation.

Some of the more general and less concretely measurable effects of frequent and easy divorce are those that might antecedently be expected. Among them are a general weakening of the sense of sin or crime regarding illicit sexual relations. When an easy court process and formality render regular and permissible a new sexual relation, it is very easy for men and women to assume that other causes and excuses

may be sufficient to justify such relations. Why wait for divorce? To put it in another way: Why is simultaneous polygamy any worse than successive polygamy? Again, the realization that it is easily obtained impels many persons to enter upon hasty marriages which end in divorce, but which would not be contracted at all if that contingency did not offer an easy way of correcting a mistake. The facility with which divorces are obtained frequently prevents married couples from composing differences which would readily disappear if divorce were impossible. When such persons form new unions they very often find the same differences reoccurring and learn too late that they are more or less inevitable in the marriage state. Divorce has increased rather than diminished their difficulties.

As noted in an earlier paragraph, there is one state which has never granted a divorce, that is South Carolina. Despite the bad example set by many of the other States, the people of South Carolina seem to be satisfied with their own law. Following is a paragraph written some ten years ago by Benjamin Ryan Tillman, who for many years was a distinguished representative of South Carolina in the Senate of the United States:

"The absence of a divorce law in South Carolina is a matter of great pride with us. South Carolina, as you probably know, is ultra-Protestant in her religion, but she looks on the marriage relation with the same reverence as does the Catholic Church. Practically, if not theologically, marriage is with us a sacrament, and the curse of the whole state would fall on the man or set of men who should dare to make it less. You ask if the absence of a divorce statute conduces to morality. Unqualifiedly, I answer, it does. Our women—God bless and keep them in His holy care—are the fairest and best I have ever known, and as long as our men realize that to each of them is given one

and only one woman, just so long will they see to it that purity and chastity continue to prevail. A South Carolinian cannot say, 'I will marry this woman now, and if she is not the right kind, I will divorce her.' He must make sure beforehand, and he, therefore, demands that his woman be pure and above reproach. For the same reason, *viz.*, the absence of divorce, the women know that the men demand that they be pure and innocent, and they meet the demand. Of course, not all men nor all women reason the matter out, but the effect is the same as if they did. Consciously or unconsciously and largely because of the absence of divorce, South Carolina men tell their women:

> " 'Bear a lily in thy hand,
> Gates of brass cannot withstand
> One touch of that magic wand—'

and South Carolina women obey, and happy homes and families are the result."

While it would be impertinent for a foreigner to offer any suggestion to the legislators of the Irish Free State on the question of establishing legal divorce, I cannot refrain from submitting this consideration.[1] Any law which conceivably could pass the Free State Parliament would inevitably be pretty strict. The number of divorces obtainable under it would be extremely small. In other words, only an insignificant percentage of the population could obtain any relief(?) or benefit(?) under the divorce law. This being the case, why enact any such legislation? In the circumstances a divorce law would not be for the *common* good; it would serve the interests of only a very few. That is not in harmony with the democratic ideal. It is rather the doctrine of privilege. On the other hand, if the law made provision for liberal divorce the temptation would inevitably

[1] This paper appeared originally in the Dublin quarterly, *Studies*.

be toward greater laxity, at least for a considerable time, until the bad effects of the legislation became intolerable. Leaving out of account the teaching of the Church and considering only the social and political aspects of the question, we seem to be justified in asserting that there is no such thing as a rational system of absolute divorce.

XXVII

THE CASE FOR BIRTH CONTROL

FOR several years the advocates of birth control have possessed an international organization. Its Sixth Annual Conference (1925) was held in New York. Among the names appearing on the program were several that enjoy some prominence in one or other department of science, such as economics, sociology, statistics, and medicine. Indeed, considerable pains seem to have been taken in order to convey the impression that the papers and discussions of the Conference occupied a high scientific plane. The average reader of the newspaper accounts probably drew the inference that the men and women who spoke at the Conference treated the subject on the basis of facts, and according to strict scientific methods. To the critical reader, however, the scientific appearance of the discussion was only appearance. With very few exceptions, the papers and the speeches presented superficial or one-sided statements of fact, and arrived at unwarranted conclusions. A brief review of the discussion will show that this was the case with regard to the most important subjects treated, namely, population, labor, and human "fitness."

It seemed to be the intention of the promoters of the Conference to lay more stress upon population than upon any other aspect of birth control. Several speakers stressed the evils threatening the race through over-population. Dr. Knopf declared that there is a real danger of over-popula-

tion in the United States, and that at the present rate of increase the world would afford standing room only to its inhabitants in the year 3000 A. D. Professor Fairchild viewed with alarm the fact that the population of the world has more than doubled since the beginning of the nineteenth century. The former speaker gave no convincing reason for his dire prediction; the latter ignored the well-known fact that the rate of population increase has steadily declined during the last forty years, and that the forces responsible show every indication of continuing to operate.

The one speaker who considered all the facts in his discussion of the population question was Dr. Louis I. Dublin, statistician of the Metropolitan Life Insurance Company. Bluntly telling the members of the Conference that they had not read correctly the current tendencies in our population growth, and that they had not given adequate attention to all the facts, he pointed out that, at the present rate of increase, the population of the United States would not be doubled within 120 years. Since immigration has been radically decreased by law, the future increase will depend almost entirely upon births within the country. When we consider the facts and tendencies among our people, especially among the native-born, we have reason to believe that we are "rapidly approaching a condition of a stationary population." To prevent a decrease in numbers, it is necessary that families shall average nearly four children; but all groups of urban American families show a smaller average than this. Middle class families of the present generation in the Middle West average only 3.3 children, as against 5.4 in the preceding generation. From these facts and tendencies presented by Dr. Dublin, and from others which might be presented, the conclusion is inevitable that no group which practices birth control maintains its numbers, and consequently, that if birth control becomes gen-

eral, the population of the United States will not merely fail to increase, will not merely remain stationary, but will decrease.

What reply did the advocates of birth control make to these statements? So far as the newspaper accounts enable us to determine, there was no reply whatever. According to their usual method, the birth control champions ignored the specific and pertinent facts and tendencies submitted by Dr. Dublin, and confined themselves to generalities based upon a partial consideration of facts, and upon hypotheses and assumptoins which they made no attempt to prove.

The old fallacies and misrepresentations were repeated concerning the relation between the birth rate and the death rate. More than one speaker asserted that the declining birth rate, which has characterized various countries in the last forty years, has been offset by the declining death rate, and consequently, that the net rate of population increase has not been diminished. It is true that the declining birth rate has been accompanied by a declining death rate, but the former has been only slightly responsible for the latter. The vitally important facts are: the death rate has not been lowered as fast as the birth rate; no low birth rate country shows as high a rate of net increase in population as it showed before the birth rate began to decline; and the countries with fairly high birth rates are increasing faster in population than the countries with low birth rates. These facts are available to anyone who takes the trouble to study the statistical sources. The advocates of birth control prefer to ignore them, or to misrepresent them.

One session of the Conference was given over to the discussion of the benefits to be derived by the working classes from the practice of birth control. Labor organizations were urged to support the movement on the ground that large families in the working class caused an over-

supply of labor with resulting low wages, poverty, and unemployment. The simple remedy was offered to the laboring classes of keeping their families small, restricting the labor supply, and thus forcing up wages. It does not seem to have occurred to the members of the Conference that a more rational remedy would be to bring about a better distribution of the national product and the national income. Instead of putting the responsibility for low wages and the evil industrial conditions of the masses upon the industrial system, the birth control advocates would place the blame upon the workers themselves. No competent authority would assert that the productive resources of the United States are insufficient to support all classes of our society in reasonable comfort, and to afford higher standards of living to a considerable part of the population. The birth control advocates ignore this fact and its implications. Instead of seeking industrial justice, they would deprive the working people of the right to normal family life. In this matter, they are illustrating the fact that history sometimes repeats itself. In his *History of Political Economy,* John Kells Ingram informs us that the doctrines of Malthus were adopted most enthusiastically in the early part of the nineteenth century by the middle classes, because they were thus enabled to shift the blame for the awful conditions of the working classes from their own shoulders. Owing to their large families, the working classes were the cause of their own misery. It was a very comforting doctrine for the exploiters. The same doctrine is now taught, in effect, by the bourgeois advocates of birth control.

The third fallacious argument advanced at the Conference for birth control and family limitation was based upon the theory that quality is better than quantity. Birth restriction would enable children to be more "fit," to have more desirable qualities, on the average, than would be the case in

the absence of artificial limitation. No reasonable person objects to the principle that children of good quality, and men and women of good quality, are more desirable than those of poor quality. The important questions are: What constitutes good quality? Does quality consist merely in physical and intellectual soundness and capacities?

On this question of quality, social fitness, and social superiority, I wish to quote two paragraphs from an address delivered by Professor Warren S. Thompson. He is referring to the so-called superior classes, those who practice birth control for the sake of alleged better quality.

"Nature's answer is clear. She says they are unfit. She shows clearly that she prefers the lower classes who live simply, who reproduce more or less instinctively, who do not think about the future of the race or of civilization, but who are carrying the burden of the future in the rearing of children. We may call these people brutish, we may say that they are intellectually inferior, we may hold that they have not risen above the level of instinctive reactions, we may believe that they carry the burden of the future only because they do not know how to avoid it, and because they do not yet feel it to be a burden, but they survive, and the future belongs to them. We may prove to our own satisfaction that a civilization developed by such a people will be distinctly inferior to ours, but if nature prefers it because we cannot or will not participate in the future by rearing children, we should have no fault to find with her. . . .

"People who wish to play so prominent a part in the affairs of their day that they do not find time for family and children, who are unwilling to partake in the struggles and hardships of the common lot, are doomed to extinction. Those who can make the combination of satisfying their ambition and raising a fair-sized family will survive, and though civilization may change under their guidance, I do

not see why we should be exercised for fear that it will not be Anglo-Saxon, or Teutonic, or Gallic, as the case may be. If we do not have children it will not affect us or ours, that the present social order which we call Western Civilization will have perished. The people who do survive and carry on will probably develop a civilization which will suit them better than ours. If it is so organized that it has a place for the family and if it rests upon those virtues growing out of the intimacies of family and communal life, it will probably displace ours and survive much longer than ours has, and thereby prove its fitness." [1]

None of the speakers at the Conference showed any appreciation of the moral element in human fitness. All their arguments were to the effect that in a small family, the children could obtain better physical care and greater educational advantages than in a large family. So far as the poor and the lower middle classes are concerned, this contention may be admitted, provided that we leave out of account the influence of the moral element upon the parents, as well as upon the children. It is precisely this omission which is fatal in the arguments which the birth control advocates put forward under the head of quality.

Parents who shirk the task of bringing into the world and rearing a family of normal size inevitably and profoundly diminish their own moral strength. Moral power and moral efficiency consist, for the most part, of self-control, of the capacity to pass by the easy things of life in order to attain the things worth while. No great achievement is possible without sacrifice. The man or woman who avoids the sacrifices which are involved in the ordinary, normal course of human life, gradually loses the capacity to endure and to carry on sustained effort. The easier way is never the way of worth-while accomplishment. All this

[1] *Monthly Labor Review*, February, 1924.

is quite true of the children as of the parents. The one, or two, or three children of parents who shirk their natural duties in order to follow the easier way are deprived of that training in self-control which is essential to the formation of strong moral character. They, too, come to look upon the easier way as the better way. Hence, they do not acquire the qualities and the capacity to work hard, or to achieve great things. They may possess physical fitness. They are unlikely to acquire a high degree of intellectual fitness. They are unlikely to take full advantage of their larger opportunities of education because they are disinclined to put forth the necessary efforts.

In a word, the race of human beings resulting from birth control practices and theories will exhibit a lower degree of fitness, will be poorer in intellect and character, than a race which is produced in the atmosphere and under the direction of the moral law. Competition between these two groups will result in the survival of the latter because it is the fitter to survive, that is, the fitter morally. Moral fitness is the most important of all, even though it is entirely ignored by the advocates of birth control.

Perhaps the supreme exhibition of fallaciousness and futility was given by the Conference when it adopted the resolution: "that persons whose progeny give promise of being of decided value to the community should be encouraged to bear as large families, properly spaced, as they feasibly can." The man who introduced this resolution, a geologist from Pittsburgh, declared that "super persons" should realize their moral responsibility to bear children. Passing over the questions as to what kind of progeny would be of "decided value" to the community, what is a "properly spaced" family, and what is meant by "feasibly," I would merely call attention to the obvious consideration that no husband and wife who prefer luxuries to children will feel any ethical

obligation to the community, or to posterity. Parents who have ample financial resources to raise large families and yet who refuse to do so because of the attendant inconveniences, will logically pay no attention to appeals on behalf of the race, or the community, or posterity.

Seventeen hundred years ago the great Christian apologist, Tertullian, in a passage which has become famous, described the triumph of Christianity over the decadent Roman civilization of his day. In considerable detail he showed that the Christians were coming into all the departments of social and economic life to such an extent that they were leaving to the previously dominant class only the false gods and the empty temples of paganism. Paraphrasing his sentences of warning and condemnation we throw out this challenge to the advocates of birth control:

"We, too, are of yesterday, but we shall be the America of to-morrow; we shall be the majority. We shall occupy and dominate every sphere of activity; the farm, the factory, the counting house, the schools, the professions, the press, the legislature. We shall dominate because we shall have the numbers and the intelligence, and above all, the moral strength to struggle, to endure, and to persevere. To you we shall leave the gods and goddesses which you have made to your own image and likeness, the divinities of ease, and enjoyment, and mediocrity. We shall leave you the comforts of decadence and the sentence of extinction."

XXVIII

MINIMUM AND MAXIMUM STANDARDS OF LIVING

A. The Minimum

WITHOUT attempting to decide the old, old question whether dependency is due in greater measure to social than to individual causes, we all realize that a very considerable part of social distress is a direct and necessary result of inadequate material resurces. Some eighteen years ago the National Conference of Charities and Correction appointed a committee to determine the relation between standards of living and labor and problems of poverty and relief. After three years of investigation, the committee formulated a platform of minimum standards under the following headings: Wages, Hours, Safety and Health, Housing, Term of Working Life, Compensation or Insurance. Under each of these terms, the committee described the lowest standard of welfare compatible with right living. It laid down the general proposition that families on lower standards than these must sooner or later become objects of charity. The committee's presentation of facts and standards led inevitably to the conclusion that the task of removing the causes of social distress cannot be adequately or intelligently performed by social workers unless they strive to abolish or mitigate the manifold and many-sided industrial factors which are responsible for inadequate income.

Of the seven items in the standards set up and elucidated by the committee of the National Conference, five are imme-

diately dependent upon income. The other two concern the length of the working day and safety in work places. Health, housing, term of working life, and compensation or insurance are all vitally affected by wages. The standard of wages described by the committee is substantially that which has been accepted by the majority of students who have made special studies in this field. The family wage should be adequate to what is generally known as the minimum comfort level of living. It should be sufficient to command a decent house of five or, at least, four rooms; to provide food adequate to normal health and physical efficiency; to purchase cheap but neat clothing; to furnish a moderate amount of money for recreation, for intellectual life, and for insurance against sickness and old age.

Many studies have been made for the purpose of translating the minimum comfort standard of living into terms of money. In this recent book on *Wages and the Family,* Professor Paul H. Douglas presents thirty-seven such estimates. The first was made in 1905 in New York and the last, in 1923 in Chicago. These estimates represented some twenty different cities or industrial regions from Boston to San Francisco. Despite considerable variety in details, they are in remarkably close agreement, when account is taken of differences in commodity prices. This is particularly true of those studies whose object was to determine the reasonable cost of living in connection with the establishment of minimum rates of wages by public authorities or by Minimum Wage Boards. Consequently, we are justified in asserting that the minimum standard of living and of income which is necessary to satisfy the demands of reason and decency and to prevent families from becoming the objects of charity through lack of income, is ascertainable, definite and entirely practicable as a guide to social workers. In the larger cities in the United States the annual sum

required to-day for a man and wife and three small children seems to be about $1,500.

It is true that the theory or concept of a definite minimum standard of decent living is occasionally attacked on the ground that it does not correspond with the facts. According to this criticism, the differences both in family needs and in family talents for household management are so great that a uniform amount of income results in great differences in family well-being. Even the Supreme Court of the United States gave expression to this view when it condemned the Minimum Wage law of the District of Columbia because the legal rate of $16.50 per week meant great variations of welfare in the group of women wage earners affected. In reply to this contention, it is sufficient to say that the differences, whether in needs or in the capacity for household management, are not nearly so great as the objection implies. Those who know most about the facts of the situation, those who have much greater opportunities of actual observation than any casual critic, or than any member of a court of justice, will confirm this statement. At any rate, such differences as exist are not nearly so important from the viewpoint of social welfare as the benefits which are derived from the enforcement of a minimum standard. Suppose that one-third of the families protected by such a standard find it less than sufficient; suppose that one-third find it more than sufficient; and suppose that only one-third find it neither too low nor too high. Are not the members of all three groups better off than they would be on a lower level of income and maintenance? And is any social harm done by the fact that some of the families get a little more than a bare minimum?

The social worker knows full well that a certain minimum of income is necessary to prevent social distress. The industrial expert is aware that such a minimum is necessary

for physical and industrial efficiency. The person who is interested in good citizenship realizes that one important source of crime and other forms of bad citizenship is the lack of adequate family income. The great majority of the people, perhaps of employers, have accepted the principle that wages ought to be at least sufficient for decent living. What is the verdict of Christian teaching?

The first authoritative declaration on this subject was made by Pope Leo XIII nearly thirty-six years ago. In his Encyclical on the "Condition of Labor," he replied at length to the theory that wages should be fixed at any rate agreed upon by the contracting parties. Admitting that this is a valid general rule, the Pope nevertheless maintained that there is a dictate of nature more imperious and more honorable than any bargain between man and man, namely, that remuneration should be sufficient to enable the wage-earner to support himself in reasonable and frugal comfort. Continuing, he declared that if through necessity or fear or a worse evil, the working man accepted less because the employer would not pay him more, he was the victim of force and injustice. Moreover, the Holy Father had in mind a wage sufficient for the needs of a family; and he interpreted these needs rather liberally, inasmuch as he assumed that the wage would enable the head of the family to make savings and to acquire some income-bearing property.

Several years ago, the Federal Council of Churches of Christ in America pronounced in favor of a living wage as a minimum in every industry. That declaration has been repeated by more than one of the constituent denominations since that time. The most recent utterance from a Protestant source is that found in "A Statement of Social Ideals" by the Congregational Churches of the United States. In this excellent summary it is laid down that the first charge upon industry should be a minimum comfort wage.

Against these pronouncements of the churches, it may be urged that the Founder of Christianity blessed poverty; that He urged His followers not to be solicitous as to what they should eat, drink or wear; that they should even sell their goods and give the proceeds to the poor, and then follow Him. The last injunction has always been understood by the Catholic Church as a counsel of perfection addressed to the few, not a commandment imposed upon all. Neither the benediction which Christ pronounced upon the poor whom he addressed, nor the admonition about material things can fairly be interpreted as condemning the doctrine of a decent minimum. Saint Thomas Aquinas and Pope Leo XIII pointed out that a certain amount of material goods is necessary for the practice of virtue. When the income of a family falls below the amount that social students have estimated as the decent minimum, the quantity and the quality of food, the size and equipment of the home, the clothing, the lack of provision for sickness, accidents, old age, recreation, books, newspapers, and religion and the continuous fear of want will subject the members of the family to severe and unreasonable temptations, and will deprive them of the conditions which are necessary for the good life. At least, that is what happens in the great majority of instances. Obviously there are always exceptions.

It is to be kept in mind that none of the declarations by the Christian forces of the world assert or imply that the minimum decent wage constitutes in all cases complete justice. According to every one of them, a living wage is merely the least that is compatible with Christian principles. For example, the Catholic Bishops' Program of Social Reconstruction declared:

"Even if the great majority of workers were now in receipt of more than living wages, there are no good reasons why rates of pay should be lowered. After all, a living

wage is not necessarily the full measure of justice. In a country as rich as ours, there are very few cases in which it is possible to prove that the worker would be getting more than that to which he has a right if he were paid something in excess of this ethical minimum. Why then should we assume that this is the normal share of almost the whole laboring population?"

"Give me neither poverty nor riches," said the Wise Man; "give me only the necessaries of life."

B. The Maximum

While it is desirable that all families should possess something more than the bare minimum required for the elementary needs of life, it is not desirable that any class of the people expand living standards indefinitely. In other words, there is a maximum amount of family expenditures which is most favorable to the maintenance of Christian precepts and Christian ideals. Unfortunately, this proposition is almost universally rejected in the current theory of welfare and life, and it is very widely repudiated in current practice. Let us consider the situation in some detail.

The main sources of expenditure for non-intellectual goods may be classified under the heads of shelter, food, clothing, social intercourse, and amusement and recreation. According to the prevailing practice, a family that occupies a plain house of seven or eight rooms will, when its income is considerably increased, expend a part of the increase for a better house. This means a larger structure, built of more costly materials, and demanding a greater quantity and more expensive quality of furniture, utensils, woodwork, carpets, chairs, tables, beds, chinaware, etc. It implies also a larger outlay for hired servants and a more "select" neighborhood.

When income permits a change, persons are no longer satisfied with plain and nourishing food. They must have

more costly, more select, and more varied articles, served in more formal, elaborate and costly fashion, there must be many courses, more and dearer china, and more ornate glassware. In dictating the last sentence, I uttered the words "cut glass," but my secretary informed me that cut glass has "gone out," and she proposed in its stead the phrase at the end of the last sentence. I suggested that fancy glassware costs much more than cut glass, and received the assurance that I was right, which substantiates the point that I am making in this paragraph.

Clothing exemplifies the same process. After the demands of reasonable comfort have been met, the desire arises for a larger number of suits, a more frequent replacement to comply with the fashions, and a more high-priced tailor. These and many other expansions of the clothing want take place in the case of men, and in even greater degree in the case of women. Witness this list of items and prices in certain "smart" Fifth Avenue shops: Cheapest women's shoes, $25 a pair; small dress hat, $100 to $175; popular one-piece street gown, $250 to $350; smart evening gown (popular price), $700 to $1,200; ordinary Russian sable coat, $12,000 to $40,000; silk sweater, $50 and up; stockings for evening wear, $10 to $25 a pair; vanity case, $36 to $200.

With increased outlay for shelter, food and clothing, the class of wants which fall under the head of social intercourse, or are sometimes merely called "social," inevitably becomes more complicated and more expensive. Entertainment and "social functions" become more frequent and elaborate; notable increase takes place in the accessories of entertainment, such as decorations, flowers, attendants, etc.; and there is a considerable additional outlay for food and clothing.

The desire for amusement and recreation is also capable

of indefinite expansion. Consider the difference in cost between a theatre ticket for one or two and the tickets and accessories which go with "a theatre party." There is no need to multiply illustrations.

In the case of all but the few extremely rich, these five classes of wants can be expanded indefinitely and can absorb the entire family income. However much a person pays for meeting these wants, he can still maintain, in accordance with the language and standards of the day, that he is merely "improving his social position"; and this theory of welfare is held not only by the rich and the well-to-do, but in some degree by substantially all classes.

Here are a few instances taken from actual life of the extreme length to which this theory has been extended: houses costing more than a million dollars, gardens, half a million; private ball-room, hundreds of thousands; beds, ten thousand; opera glasses, seventy-five thousand; piano, fifty thousand; necklace, six hundred thousand; cradle, ten thousand; motor car, thirty thousand; dinners, two hundred and fifty per plate; dinner to dog, crowned by present to dog costing fifteen thousand; cigarettes wrapped in one-hundred dollar bills.

This indefinite striving for indefinite amounts of material satisfaction is not an accidental phenomenon. It is but the natural outcome of the prevailing theory of life. In the words of the philosopher Paulsen: "The old Christianity raised its eyes from the earth, which offered nothing, and promised nothing, to Heaven and its super-sensuous glory. The new age is looking for Heaven upon earth; it hopes to attain to the perfect civilization through *science,* and expects that this will make life healthy, long, rich, beautiful and happy." [1] In the opinion of Lange, "it is a favorite principle of the ethical materialism of our days that a man is all the

[1] *A System of Ethics,* pp. 139-140.

happier the more wants he has, if he has at the same time sufficient means for their satisfaction." [1] Such is the prevailing conception of "wider and fuller life." Since life is merely, or at any rate chiefly, an aggregate of sensations, more abundant life means the multiplication of sensations, possessions, and pleasurable experiences.

The contradiction between this theory and the Christian concept is obvious. Christ declared that "a man's life consisteth not in the abundance of things that he possesseth." In many places and under many forms, the Founder of Christianity insists that material possessions are unimportant to His followers; and that those who have much wealth will find it almost impossible to get into His Kingdom.

According to the Christian principle, it is not the number but the kind of wants that is important. Right human life is primarily *qualitative*. It consists in thinking, knowing, communing, loving, serving, and giving, rather than in having or enjoying. Its supreme demand is that we should know more and love more, and that we should strive to know the best that is to be known and to love the best that is to be loved. It demands that we satisfy the cravings of our senses only to the extent that is compatible with a reasonable attention to the things of the mind and the spirit. The senses are not on the same moral level as the soul. This true function is that of instruments.

Let us make a summary application of the Christian principle to the main heads of expenditure. It is not the mere size of the very expensive house which constitutes a serious impediment to the Christian standard of living. It is rather the accidentals and accessories. When a certain limit is passed in the provision of housing, it is not additional comfort that is desired so much as additional accommodations for numerous servants, facilities for elaborate social func-

[1] *History of Materialism*, p. 239.

tions, and the consciousness of occupying as large or as imposing a dwelling as some acquaintances. The very expensive establishment involves a great waste of time, thought, energy and money, an increase in the passion of envy, a desire to out-do one's neighbor in the splendor of material possessions, and in outward show generally, a lessening of sincerity in social relations, a weaker consciousness of Christian brotherhood, and finally such an immersion in the things of matter that the higher realities of life are increasingly forgotten or ignored.

Satisfaction of the food want becomes excessive when the appetite is stimulated or pampered to the injury of health, and when victuals come to be prized for their capacity to please the palate rather than for their power to nourish. These conditions are reached sooner than most persons realize. Exquisite attention to the preparation and serving of food easily produces undue and injurious stimulation of appetite. The pleasures of diet and of eating become too prominent and are too carefully sought. There follows naturally a lessening of control over other appetites; for the power of governing the senses is a unified thing which becomes weakened as a whole whenever it suffers injury in any part. Finally, the limits of reason are exceeded when the accessories of eating are distinguished chiefly for their costliness and magnificence.

Unchristian excess appears in clothing as soon as the desire to be dressed comfortably and decently becomes less prominent than the desire for conspicuousness, richness, elaborateness, splendor. All these are refinements of the process of satisfying the clothing want. They involve waste of money, since the ends which they serve are of no importance to reasonable living. They involve deterioration of character through indulgence of the passion for mere possessions and the passions of pride, vanity and envy.

There is a certain moderate scale of "social" entertainment in which the activities, the dress, the refreshments, and all the other accessories are distinguished by a certain naturalness and simplicity. When these conditions are verified, the usual result is a maximum of right human feeling. When, however, the chief concern is the accessories of the entertainment, rather than the promotion of kindly human intercourse and enjoyment, when the main object is to emulate the elaborateness, costliness, or magnificence of some other "function," genuine enjoyment and kindly feeling are less than in the simpler conditions, while the demands on purse, health, nerves, and character are almost invariably greater. Except in a very small proportion of cases, the functions and gatherings of "society" do not make for true culture or for intellectual improvement. Their primary object is to entertain, but they have come to include so many factitious elements that one of their most common by-products is a group of unlovely and unchristian qualities, such as the desire for social preëminence, the passion for distinction, the wish to be thought at least as prominent as any other person in a certain "social set." Very similar statements can be truthfully made concerning excessive expenditures under the head of amusement and recreation.

Another evil effect of this materialistic theory of values is the weakening of the religious sense and of the altruistic sense. In the majority of cases, it seems that after the stage of moderate income and plain living has been passed, there follows a decay of religious fervor and vital faith. The things of God are crowded out, "choked by the cares and riches and pleasures of life." Inordinate satisfaction of material wants diminishes the feelings of disinterestedness and generosity. As a general rule, persons above the line of moderate comfort give a smaller proportion of their income to charitable and religious causes than those who are

at, or somewhat below, that level. Reason, as well as Christian teaching, dictates that they should give a larger proportion, just as the government requires that they contribute a larger proportion in the way of income taxes.

Nowhere are the harmful effects of this materialistic conception of life more manifest than in the phenomena associated with the reduced birth rate. Deliberate limitation of offspring is as yet chiefly confined to the middle and upper classes, to the persons whose elementary and reasonable wants are already fairly well supplied. They desire to satisfy a larger number of material wants in themselves and in their children. They speak much of aiming at quality rather than quantity in offspring. This is perhaps the most insidious of the many fallacies by which they are misled. As a matter of fact, the children of parents addicted to birth control are liable to be of *inferior quality* in all the essentials of character. They grow up in an environment which fosters selfishness, laziness, flabbiness of will, and inefficiency of intellect. They do not have the capacity to overcome obstacles, and to endure the unpleasant things of life. They lack the power to do without. Lacking this power, no person is able to achieve anything beyond mediocrity.

Another evil result is the weakening of mental powers and activities. Persons devoted to the pursuit of material things, of ease and of pleasure, deprive themselves of the best conditions for achievement in the higher and more arduous fields of mental effort. The decline which has taken place in the average capacity for application and hard work among college students is only one example of a general condition. While the proportion of formally educated persons in our population has greatly increased, there is reason to doubt that the proportion which reads serious and beneficial literature is as great to-day as it was fifty years ago. The great mass of the reading public is now satisfied

with the newspaper, the cheap magazine, and books of fiction, good, bad and indifferent. A generation or two ago, the majority of those who read had access to only a few books, but these were of a high class and were read again and again. Even the general quality of the literary output seems to have deteriorated, as pointed out by Mr. Frederick Harrison in a striking article twenty years ago. "As I look back over sixty years, it seems to me as if English literature had been slowly sinking, as they say our Eastern countries are sinking below the level of the sea." Among the forces which have brought about this decadence, Mr. Harrison mentions, "the increase of material appliances, vulgarizing life and making it a scramble for good things." [1]

In one sense, the saddest defect of the current theory about the worth of material satisfactions is that it does not bring the one good for which it is recommended and adopted. It does not produce happiness. Not infrequently, the seekers after happiness by this route realize that it is not thus attainable. The consequent disillusion and disappointment often turn them into pessimists. In this connection Paulsen cites a document which was placed in the steeple knob of St. Margaret's Church at Gotha in 1784, and which glorifies the modern age, with its freedom, its arts, its sciences, and its useful knowledge,—all destined to insure greater material enjoyment and greater happiness. Upon this glowing prophecy, Paulsen makes this comment:

"When we compare the self-confidence of the dying eighteenth century, as expressed in these lines, with the opinion which the dying nineteenth century has of itself, we note a strong contrast. Instead of the proud consciousness of having reached a pinnacle, a feeling that we are on the decline; instead of joyful pride in the successes achieved and joyful hope of new and greater things, a feeling of

[1] *The Literary Digest*, March 9, 1907.

disappointment and weariness, and a premonition of a coming catastrophe; . . . but one fundamental note running through the awful confusion of voices: *pessimism!* Indignation and disappointment, these seem to be the two strings to which the emotional life of the present is attuned. . . ."

Would it be rash to attempt an estimate of the maximum expenditure which is most consistent with the Christian standard of living? Obviously, no such estimate can have the degree of definiteness which is possible in a statement of the minimum. At any rate, I shall make one or two suggestions. Suppose that one-fourth of the houses and apartments which are the most costly of all the dwellings in any large city were somehow to fade out of existence, and the occupants were compelled to live in less expensive houses and apartments and to reduce accordingly their payments for food, clothing, "social" activities, and amusements. Does anyone doubt that the great majority of these persons would lead more rational lives and approach more nearly than now to the Christian standard?

In a little book entitled *What Can a Man Afford?* Professor Paul H. Douglas and Mrs. Douglas put the reasonable maximum of family expenditure at $20,000 per year. They suggested that this was sufficient to cover all items of family expense except charity, religion and education. They made this estimate, not in the effort to find a reasonable maximum, but incidentally to their endeavor to ascertain the proportion of income which should be given by the various classes of families of the United States in order to meet the national budget of philanthropy. According to their calculations, the family in receipt of $40,000 per year should save and invest 23 per cent, should give 20 per cent to philanthropic objects of all sorts, including religion and education, and should pay 7 per cent in Federal income taxes (the estimate was made in 1921). This would leave $20,000 for family expendi-

tures, exclusive of education, religion and all forms of charity. "This sum," they write, "we treated as a practical maximum in the sense that all but a few of the extremely wealthy were to remain within a few hundred or thousand of it." To the objection of the man with an income of half a million dollars, that he ought not to be required to give 50 per cent of it in charity, and that he ought not to be asked to live like the man with an income of fifty thousand dollars, the authors reply, "Our scale is indeed somewhat of a counsel of perfection if one is going to take all our present standards as normal. But the fact plain to our view is that the luxury side of current standards is not and need not be normal. . . . The social climbers of all ranks, especially the great middle groups of incomes, will be more quickly affected to sane living and reasonable generosity by the concrete example of their financial superiors than by any amount of preaching."

No social student will question the statement that I have just quoted. If all the rich were to live within the maximum amount set by Paul and Dorothy Douglas and to contribute to philanthropic causes according to the scale which these writers have worked out, their example would have a very powerful effect in checking the exaggerated standards and wasteful expenditures of the upper middle classes. With this interpretation of Christian standards realized in practice, we should have a more virtuous society, a vastly nobler general happiness.

XXIX

THE SPIRITUAL ELEMENT IN SOCIAL WORK [1]

THE field of social work is presumably pretty well covered by the twelve divisions of the National Conference. Eight of them are concerned with various objects of social work, while the other four deal with methods, means, and organization. The objects are primarily the relief and prevention of social distress, and secondarily improvement of social life and social standards. Analyzing the wide variety of topics which have a place on the program of the present conference, we find that the majority of them relate to physical distress, physical needs and physical improvement. The other topics have to do with the moral and mental welfare of persons in distress or persons who lack adequate opportunity or suitable environment.

Only two papers deal with spiritual distress or spiritual improvement. In both of them the spiritual or religious element is treated not as an end but as a means to social and individual welfare. However, no just fault can be found with this situation. Spiritual needs and spiritual improvement are the proper and formal concern of religion and religious organizations. Were social workers to make the spiritual faculty the primary object of their activities, they would cease to be social workers and add one more to our already lengthy list of religious divisions.

[1] Read before the National Conference of Social Work, Cleveland, May 30, 1926.

Nevertheless, they cannot and should not ignore the spiritual side of life, the spiritual element in those to whom they minister. Social distress is fundamentally the distress of human beings and a human being is something more than a combination of physical and mental powers. A part of his nature, by far the most important part, is spirit. To deal with a human being for any purpose without taking into account his spiritual nature is to treat him inadequately. Sooner or later such one-sided treatment must do harm as well as good, and not infrequently, the harm will exceed the good. Neglect of the spiritual element necessarily means neglect of the moral life. It frequently hinders material and intellectual improvement. In the second place, the social worker who ignores the spiritual element in those whom he serves deprives himself of the most effective motive for conscientious and sustained social ministration.

Although the majority of social workers are mainly occupied with specific problems of relief or prevention, their vision and aims are not restricted to the person or groups that constitute the immediate object of their activities. All earnest and thoughtful social workers look upon their tasks and functions as means of social improvement. They look forward to better social conditions and arrangements, better social institutions, a better society, a better civilization. What is social improvement, or social progress? What do we mean by better social institutions, or a better society? These questions cannot be answered by any social worker without taking an attitude toward the question of the spiritual element in humanity.

Social progress is commonly conceived in terms of evolution. Among the various theories of social evolution that have at one time or another obtained considerable acceptance, there are two which may with advantage receive brief notice here. In some respects, they are opposites; in other respects,

they exhibit a good deal of mutual resemblance. The theories that I have in mind were respectively held by Herbert Spencer and F. G. W. Hegel.

According to Spencer, "the well-being of existing humanity, and the unfolding of it into this ultimate perfection, are both secured by that same beneficent, though severe, discipline, to which the animal creation at large is subject: a discipline, which is pitiless in the working out of good: a felicity-pursuing law which never swerves for the avoidance of partial and temporary suffering. The poverty of the incapable, the distresses that come upon the imprudent, the starvation of the idle, and those shoulderings aside of the weak by the strong, which leave so many in shallows and misery, are the decrees of a large, far-seeing benevolence."

In the system excogitated by Hegel, the State is the highest expression, manifestation, evolution of the Universal Reason, or World Spirit. Since perfection of life consists in the continuous development of the Universal Reason, and since the Universal Reason obtains its highest development in the State, all persons and institutions should serve and magnify the State. The individual exists for the State, and bears the same relation to the State as the branch does to the tree. Hence the State is the final and supreme end of human action, is an end in itself.

Spencer's theory of social progress would leave no place for either social work or State assistance. The weaker members of society should be permitted to perish under unlimited competition. The competitive struggle would accomplish among human beings that which is brought about in the animal world by natural selection. The desirable result would be a continuously improving human society, a gradually rising average human perfection. While Hegel would probably not have excluded entirely social workers had they existed in his day, there is no doubt that he would

have approved the most ruthless treatment of individuals whenever that course seemed useful to further the development or increase the power of the State. And he would have regarded this enhancement of State welfare as identical with social evolution and social progress.

Social workers have never fully accepted either of these theories. Substantially all their activities for the relief of social distress are directly opposed to the Spencerian program of eliminating the unfit by the process of unmitigated competition. Nor have American social workers ever hesitated to invoke legislation and other appropriate State action on behalf of the weaker classes. In America, social workers have not accepted the Hegelian theory of State omnipotence, nor looked upon the State as identical with society.

Nevertheless, there is a real danger that social workers will accept some of the worst features of both these theories unless they hold fast to the truth of man's spiritual nature. If we think of society as an entity, a good apart from its component individuals, we can easily and logically adopt the conclusion that individuals who are not reformable, who are not capable of becoming useful to society, should be eliminated; or at least that they should be so treated as to diminish their power for harming society without helping them for their own sake. And we can become sufficiently Hegelian in our social thinking as to demand that this task of elimination or of subordination should be performed by the State. While social workers are not likely to regard aggrandizement of the State as the proper end of their efforts, they can easily come to hold that drastic action upon the individual by the State is a legitimate means of promoting social progress. The only adequate corrective of this tendency is proper regard for the spiritual element in human beings.

Perhaps it is worth while to define just what we mean by

the spiritual element. The word spiritual is frequently misused and used vaguely. Sometimes it is a synonym for emotional, or idealistic, or unselfish. It is much more than any of these. The spiritual element is not the same as the religious element; for the latter refers to a religious creed, religious observances, church affiliations. While religion is extremely important in social work, it can be properly applied only under the direction of religious organizations. It is therefore outside the sphere of all social workers except those who are employed by churches.

The definition of spiritual in the Century Dictionary is sufficiently clear and serviceable. It means "pertaining to the soul." The spiritual element, therefore, is the soul. The spiritual element in social work is the recognition of the soul as the supreme good in a human being. It is the soul which gives to man his intrinsic worth as a person, instead of a mere means to the welfare of society. Because of his soul, his personality, his intrinsic worth, the human individual is endowed with certain rights which may not be disregarded even in the interest of social progress. After all, social progress means the progress of human beings. Apart from human beings, social progress and society itself are empty abstractions. To use any class of human beings as mere instruments to social advantage is in reality to subordinate one group of persons to another, albeit a larger, group of persons. For such a policy there can be no moral justification. The only defense available is that which may be based upon considerations of brute force.

If this conception of the human individual as having intrinsic worth seem intangible or metaphysical, the answer is that every ultimate standard of values is intangible and metaphysical. To the person who believes that weak and socially useless individuals ought to be sacrificed to social welfare, society appears as good in itself, as metaphysically

good. To the question, why should we further the interests of society, the answer must be in terms of metaphysics. At least the assumption must be made that society is its own justification, that there is no further end to which society might be made an instrument.

So much for the general principle concerning the supreme worth of the individual as derived from his spiritual element. Let us consider two or three particular applications of the principle. Many social workers are to-day interested in eugenics. They believe that the presence of great numbers of mentally and physically subnormal persons is a grave menace to racial integrity and racial improvement. Therefore, they desire that the number of such persons should be reduced both absolutely and relatively. Some of the means advocated to reach this end are drastic, and until recently would have seemed shocking and inhuman to substantially the entire population. Among these are severe restrictions upon the marriage of the relatively unfit and universal laws for sterilization. If laws of the latter character could be enforced, it is contended that "less than four generations would eliminate nine-tenths of the crime, insanity and sickness of the present generation in our land. Asylums, prisons and hospitals would decrease and the problems of the unemployed, the indigent old and the hopelessly degenerate would cease to trouble civilization."

No social worker who gives due recognition to the spiritual element can approve these brutal proposals. Even if we assume that it is possible to identify all persons whose offspring would be a social liability rather than a social asset, the proposed means of forbidding them the opportunity of marriage and parenthood are immoral. A considerable immediate gain would come to society if all the insane, all the hopelessly crippled, all the irredeemable criminals, and all the incurably infirm were put to death. For two reasons

this remedy finds few if any advocates. The first reason is that it would violate the right to live which these afflicted groups possess in common with their more fortunate fellows. In the second place, there is grave reason to fear that the disregard of human sacredness involved in this wholesale killing for a social end would bring about a continuous decline in human sympathy and in the sense of human values generally. Human society would revert to the practices of the jungle.

Both these objections can be urged against the radical measures of race betterment proposed by many of the eugenists. The difference in the two situations is only a difference of degree. A due regard to the sacredness of human personality, to the spiritual element in the human being, requires that no person should be permanently deprived of the power to marry unless he is insane, or so feeble-minded that his condition practically amounts to that of insanity. Ignore the spiritual element in any other kind of relatively inferior persons, any other group of so-called unfit, and you are introducing into society a deadly principle which can be extended indefinitely. The magic circle of fitness can be contracted more and more until it includes only Nordics, or Class A in the army intelligence tests, or some other small but fortunate minority of the population. Disregard the spiritual element in man and his essential sacredness, and you can set no logical or certain limit to the process of subjecting the supposedly less desirable individuals to the assumed welfare of society. If the abstraction which we call society is worth more than certain individuals, then it may be worth more than any number of individuals, however large, whom the social experts or the politicians may regard as a social liability.

Another application of the spiritual principle occurs in relation to artificial family limitation. Moved by the sad

conditions of many of the large families that they are called upon to assist, social workers sometimes advocate the practice of birth control. In these cases, at least, birth control appears to be a simple remedy. It is entirely too simple. Its delusive simplicity and its ultimate failure arises from its disregard of the spiritual factor. Those who recommend it to or for poverty-stricken families are thinking only of material and mental advantages. Their slogan is "a smaller quantity of children but a better quality." The "better quality" which they have in mind comprehends only material conditions and larger opportunities of education. It cannot include moral qualities. In all the essentials of character, children in artificially restricted families are liable to be of inferior quality. They grow up in an environment which fosters selfishness, laziness, weakness of will and flabbiness of intellect. They have not the capacity to overcome obstacles and to endure the unpleasant things of life. They lack the power to do without. Lacking this power, no person is able to achieve anything beyond mediocrity.

Obviously these results would not occur immediately in families that are now very poor. Once these parents adopt the theory and practice of birth control, however, they assure its continuation in their offspring. The latter will subject themselves and their children to all the disadvantages and evils which follow the practice in families and groups where it is well established.

The fate of the classes that have already committed themselves to this delusive theory will be shared by the whole American people if the practice of birth control becomes general. In order to prevent a declining population, it is necessary that an average of about three and three-fifths children should be born for each married couple. By this time we have sufficient experience to warrant the prediction that the average number of children in families addicted to

birth control will remain considerably less than three and three-fifths. Hence, this simple and sovereign remedy for poverty tends inevitably to bring about a declining population. When that condition arrives, the American people will be at the same disadvantage as that which now besets the so-called superior classes in relation to the so-called inferior but more prolific classes. The "inferior" *peoples* will conquer and survive.

Social workers who advocate the theory and practice of birth control are surely taking a short-sighted view of social progress. They are subordinating society as a whole, particularly the society of the future, to the material welfare of the individual. They are encouraging individual selfishness at the expense of social well-being.

If anyone objects that what we are now talking about is the moral rather than the spiritual element, the answer is that no true morality nor any adequate conception of moral good is possible without a recognition of the human soul, the spiritual principle in human beings. Without such recognition, morality becomes a mere calculus of pleasure and pain. The moral good becomes identified with the useful. Unless we think of man as possessing an indestructible spirit made in the image and likeness of God, we cannot hold that he or his conduct has intrinsic worth. Murder, theft, and every other evil act cease to be wrong in themselves. Charity, justice and all the other virtues cease to be good in themselves. They are good only in so far as they are useful. Useful for what? Evidently for one's own pleasure or happiness only. There can be no other good or conception of good which it is worth one's while to seek if one gives up the doctrine that some things are good in themselves. And this doctrine is necessarily given up when one abandons or ignores the truth of the spiritual element in man.

The spiritual element has an important relation to theories

of crime and punishment. Unless we cling to the truth that man is endowed with that immaterial principle which we call the soul, we cannot attribute to him free will or responsibility. If his will be not free; if he lack the power to choose between doing and not doing a given thing at a given moment, he is not morally accountable for his actions or omissions. He is no more responsible than the cyclone or the tiger. He is not the efficient cause of his actions. He is only an instrumental cause, like the pen with which he writes or the gun with which he shoots.

If man has not free will, the criminal could not have avoided his crime. He was the helpless instrument of his motives, his character and his environment. He cannot of himself make a resolution to do better in the future, for he has not the power to originate any act, internal or external. He can no more feel remorse for his crime than for talking in his sleep. The encouragement to criminal actions which acceptance of this theory can easily produce in the criminally inclined needs no elaboration.

When the criminal is brought to trial, his treatment and sentence will necessarily take no account of his moral desert, of his degree of moral guilt. The only determining elements will be the probability of reforming him, as a vicious dog might be reformed, and adequate protection to society against a repetition of the offense by this criminal or by others like him. Being devoid of a soul, he possesses no intrinsic worth, no sacredness of personality. If he seems incapable of reformation, or if the process of reforming him does not seem likely to produce a sufficient influence upon others, then he may reasonably be kept in prison indefinitely or put to death. All these conclusions are involved in rejecting or ignoring the spiritual element.

Thus far we have dealt with the place of the spiritual element in the theory and objects of social work. Let us

now glance briefly at its function as a motive. Probably no social worker acts for any considerable time in response to a single motive. In social work, as elsewhere, more than one motive enters into the sum total of psychical forces which precede and influence human action. Among the various motives there is usually one which is predominant.

In social work the predominant motive sometimes arises from the desire to get a living by continuing to hold one's job; sometimes it may be the joy of work, the peace and satisfaction which come from daily activity in congenial tasks; sometimes it may be pity for and sympathy with the individuals and groups that are the beneficiaries of the social worker's ministrations. None of these motives is morally bad or even unworthy; none of them is ineffective. Of the three, the last mentioned is likely to be the most fruitful and it surely rises highest in the scale of moral values.

Higher than all of them, more effective than all, is the motive which derives from formal and adequate consideration of the spiritual element. When we reflect that the human person is not merely a combination of muscle, nerves and brain, but that he possesses an immaterial and indestructible principle which we call the soul, we have a much more powerful reason for serving him than any which can be generated by considerations which have to do with self-satisfaction or emotional reactions. Nevertheless, there is a still higher and more effective way in which the spiritual element can function as a motive of social work. It becomes available when we consider the human person in distress as possessing a soul which is made in the image and likeness of God; when we reflect that his intrinsic worth is based upon the infinite worth of God; and when we realize that he deserves to be helped not merely because he is a person, not merely for his own sake, but because he is a child of God—in the Christian philosophy, an adopted son of God.

This motive is confirmed and strengthened by the positive Divine command to love one's neighbor as one's self. For the follower of Christ, it receives its supreme value from the declaration of the Master that the command to love the neighbor as the self is like unto the command to love God. In Catholic theology, these truths are summed up in the doctrine that love of God and love of the neighbor are based upon the same Divine motive. Both kinds of love are included under the supernatural virtue of charity. According to this conception, social work can be elevated to the same level as love of God. A final element of strength in this motive of serving the needy neighbor from love of God is derived from the rewards promised by Christ in the life to come. "Amen I say to you, as long as ye did it to one of these my least brethren ye did it to me. . . . Come ye, blessed of my Father, possess you the kingdom prepared for you from the foundation of the world."

It ought not to be necessary to observe that this promise applies only to charitable actions and social work for the relief of genuine need. Christ did not say anything about rewarding assistance extended to those who pretend to be sick, who pretend to be hungry, who pretend to be thirsty, who pretend to be in want of clothing. The assumption that the hope of eternal reward encourages or justifies useless or harmful almsgiving has no basis in the doctrine itself.

Surely the motive that we have just been considering is at once the highest within the reach of the social worker and easily capable of becoming the most effective. It excludes none of the inferior motives. One can carry on social work because its objects are children of God, without discarding motives drawn from the need of getting a living, or pleasure in the work, or pity and sympathy for the distressed, or love of the neighbor for his own sake. Social work for love of God completes and crowns all the other

motives. It was probably what Mrs. Sidney Webb had in mind when she wrote: "For my own part, I find it best to live as if the soul of man were in communion with a superhuman force which makes for righteousness." This motive enables the social worker to feel that he or she is coöperating with that "superhuman force which makes for righteousness." Surely this conception gives to social work an infinitely higher value than any other motive or theory.

I have tried to refrain from making this address a sermon. My only aim has been to set forth a philosophy of social work which seems to me to be the only one compatible with lasting social progress. I have striven to describe it in such terms that it can be accepted not only by Catholics, not only by Protestants, not only by orthodox Jews, but by every person who believes in the supreme dominion of God and the indestructible worth of the human spirit.

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