





## **THE GOOD SOCIETY**

*By the same author*

**PUBLIC OPINION**

**THE POLITICAL SCENE**

**A PREFACE TO MORALS**

**INTERPRETATIONS, 1931-1932**

*Selected and Edited by Allan Nevins*

**THE METHOD OF FREEDOM**

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**TO WALTER WILMERDING**

*March 23, 1937*





## INTRODUCTION TO THE 1943 EDITION

THIS book was written before the war. It was written in order to define the principles which may guide us in the postwar world.

I began work upon it in the late summer of 1933 after I had attended the London Economic Conference. Sharp in my mind were the impressions I had received two years earlier, from watching the League of Nations attempt to deal with the Japanese seizure of Manchuria. With the failures at Geneva and at London and with the rise of Hitler, it was evident that the world was moving towards a gigantic war. I completed the book in the early spring of 1937, that is to say after Hitler had reoccupied the Rhineland and just before the Japanese invasion of North China.

The book, as the reader will see, is stamped with the realization that

the dominant fact in the contemporary world  
is the return of the European and Asiatic  
great powers to the conception of total war [p. 149],

that

Germany, renascent under Nazi leadership,  
would . . . seek to annihilate all rival  
powers in Europe [pp. 148-149],

and that in Russia

the form of the political state, the plan  
of the economy, the determining policies  
of the regime, are what they are because Russia  
has been preparing for war on her European  
and on her Asiatic frontiers. [p. 88]

Here and abroad, by the years 1935-1937, these observations were the common knowledge of so many officials and correspondents that they were not news, much less prophecy. But they were the axioms of any inquiry into the future.

So there was little time left, I felt, to clear my mind and settle my own convictions before the tempest descending upon us must leave us so preoccupied with the terrible daily urgency of war that it would be difficult to think at all of the more permanent things. With that impulse this postwar book was composed in the closing days of the prewar era.

I wrote it, daring to believe that the causes of the coming war and the principles of the reconstruction to follow it were known. I do not mean that I could invent them, or could discover them; only that it was possible to find them and to know them. I had learned that in respect to political principle in our ancient civilization only the naïve think they can be original. For the enduring principles are enduring because they reflect a very long experience.

The first eight chapters of the book may now be tested by hindsight, and the reader will readily see where they were correct and where they were not. These eight chapters are an analytic criticism of the falsities that have animated the great reaction of our times; this reaction set in about 1870 and it has doomed our generation to pass through the terrible ordeal of total wars and of revolutionary dictatorship. The remainder of the book is a constructive affirmation of the principles to which, I believe, men must and will adhere when the reaction subsides and they resume the work, so often interrupted, of conserving and developing the civilization of which we are the inheritors.

The constructive portion of the book, which begins on page 159, is built upon two affirmations. The first, and the more fundamental of the two, is that the politics, law, and morality of

the Western world are an evolution from the religious conviction that all men are persons and that the human person is inviolable. "Towards this conviction men have fought their way in the long ascent out of the morass of barbarism. Upon this rock they have built the rude foundations of the Good Society." (p. 378)

The second affirmation is that the industrial revolution "which still engages the whole of mankind and poses all the great social issues of the epoch in which we live, arises primarily from the increasing division of labor in ever-widening markets; the machine, the corporation, the concentration of economic control and mass production, are secondary phenomena." (p. 164)

The central theme of the book is posed by these two affirmations: the problem, as I see it, is how to reconcile with the comparatively new economy of the division of labor the great and ancient and progressive traditions of liberty embodied in laws which respect the human personality. The reader will find set out at length the argument as to why fascism, communism, state socialism, state capitalism, and nineteenth-century laissez-faire individualism, are incapable of reconciling the modern economy with our cultural heritage. In Chapters XI, XII, and XIII he will find what I believe to be the necessary principles of the reconciliation.

Inasmuch as I rest my case upon old and tested truths, I do not feel that I am guilty of pride of opinion when I say that the experience through which we have passed since the book was first published has not shaken but has, in fact, strengthened my conviction that it contains more truth than error. Obviously, if I wrote the book today, I would change many things in it. I would, I hope, be able to spare the reader much trouble by shortening it. But the defects of the book must be attributed to the author; the truths which it expounds are the

work of the masters of our civilization, and the reader must not let the faults of the disciple too greatly disturb him.

In the text and in the footnotes I have acknowledged the sources upon which I have drawn; there too will be found the teachers by whom I have been taught.

W. L.

WASHINGTON, D. C.

*September 6, 1943*

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**BOOK I**  
**THE PROVIDENTIAL STATE**

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## I

### THE DOMINANT DOGMA OF THE AGE

There will be some fundamental assumptions which adherents of all the various systems within the epoch unconsciously presuppose. . . . With these assumptions a certain limited number of types of philosophic systems are possible, and this group of systems constitutes the philosophy of the epoch.—ALFRED NORTH WHITEHEAD, *Science and the Modern World*, page 69

IN the violent conflicts which now trouble the earth the active contenders believe that since the struggle is so deadly it must be that the issues which divide them are deep. I think they are mistaken. Because parties are bitterly opposed, it does not necessarily follow that they have radically different purposes. The intensity of their antagonism is no measure of the divergence of their views. There has been many a ferocious quarrel among sectarians who worship the same god.

Although the partisans who are now fighting for the mastery of the modern world wear shirts of different colors, their weapons are drawn from the same armory, their doctrines are variations of the same theme, and they go forth to battle singing the same tune with slightly different words. Their weapons are the coercive direction of the life and labor of mankind. Their doctrine is that disorder and misery can be overcome only by more and more compulsory organization. Their promise is that through the power of the state men can be made happy.

Throughout the world, in the name of progress, men who call themselves communists, socialists, fascists, nationalists, pro-

gressives, and even liberals, are unanimous in holding that government with its instruments of coercion must, by commanding the people how they shall live, direct the course of civilization and fix the shape of things to come. They believe in what Mr. Stuart Chase accurately describes as "the overhead planning and control of economic activity."<sup>1</sup> This is the dogma which all the prevailing dogmas presuppose. This is the mold in which are cast the thought and action of the epoch. No other approach to the regulation of human affairs is seriously considered, or is even conceived as possible. The recently enfranchised masses and the leaders of thought who supply their ideas are almost completely under the spell of this dogma. Only a handful here and there, groups without influence, isolated and disregarded thinkers, continue to challenge it. For the premises of authoritarian collectivism have become the working beliefs, the self-evident assumptions, the unquestioned axioms, not only of all the revolutionary regimes, but of nearly every effort which lays claim to being enlightened, humane, and progressive.

So universal is the dominion of this dogma over the minds of contemporary men that no one is taken seriously as a statesman or a theorist who does not come forward with proposals to magnify the power of public officials and to extend and multiply their intervention in human affairs. Unless he is authoritarian and collectivist, he is a mossback, a reactionary, at best an amiable eccentric swimming hopelessly against the tide. It is a strong tide. Though despotism is no novelty in human affairs, it is probably true that at no time in twenty-five hundred years has any western government claimed for itself a jurisdiction over men's lives comparable with that which is officially attempted in the totalitarian states. No doubt there have been despotisms which were more cruel than those of

<sup>1</sup> *The Economy of Abundance*, p. 310.

Russia, Italy, and Germany. There has been none which was more inclusive. In these ancient centres of civilization, several hundred millions of persons live under what is theoretically the absolute dominion of the dogma that public officials are their masters and that only under official orders may they live, work, and seek their salvation.

But it is even more significant that in other lands where men shrink from the ruthless policy of these regimes, it is commonly assumed that the movement of events must be in the same general direction. Nearly everywhere the mark of a progressive is that he relies at last upon the increased power of officials to improve the condition of men. Though the progressives prefer to move gradually and with consideration, by persuading majorities to consent, the only instrument of progress in which they have faith is the coercive agency of government. They can, it would seem, imagine no alternative, nor can they remember how much of what they cherish as progressive has come by emancipation from political dominion, by the limitation of power, by the release of personal energy from authority and collective coercion. For virtually all that now passes for progressivism in countries like England and the United States calls for the increasing ascendancy of the state: always the cry is for more officials with more power over more and more of the activities of men.

Yet the assumptions of this whole movement are not so self-evident as they seem. They are, in fact, contrary to the assumptions bred in men by the whole long struggle to extricate conscience, intellect, labor, and personality from the bondage of prerogative, privilege, monopoly, authority. For more than two thousand years, since western men first began to think about the social order, the main preoccupation of political thinking has been to find a law which would be superior to arbitrary power. Men have sought it in custom, in the dictates of

reason, in religious revelation, endeavoring always to set up some check upon the exercise of force. This is the meaning of the long debate about Natural Law. This is the meaning of a thousand years of struggle to bring the sovereign under a constitution, to establish for the individual and for voluntary associations of men rights which they can enforce against kings, barons, magnates, majorities, and mobs. This is the meaning of the struggle to separate the church from the state, to emancipate conscience, learning, the arts, education, and commerce from the inquisitor, the censor, the monopolist, the policeman, and the hangman.

Conceivably the lessons of this history no longer have a meaning for us. Conceivably there has come into the world during this generation some new element which makes it necessary for us to undo the work of emancipation, to retrace the steps men have taken to limit the power of rulers, which compels us to believe that the way of enlightenment in affairs is now to be found by intensifying authority and enlarging its scope. But the burden of proof is upon those who reject the oecumenical tradition of the western world. It is for them to show that their cult of the Providential State is in truth the new revelation they think it is, and that it is not, as a few still believe, the gigantic heresy of an apostate generation.



## II

### THE GODS OF THE MACHINE

#### *1. Technical Progress and Political Reaction*

LIKE the man who said he knew the earth was flat because it had looked flat to him in all the places he had ever visited, each generation is disposed to regard its main assumptions as self-evident even when in fact they have merely been adopted uncritically. Generally this disposition is fortified by some large interpretation of experience supplied by the learned men of the age. The doctrine of the divine right of kings was a classic example. The claim of the king to unlimited power was removed from the field of debate — that is to say, was made axiomatic — by the assumption that he ruled by the grace of God. The men who might have questioned the king were silenced because they did not dare to question the God who had appointed the king.

The current return to the authoritarian principle in politics finds its principal sanction in the belief that the new machine technology requires the control of an omnipotent state. There are many versions of this basic idea. By some it is said that only the strong arm of government can protect men against the brutal oppression of their machines; by others that only the power of government can realize the beneficent promise of the machines. But all agree that in the recent progress of technology there is some kind of deep necessity which compels mankind to magnify the sovereignty of officials and to intensify

their intervention in affairs. The modern state holds its sovereign power by grace of the gods of the machine.

"As industry advances in mechanization," says Mr. Lewis Mumford, "a greater weight of political authority must develop outside than was necessary in the past."<sup>1</sup> It is from this thesis that the intellectual leaders of the modern world have derived their belief that the liberal conception of the state belongs, as President Roosevelt once put it, to a "horse and buggy" era.<sup>2</sup>

Yet this thesis, which our generation has come to think of as self-evident, involves an extraordinary paradox. Thus Mr. Mumford, using a scheme invented by Professor Patrick Geddes, suggests that, "looking back over the last thousand years, one can divide the development of the machine and the machine civilization into three successive but overlapping and interpenetrating phases: the co-technic [based on water-and-wood], the paleo-technic [based on coal-and-iron] and the neo-technic [based on electricity-and-alloy]"<sup>3</sup> This is a convenient and illuminating classification. But what must interest us here primarily is Mr. Mumford's deduction that in the neo-technic phase — that is, the phase we are now in — the officials of the state must regulate production and consumption, that at least in the field of what he calls the "basic requirements" of food, clothing, shelter, and "necessary luxuries"<sup>4</sup> the state must impose "rationed production" and "communized consumption" and "compulsory labor."<sup>5</sup>

Is it not truly extraordinary that in the latest phase of the *machine* technic we are advised that we must return to the *political* technic — that is, to the sumptuary laws and the forced labor which were the universal practice in the earlier phases

<sup>1</sup> *Technics and Civilization*, p. 420.

<sup>2</sup> Interview to the Press, May 31, 1935.

<sup>3</sup> *Op. cit.*, p. 109.

<sup>4</sup> *Ibid.*, p. 395.

<sup>5</sup> *Ibid.*, p. 405.

of the machine technic? I realize that Mr. Mumford hopes and believes that the omnipotent sovereign power will now be as rational in its purposes and its measures as are the physicists and chemists who have invented alloys and harnessed electricity. But the fact remains that he believes the beneficent promise of modern science can be realized only through the political technology of the pre-scientific ages. For the whole apparatus of a politically administered economy, the fixed prices and fixed wages, the sumptuary laws, the forced labor, the communized consumption, the directed production, not to speak of the censored and managed opinion in the totalitarian states, is a reversion to the political technic which had to be rejected in order that the industrial revolution could take place. It is, therefore, by no means self-evident that men must once again adopt this technic in order that the promise of the industrial revolution may be realized.<sup>6</sup>

For the regulation of industry by the state was never more minute than in the century before the great technical innovations. Think for a moment what that regulation meant. Take, for example, the famous system of *règlements* whereby Colbert, the minister of Louis XIV, sought to codify and generalize the industrial law.<sup>7</sup> From the year 1666 until 1730 the regulations of the textile industry alone are contained in four quarto volumes of 2200 pages and three supplementary volumes. The rules for Burgundy and four neighboring districts, covering the manufacture of woollens, specify that the fabrics of Dijon and Selongey are to be put in reeds  $1\frac{3}{4}$  ells wide, a warp to contain 44" x 32" threads, including the selvages, and when it comes to the fulling mill the cloth is to be exactly one ell wide. But in Semur and four other places

<sup>6</sup> The political technic of the industrial revolution is the theme of Book III.

<sup>7</sup> The material that follows is from Eli F. Heckscher's *Mercantilism*, Vol. I, p. 157 *et. seq.* (London: George Allen & Unwin Ltd.)

the warp is to have 1376 threads, whereas Châtillon is to use 1216 threads. Somehow the town of Langogne seems to have been overlooked until 1718, when an edict was published stating that "His Majesty is informed that no règlement specifies from how many threads those cloths are to be composed; a matter which must be attended to without fail."

If we ask how His Majesty was to know how many threads he should call for in Dijon, Semur, or Langogne, the answer is, of course, that he found this out from the established manufacturers, and that his règlements were essentially a device for protecting their vested interest against the competition of enterprising innovators. This is the inevitable method of authoritative regulation, for no king and no bureau can hope to imagine a technic of production other than the technic which happens to exist. Occasionally the government may have a bright idea, but its normal procedure must inevitably be to throw the weight of its authority behind the routine of the established interests. What Colbert did under Louis XIV was precisely what General Johnson<sup>8</sup> and Secretary Wallace did under President Roosevelt. Colbert regulated industry and agriculture by fortifying and subsidizing the established producers, and he tried to be thorough. The manufacturers of Saint-Maixent "had to negotiate for four years, from 1730 to 1734, before they could secure permission to use black warp."<sup>9</sup> They never were allowed to weave in black weft.

Naturally the system did not work very well. The more the règlements were violated, the more the règlements were multiplied. Lawsuits were endless, smuggling and bootlegging omnipresent, and every so often the government set out to prove that it not only issued regulations but meant them. It felt particularly vehement about printed calicoes; for the French printing industry was backward and the textile producers de-

<sup>8</sup> Cf. *The ABC of the NRA*, published by Brookings Institution.

<sup>9</sup> Heckscher, *op. cit.*, p. 170.

manded protection. Certainly the government did its best. "It is estimated," says Heckscher, "that the economic measures taken in this connection cost the lives of some 16,000 people, partly through executions and partly through armed affrays, without reckoning the unknown but certainly much larger number of people who were sent to the galleys, or punished in other ways. On one occasion in Valence, seventy-seven were sentenced to be hanged, fifty-eight were to be broken on the wheel, six hundred thirty-one were sent to the galleys, one was set free and none was pardoned. But even this vigorous action did not help to attain the desired end. Printed calicoes spread more and more widely among all classes of the population, in France as everywhere else."<sup>10</sup>

Authoritative regulation of an economy is not a modern invention. On the contrary, it was practised by the Pharaohs in Mr. Mumford's eo-technic phase of machine civilization. Under Diocletian it was the recognized method of government, under the Byzantine emperors, under Louis XIV, under Hapsburgs and Romanoffs. Far from being something new, deduced from what Mr. George Soule calls "the growth of technical civilization," it has been from immemorial antiquity the practice of governments in a pre-technical civilization. As a matter of fact, it was the polity of the Ancien Régime.

Now there is very good reason why the authoritative regulation of industry is appropriate to a primitive economy, and why it is inappropriate to one in which technical change is continual and radical. The overhead direction of an economy must by its very nature be general. Only occasionally can the commands and prohibitions be changed. This method of social control is suited, therefore, to a well-established routine which has to be altered only at rare intervals. But in the industrial revolution there is constant technical change, due to continual invention. The best machines of yesterday will be old-

<sup>10</sup> *Ibid.*, p. 173.

fashioned machines to-morrow. The official cannot issue new commandments as fast as the inventors can invent. If he bases his decrees on yesterday's process, he must either suppress to-morrow's process or he must connive at disorder. The introduction of new methods cannot be coercively planned and directed. For until the new methods have been tried out no one can know what decrees to issue. Men learned this in the eighteenth century. They found out that they must either forbid new inventions, as the French monarchy did when confronted with printed calicoes, or they must give up the attempt to have officials direct the processes of production. It is, therefore, no coincidence that minute direction from above has always been found in a relatively unprogressive economy. For new inventions are made by trying out all sorts of schemes to find out whether they work. But the experiment does not end at the laboratory door. It goes on. The next step is to install one or two of the new machines in a factory or to build a small experimental factory which is something between a laboratory and a commercial concern. Even then the experimentation is not ended. For if the new scheme is to work, the process of adopting it throughout an industry has to be carried on experimentally over and over again in relation not merely to the technic but to all the other factors, such as the cost of capital, the wages and skill of labor, the aptitude of the managers, and the like. That is why directive laws — by their nature static and inert — are technically unsuited to the highly dynamic character of the industrial revolution.

## *2. Machinery and Corporate Concentration*

Those who argue that the advancing industrial technic requires increasing political authority have probably been misled by certain of the phenomena of modern industrialism. They

see, for example, that in some branches of production a few large concerns — or even one alone — control the industry, fixing prices and wages. They then assume that this concentration of industrial power is the result of machine production, that it does not regulate itself in a competitive market, and that, therefore, it must be regulated by a very strong government.

But in this argument the initial assumption is a fallacy. The concentration of control does not come from the mechanization of industry. It comes from the state, which began about a hundred years ago to grant to anyone who paid a nominal fee what had hitherto been a very special privilege. That was the privilege of incorporation with limited liability and perpetual succession. President Nicholas Murray Butler has said of this momentous legal revolution: —

I weigh my words when I say that in my judgment the limited liability corporation is the greatest single discovery of modern times, whether you judge it by its social, by its ethical, by its industrial, or, in the long run, — after we understand it and know how to use it, — by its political effects. Even steam and electricity are far less important than the limited liability corporation, and they would be reduced to comparative impotence without it.<sup>11</sup>

This is no exaggeration. For, without the privileges and immunities of the corporate form of economic organization and property tenure, the industrial system as we know it could not have developed and could not exist. So fundamentally true is this that we should do well to follow the suggestion of Messrs. Berle and Means and speak not of the capitalist system but of the corporate system.<sup>12</sup> If that system exhibits a high degree of concentrated control, the cause is to be found not in the technic of production, but in the law.

<sup>11</sup> *Why Should We Change Our Form of Government?*, p. 82.

<sup>12</sup> *The Modern Corporation and Private Property*.

What, to take obvious examples, has the machine technology to do with the chain store or with the United States Steel Corporation or the General Motors Corporation? These organizations exist because of a special and recent development of the law which permits one limited liability corporation to own other limited liability corporations. There may possibly be some small industry, perhaps one based on a secret process or an exclusive patent, where control is concentrated without use of the privilege and immunities of the corporate device. But it would be neither representative nor significant. The concentration of control in modern industry is not caused by technical change but is a creation of the state through its laws. This is obviously true of public utilities, which hold a franchise for a monopoly. It is no less true of all other industries which approach monopoly.

We must not let ourselves confuse monopolistic control with the large-scale production required by expensive machinery. The scale on which factories have to be organized in order to make the most efficient use of new inventions and labor-saving machinery may look big. But it is practically never so big as the industry.<sup>28</sup> In other words, while large factories may, up to a point, be more efficient than small ones, no factory needs to be or can be big enough to supply the whole market. Mass production does not require monopoly. When the Steel Corporation enlarges its business it does not necessarily enlarge its plant in Pittsburgh. It builds another somewhere else. What holds together these various plants is not the technic of mass production but the legal device of incorporation.

The assumption that great corporate capitalism is in some mysterious way the inexorable consequence of machinery is an illusion. What is more, it is by no means certain that the

<sup>28</sup> Cf. *Big Business: Its Growth and Place*, published by Twentieth Century Fund, Inc.



highest development of technology is favored by this concentrated corporate control. It is a matter of common knowledge that beyond a certain point increasing size yields a diminishing return, that many of the biggest corporations are too big to be well managed, and that they become rigid and opposed to change. There is sound reason for thinking that the laws which foster concentrated control are from the point of view of technological progress reactionary, that they retard it rather than promote it, and that industrial laws suited to the genius of modern technology would vary in important respects from the laws which exist. Laws adapted to modern technology would almost certainly seek to discountenance a scale of production beyond the point of technical efficiency, to discourage concentrated control which weakens the incentives, destroys the objective criteria of the competitive market; they would seek to prevent the erection of great and rigid capital structures which make technical change ruinously expensive.

The collectivists who think that business must grow bigger and bigger until only the government is big enough to dominate it would pile Ossa on Pelion. They are not interpreting the inward principle of the modern industrial revolution. They are ascribing to the technicians results which have been produced by lawyers and politicians. They are proposing, as a remedy for the evils resulting from the mistakes of the lawmakers, political measures which long ago had to be abandoned in order that the technicians could do their work.

There is no doubt about the evil of corporate concentration. But that very evil the collectivists accept, sanctify as necessary, and then propose to multiply a thousandfold by effecting a super-concentration in the state. It is not a necessary evil. Concentration has its origin in privilege and not in technology. Nor does technology require high concentration. For technical progress, being in its essence experimental, calls for much trial

and error. That means that if industry is to advance technically, it must be flexible, not rigid; change must be possible because it is not too costly; managers must be free, as technicians are free, to make many mistakes in order to achieve a success.

Those who do not like such a programme, who would prefer industry stabilized into routine and administered by corporate or public bureaucrats, are entitled to their preference. But they must not pretend that they are the spokesmen of modern science seeking to make more effective man's mastery of nature. If what they are seeking is a social order in harmony with the genius of the scientific method and of the modern economy of production, they should look with the profoundest skepticism upon the claims of the collectivist movement. Whatever form collectivism takes, whether the great corporate structures of private enterprise, or the national collectivism of the fascists, of the communist or of the gradualist parties, its adherents claim to be adapting the organization of industry to the progress of technology. Against that claim there is a strong presumption. For these great centralized controls which have to be governed authoritatively by corporate officials or by public officials are unsuited to a system of production which can profit by new invention only if it is flexible, experimental, adjustable, and competitive. The laboratories in which the technic is being developed cannot produce the inventions according to a centrally directed plan. The future technology cannot be predicted, organized, and administered, and it is therefore in the highest degree unlikely that an elaborately organized and highly centralized economy can adapt itself successfully to the intensely dynamic character of the new technology.

It is not probable, therefore, that "as industry advances in mechanization, a greater weight of political power must develop outside than was necessary in the past." There is, on the contrary, a strong presumption that the collectivist movement

is a tremendous reaction in human affairs, that on the main line along which western society has advanced it is carrying mankind backward and not forward. The collectivists generalize from an interpretation of a relatively short historical epoch. They have confused the phenomena of the latest phase of the corporate system with the consequences of modern technology. They have come to think of these phenomena as fatally determined, when in fact, without foreseeing the consequences, the nineteenth-century states permitted and provoked them. This was done, as I hope to demonstrate,<sup>14</sup> because the liberal democrats, mistaking the privileges of corporate bodies for the rights of man, the immunities of artificial persons for the inviolability of natural persons, the possession of monopolies for private property, failed to develop their own intuitions and their own doctrines.

Because they have assumed that the development of concentrated corporate capitalism is the natural and necessary outcome of the new technology, the collectivists, whether they be big businessmen or socialists, have turned from the liberal to the authoritarian conception of society. Had they taken a longer view they would have questioned their basic premise, remembering that the scientific achievements which they now regard as compelling the establishment of authority became possible only as scientific inquiry was emancipated from authority. However pleasant its promises, they would have hesitated to revive the absolute state. They would have remembered that before modern society could be created the state had to be subjected to a constitutional system. They would have been slow to return to compulsion as an instrument of "synthesis, coördination, and rational control,"<sup>15</sup> and as the specific for private acquisitiveness and antisocial behavior. They would

<sup>14</sup> Ch. X.

<sup>15</sup> George Soule, *A Planned Society*, p. 91.

have recalled the long experience of mankind with the corruption of personal power. They would not have talked so easily about socializing and unifying nations by commands from the government had they remembered that the ascendancy of national kings over local barons, the unification of national states from discordant tribes, were revulsions against vexatious, exclusive, and intimately despotic authority. They would never have forgotten that modern technology and the greater abundance which have come from the division of labor *followed* the emancipation of men from the elaborate restrictions of the guilds and the mercantilist policies of landed interests and of ecclesiastical and dynastic power.

But these things have been forgotten by the teachers and leaders to whom this generation listens. In the past sixty or seventy years it has become the primal premise of thought and action that human progress must come not through a greater emancipation but through a revival of authority. However, the plain fact of the matter is that under the dominion of this doctrine progress has been arrested gradually but cumulatively, until at last there is a spectacular regression to lower standards of life and to a more degraded level of civilization. Though the apparatus of governing was never more elaborate, the world economy has been disintegrating into diminishing fragments. Even in the United States there has been a notable tendency to set up within the highly protected national economy all kinds of covert regional and occupational barriers by means of which special interests use political power to obtain exclusive advantages. It is unnecessary to do more than point to the atomization of Europe, where the separatist tendencies, not only among national states but within them, are everywhere provoked by the exercise of authority and with difficulty suppressed by the exercise of more authority.

But it should be noted particularly that the intensification of

government is not only aggravating the disunion which it seeks to prevent; it is arresting that very advance in science which is the reason given for the magnified officialdom. In several great nations proclaiming themselves the advance guard of human progress, free inquiry, which is the condition of scientific discovery, has been abolished in order that government may be more effective. Thus the naïve interpreters of the modern world who have justified the increase of authority in order to realize the promise of science find themselves facing the awkward fact that science is being crushed in order to increase the authority of the state.

### *3. Progress by Liberation.*

The events we are witnessing should not allow us to remain blind any longer to the truth that our generation has misunderstood human experience. We have renounced the wisdom of the ages to embrace the errors the ages have discarded. The road whereby mankind has advanced in knowledge, in the mastery of nature, in unity, and in personal security has lain through a progressive emancipation from the bondage of authority, monopoly, and special privilege. It has been through the release of human energy that men have lifted themselves above the primeval struggle for the bare necessities of existence; it has been by the removal of constraints that they have been able to adapt themselves to the life of great societies; it has been by the disestablishment of privilege that men have risen from the status of slaves, serfs, and subjects to that of free men inviolate in the ways of the spirit.

And how else, when we pause to ponder the matter, can the human race advance except by the emancipation of more and more individuals in ever-widening circles of activity? How can new ideas be conceived? How can new relationships, new

habits, be formed? Only by increasing freedom to think, to argue, to debate, to make mistakes, to learn from those mistakes, to explore and occasionally to discover, to be adventurous and enterprising, can change be more than the routine of a recurrent pattern. If those who happen by inheritance, election, or force to achieve the power to govern are not the sole originators of new ways, it follows that the energy of progress originates in the great mass of the people as the more gifted among them are released from constraint and stimulated by intercourse with other free-thinking and free-moving individuals.

This was the faith of the men who made the modern world. Renaissance, Reformation, Declaration of the Rights of Man, Industrial Revolution, National Unification — all were conceived and led by men who regarded themselves as emancipators. One and all these were movements to disestablish authority. It was the energy released by this progressive emancipation which invented, wrought, and made available to mankind all that it counts as good in modern civilization. No government planned, no political authority directed, the material progress of the past four centuries, or the increasing humanity which has accompanied it. It was by a stupendous liberation of the minds and spirits and conduct of men that a world-wide exchange of goods and services and ideas was promoted, and it was in this invigorating and sustaining environment that petty principalities coalesced into great commonwealths.

What reason, then, is there for thinking that in the second half of the nineteenth century the tested method of human progress suddenly became obsolete, and henceforth it is only by more authority, not by more emancipation, that mankind can advance? The patent fact is that soon after the intellectual leaders of the modern world abandoned the method of freedom the world moved into an era of intensified national rivalry,

culminating in the Great War, and of intensified domestic struggle which has racked all nations and reduced some to a condition where there are assassination, massacre, persecution, and the ravaging of armed bands such as have not been known in the western world for at least two centuries.

We belong to a generation that has lost its way. Unable to develop the great truths which it inherited from the emancipators, it has returned to the heresies of absolutism, authority, and the domination of men by men. Against these ideas the progressive spirit of the western world is one long, increasing protest. Thus we have rent the spirit of man, and those who by their deepest sympathies seemed destined to be the bearers of the civilizing tradition have turned against one another in fratricidal strife.

What could be more tragically and more preposterously confused than this choice? Must men renounce all that their ancestors struggled to achieve, or abandon the hope of making the world a better place for their children? Must they disregard as so much antiquated nonsense the principles by which governments were subjected to law, the great made accountable, the humble established in their rights? Shall they not remember the experience by which the violence of civil factions was subdued? Must they forget how their forefathers suffered and died in order that tyranny should end and that men should be free?

It is the choice of Satan, offering to sell men the kingdoms of this world for their immortal souls. And as always, when that choice is offered, it will be discovered after much travail that on those terms not even the kingdoms of the world can be bought.

### III

## THE GOVERNMENT OF POSTERITY

### *1. The Reception of a Myth*

**EVEN** if he remembers the struggle against absolutism, the contemporary collectivist will resent the charge that he is leading men back to the old order of things. He has such very different intentions from those which he imputes to the ministers of Louis XIV. For his eyes are upon the future, whereas theirs were on the past. They sought to preserve a great inheritance. He seeks to contrive a glorious destiny. If, like them, he relies upon the pervasive regulation of men's affairs, he feels sure that his different purpose will produce a different result.

He feels sure that it will because he hopes that it will. His ardent wish makes plausible one of the most enchanting myths which ever captured the human imagination. From the marriage of knowledge with force a new god is to be born. Out of the union of science with government there is to issue a providential state, possessed of all knowledge and of the power to enforce it. Thus at last the vision of Plato is to be realized: reason will be crowned and the sovereign will be rational. The philosophers are to be kings; that is to say, the prime ministers and their parliaments, the dictators and their commissars, are to follow the engineers, biologists, and economists who will arrange the scheme of things. The men who know are to direct human affairs and the directors are to listen to those who know. Though the providential state of the future is to have all the



authority of the most absolute state of the past, it is to be different; consecrated technicians are to replace the courtiers and the courtesans of the king, and the irresistible power of government is to dispose of mankind.

This myth has taken hold of the human imagination as ancestral religion has dissolved under the acids of modernity.<sup>1</sup> Men find themselves in a troubled world where they no longer look confidently to God for the regulation of human affairs, where custom has ceased to guide and tradition to sanctify the accepted ways. The dissolution of faith had been under way for generations, but in 1914 there took place a catastrophic unsettlement of the human routine. The system of the world's peace was shattered; the economy which was the condition of its prosperity was dislocated. A thousand matters once left to routine and taken for granted became questions of life and death.

In the darkness there was a desperate need for light. Amid overwhelming circumstance there was a desperate need for leading. In the disorder, as men became more bewildered in their spirits, they became more credulous in their opinions and more anxiously compulsive in their actions. Only the scientists seemed to know what they were doing. Only governments seemed to have the power to act.

The conditions could not have been more favorable to the reception of the myth. Science had become the only human enterprise which all men looked upon as successful. Society was broken and unruly. The need for authority was acute, yet the authority of custom, tradition, and religion was lost. In their extremity men hastened to entrust to government, which can at least act decisively and impressively, the burden of shaping their destiny. In science there was knowledge. In government there was power. By their union an indispensable

<sup>1</sup> Cf. my *Preface to Morals*, Part I. (London: George Allen & Unwin Ltd.)

providence was to be created and the future of human society contrived and directed. The people longed for kings who were philosophers. And so the men who wished to be kings declared that they were philosophers. All the things lacking in the actual world were projected upon the imaginary state that men so desperately desired.

## 2. *The Agents of Destiny*

But when we remember that any government is composed of mortal men, it is evident that there must be limits to the degree in which a social order can be planned and deliberately administered. It makes no difference whether the rulers of a state inherit authority or were elected to it, whether they received it by appointment or have captured it by force; it makes no difference where they came from or how they are thought to be inspired or to what grandeur and glory they aspire. They are men, and so their powers are limited. And the limits of their powers lie a long way this side of omniscience and omnipotence. It follows that though the ruler may think he has his patents from God, he does not have the wisdom or the power of God. Though he has his authority from the people, the potentialities of the human race are not realized in him.

No matter, therefore, how nobly the government may be derived, its faculties are not thereby commensurate with its origins: the king descended from Zeus does not inherit the competence of Zeus, and the elected ruler of a nation is not the mystical possessor of all his people's genius. Nor does the declaration of a government's purposes mean that it possesses the faculties to achieve them. Where there is a wish, there is not necessarily a way. Devotion to an end does not ensure the discovery of the means; pretensions do not magnify men's powers. And so the real, rather than the apparent, policy of

any state will be determined by the limited competence of finite beings dealing with unlimited and infinite circumstances.

Amid all the grandiose generalization and passionate willfulness of political debate, it is perilous to lose the humility which is the guardian of our sanity. The eye must recapture its innocence if it is to see things as they are: to see not the New Deal in terms of its aspirations, but the New Dealers in their actual careers; not fascism or communism as ideas, but fascists and communists as they govern great nations; to remember that while ideals are illimitable, men are only men. And when these men, breathing the incense burned before their altars, are tempted to regard themselves as the directors of the human destiny, they need to be reminded of the poet who, after a night in town, wandered into the zoo thinking rather well of himself as the last product of evolution until he became sober enough to remember that he was, after all, "a little man in trousers, slightly jagged."<sup>3</sup>

Governments are composed of persons who meet occasionally in a hall to make speeches and to write resolutions; of men studying papers at desks, receiving and answering letters and memoranda, listening to advice and giving it, hearing complaints and claims and replying to them; of clerks manipulating more papers; of inspectors, tax collectors, policemen, and soldiers. These officials have to be fed, and often they overeat. They would often rather go fishing, or make love, or do anything, than shuffle their papers. They have to sleep. They suffer from indigestion and asthma, bile and palpitation, become bored, tired, careless, and have nervous headaches. They know what they have happened to learn, they are aware of what they happen to observe, they can imagine what they happen to be interested in, they can accomplish only what they can command or persuade an unseen multitude to do.

<sup>3</sup> "The Menagerie," by William Vaughn Moody.

In the prevailing view they are the agents of destiny. It is they, or others panting to take their places, who are to contrive the shape of things to come. They are to breed a better race of men. They are to arrange abundance for all. They are to abolish classes. They are to take charge of the present. They are to conceive the future. They are to plan the activities of mankind. They are to manage its labors. They are to formulate its culture. They are to establish its convictions. They are to understand, to forecast, and to administer human purposes and to provide a design of living for the unborn. Surely, greater love could no man have for the wisdom of his rulers than this, that he should put his life entirely in their hands.

In order to magnify the purposes of the state it is obviously necessary to forget the limitations of men. But in reality the limitations prevail and the behavior of the state must conform to them. Governments can do no more than they can do. In any one period there is, as it were, no more than a certain capacity to govern. This may gradually be increased by education and the invention of new instruments. There is no doubt, for example, that by means of such inventions as the telephone and telegraph, the typewriter and the printing press, calculating machines, and swifter means of transportation, the scale of effective government has been greatly enlarged since Aristotle said that a community must not extend beyond the territory which a naked eye could encompass.

But though men at the centre of authority can communicate with more men over greater distances than they could before, it must be remembered that by extending their influence they have complicated their task. These new instruments do not represent additional powers for governing the original community. If that were the case, they might be considered a net gain in the effectiveness of government.

But the fact is that though President Roosevelt has a greater reach than Pericles, he needs a very much greater reach. The

new instruments at Mr. Roosevelt's disposal serve his work no better than the tools of Pericles served his. The increase of the scale of human organization has complicated the work to such a degree that it is by no means certain that modern equipment is relatively more efficient. It would be rash, for example, to assume that Mr. Roosevelt can learn more about the needs and desires of the people of the United States through the newspapers and his mail and the reports of his advisers, though they travel by airplane and report by telephone, than Pericles could learn about Athenian public opinion through word of mouth; or that Mr. Roosevelt can convey more of his intentions to a larger proportion of his people by broadcasting his speeches than Pericles could by speaking in the agora.

A steam shovel can move more dirt than a spade, but it will not move a mountain more efficiently than a man can turn over the earth in his garden. If men can travel faster but have to go farther, they do not thereby arrive sooner at their destination. If they can do more but have more to do, they have not achieved their purposes more completely. To some very considerable degree, which obviously cannot be exactly determined, the effectiveness of the new instruments is neutralized by the fact that as the scale of government is enlarged its complexity is multiplied.

The human beings who actually govern have apparatus which covers more ground and therefore gives them more ground to cover. In between their greater complexities on the one hand and their more efficient instruments on the other they remain human beings with faculties of insight and foresight that have not grown appreciably greater in recorded history, and may in any one generation be regarded as fixed.

I do not suggest that this quantum can be measured. But I do suggest that the existence of some such relatively fixed limitation of human faculties can be inferred. Both in thought and in action there are continual choices in which something

has to be renounced if another thing is to be attained. Man cannot know and do all things. That is the mark of his mortality. He has to choose between the comprehensive and the specialized view; between the broad but shallow and the narrow but deep; between the large and cool, the small and hot, the panorama and the portrait; between a macro- and a micro-scopic understanding. In action, too, he must choose, one career excluding others, one course foreclosing its alternatives. By turning his face in one direction he turns his back in the other. So the decisions that men make in their practical affairs, like the decisions which determine the policies of states, are alternatives in which, because all things cannot be achieved at once, there is some sacrifice for every gain. So it is with statesmen: in deciding where they will spend their modicum of energy they must decide what purposes they will renounce, what desires they will, with Burke, leave to "a wise and salutary neglect."

Those who formulate the laws and administer them are men, and, being men, there is an enormous disparity between the simplicity of their minds and the real complexity of any large society. Attempts have been made, to be sure, to argue that the whole complex reality may be mystically present in the spirit of a popular legislature or even in that of a dictator; that somehow a few minds can be inspired to the point where they are universal and inclusive. Thus the voice of the people speaking through their representatives has been regarded as the voice of God, and, when it seemed a little too preposterous to think of three or four hundred politicians as inspired, the even more preposterous claim has been advanced that some triumphant agitator contains within himself the mind and spirit and faith of great populations.

All this is not one whit more credible than the notion once held by the whole European civilization that the earth, as

Shakespeare said, is "this huge stage . . . Whereon the stars in secret influence comment." Such philosophy made it certain that the wife of Bath was to be hardy and lusty because at her birth Mars was in the constellation Taurus.<sup>8</sup> The supposition that the rulers of a state can be fully representative of a whole society is a superstition of the same order, and in practice a more sinister one.

The ruler in any society is a private man doomed to take partial views. He may be looked upon as standing at the small end of a funnel which at its large end is as wide as the world in the past, the present, and the future. All that is relevant to human affairs ought to come through the funnel and into his mind. But in fact at the receiving end no more may pass through than he can understand. That is a very small part of the whole. And to understand even that small part he must turn to theories, summaries, analyses, principles, and dogmas which reduce the raw enormous actuality of things to a condition where it is intelligible.

Having mastered what he can, the ruler has then to contrive a method of thought enabling him to formulate policies which by small actions will produce large effects. He cannot govern every transaction. He cannot issue a specific command to each person. Only here and there can he intervene, hoping that his measures will multiply and reverberate. For in his actions, as in his understanding, he is at the small end of an instrument which at the other end opens to the whole world.

### 3. *The Illusion of Control*

There is no possibility, then, that men can understand the whole process of their social existence. Life goes on only because most of its processes are habitual, customary, and un-

<sup>8</sup> J. L. Lowes, *Geoffrey Chaucer*, pp. 20-21.

conscious. If they tried to think about everything, drawing each breath deliberately, willing each act before they acted, it would require such bewildering effort merely to exist that they would sink rapidly to the level of a conscious vegetable. It is only because men can take so much for granted that they can inquire into and experiment with a few things. "Foresight itself," says Whitehead, "presupposes [the] stability of a routine. But for the immense economy in which experience becomes habitual and unconscious, men would have neither the time nor the energy for deliberation."<sup>4</sup>

The thinker, as he sits in his study drawing his plans for the direction of society, will do no thinking if his breakfast has not been produced for him by a social process which is beyond his detailed comprehension. He knows that his breakfast depends upon workers on the coffee plantations of Brazil, the citrus groves of Florida, the sugar fields of Cuba, the wheat farms of the Dakotas, the dairies of New York; that it has been assembled by ships, railroads, and trucks, has been cooked with coal from Pennsylvania in utensils made of aluminum, china, steel, and glass. But the intricacy of one breakfast, if every process that brought it to the table had deliberately to be planned, would be beyond the understanding of any mind. Only because he can count upon an infinitely complex system of working routines can a man eat his breakfast and then think about a new social order.

The things he can think about are few compared with those which he must presuppose. They are as the world he can see with his eye is to the far reaches of the heavens and the deep recesses of matter. Of the little he has learned, he can, moreover, at any one time comprehend only a part, and of that part he can attend only to a fragment. The essential limitation, therefore, of all policy, of all government, is that the human

<sup>4</sup> *Adventures of Ideas*, p. 114 *et seq.*



mind must take a partial and simplified view of existence. The ocean of experience cannot be poured into the little bottles of our intelligence. The mind is an instrument evolved through the struggle for existence, and the strain of concentrating upon a chain of reasoning is like standing rigidly straight, a very fatiguing posture, which must soon give way to the primordial disposition to crouch or sit down.<sup>5</sup>

The mind, moreover, was evolved as an instrument of defense and for the mastery of specific difficulties: only in the latest period of human development have men thought of trying to comprehend a whole situation in all its manifold complexity. Even the intellectual conception is beyond men's capacities. In actual affairs they have to select isolated phenomena, since they have only limited energy and a short time in which to observe and to understand: out of the infinite intricacy of the real world, the intelligence must cut patterns abstract, isolated, and artificially simplified. Only about these partial views can men think. Only in their light can men act. To the data of social experience the mind is like a lantern which casts dim circles of light spasmodically upon somewhat familiar patches of ground in an unexplored wilderness.

It is, therefore, illusion to imagine that there is a credible meaning in the idea that human evolution can be brought under conscious control. And there can be no illusion except to those who take it for granted that what their minds have failed to grasp is irrelevant, that what they can comprehend intellectually is all that is necessary in dealing with a situation. No doubt it is true that the human mind could plan a society which it understood and direct one of which the scheme was intelligible. But no human mind has ever understood the whole scheme of a society. At best a mind can understand its own version of the scheme, something much thinner, which bears to reality

<sup>5</sup> John Murphy, *Primitive Man*, p. 76.

some such relation as a silhouette to a man. Thus policies deal with abstractions, and it is only with abstracted aspects of the social order that governments have to do.

For this reason social control can never be regarded as even an approximation to the kind of mastery which men have ascribed to God as the creator and ruler of the universe. It was God's prerogative to make a world suitable to His governance. Men govern a world already in being, and their controls may best be described as interventions and interferences, as interpositions and interruptions, in a process that as a whole transcends their power and their understanding. Men deceive themselves when they imagine that they take charge of the social order. They can never do more than break in at some point and cause a diversion.

A doctrine, a policy, measures, can take account only of certain of the more immediate and obvious aspects of a situation. The actual situation, as suggested by the assembling of orange juice, coffee, and toast for breakfast, is the result of a moving equilibrium among a virtually infinite number of mutually dependent variables.<sup>6</sup> A conceptual grasp of such a complex is not to be achieved, as Henderson shows, by the ordinary method of "cause and effect analysis," though it must be remembered that even in the use of such simple logic the hereditary, elected, and self-appointed rulers of men are not preëminently gifted. The logic by which it might become possible to analyze the "mutually dependent variations of . . . variables" is such an abstruse logico-mathematical undertaking that it is as much beyond the lay mind of a minister of public affairs or his technical advisers as chemistry is beyond a cook. As a matter of fact, it is a method of thought that even the most advanced students of human affairs are able to use only tentatively and most imperfectly.

<sup>6</sup> Cf. L. J. Henderson's *Pareto's General Sociology*.

Yet such a complex logic is necessary because the fundamental characteristic of any social system is that its innumerable elements are interdependent and interacting. No important action, therefore, has a simple consequence. Though a society is far more complicated than a family, the analytical problem may be illustrated by the example of a love affair between the man of one household and the woman of another. Let us suppose that there are two children from each of the marriages, that there are two divorces, and that the lovers marry and produce two children. Their love affair has not changed merely their two lives; it has changed ten lives. And while the two lovers may by consulting their own feelings be able to determine what will be the consequences to themselves, they are not likely to know the consequences for the eight other lives that are intimately affected.

The conceptual apparatus required for the successful analysis of a great society can perhaps be imagined by the mathematical logicians. But in the present state of human knowledge the apparatus is not yet perfected sufficiently to be used effectively by students of the social sciences, much less by public men. The time may come when the higher logic will have been sufficiently developed to enable thinkers to analyze the whole relevant social order, and from the analysis to predict successfully the real, not merely the apparent and immediate, effect of a political intervention.

Not until then will it be possible to contemplate a planned society consciously directed. It is not merely that we do not have to-day enough factual knowledge of the social order, enough statistics, censuses, reports. The difficulty is deeper than that. We do not possess the indispensable logical equipment — the knowledge of the grammar and the syntax of society as a whole — to understand the data available or to know what other data to look for.

The ideal of a directed society requires, therefore, something much more than a proletarian revolution to fulfill it. It requires a revolutionary advance in the logical powers of men comparable with that which took place when they learned to use algebra or the differential calculus in the analysis of the physical world. In certain of the more recondite branches of mathematical economics we may perhaps have premonitory intimations of the modes of thought that may some day be developed to a point where the social order can be successfully analyzed. I do not know. I do not understand them. But at best they can be no more than intimations of what Pareto, who labored in this field, called an ideal goal which "as regards the economic and social sciences . . . is almost never attained in the concrete."<sup>†</sup>

Perhaps the intimations are promising; it may be that men have picked up a scent which, if followed bravely, will lead them to the quarry and give them a dependable understanding with which to control human society. But those who do not realize the distance that has yet to be traversed from our present abstractions to formulations which could be used as the policies of a state in reshaping the social order are like those who, having heard of Dr. Carrel's immortal piece of chicken, expect soon to find the serum of immortality on sale at the corner drugstore.

<sup>†</sup> Vilfredo Pareto added: "Unfortunately it [the hypothesis of interdependence] can be followed in but relatively few cases because of the conditions that it requires. Essential to it, in fact, is the use of mathematical logic, which alone can take full account of interdependencies in the broadest sense. It can be used, therefore, only for phenomena susceptible of measurement—a limitation that excludes many many problems, and virtually all the problems peculiar to sociology. Then again, even when a phenomenon is itself measurable, serious difficulties arise as soon as it becomes at all complex." *The Mind and Society*, Vol. III, Sec. 1732, pp. 1192-93.

#### 4. *The Organization of Immobility*

Because of the limitations of our understanding and of our power, the dynamics of human capacity follow the rule that the more complex the interests which have to be regulated, the less possible is it to direct them by the coercion of superior authority. This is not the current view. It is generally supposed that the increasing complexity of the social order requires an increasing direction from officials. My own view is, rather, that as affairs become more intricate, more extended in time and space, more involved and interrelated, overhead direction by the officials of the state has to become simpler, less intensive, less direct, more general. It has to give way, as we shall see later,<sup>8</sup> to social control by the method of a common law.

Thus it is, I believe, a maxim of human association that the complexity of policy, as distinguished from law, must be inversely proportionate to the complexity of affairs. For, while a few things can be directed much, many things can be administered only a little.

The essential principle is clearly visible in the strategy of armies. If the campaign, let us say, of Colonel Lawrence in Arabia is compared with that of the Allies on the western front, it is plain that a war of movement is possible where there are small bodies of troops with light equipment; that as armies become larger and their equipment heavier, they lose the capacity for strategic manœuvre and are reduced to creeping tactical attrition. Their inertia becomes so great that they can only press on in the direction they have started to go and wait grimly to see whether they can outlast the enemy. In the final stages all mobility may disappear: when the service of supply becomes so elaborate that it can just barely supply itself. At

<sup>8</sup> Ch. XIII.

this point an army becomes stationary and can have no objective except to maintain itself wherever it happens to be.<sup>9</sup>

This principle of diminishing mobility with the increase of scale and complexity may be observed in all human organization. Mr. Henry Ford, for example, cannot change the design of the cheap car which he turns out in mass as he can change the design of a car made largely by hand; the new tools needed to vary the design are too complicated and too expensive. But Mr. Ford can change the design more readily than can a manufacturer who is immobilized by a great capital structure and a heavy load of debt. So, as industrial organization becomes bigger, it must become more inflexible, until in its last stages it is hostile to invention, enterprise, competition, and change. It is unable to consider any ideal except stability.

This narrowing of objectives with increasing complexity is the phenomenon of bureaucracy. It is to be found in governments and in corporate business, in armies and in churches and in universities. The more intricate the organization, the more it must renounce all other ambitions in order to perpetuate itself.

Thus it is no coincidence that the watchwords of policy in recent times should have been "Protection, stabilization, and security"—of output, hours of work, processes, markets, wages, prices, and the quality of goods. Though it is commonly believed that it was necessary to organize for stability against the "chaos" of competition, the truth is that it has become necessary to stabilize because organization has become so elaborate. As modern nations adopted protection, assented to large-scale industrial organization, with heavy fixed capital charges and large overhead costs, with wages and hours rigidly established by law or contract, with rates and prices set rigidly

<sup>9</sup> Cf. B. H. Liddell Hart's "Future Warfare," *Atlantic Monthly*, Dec. 1936.

by government commissions or by monopolistic agreements, the objective could no longer be increased wealth through new inventions, new enterprises, and successful competition. The objective had to become stabilization at the existing level of productivity, variety, and economic technic.

Thus it is that many have been persuaded that the import of cheaper goods is a menace, that technological progress is a disaster, that to produce more is to earn less. They have the conviction that if only they could close the ports of entry, if they could erect around their occupation a sufficiently high Chinese wall composed of holding companies, mergers, marketing contracts, production agreements, licenses, quotas, labor laws and labor contracts, a wall high enough to exclude new ideas, new methods, new men, and unusual labor, they would enjoy the blessings of stability. No doubt it is true that a society which organizes itself elaborately must go on until it has organized itself into rigidity, that it must seek stability because it cannot advance. It must imitate the mollusk, which, though it can neither walk, swim, nor fly, and has only meagre ambitions, does seem to enjoy a reasonably well-protected and stable existence.

### *5. The Nemesis of Authoritative Control*

The generation to which we belong is now learning from experience what happens when men retreat into a coercive organization of their affairs. Though they promise themselves a more abundant life, they must in practice renounce it; as the organized direction increases, the variety of ends must give way to uniformity. This is the nemesis of a planned society and of the authoritative principle in human affairs.

It is not insignificant — on the contrary it is a manifestation of the inexorable nature of things — that the cult of the state

as provider and savior should flourish in an era when the improvement of the general standard of life throughout the world has been retarded and in many places reversed; that the worship of Cæsar should be revived when there is a disintegration of political unions, an accentuation of regional, of clannish, of sectarian, of ethnic, and of national conflicts, a widespread assault on freedom of inquiry and of debate, a frontal attack from many quarters on the very idea that the individual has inviolable rights.

These phenomena, every one of them the symptom of regression to more primitive levels of social behavior, are not unconnected with that principle of authoritative management which has steadily taken possession of the thought, the actual policy, and the popular emotion of the modern world. Though it is the fashion to believe that because the progress of civilization has been arrested it is necessary to make organization more elaborate and to redouble the impact of authority, the truth of the matter is that the alleged remedy for the trouble is the real cause of it.

No doubt it is occasionally necessary to fight fire with fire by burning over areas in the path of the conflagration, or to dynamite one wing of a house in the hope of saving the rest. In this sense each nation may find itself constrained to raise its tariffs when its neighbors raise theirs, to direct or to subsidize one more industry because others are already being directed or subsidized. But it is a mistake to think that a man revolving in a vicious circle is an exemplar of progress, or that, having convinced himself that he must continue to revolve in it, he is the exponent of a novel and enlightened conception of human affairs.

For more than two generations an increasingly coercive organization of society has coincided with an increasing disorder. It is time to inquire why, with so much more authority, there is



so much less stability; why, with such promises of greater abundance, there is retardation in the improvement, in many lands a notable lowering, of the standard of life; why, when the organization is most nearly complete, the official idea of civilization is least catholic. The argument that it is "chaos" which compels the resort to authority cannot be true, — even though in an immediate situation it may be the only remedy for a present evil, — because, if it were true, the increase in coercive organization during the past three generations ought to have brought some increase in stability. But actually the disorder is greater than when the remedy began to be adopted and there is, therefore, an overwhelming presumption that it is coercion which is creating the chaos it purports to conquer.

It is not a mere coincidence that the cult of a directed civilization should be accompanied by a general foreboding that modern civilization is doomed. Why should it be that, in a time when men are making the prodigious claim that they can plan and direct society, they are so profoundly impressed with the unmanageability of human affairs? Is not the one mood the complement of the other? Is not their confidence inflated by despair, and their despair the deeper because of their pretensions?

They find that the more they organize, the more general is the disorganization; the more they direct affairs, the more refractory they become. They find the directed society harder and harder to direct. For they have reached the point where the organization is too elaborate to be managed. The attempt to regulate deliberately the transactions of a people multiplies the number of separate, self-conscious appetites and resistances. To establish order among these highly energized fragments, which are like atoms set in violent motion by being heated, a still more elaborate organization is required — but this more elaborate organization can be operated only if there is more

intelligence, more insight, more discipline, more disinterestedness, than exists in any ordinary company of men. This is the sickness of an over-governed society, and at this point the people must seek relief through greater freedom if they are not to suffer greater disasters.

### 6. *The Great Schism*

These observations have their place in the argument because they are necessary to an understanding of that great schism in the human outlook which has shaken the world. The essential difference between the faith that our generation has embraced and the faith that it has forsaken is to be found in what it thinks some men can do to manage the destiny of other men. The predominant teachings of this age are that there are no limits to man's capacity to govern others and that, therefore, no limitations ought to be imposed upon government. The older faith, born of long ages of suffering under man's dominion over man, was that the exercise of unlimited power by men with limited minds and self-regarding prejudices is soon oppressive, reactionary, and corrupt. The older faith taught that the very condition of progress was the limitation of power to the capacity and the virtue of rulers.

For the time being this tested wisdom is submerged under a world-wide movement which has at every vital point the support of vested interests and the afflatus of popular hopes. But if it is true that men can do no more than they are able to do, then government can do no more than governors are able to do. All the wishing in the world, all the promises based on the assumption that there are available omniscient and loving autocrats, will not call into being men who can plan a future which they are unable to imagine, who can manage a civilization which they are unable to understand.

The fact that the whole generation is acting on these hopes does not mean that the liberal philosophy is dead, as the collectivists and authoritarians assert. On the contrary, it may be that they have taught a heresy and doomed this generation to reaction. So men may have to pass through a terrible ordeal before they find again the central truths they have forgotten. But they will find them again, as they have so often found them again in other ages of reaction, if only the ideas that have misled them are challenged and resisted.



**BOOK II**  
**THE COLLECTIVIST MOVEMENT**



## IV

### THE INTELLECTUAL ASCENDANCY OF COLLECTIVISM

IN the realm of ideas a change in theory is reflected in practice only after a lapse of time and, as Mr. Keynes has said, the active men of an epoch are generally applying the theories of men who are long since dead.<sup>1</sup> Thus Adam Smith published *The Wealth of Nations* in 1776, and before his death in 1790 two English Prime Ministers, Lord Shelburne and William Pitt,<sup>2</sup> had been converted to his ideas. Yet it was not until 1846 that the Corn Laws were repealed, and the free-trade system was not established until Gladstone brought in his budgets of 1853 and 1860. This great reversal of policy was the outcome of a change in European thinking which took about seventy-five years to affect the policies of governments.

In that period the liberal philosophy was in the ascendant: conservatives like Sir Robert Peel, and revolutionists as well, thought of the future in terms of increasing emancipation from prerogative and privilege. Freedom was the polestar of the human mind. When there was an evil to be dealt with, men looked instinctively for its cause in some manifestation of arbitrary power. They sought the remedy in the limitation of arbitrary power and the disestablishment of privilege. They believed in governments which were under the law, in the rights

<sup>1</sup> J. M. Keynes, *The General Theory of Employment, Interest and Money*, p. 383. "Practical men who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back."

<sup>2</sup> F. W. Hirst, *Economic Freedom*, p. 40.

of man rather than the sovereignty of kings or of majorities. They held that the improvement of the human lot was to be achieved by releasing thought, invention, enterprise, and labor from exactions and tolls, from the rule of princes, monopolists, great landlords, and established churches. Though some, conservative by interest and temperament, were opposed to drastic change, while others were in favor of radical reform, the conflict between them was whether existing privilege should be maintained or should be withdrawn.

It may be said, I believe, that between, say, 1848 and 1870 the intellectual climate of western society began to change. At some time in that period the intellectual ascendancy of the collectivist movement began. A phenomenon of this sort cannot, of course, be dated precisely, but it is fairly clear that after 1870 liberal philosophy was on the defensive in theory, and that in practice the liberals were fighting a losing rear-guard action.<sup>3</sup> England, it is true, remained faithful to free trade until the Great War of 1914, but the protectionist doctrine grew everywhere in popularity. In 1850 a liberal like Herbert Spencer believed that the next phase of social reform was an attack on the great landed monopolies; as time went on he lost confidence and finally suppressed what he had written on the subject.<sup>4</sup> John Stuart Mill, though he never became an authoritarian socialist, did begin, toward the close of his life, to write on the assumption that the benefits of liberal philosophy had all been achieved and that the line of further progress was in the direction of collectivism.

More than seventy-five years passed before the collectivist movement was dominant in actual affairs, but in this middle period of the nineteenth century it established itself in men's

<sup>3</sup> Cf. A. V. Dicey's lectures on the relation between *Law and Public Opinion in England* during the nineteenth century.

<sup>4</sup> Cf. Henry George's *A Perplexed Philosopher*.



thought. Both capital and labor became predominantly protectionist. The older theory that incorporation is a privilege was abandoned and the way was opened to the corporate forms of business organization by the adoption of general incorporation laws. Then, too, the conception of democracy changed. Once the popular movement had been chiefly concerned with the Bill of Rights and other limitations on the sovereign, but the rapid enfranchisement of the masses resulted in the belief that popular sovereignty must not be restrained, that the meaning of free government was the dictatorship of the majority.

Thus freedom ceased to be the polestar of the human mind. After 1870 or thereabouts men thought instinctively once more in terms of organization, authority, and collective power. To enhance their prospects businessmen looked to tariffs, to concentrated corporate control, to the suppression of competition, to large-scale business administration. To relieve the poor and lift up the downtrodden, reformers looked to an organized working class, to electoral majorities, to the capture of the sovereign power and its exploitation in their behalf. Though great corporate capitalists continued to invoke the shibboleths of liberalism when confronted by the collective demands of the workers or the hostile power of popular majorities, yet they were thoroughly imbued with the collectivist spirit through their attachment to protection and to the concentration of control. The reformers and the labor leaders also continued to talk of liberty when their attempts to organize were resisted or their plans for regulation by the state were attacked, or when their agitators were put in jail for disturbing the peace. But in their belief that popular majorities must be unrestrained, in their persistent demands for the magnification of government, in their fundamental aim to dominate and possess and perpetuate the private collectivism of the corporate system, rather than to break up monopoly and disestablish privilege, they

became the adversaries of freedom and the founders of a new authoritarian society.

The contemporary world is so thoroughly imbued with the collectivist spirit that at first it seems quixotic to challenge it. Yet the prospects of reversing the mercantilist policies of European states can hardly have seemed bright when Adam Smith wrote *The Wealth of Nations*; now we know that the zenith of those policies had been passed. The Ancien Régime was doomed, though Europe still had to pass through the wars and revolutions which marked its end. So it may well be to-day that the beginning of the end is at hand, that we are living at the climax of the collectivist movement, its promises already dust and ashes in men's mouths, its real consequences no longer matters of theoretical debate but of bitter and bloody experience. For in the generation before the Great War, when it became the fashion to believe that all reasonable and enlightened men must be collectivists, no one had ever lived in a society regimented by an omnipotent state according to an official plan. But from 1914 to 1919 the western peoples had a taste of it under war conditions, and since then they have had the opportunity to observe the Russian, German, and Italian experiments. The easy confidence of the pre-war generation has now been shaken by grave doubts as to whether the collectivist principle is consistent with peace and prosperity or with the moral and intellectual dignity of civilized men.

A reaction, definite and profound as that which in the late eighteenth century set in against the Ancien Régime, which in the nineteenth set in against the crudities of *laissez-faire*, has, I believe, already begun. But the popular and influential leaders of contemporary thought are in a quandary. Their settled convictions compel them to believe that a new and better order is being created in one or the other of the collectivist states; their instincts and their observations tell them

that the coming of this new society is attended by many of the symptoms of a relapse into barbarism. They do not like dictatorships, the concentration camps, the censorship, the forced labor, the firing squads, or the executioners in their swallow-tail coats. But in the modes of their thinking, the intellectuals who expound what now passes for "liberalism," "progressivism," or "radicalism" are almost all collectivists in their conception of the economy, authoritarians in their conception of the state, totalitarians in their conception of society.

Mr. Stuart Chase, for example, is a man of liberal instincts and democratic sympathies, but he tells us that in order to achieve abundance for all we must have "centralization of government; the overhead planning and control of economic activity. . . . The United States and Canada will fall into one regional frame; similarly most of Europe. Economically supreme over these frames must sit an industrial general staff with dictatorial powers covering the smooth technical [*sic*] operation of all the major sources of raw material and supply. Political democracy can remain *if it confines itself to all but economic matters . . .*" (italics mine).<sup>8</sup>

Thus, though Mr. Chase is the enthusiastic sponsor of dictatorship on a continental scale, he would yet like to preserve the essentials of personal self-determination. The problem for him, as for all the collectivists of his school, is to reconcile the theory of a dictated economy with an instinctive revulsion against the behavior of active dictators. By some the reconciliation is achieved rather easily. They explain away the barbarism of the dictatorship they happen to admire while denouncing it manfully in all others. Thus sympathizers with the communist effort are profoundly moved by the German persecutions and the Italian deportations. But they have

<sup>8</sup> Stuart Chase, *op. cit.*, pp. 312-13. Cf. also George Soule, *op. cit.*, pp. 214-15.

an abiding faith that the Russian persecutions and deportations have been exaggerated and misunderstood. Mr. Soule, for instance, holding up the Soviets as an example, says with what is apparently an untroubled conscience that the land and capital of Russia are administered by the Communist Party so "that all these things shall be used for the benefit of the whole population (except of those whom the Socialist State regards as enemies or useless persons, like statesmen, priests, private traders and private employers)." Others, who sympathize with the fascist effort, are certain that its brutalities are an unfortunate necessity in order to forestall the greater brutalities of a communist regime. By such casuistry as this men accommodate their faith in the collectivist principle to their recollection of what constitutes a civilized society.

Apologists for both communism and fascism, then, are compelled to believe that the absolutism which they see at work in these promised lands is transitory;<sup>6</sup> that it is either an accidental blemish or only a temporary necessity. They are, I believe, greatly mistaken. A collectivist society can exist only under an absolute state, a truth which Mr. Chase seems dimly to have appreciated when he said that "political democracy can remain if it confines itself to all but economic matters." In view of the fact, for example, that schools, universities, churches, newspapers, books, even athletic sports, require money,

<sup>6</sup> Cf., e.g., Engels's letter to Bebel (1875): "As the State is only a transitional institution which we are obliged to use in the revolutionary struggle, in order to crush our enemies by force, it is pure nonsense to speak of a free people's State. During the period that the proletariat *needs* the State, it needs it, not in the interests of freedom, but in the interests of crushing its antagonists, and when it becomes possible really to speak of freedom, the State as such will cease to exist." (Quoted in Lenin's *State and Revolution*, pp. 170-71. Vanguard Press, 1926.) Lenin gives a similar definition: "Dictatorship is an authority relying directly upon force, and not bound by any laws. The revolutionary dictatorship of the proletariat is an authority maintained by means of force over and against the bourgeoisie, and not bound by any laws." *The Proletarian Revolution*, p. 15. Communist Party publication, London.

marketing, and have to have economic support, the realm of freedom and democracy which Mr. Chase leaves is about equal to nothing at all. That is why the absolutism that we see in Russia, Germany, and Italy is not transitory, but the essential principle of a full-blown collectivist order.

For in so far as men embrace the belief that the coercive power of the state shall plan, shape, and direct their economy, they commit themselves to the suppression of the contrariness arising from the diversity of human interests and purposes. They cannot escape it. If a society is to be planned, its population must conform to the plan; if it is to have an official purpose, there must be no private purposes that conflict with it. That this is the inexorable logic of the principle can be learned best by looking at what actual collectivists say and do when they are in power rather than by consulting the writings of sheltered revolutionists like Mr. Chase and Mr. Soule or, better still, Karl Marx, working in the British Museum. It is easy to make the best of both worlds while living safely in a regime of liberty; to let oneself become enchanted by the notion that the promises of the Providential State can be reconciled with the blessings of freedom.

But when we come to the actual collectivists, a different note is sounded. The fascist conception of life, says Mussolini, "accepts the individual only in so far as his interests coincide with those of the state." Does communism accept the individual on any other terms? Does it recognize any right — to labor, to possess property, to think, to believe and to speak — which does not coincide with the interests of the state? It cannot. The ultimate ideal, the practical goal, the inescapable procedure of any full-blown collectivism, was announced by Mussolini, who has been all kinds of collectivist in his time, when he said, "All in the State, nothing outside the State, nothing against the State."

Thou shalt have no other gods before me. A political providence is necessarily a jealous god — how jealous will depend upon how far the state is impelled to go in directing the social order. Of course, the average humane collectivist<sup>†</sup> does not wish to go all the way to the totalitarian state. He does not wish to go too fast or too violently to the point at which he would like to stop. That does not alter the fact that he has embraced a principle of social organization which has no other remedy for evil except to intensify overhead government by officials. For, unless the moderate collectivist believes that a little more official supremacy will end all important evils, how can he say when he proposes to stop? If he is right in thinking that the state can, by what Mr. Chase calls “the overhead planning and control of economic activity,” remedy the disorders of mankind, then surely it would be cruel and benighted not to take full control and end all social evils. Though no doubt most collectivists in western countries hope to stop a long way this side of absolutism, there is nothing in the collectivist principle which marks any stopping place short of the totalitarian state. Their tastes and scruples are the sole checks on their principles, which in themselves are absolutist.

And, worse than this, the application of those principles is cumulative in its effect. As long ago as 1884<sup>\*</sup> Herbert Spencer pointed out that “every additional state-interference strengthens the tacit assumption that it is the duty of the state to deal with all evils and secure all benefits” and at the same time there is a continually “increasing need for administrative compulsion and restraints, which results from the unforeseen evils and shortcomings of preceding compulsions and restraints.”

Spencer predicted that this tendency must lead to the trans-

<sup>†</sup> Who reads Mr. Mumford, Mr. Chase, Mr. Soule, for example.

<sup>\*</sup> *The Man versus the State*, p. 33.

formation of industrial and quasi-popular regimes into "militant communities" organized for "a state of constant war" under a "revival of despotism."<sup>9</sup> There may have been some doubt about that judgment in 1884. But now the course that Spencer predicted is unfolding itself before our eyes. Fifty years have passed since he wrote. During those fifty years there has been no stopping place in the progress of mankind toward ever-greater regimentation in ever-contracting societies. There has been no point in the expansion of tariffs, bounties, bureaucracies, inspectors, censors, police, and armies, no point in the contraction of markets, the disintegration of states, the disunion of ethnic groups — no point at which the collectivists have been able to say: "Thus far and no farther."

How can they say so? The application of their principles creates such disorder that they are never without warrant for redoubling the dose. Without abandoning their central doctrine, how can they refuse to invoke the state as savior when there is obviously so much evil that should be remedied? They have no other principle they can invoke. Like the secret of some ancient art, they have lost the principles of freedom.<sup>10</sup>

They must not complain, then, if men look at Russia, Italy, and Germany to see where the cult of the state is leading them. There, in deeds visible to all, the idea is incarnate.

<sup>9</sup> *The Coming Slavery.*

<sup>10</sup> Cf. Bk. III.

## THE TOTALITARIAN REGIMES

### 1. *Their Necessary Absolutism*

THE regimes of authority have been established by armed bands who, by force or intrigue or both, have seized the coercive machinery of the state. This power they have used to imprison, terrorize, exile, or kill those who might be disposed to dissent. They have extirpated all organs of representation — such as elections, a free press, voluntary assembly — through which dissent might be encouraged and could express itself. To the innocent in foreign lands all this is explained as unpleasant but necessary: as transitory measures in an emergency, like the martial law which, in a free community, might be declared after an earthquake. The implication of the argument is always that eventually constitutional government will be restored, and with it the right to dissent. But while this explanation is offered to foreigners whose feelings have to be placated, the plain truth is that the “transition” is never completed and can never be completed while the regime lasts.<sup>1</sup>

The authoritarian collectivists, when they are grounded in their principles and candid with themselves, know quite well that the right to dissent can never be restored without renounc-

<sup>1</sup> This passage was written before the Russian Constitution of Dec. 5, 1936, was promulgated. I see no reason for altering the view that the right to dissent will not be restored while the regime of planned collectivism endures. The revival of liberty might take place in Russia but only as the planned economy is demobilized. Cf. Ch. VI.



ing their principles and destroying their social order. When they speak of liberty, as they occasionally do, what they mean is that they hope eventually to train their peoples to desire only what the state desires, to have no purposes but the official purposes, to feel free because they have become habituated to conform. "Far from crushing the individual," says Mussolini, "the Fascist State multiplies his energies, just as in a regiment a soldier is not diminished but multiplied by the number of his fellow soldiers."<sup>2</sup> But obviously, whatever the individual may gain by being a member of a regiment, he loses his right to dissent, to object to the strategy of the generals or the tactics of the officers; he is deprived of all possibility of having something to say about what he will live and die for. Only when he has lost the will to dissent can he find in the regimental discipline a more perfect freedom. In this sense only can freedom obtain in a totalitarian state: that when there is no more opposition, it will no longer be necessary to crush the opposition; that a perfectly obedient people would not have to be governed ruthlessly.

In this sense only can the collectivist regimes ever bring to an end "the transitional" violence of the concentration camp, the secret police, and the censorship. The emergency never ends: the transition cannot be completed until everyone is a fascist or a communist by instinct and indurated habit. For a government cannot shape the destiny of a society unless its members assent to its plans and conform with them. As in Mussolini's regiment, they must think, when they think, as their officers think, and they must have the emotions which the plan of campaign demands. Given the premise that a society is to be planned and directed by authority, by "the

<sup>2</sup> Michael T. Florinsky, *Fascism and National Socialism*, p. 65. Marx and Engels described socialism as "a realm of freedom," meaning that society would be free to direct production, not that individuals would be free to dissent.

overhead planning and control of economic activity," the conclusion is correct. The dissenters *must* be eliminated because they are insubordinate; they interfere, to quote Mr. Chase again, with "the smooth technical operation" of the economy. The rank and file must be drilled until, as Hitler says, they recognize "the absolute authority of the leaders over those below." The syllogism is perfect: Those who look to the state as director of society must abolish the diversity and contrariness of human purposes. And if they are not to rely forever on sheer physical coercion, they must put their trust in some supplementary method of producing unanimity among their subjects.

Thus all collectivist systems must and do implicitly assume that plurality of interests, which actually exists everywhere, is evil and must be overcome. They speak of the chaos and the confusion of the free regimes and feel inspired to eliminate "the interaction of all the numerous private interests"<sup>3</sup> of individuals, groups, and classes, of local and regional communities. Collectivists are profoundly monistic in their conception of life, because they regard variety and competition as evil. They look upon the state, not as the dispenser of justice among the various interests of men, — for the idea of justice involves a recognition of variety, — but as the creator of a unity in which variety of interest will have disappeared. So while in free societies opposition is a constitutional function, in authoritarian societies it is treason. Thus the collectivist ideal, as Mussolini has correctly discerned, is realized most completely, not in a family, or in a partnership, or in a market, or in a university, or in a church, but in a regiment of well-disciplined troops. For it is in a regimental organization of human beings that everyone's labor, everyone's time, and at last everyone's life, are at the disposal of the supreme commander.

<sup>3</sup> Soule, *op. cit.*, p. 215.

So the crucial problem presented to the theorists of collectivism is how to eliminate the obstinate variety and contrariness of mankind. They realize that terrorism, however effective for a while, is revolting and cannot be sustained forever; no regime can be vigilant enough in perpetuity to crush opposition wherever and whenever it arises. There are instances, to be sure, of despotisms which endured for centuries. But the experiment has never been tried in a population that has known freedom and is accustomed to a fairly high standard of life. Moreover, the ancient despotisms were established by conquest, whereas the new ones, at least up to the point where a coup d'état is practicable, have to rely upon conversion. The collectivist doctrine is obliged, therefore, to provide some kind of plausible formula which promises to abolish conflict in society.

## 2. *The Fascist Paradox*

The fascist version of the collectivist principle is less explicit than the communist.<sup>4</sup> For while the communist doctrine has an intellectual history which ascends to the very earliest known speculation about the state, fascism, though it is also an ancient doctrine, has disguised its ancestry by adopting a very new ideology. There is no literature of fascism comparable in erudition or in pedantry to the literature of Marxism; there are only the speeches and tracts of agitators and the works manufactured by propaganda ministries. The fascist doctrine has been hastily improvised since the World War, and it has never been elaborated, as the communist doctrine has been, by men who could speculate and investigate at their leisure, criticizing and refining their theories under the conditions of freedom obtaining in capitalist democracies.<sup>5</sup>

<sup>4</sup> Cf. E. B. Ashton's *The Fascist: His State and His Mind*, p. 17.

<sup>5</sup> Karl Marx wrote *Das Kapital* in the British Museum during the ascendancy of the liberal tradition.

The fascist theory has been hastily assembled out of such scraps of learning as happened to remain in the minds of men like Mussolini and Hitler who spent their days making speeches, hatching conspiracies, and organizing their adherents. Thus it is an absurdity to speak, for example, of Vilfredo Pareto as the Karl Marx of fascism. For Pareto was a free trader in his economics and an inveterate liberal in his hatred of interference with morals and culture, and his book ends with a portentous warning against that "byzantine" conception of society to which fascism and the so-called corporative states are returning.

It is from the behavior of the fascists that the fascist remedy for human variety has to be deduced. The panacea would appear to be propaganda, drill, and education. Fascists make the assumption, never wholly explicit nor completely stated, that there is only a marginal willfulness in human behavior; that the great mass of mankind is naturally docile; that, by exterminating the minority and drilling the mass, significant dissent will disappear. Hence the claim of the fascist states to an absolute monopoly of all agencies of education, intelligence, and culture. For without such a monopoly they could not protect the mass, whom they propose to discipline into unanimity, from the contagion of individual contrariety.

That the fascist reliance is upon the drilling of the mass is evident from the fact that they propose to evolve the perfectly harmonious and heroic nation of the future out of the discordant and ordinary human stock which happens to inhabit the territories they govern. It is true that the German National Socialists talk much about blood and race. But except for sterilizing the hereditarily unfit, segregating and persecuting persons whose grandparents are known to have been Jews, they have to breed the future race out of the Germans who

live in Germany. Considering the fact that these Germans are legally assumed to have the proper ancestry if their forbears before the year 1800 are unknown to them, it is manifest that the racial theory is a political fiction employed to make the Germans feel that from the creation of the world they have been as unanimous as the Nazis would like them to become. The Italian version of fascism confines its eugenic activities to increasing the birth rate, having never been tempted in an old and skeptical civilization to ask anyone to believe that the mixture of strains in the Italian Peninsula is a distinct biological species. Thus the Italian fascists have recognized rather more clearly than the German National Socialists that they are not breeding a new race but are merely trying to recondition an old community.

The preliminary step in the operation is to create about the fascists of the future a sterile area through which dangerous ideas cannot penetrate, to select with the greatest care the ideas and information which may be administered, and then to habituate their subjects to the official doctrine by continual and vehement repetition.<sup>6</sup> Nothing quite like this has ever been attempted before. Children have been trained by these methods, novitiates in religious orders, and, of course, soldiers. There have been, too, many governments which tolerated no dissent. But never before have large populations, used to reading newspapers, been taken in hand by the state with the intent not merely to influence their current opinions but to re-fashion the whole character of their minds and spirits. Fascism, says Mussolini, "demands remaking not the forms of human life, but the contents; man, character, faith. And to this end it demands a discipline and authority which descends within the spirit and then dominates unchallenged."<sup>7</sup>

<sup>6</sup> Cf. Aldous Huxley's *Brave New World*.

<sup>7</sup> Cf. Article on Fascism, *Italian Encyclopedia*, p. 848.

It is one of the most curious experiments ever undertaken: the attempt, in an age when the means of communication have been stupendously magnified, to control by government bureaus all the organs of intelligence in order to remake man, character, faith. The German experiment, except to those who are its victims, is particularly interesting, and, like the offer of a strong man to let himself be vivisected, should make a great contribution to political science. For the Germans are the most gifted and most highly educated people who ever devoted the full strength of a modern state to stopping the exchange of ideas; they are the most highly organized people who ever devoted all the coercive power of government to the abolition of their own intellectual life; they are the most learned people who ever pretended to believe that the premises and the conclusion of all inquiry may be fixed by political fiat.

The success of the experiment would seem to depend upon the fulfillment of a paradox. All Germans must sink into docile but eager resignation, accepting the decisions of the Führer as the fellah accepts the will of Allah; and then out of this conforming mass must arise brilliant, adventurous, and supremely intelligent leaders. It should be remembered that while the National Socialists lay great emphasis upon obedience they also extol the principle of leadership, recognizing quite correctly that the German economy, the German army, and the German state cannot be administered by routineers. They know that to sustain so large a population on so poor a soil requires exceptional foresight, inventiveness, enterprise, and technical competence. So a population is dogmatically drilled, its curiosity is frustrated, it is forbidden to examine the premises or the conclusion of the official dogma, it is unable to exchange ideas at home or abroad — and then it is called upon to produce leaders. This is the most puzzling paradox of

the Nazi philosophy. For the principle of leadership is highly individualistic. It presupposes the continual emergence of resourceful men; but the principle of absolute collective conformity from birth to death would hardly seem calculated to develop and select them.

It is easy enough to understand how temporarily convenient the paradox is to the prevailing dictators. The principle of leadership justifies their own arbitrary powers and the principle of obedient conformity justifies their denial of power to anyone else. But since, according to Hitler's own assurances, National Socialism is to last for a thousand years, the problem of how new leaders are to be recruited is a serious one for those who take seriously the aspirations of the Nazis. Germany to-day is, of course, ruled by soldiers, bureaucrats, and industrialists who were educated and selected before the Nazi revolution. They may profess National Socialism but they are not the products of National Socialism. If the ideal is ever to be tested fairly in practice, the regime must last until Germany is ruled by men who have known no other discipline except that which the Nazis provide. That would require at least two generations. For even the Nazi children to-day are being reared by parents and teachers who have the unregenerative mentality of the pre-Nazi era. The reconditioning of the German nation cannot be said to have been fully begun until the Nazi sons of Nazi parents rule Germany.

Yet the problem of creating a resourceful governing class out of an intellectually sterilized population would seem to be insoluble as long as the fascists continue to adhere to one of the cardinal principles of the democratic regime which they so thoroughly despise. This is the principle of equal opportunity—even if the equality is restricted to certified Nazis; for this remnant of liberalism leaves careers open to talent, and it supposes that masterful leaders can be se-

lected out of the conforming mass of corporals and house-painters, blacksmiths and journalists.

If the system is to work, if leadership is to be-combined with the conformity of the mass, the only practicable solution would seem to be an hereditary governing caste. For then it would be theoretically possible to keep the people intellectually isolated, sterile, and obedient, and yet to give to the hereditary rulers a genuine education. Without such a division of the nation into castes it will be necessary to afford everyone approximately the same cultural opportunities: if the opportunities are varied enough to train and select leaders, they will encourage what the Japanese call "dangerous thoughts" in the mass; if they are meagre enough to keep the people docile, they will be insufficient to produce leaders. Therefore, unless the fascists renounce the liberal conception of universal education and equal opportunity, they will lack leaders or they will destroy conformity.

So they must have the courage of their despotism and return in this respect, as they have in almost all others, to the ancient practice of all despotism, which is to provide one kind of education for the subject and another for the ruler. The caste must be hereditary. For if the fascists attempt to select promising youths for special training, it may be too late to develop their promise. There is no sure way of detecting the capacity for leadership early enough, and they would be in trouble when they attempted to say that the son of a high Nazi official was not fit to be educated for leadership but the corporal's child was fitted to head the state. Unless the leaders of the future are designated at birth, they cannot be specially trained in those very qualities which fascism must discourage in the mass whom the leaders are to lead: since little boys are not born with a certificate of leadership, the only way to designate the future leaders is to make leadership hereditary, and thus



carry to its necessary and logical conclusion the doctrine that all human rights and virtues are biologically predetermined.

Though this is the only practicable solution of the fascist paradox, there is one fatal objection to it. It re-creates that very diversity in society which the fascist doctrine promises to eliminate. Between any ruling caste and its subject mass there would be some conflict of interest. How much, how severe, would depend on how perfectly the ruling caste had conditioned the people and how wisely it ruled them. But, enjoying a privileged position, the caste would be tempted to defend its privileges, perhaps even, if it were human, to enhance them, and — unless the drillmasters and propagandists are miracle men — envy, the longing for more equal opportunity, the sense of injustice, would produce popular discontent. Once more it would be necessary to define conflicting rights and to adjust diversity of interest.

The truth is there is no formula anywhere in the fascist doctrine which even suggests how its social ideal could be realized. It seeks two inherently incompatible results: great leaders and a conforming nation. If it devotes itself to promoting conformity, it will not produce leaders. It will produce routineers, bureaucrats, and courtiers. If it devotes itself to producing leaders, it will destroy the conformity of the mass. If it establishes an hereditary ruling caste, it might produce enterprising leaders and docile subjects. But it would then have returned to that class division in society which is irreconcilable with its ideal of unanimity and national solidarity.

### *3. The Fascist Reality*

Although the inherent contradictions of the doctrine prove it to be a fantasy, the mystery of fascism dissolves once we adopt the hypothesis which both Mussolini and Hitler offer in ex-

planation of their policies when they are not possessed by an ideological fervor. It is the simple hypothesis that they lack the physical resources to maintain their populations at a desirable standard of life and that they must conquer new places in the sun. This makes the whole fascist system and ritual easily intelligible, and all aspects of it, so strange when considered as a method of social reconstruction, are suddenly recognizable as perfectly familiar phenomena.\*

Thus there is no doubt that the fascist revolutions were preceded by a severe class struggle in which the workers and peasants were threatening gradually to expropriate the industrial capitalists and the landlords. There is no doubt, too, that the devastation of the World War and the subsequent failure to restore the international economy intensified the struggle to the point where it was almost unmanageable. Both Italy and Germany are peculiarly dependent upon the outer world for necessary materials. They were unable to buy what they needed in sufficient quantity by the sale of their exports. In both countries there was a diminishing national income, and a class struggle to share it. The contrast between their situations and that of the creditor nations possessing ample resources at home or empires abroad was striking enough, and both peoples became imbued with the idea that if they did not obtain access to greater opportunities they would be destroyed by civil war. With tariffs rising everywhere to impede their exports, dependent upon precarious and, as the event proved, capricious international credits, they felt wholly insecure. Rent by struggle at home, their standards of life sinking, unable to obtain substantial concessions abroad, they became possessed of the idea, as Hitler put it, that they must fight "tre-

\* In saying this I am not intending to imply that the Italians and Germans are in fact crowded because they do not govern enough territory or that their difficulties can be overcome by conquering empires. I am merely saying that they act on this hypothesis and that it explains the two regimes.

mendous battles for the existence of mankind” and that “in the long run only the passion for self-preservation can win a lasting victory.”<sup>9</sup>

There is no mystery in fascism, once its pretensions to being a universal formula of social reconstruction are put aside, and it is recognized as the elaborate and intense militarization of a people for a war of conquest. Fascism is martial law, and there is no essential feature of fascism that is not a familiar phenomenon in any highly organized nation when it goes to war. Only by failing to see fascism as a mobilization do these regimes seem novel or unintelligible. It has taken some time to recognize fascism for what it is. Men have not seen a mobilization lasting many years, preceding any declaration of war, preceding even a clear decision as to when the war was to be declared or against whom. Outsiders have been bewildered by the appearance of a war mentality and the taking of war measures without actual battles. But once it is understood that fascism is preparation for war, the unfamiliarity disappears.

All the phenomena of a nation at war are reproduced. Strikes and lockouts are ruthlessly suppressed as treason against the safety of the nation. Hatred is fanned to a white heat. Ruthlessness is exalted. Pacifism and humanitarianism, as Hitler says, are treated as “a mixture of stupidity, cowardice, and superciliousness”; only the martial virtues are officially approved and the people are taught, as Mussolini has said, that “war alone brings to its highest tension all human energy and puts the stamp of nobility upon the people who have the courage to engage in it.” Some persecution is necessary in time of war: it enables the noncombatants to feel that they are at war with someone; it hardens the heart of the people, like

<sup>9</sup> *Mein Kampf*, pp. 148-49. (Munich, 1933 ed.) Cited in Florinsky, *op. cit.*, p. 73.

philosophical, and other conceptions of each historical period.”<sup>10</sup> Human nature should be remolded, therefore, not by propaganda, but by socialization of the means of production.

The communist thesis is that if property used in the production of wealth were collectively owned, and were administered without personal profit to themselves by public officials, the social antagonisms in society would disappear. For it is supposed that the antagonisms originate in the private ownership of productive capital, that this is the bone of contention, that all important social conflict is provoked by the fact that productive capital is privately owned. If this is true, then a harmonious and unanimous society should appear when productive capital has been socialized. The continuation of the dictatorship, the terror, and the propaganda may thus be explained away on the ground that the process of socialization is not yet complete and that the capitalists who still hope to recover their property are not yet dead.<sup>11</sup>

But if it is true, as the Communist Manifesto proclaims, that “the history of all hitherto existing society is the history of class struggles,” what reason is there for believing that the history of all future societies will not also be the history of class struggles? Yet the Marxian interpretation of history avers that the method of social progress which has always prevailed will come to an end with the establishment of socialism. Then evolution, as the human race has known it, is to cease. And then what? It is not easy to say. The Marxian canon does not say whether socialism is to be static once it is established, or whether it is to evolve according to some wholly new and alto-

<sup>10</sup> Herr Eugen Dühring's *Revolution in Science*, p. 32.

<sup>11</sup> “The proletariat needs the State, the centralized organization of force and violence, both for the purpose of crushing the resistance of the exploiters and for the purpose of guiding the great mass of the population — the peasantry, the lower middle class, the semi-proletariat — in the work of economic Socialist reconstruction.” Lenin, *op. cit.*, p. 133.

gether undefined dynamic principle of its own. All that the Marxians say is that other social systems have evolved by class struggle. But whether socialism itself is to evolve, and if so how, is not explained in their philosophy.

Yet this is a crucial question if credence is to be given to their promise that, after one more supremely great class war, peace will prevail. For myself, I can find no reason, on the Marxian hypothesis, for thinking that social and international peace will be any easier to achieve after the revolution than before. For what was it, according to the hypothesis, that caused capitalism to evolve out of feudalism? It was the invention of a new technology for the production of wealth.<sup>12</sup> The entrepreneurs who organized this new system of production then displaced the feudal nobility as the masters of government and of the policy of the state. This theory stipulates, therefore, that a new technology will call into being a new ruling class and that this new class will then overthrow the older ruling class with its antiquated technology. Now presumably invention will not stop under socialism, and still newer technologies are, therefore, to be expected. But for some reason the Marxians believe that after socialism the new technologies will not call into being a new class whose interests conflict with the interests of those who still live by the more antiquated technology.

What reason is there for thinking that until socialism "a

<sup>12</sup> "The materialist conception of history starts from the principle that production, and with production the exchange of its products, is the basis of every social order; that in every society which has appeared in history the distribution of the products, and with it the division of society into classes or estates, is determined by what is produced and how it is produced, and how the product is exchanged. According to this conception, the ultimate causes of all social changes and political revolutions are to be sought, not in the minds of men, in their increasing insight into eternal truth and justice, but in changes in the mode of production and exchange; they are to be sought not in the *philosophy* but in the *economics* of the epoch concerned." Engels, *op. cit.*, p. 294.

history has existed" but that after socialism "none exists any longer"?<sup>13</sup> Surely a good Marxian determinist ought to hold that a conflict between an older and a newer technology will always produce a class struggle between the beneficiaries of the two systems. But the Marxians deny that this will happen once all the means of production are collectively owned and administered by the state. Their assumption is that the transition from one mode of production to another will then take place without a struggle. Why should it? Let us suppose that scientists invent a method of developing energy from salt water, and that the new power machines are as much superior to our present power machines as dynamos are to wind-mills. At once the productive capacity of peoples living near salt water would become immensely greater than that of peoples living in the interior of great continents. The prosperous industrial regions will be at the seashore. Italy, with its long coast line, would have greater natural resources than Russia with all its minerals.

Now if we are to suppose a socialist commonwealth embracing the whole world,<sup>14</sup> the regions adapted to the new technology will enjoy a far higher standard of life than the land-locked regions. Are we then to suppose that the supreme socialist world government will be able to equalize this gross disparity, that it will be able to expropriate the economic rent of the favored communities along the coast in order to pass it on to the backward populations, or that it will be able to transplant these populations to the sea coast? To suppose that the World Soviet could do that, and do it with such perfect authority and justice as to obviate the resistance of the priv-

<sup>13</sup> *Das Elend der Philosophie*. Marx used this phrase in attacking an opponent. The quotation is from Ludwig von Mises's *Socialism*, p. 287.

<sup>14</sup> This is what the doctrinaires do suppose. Cf., e.g., Harold J. Laski's *The State in Theory and Practice*, p. 223: "An international society requires economic world-planning." (London: George Allen & Unwin Ltd.)

ileged masses against the influx of the unprivileged, is to believe in a whole series of miracles. It is to believe in the existence of men capable of administering the affairs of the whole world. It is to believe in the voluntary acceptance of their rule by the whole population of the globe. It is to believe in their omnipotence and in their omniscience. It is to believe not in human government but in a Providential State.

Now the example may be unreal in the sense that machines for making power from salt water may not be invented. But the example illustrates, in an extreme form to be sure, the kind of technological change which has in fact caused so many revolutions in human society. Certainly no Marxist believing in the materialist interpretation of history could deny the immense effect on the distribution of peoples, on relative standards of life, on the rise and decline of communities, brought about by the development of energy from coal, and then from oil and from falling water. But why should a Marxist suppose that in the future an all-powerful and all-wise state can somehow abolish the revolutions wrought by technological change? Is it not plain that the Marxist who thinks class struggles will be abolished in the socialist state is simply abandoning his "science" at the threshold of socialism, and that thereafter he relies on the state as *deus ex machina*? That he is in effect saying that the socialist statesmen of the future will be able to do what by his own hypothesis no statesmen of the past could possibly have done?

By what process of reasoning, we may ask, is the communist able to persuade himself that the statesmen of the future will possess this unprecedented foresight, wisdom, authority, and disinterestedness? Simply by allowing himself to believe that the root of all evil is in the private ownership of the means of production. The theory assumes that, but for the corrupting effect of private property and capital goods, men are now capable

of "world economic planning" for an otherwise sweetly reasonable human race. All the faculties required for utopian statesmanship are assumed to exist, ready for action, needing only to be released from the corruption of private property. For it is by a revolution in the ownership of property that this revolution in human behavior is to be effected.

To hold this theory is not only to take a very naïve view of human behavior, extraordinarily naïve in men who deride idealism and pride themselves on being tough-minded; to hold this view is to have a crudely naïve conception of the nature of property. The Marxist, curiously enough, builds his hope for the supreme reasonableness of society upon an ultra-legalistic notion of property. At bottom he identifies property not with the control and use of capital goods but with the residual title deeds, and he assumes that if all the titles are collectively held, the instruments of production will necessarily be collectively "owned" and administered.

This is the crucial point in the socialist argument: the whole hope that exploitation, acquisitiveness, social antagonism, will disappear rests upon confidence in the miraculous effect of the transfer of titles. It is this transfer, and only this transfer, which is to revolutionize human behavior, is to enhance beyond all known experience the human capacity to govern, and is to terminate once and for all that history which "in all hitherto existing society is the history of class struggles." The socialist does not say that under socialism diversity of interest is to be more successfully adjusted. He says that when the titles are collectively held, diversity of interest will have been abolished. He does not say that socialist statesmen must learn to plan and administer the economy of the world; he says that when the titles are collectively held, the statesmen will plan and administer the economy of the world.

There is for the socialist only one social problem, and it is



easily solved by the transfer of the title deeds. I know that socialists will deny that their doctrine rests on such a simple formula. But I must insist that that is the formula on which it does rest. There is no socialist technology, there is no socialist plan for the production and distribution of wealth: all the problems in these realms remain to be solved by the socialist officials of the future. There is nothing in the Marxian canon from which the Russian Soviet officials were able to deduce one single guiding principle for the formulation and the administration of the Five-Year Plan. Socialist theory provided no clue whatsoever which told them what to produce, how much to save for capital investment, what wages they should pay, what hours of labor they should require, what prices they should charge. All of that they had to decide without benefit of Marxism. The only principle which they derived from their doctrine was that the residual title to property in land and capital goods was to repose in the state.

The supposition is, of course, that if the residual titles are collective, the whole planning and administration of the economy will be done in reference not to the profits of private owners but to the welfare of the whole community. But that is a non sequitur which springs from the fallacious assumption that the residual owner of the property is necessarily the chief beneficiary. It is astonishing that socialist theorizing should have fallen into this error. The residual owner of all the land of England is the King. Does that mean that the lands of England are administered for his benefit? The residual owner of the army and navy is the nation. Does that mean that the armed forces have necessarily acted only for the good of the nation? The residual owners of great corporations are the owners of equity shares. Has that meant that all corporations are necessarily conducted for the benefit of the shareholders?

Collective property can readily be administered for the benefit of a class. There is no magic in title deeds. There is nothing in the act of transferring the ownership of productive capital to the community which offers any guarantee whatever that the official managers will not enrich themselves and exploit the community. On the contrary, collective ownership is entirely compatible with the division of society into hereditary or appointive castes. What is there in the principle of collective ownership which precludes a distribution of income in which the political administrators take the lion's share? There is nothing, and anyone who thinks there is should read Plato's design for a communist society composed of stratified social classes.

Surely it is plain that to vest the legal title of residual ownership in the community has no necessary connection with the beneficial use of the property by the whole community. If it did, there would be no such thing as militarism in armies, as bureaucracy in government departments, as profiteering by corporate officials and controlling minorities, as favoritism and patronage in the public services, as legalized raids on the public treasury. It is because soldiers, who do not own the army, develop special interests of their own that we have the phenomenon of militarism. It is because officials use the government service as a vested interest, though they do not own it, that we have the phenomenon of bureaucracy. It is because corporate officials and financiers and minorities use corporate property for their own benefit, though the residual owners are the shareholders, that we have the phenomenon of corporate mismanagement.

None of these evils is prevented by the fact that the beneficiaries do not possess the title deeds. The legal title does not even indicate how the property is to be administered for the beneficial advantage of the residual owners. Yet the whole

promise of socialism rests on the assumption that property held in trust for others will be administered faithfully and wisely in their highest interest. Though it is evident from all experience that there is no warrant for this assumption, — though it is evident that property held in trust is not necessarily administered in the highest interest of the residual owner, — the socialist naïvely argues that if all property were held in trust for all the people, all property would as a matter of course be administered in their highest interest.

And what is the communist conception of how collective property should be administered? There is a “socialist” formula, declared in the present Russian constitution,<sup>18</sup> which is “from each according to his ability, to each—according to his toil.” But this is regarded officially as a transitional formula to the true communist principle: “From each according to his ability, to each according to his needs.” But how are “needs” to be determined? Since inequality has, on the Marxian premise, provoked all class struggles, the answer must be that the “classless” state will be one in which there is nothing to struggle for. The communists are driven to the notion that only if worldly possessions were “equally” distributed would men cease to struggle for more than their allotted share.

The whole promise of communism — that it can end class war, imperialism, national war, personal acquisitiveness and possessiveness — rests upon two suppositions: that equality of reward can be calculated and administered, and that it will be acceptable. So the correct way to state the communist theory is not that it means to abolish the private ownership of productive capital, — that is merely the means to the end, — but that it promises to administer productive capital according to the principle of “equal” rewards.

The fulfillment of this promise is, of course, conditional upon

<sup>18</sup> Ch. I, Article 12.

the ability of the rulers of a communist state to define equality in actual practice, to administer the economy by offering equal rewards, and to discourage, suppress, reëducate, and, if necessary, exterminate those who demand more than an equal reward.

Now it is no easy problem to deduce from the general principle of equal rewards the criteria by which they can be determined. I use the word "rewards" because it is evident that the hypothesis could not be satisfied if all incomes derived from useful labor were equal in terms of money. Identical money wages would merely enhance the desirable advantages of inequality in other things. In an army all private soldiers are paid the same wage, but it makes a vast difference to the soldier whether he is paid for service in the front-line trenches or for being the chauffeur of the minister of war. It must be obvious, particularly to communists who pride themselves on having a realistic appraisal of human selfishness, that only total and absolute equality of reward could, according to their theory, end the struggle for privilege. The total satisfactions, the real income, measured not only in money, not only in goods, but also in place, power, repute, safety, adventure, interest, relief from monotony, would have to be so equally divided that no one would wish to have any other job than the one which is open to him.

But though the communist diagnosis demands it, equality in this sense cannot be defined in theory or arranged in practice. The reason is that equality of reward has only a subjective meaning, whereas wage schedules, occupational requirements, the recruitment of labor, and the selection of managers and officials are objective decisions. The two cannot be reduced to a common denominator. Thus if money incomes are equal, how shall the pleasure and pain of the effort expended be equalized? How many hours in a coal mine are

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equal to how many hours in the commissar's office? If wages are proportioned to the effort needed to acquire them, money incomes will be unequal. If wages are proportioned to the product, the coal miner will get a larger return in a good mine than in a poor mine. If he is deprived of this economic advantage, then wages cannot be equalized with productivity. If opportunity is equal, then achievements will be unequal. For ability is not equal. If ability is equalized, — say by putting a good farmer on poor land and a poor farmer on good land, — then opportunity is not equal.

All this has been said many times, but it is none the less true. Total equality is impossible unless all human satisfactions as subjectively experienced could be reduced to a common measure. In an exact and total equality everything would have a price — not merely goods, services, and work, but honor, power, preference, effort, and sacrifice. If such a calculus were conceivable, it would be conceivable that all rewards, all careers, could be so equalized that all men ought to feel that to desire more is to quarrel with perfect justice.

But such a calculus applied to any actual economy would call for measures that are not even hinted at in communist literature or in the Five-Year Plans. There would have to be an individual wage for each worker, separately calculated, and an individual price separately calculated for each customer for each article consumed. For only by an elaborate objective economic inequality could the sense of subjective equality be satisfied. The wage would have to be what the man feels his labor is worth to others, and the price what the product of other men's labor is worth to him. This is, of course, an absurdity, but in reducing the argument to an absurdity the distance between the practical formulæ of communism and its ideal pretensions is disclosed.

### 5. *The Working Theory of Communism*

In their working theory, as distinguished from their doctrinaire aims, what the communists propose to do is to stop the payment of incomes to the owners of productive capital, to landlords, bondholders, and shareholders. The assumption is that if income is paid out in wages alone, then rent, interest, and profits will no longer produce social inequality, and that this will end the class struggle, war, and the other social evils of an acquisitive society. But the truth is that the inequalities provoking ambition and antagonism will remain though wages are equal. For the difference between working in a mine and in a government office, between working on poor land and on good land, with good tools or poor ones, with labor-saving machinery or without it, will still persist. The fact that the landlords and capitalists had disappeared would not mean that no substantial advantages worth a struggle were left. If a ditch digger were paid as much as a commissar, it would still seem preferable to be a commissar. Unless the communist state can find a way to make each man's lot seem to him as good as any other man's, there will, if the communist interpretation of human nature is correct, be social advantages which men will strive to obtain and fight to hold.

In the socialist society, as an exceptionally gifted observer<sup>36</sup> has seen it in Russia, the organization of the economy "is in its mechanism almost identical with that of Capitalism"—that is, with monopolistic corporate capitalism, "the main difference being that 'ownership' is not transferable by private agreement since the Government appoints the 'owners' (managers). In such a system enterprises must naturally become separate units under the effective control of managers who

<sup>36</sup> M. Polanyi. Cf. *U. S. S. R. Economics*, p. 18. (Published by the Manchester University Press, 1936.)

can make the best of local resources and local marketing. . . . The local Soviets approach the central Planning Commission with various projects which they consider to be profitable. From these projects the Commission chooses a certain number which are thought to be sound and the local authorities are then provided with the money to start them and are held responsible for their success. The approved projects then appear in the national plan of the year. Thus the Commission actually undertakes, towards the local authorities, merely the function of a financier to an entrepreneur. . . . The system can best be envisaged if we conceive of each private firm in a capitalist country being made into a limited company, the State holding the shares and appointing a manager to each enterprise.”

Now this system is in all fundamental respects like that which prevails in the United States when money is to be appropriated for public works. Under socialism all important enterprises are what we call public works. Is it necessary to remind ourselves of how acute is the rivalry for appropriations not only among communities but among those interested in various projects within each community? Does the fact that the residual title to public works is in the community, that none of them is operated for the profit of private shareholders, abolish the antagonisms of the groups interested in conflicting projects? It certainly does not.<sup>27</sup> Yet in a socialist regime not merely some interests but all the interests of every person are directly affected by the decisions which allocate capital. Imagine, for example, the issues presented to the government planners if they had to decide whether to allocate new capital for textile mills in the South or in New England. The ab-

<sup>27</sup> Consider, for example, the political bitterness engendered between Jacksonville and Miami, Florida, over the Florida Ship Canal; between New York and the Lake states over the St. Lawrence seaway.

sence of private shareholders would not make the decision easier; for the burden of the decision, supposing it were in favor of the South, would mean that the government had decided to uproot the New England workers, forcing them to move from their homes or find new occupations.

It is incredible that anyone should have thought that by concentrating the responsibility for these vital decisions in public officials the conflicts of human interest would disappear. Substantiation for such an idea could be found in the Russian regime only because the conflicting interests are ruthlessly prevented from organizing for political action. It is the authority of the dictatorship, not the natural harmony of all interests, which creates the appearance of harmony. Were it not for the dictatorships, the rivalry of communities and of occupational interests for priority in the allocation of capital would be like the adoption of an American pork-barrel bill. But it would be ever so much more fiercely competitive. For the competing interests would be so much more numerous and would have so much more at stake.

The socialist contention that the collective ownership of the means of production will produce a "classless" state inhabited by a race of men who are purged of acquisitiveness and aggression is wishful thinking from a crude fallacy. The transfer of the residual titles can at the utmost expropriate the incomes of certain private owners. In so far as those incomes are the necessary payments for necessary services, such payments will be made or the services will not be rendered. In so far as there are unnecessary payments of unearned increments, they can be expropriated under capitalism at least as effectively as under socialism, and for the welfare of capitalism they should be expropriated. On the other hand, there is no reason for thinking that the unearned increment will be more effectively expropriated under socialism than it can be under capitalism.



For unearned increment in the form of economic rent would fall to the workers on superior lands and capital goods unless it were deliberately recaptured by taxation. It would be no easier for a socialist state to take away from the farmer the unearned increment of his more fertile land than it would be for a capitalist state to take it away from the landlord. In fact, it would be rather easier to tax the privilege of a few landlords and monopolists than of a multitude of peasants and workers. When I say that it would be easier, I am thinking, of course, of a self-governing democracy. Judging by the ruthless brutality with which the Soviets expropriated the kulaks, it must, of course, be admitted that a dictatorship might do it easily enough — at least until it encountered the privileges of the inner minority upon which its own power depended, until, for example, it ventured to equalize the standard of life in the Red army and in the Commissariats with that of the peasantry.

So the more closely one examines the socialist doctrine, the more plain it becomes that there is not in it any new principle which obliterates group conflicts or leads to a more successful adjustment of such conflicts. The real principle of social harmony in communism is nothing but the paramount power of the new ruling class.

One kind of privilege in particular would, therefore, be ineradicable in a socialist state. That is the privilege of ruling it. In a planned economy some must make the plan and administer it, the rest obey and be administered. It is impossible to imagine how from the exercise of such vast power there could be eliminated all the familiar characteristics of supreme privilege. Perhaps it might be done by stipulating that those who are to exercise this power shall be eunuchs chosen by lot, imprisoned like the queen bee, and then, when they have served a fixed term, put to death with Aztec ceremonial, and

buried with honors! Some such arrangement might discourage the struggle for place and power. But if communist rulers are to be less drastically dealt with, if they are to be trained for their special tasks and provided with the conveniences, the freedom, and the authority which the exercise of responsibility requires, they will live better and be more important than other men.

To rule in the communist state must and will remain an object of ambition. To rule means to decide how the collective savings shall be invested, how and when the population shall work, and what each man shall receive. How is it possible to imagine that occupational and regional grievances and hopes will not unite with personal ambitions to create factions and parties? Shall a new plant be built in the Ukraine or in the Urals? Shall an old plant be modernized or shall the money be used to increase the pay of the army? Shall there be more schools or more roads, more clothes or more steel, more food for the people or more imported machinery bought with the money the people need for food?

The mere fact that the state is the owner of the factories, its managers agents of the government rather than of the shareholders, would have little influence upon the desires of employees to redress their grievances or to improve their lot. Some industries, and in each industry some workers, are strategically more indispensable than others; is there reason to suppose, especially on the materialist hypothesis, that they will refrain from exploiting their advantages? In determining how much capital to save out of current production, in allocating it for new investment, the communist government has to choose among industries, regions, occupations. Though the planning were done with incorruptible wisdom, it would consist in a series of vital decisions favoring the present generation or the next, this kind of industry or that, this region or another.

It would be astonishing indeed if those least favored in the plan did not persuade themselves that, if they controlled the state, they could plan the economy with greater satisfaction to themselves and therefore with an even more incorruptible wisdom.

These questions of advantage arise out of the variety of life itself. They spring up in any society, capitalist or communist. But since a communist society is politically administered, and highly centralized in all vital matters, the social conflict is concentrated in the field of politics. Because everything is decided politically, all conflict becomes political, and the possession of power becomes the key to all other possessions.

In short, communism, when it abolishes private property in productive capital, establishes a new kind of property in the public offices which manage the collective capital. The commissars replace the capitalists, exercising the same powers or greater ones, enjoying the same social privileges or greater ones, and though their money incomes may be less, their luxuries less florid, they have everything that could tempt the less favored to envy them, to challenge them, and to strive to replace them. The social situation and the psychological mechanism which exist to-day, and which according to communist theory divide society into antagonistic classes, remain intact in the communist order. The only difference is that whereas under capitalism social advantages give political power, under communism political power gives social advantages. Thus the struggle for wealth is transmuted into a struggle for power, and the party of Stalin puts to death the partisans of Trotzky.

### *6. The Communist Reality*

This analytical examination of the contradictions in the communist theory suggests that we must look somewhere else than

in the official doctrine for the working principles of the Russian planned economy. It is not possible to understand the practical government of the Russian state by studying the Marxian dogmas. The dogmas accompany the action. But like the songs that soldiers sing when they go to war, the doctrines do not disclose the strategy of the high command.

That there is some kind of radical cleavage between the Marxian theory and the historic Soviet state is most readily visible in the fact that before 1917 no orthodox Marxist could have imagined that Russia would be the first communist society. It had been laid down in the theory that communism must appear first in the most highly industrialized countries. Although some attempts have been made to explain away this discrepancy, there can be no doubt that Marx and all his followers up to the Russian Revolution thought that capitalism would develop gigantic monopolies and that socialism would come through their nationalization. The new order was supposed to be developing as an embryo within the old order, and the dictatorship of the revolutionary proletariat was to be "the midwife," as Marx puts it, of "an old society pregnant with a new one." But when it came to the historic test, the oldest capitalist societies, like England, Belgium, Germany, and the United States, were not pregnant and could not be delivered, whereas agrarian Russia, with its feeble and semi-colonial industries, gave birth to communism.<sup>18</sup>

This contradiction between the prophecy and the event is extremely significant. It not only shows that communism is

<sup>18</sup> Cf. *Encyclopedia of the Social Sciences* (Vol. XIII, p. 478), article on "Russian Revolution": "Unlike the Western countries, Russia did not experience the comparatively slow transition from a handicraft economy through the factory system to full-fledged industrialism. There was consequently little correlation between the base of the Russian economy, which comprised a rather primitive agriculture and peasant handicraft, and the modern industrial giants at the top, which had been built up with the aid of government subsidies and investments of foreign capital."

not a necessary development out of capitalism, as all good communists used to believe, but it indicates that communism, as it has appeared in Russia, may be fundamentally unrelated to the evolution of capitalism, that it may have its roots in a wholly different set of circumstances.

There is fairly good reason for thinking that on the eve of his conquest of the Russian state, Lenin held the orthodox Marxian view that the new order must already exist, preformed within the old one. Thus in his treatise on *State and Revolution*, written between July and October, 1917, Lenin said that "the bookkeeping and control necessary for this have been simplified by capitalism to the utmost, till they have become the extraordinarily simple operations of watching, recording and issuing receipts, within the reach of anybody who can read and write and knows the first four arithmetical rules."<sup>19</sup> Lenin's slogan before the seizure of power was: "Under a Soviet government, state capitalism constitutes three-quarters of socialism" — the idea being that the proletarian dictators would control the organization which capitalism had already created. He thought this could be done by nationalizing the banks on the theory that capitalist industry is itself controlled by the banks. He took this step in December 1917, hoping "that in this way the Soviet government might gain control of the entire capitalist economic system without destroying its internal organization."<sup>20</sup>

But within a year, by the summer of 1918, Lenin knew that this method of realizing communism had failed, that the Marxian theory of the old order, pregnant with the new, did not hold in Russia. The bolshevik explanation is that in 1918 civil war broke out in Russia and that the capitalistically-minded managers could not be trusted while the Soviets were

<sup>19</sup> *Op. cit.*, p. 205.

<sup>20</sup> Boris Brutzkus, *Economic Planning in Soviet Russia*, p. 100.

at war with armies organized by the capitalist class. Professor Brutzkus, on the other hand, while conceding that this explanation has weight, maintains that it is not the whole explanation, that capitalist industry was paralyzed from the moment of the Revolution when the masses were incited to "rob the robber" and the bourgeoisie lost all security not only in their property but in their lives. Either explanation or both may be true: the essential point is that the fundamental prophecy of Marx did not come true. Communism did not come into the world as a development of the maturity of capitalism in Russia; it did not develop from the capitalism existing there but had deliberately to be fabricated on its ruins.

This is, I believe, a crucial point in any effort to understand the inwardness of the communist regime. The circumstance which compelled Lenin to depart from the Marxian idea of controlling the economy organized by capitalists, and to adopt the idea of organizing a new economy, was the civil and international war which broke out in July 1918 and lasted until November 1920.

It was in the interval known officially as the period of "war communism"<sup>21</sup> that the fundamental principle of the planned economy was adopted because, as Lenin put it in January 1920, "the centralization of the national economic administration is the principal means at the disposal of the victorious proletariat for developing the productive forces of the country." The means was a centralized administration, the end was the support of the Red army in a defensive war on many fronts and also in an offensive war against Poland.

At the critical period of this war the Russian Soviet state was practically surrounded by enemies. There were German and Austrian troops in the Ukraine, a White army in the

<sup>21</sup> The civil war ended in Nov. 1920; the period of war communism ended in March 1921.

Caucasus, a Czech army in Siberia and the Urals, an Allied army, Japanese and American, at Vladivostok, a British, French, and American army at Archangel, French naval forces in the Black Sea ports, and then, within this ring, the counter-revolutionary armies of Kornilov, Denikin, Yudenich, Wrangel, and Kolchak. Red Russia was cut off not only from the outer world but from the Russian regions which produced wheat, meat, coal, and oil. In this desperate struggle the communists had to create an army and supply it.

These were the circumstances under which the primary institutions of the planned society were established: the centralized administration, the dictatorship and the terror, the planning of production, the conscription of labor, and the rationing of consumption. These are the familiar features, not merely of communism, but of all modern national war economies. It is highly significant that Lenin was driven to a dictated collectivism because he had to fight a war, that he had not intended to bring in communism in this way until he was forced to fight a war. What he created under the compulsion of events was not a Marxian state but a military state. No doubt the Marxist aspiration and ideology reënforced the morale of the people, as the Wilson ideology reënforced the Allied morale in 1917, as the fascist ideology reënforces German and Italian morale. But the directing purpose of the planning and of its execution was not the Marxian promise but grim military necessity. Any Russian regime compelled to fight such a war would have had to adopt essentially the same political and economic organization.

This brings us to the question of whether in its subsequent development Russian collectivism has continued to be predominantly military in its aims and its methods. To prove that it has been, the argument must go deeper and must show that the purpose which has dominated the fundamental decisions of

those who have planned the Russian economy is a military purpose, that the economy is organized not to improve the popular standard of life as rapidly as possible but to make Russia a formidable military power.

The proof is to be found in the fact that the two Five-Year Plans have had as their primary objective the creation of heavy industries in the strategically invulnerable part of Russia, and that to finance this industrial development the Russian people have been subjected to years of forced privation. If the primary purpose of these Plans was the improvement of the standard of life, can it be seriously argued that the erection of steel plants would have been put ahead of the manufacture of clothes, that food would have been exported while the people went hungry in order to buy machinery to make goods which could have been bought direct at cheaper prices? No doubt the idealists believe that in giving the people steel instead of bread they are creating for the future a self-sufficient industrial system on the socialist pattern. But why was it necessary to make Soviet Russia self-sufficient? Why was it necessary to aim at self-sufficiency even in the years when Germany and most of Central Europe were ruled by social democrats? Because, as the communists have repeatedly insisted, they have lived in dread of an "imperialist" war. In other words, they did not choose steel rather than bread in order to prove that communism could do anything that capitalism could do; they chose steel because they wished to be self-sufficient as against a military blockade.

I do not mean to argue that they have not done many incidental things which are not military in origin. But I think it is evident that the fundamental decision as to the form of the political state, the plan of the economy, the determining policies of the regime, are what they are because Russia has been preparing for war on her European and on her Asiatic frontiers.



### *7. Collectivism a War Economy*

If this analysis is correct, then it has been demonstrated that the totalitarian states, whether of the fascist or the communist persuasion, are more than superficially alike as dictatorships, in the suppression of dissent, and in operating planned and directed economies. They are profoundly alike. For they have the identic controlling principle, which is the militarization of a people to the maximum degree. That the fascists and the communists hate each other and regard their respective doctrines as antithetical does not impair the generalization that they are both organizing for war. Their hatred merely supports the generalization: it means that they have developed not only the weapons but the will to fight the war.

We may go further and say that, though the planned economy is proposed as a form of social organization which will provide peace and plenty, thus far in all its concrete manifestations it has been associated with scarcity and war. From 1914 to 1918 all the belligerents were driven step by step into a planned and politically directed economy. The bolsheviks, as we have seen, were driven into it by the civil and international war they were forced to fight. They have continued with it under the Five-Year Plans, which, in their strategy and in the order of their priorities, are fundamentally military. The fascists have adopted collectivism, more or less frankly proclaiming their intent to solve their social problems by developing their military power. In all the nations which are still democratic and capitalistic, plans are drawn for their rapid transformation into totalitarian states. The only difference is that these plans are not described as schemes of social reconstruction. They are called more candidly plans of rearmament and mobilization, and they are drawn up in War Colleges, Committees of Imperial Defense, in General Staffs and Naval Boards.

That, I believe, is where all planned economies have originated and must in the very nature of things originate. For it can be demonstrated, I am confident, that there is only one purpose to which a whole society can be directed by a deliberate plan. That purpose is war, and there is no other.

## VI

### PLANNING IN PEACE FOR AN ECONOMY OF ABUNDANCE

#### *1. The Dependence of Planning upon the Martial Spirit*

ALTHOUGH all the known examples of collectivism have had their origin in war or have as their objective the preparation for war, it is widely believed that a collectivist order could be organized for peace and for plenty. "It is nonsense," says Mr. George Soule, "to say that there is any physical impossibility of doing for peace purposes the sort of thing we actually did for war purposes."<sup>1</sup> If the state can organize for war, it is asked, why can it not organize for peace and plenty? If it can mobilize against a foreign enemy, why not against poverty, squalor, and the hideous social evils that attend them?

It is plain enough that a dictated collectivism is necessary if a nation is to exert its maximum military power: very evidently its capital and labor must not be wasted on the making of luxuries; it can tolerate no effective dissent, nor admit that men have any right to the pursuit of private happiness. No one can dispute that. The waging of war must be authoritarian and collectivist. The question we must now consider is whether a system which is essential to the conduct of war can be adapted to the civilian ideal of peace and plenty. Can this form of organization, historically associated with military purposes and necessities, be used for the general improvement of men's condition? It is a critical question. For in answering it we shall be making up our minds whether the hopes invested in the

<sup>1</sup> *Op. cit.*, "We Planned in War," p. 187.

promises of the collectivists are valid, and therefore entitled to our allegiance.

We must remind ourselves again, not only why collectivism is necessary in war but why war is so favorable to collectivism. In war time the political conditions fix the "imperatives" which Mr. Chase lays down: "the scrapping of outworn political boundaries and of constitutional checks and balances, where the issues are technical [*sic*]; centralization of government; the overhead planning and control of economic activity."<sup>2</sup> Under the system of centralized control without constitutional checks and balances, the war spirit identifies dissent with treason, the pursuit of private happiness with slackerism and sabotage, and, on the other side, obedience with discipline, conformity with patriotism. Thus at one stroke war extinguishes the difficulties of planning, cutting out from under the individual any moral ground as well as any lawful ground on which he might resist the execution of the official plan. The dissenter, the conscientious objector, the indifferent and the discontented, have no rights which anyone is bound to respect, and if they are dealt with leniently it is because the war administrators have scruples or regard them as negligible. In the degree of their interference with the prosecution of the war, they have no more standing against military authority than has been enjoyed by the victims of Lenin, Trotzky, Stalin, Mussolini, and Hitler. Mr. George Soule has found the polite name for all this. He puts first among "the lessons from our war planning" that "we must have an objective which can arouse general loyalty and enthusiasm."<sup>3</sup>

<sup>2</sup> *Op. cit.*, p. 310.

<sup>3</sup> *Op. cit.*, p. 203. Mr. Soule, it should be understood, is a pacifist. His admiration for the war spirit is not that of the sentimental militarist. Mr. Soule would like to have the unanimity and enthusiasm of the war spirit without the intolerance and brutality of the war spirit. He would like the omelet, but he would not like to break the eggs.

War easily provides such an objective, and it is incomparably suited to the creation of a collective sentiment in which all lesser purposes are submerged. A call to arms is specific and everyone understands it. The cry that the enemy is at the gates, even the cry that beyond the deserts and mountains of Africa lies the promised land, needs little explaining. This is a very different thing from blowing the bugles and summoning the people to the abundant life to be achieved by "capacity operation of its plant, on the balanced load principle."<sup>4</sup> Anyone can imagine an enemy and hate him; but to talk about an abundant life is merely to begin an interminable argument. This is the reason, based on deep psychological compulsion, why the socialist propaganda has always relied more upon an appeal to class war than upon the vision of a socialist society, why the effective leaders from Marx to Lenin have always derided as "unscientific" and "utopian" any detailed concern with the nature of a socialist society. Their intuition has surely been sound. For it is the war spirit that most readily imposes unanimity for collective action among masses of men. When men are at peace, they have an incorrigible tendency, if one likes collectivism, a noble tendency if one dislikes it, to become individuals.

For reasons of this sort war provides a congenial climate for the administration of a planned economy. It is no less favorable to the planners when they face the crucial problem of deciding what specifically they will plan for. "We must have," says Mr. Soule, "an objective which is capable of being so concretely defined that it can decide questions as to how much we need to produce and in what order of importance the requirements are to be arranged."<sup>5</sup> In war time, or when a nation is totally committed to preparation for war, Mr. Soule's

<sup>4</sup> Chase, *op. cit.*, p. 308.

<sup>5</sup> *Op. cit.*, p. 203.

planners go to the general staff for a schedule of war machines, ammunition, fuel and spare parts, uniforms, food and medical supplies, barracks, and the transportation needed in order to train, equip, and supply an army of a specified size. With the demands of the general staff before them, they can take an inventory of their available supplies of men, materials, and technical skill. They can estimate the indispensable requirements of the civilian population. From these more or less known factors the planners can calculate the proportions and the priorities in the expenditure of men and materials and money.

An overhead planning and control of economic activity is feasible because the plan is calculable.<sup>6</sup> It is calculable because there is a specific purpose to be achieved, the supply of a military force of known size with known requirements out of known resources, and to this concrete objective all other needs must conform. The planners know definitely what goods are needed and in what amount. There is no problem of how much can be sold. The problem is how much can be produced. There is no worry about the varying tastes of voluntary consumers; the consumer is rationed. There is no such thing as a choice of occupation; labor is conscripted. Thus, though war economies

<sup>6</sup> The original discoverer of the idea that a planned economy in peace is incapable of "economic calculation" appears to have been the Austrian economist, Professor Ludwig von Mises — "Die Wirtschaftsrechnung im Sozialistischen Gemeinwesen," in *Archiv für Sozialwissenschaft*, Vol. 47, 1, April 1920. Professor von Mises developed the idea in Part II of his *Die Gemeinwirtschaft* (1922), published in English under the title *Socialism*.

Others, notably the German sociologist Max Weber and the Russian economist Boris Brutzkus, seem to have reached the same conclusions independently and concurrently. Since 1920 a formidable literature has developed in Europe. In English, besides von Mises's *Socialism*, the most important available works are the book on *Collectivist Economic Planning*, edited by F. A. von Hayek, containing papers by N. G. Pierson, Ludwig von Mises, Georg Halm, and Enrico Barone, also a bibliography; and Boris Brutzkus's *Economic Planning in Soviet Russia*.

An acquaintance with this school of socialist criticism is indispensable to all who would now discuss the problem of collectivism.

are notoriously inefficient, they can be administered by the method of overhead planning and control because, theoretically at least, there are no unknown factors, and there can be no resistance; it is possible, therefore, to calculate the relation of the means to the end and execute the plan whether people like it or not.

It is from military planning of this sort that all directed economies have derived their basic principles. One has only to examine their subsidies to agriculture, their policies in respect to the import of raw materials, the strategic design of their capital investment, — as, for example, the Magnitogorsk-Kuznetsk Combine in Russia, the Italian “battle of wheat,” or Dr. Schacht’s management of German foreign trade, — to see that military considerations supply the directives of the planning. But like their predecessors in war time, these politically managed economies are not planned initially by Dr. Schacht’s office or its Italian equivalent or by the Russian Gosplan. These civilian planning bodies receive their orders both for their objectives and for the specifications for attaining them from a higher authority — the general staff of the army.

Without such specific directives it would be impossible to plan. Yet in the popular discussion of planning this crucial point is rarely appreciated, and it is naïvely assumed that the planning boards determine the character of the plan. They can no more do that than an architect can plan a building until someone tells him whether it is to be a church, a factory, a tenement, a garage, or a gambling casino. Even when he knows that, he has to be told whether the church is to be a cathedral or a mosque, whether the garage is to hold one Ford or a fleet of omnibuses. If he knows what is wanted he can plan a building. But no planning can tell him what is wanted. That decision must come from someone higher up than the planner; in a society it must come from the sovereign.

The question of whether an economy can be planned for abundance, for the general welfare, for the improvement of the popular standard of life, comes down, therefore, to the question of whether concepts of this sort can be translated into orders for particular goods which are as definite as the "requisitions" of a general staff. An objective like "the general welfare" has to be defined as specific quantities of specific goods — so many vegetables, so much meat, this number of shoes, neckties, collar buttons, aspirin tablets, frame houses, brick houses, steel buildings. Unless this can be done there will not exist the primary schedule of requirements from which to calculate the plan. The general staff can tell the planner exactly how much food, clothing, ammunition, it needs for each soldier. But in time of peace who will tell the planners for abundance what they must provide?

## 2. *Civilian Planning*

The answer given by Mr. Lewis Mumford<sup>1</sup> is that "a normal standard of consumption" can be defined by biologists, moralists, and men of cultured taste, that the goods necessary to support it can be "standardized, weighed, measured," that they should be supplied to all members of the community. He calls this "basic communism." It is not quite clear to me whether he believes that the goods listed in this normal standard are to be furnished as they are to soldiers out of a public commissariat or whether he proposes to guarantee everyone a basic money income sufficient to buy a "normal" quantity of goods. If he has in mind the providing of rations of standard goods, then, of course, he has considerable confidence in his ability to determine what is good for the people, small respect for their varied tastes, and an implied willingness to make them like what

<sup>1</sup> *Op. cit.*, Ch. VIII.



they ought to like. Conceivably it could be done. But I should suppose it could be done only under the compulsion of necessity: that is, if goods were so scarce that the choice lay between the official ration and nothing. On the other hand, if he has in mind a guaranteed minimum income which may be spent freely, then he has no way of knowing whether the consumers will have Mr. Mumford's own excellent tastes, and go to the stores demanding what he thinks they should demand. But if they do not wish to buy what he would like them to buy, then his planners are bound to find that there is a scarcity of some goods and a glut of others.

The difficulty of planning production to satisfy many choices is the rock on which the whole conception founders. We have seen that in military planning this difficulty does not exist. It is the insurmountable difficulty of civilian planning, and although advocates like Mr. Mumford, Mr. Chase, and Mr. Soule have never, I think, faced it squarely, they are not unaware that it exists. They show that they are troubled because they denounce so vehemently the tastes of the people and the advertising which helps to form those tastes. They insist that the people have foolish and vulgar desires, which may be true enough, and that altogether better standards, simpler, more vital, more æsthetic, and more hygienic, ought to replace them. I agree. But I do not see how the purification of the public taste is to be worked out by a government commission. I can see how and why the general staff can decide how soldiers should live under martial discipline; but I cannot see how any group of officials can decide how a civilian population shall live nobly and abundantly.

For the fundamental characteristic of a rising standard of life is that an increasing portion of each man's income is spent on unessentials; it is applied, in other words, to things in which preference rather than necessity is the criterion. If all income

had to be spent on the absolute necessities of life, the goods required would be few in number and their production could readily be standardized into a routine. Now it should be noted that all known examples of planned economy have flourished under conditions of scarcity. In the war economies of 1914–1918, in the collectivist regimes in Russia, Italy, and Germany, the supply of necessary goods has never been equal to the demand. Under such conditions, as during a siege or a famine, the communist principle is not only feasible but necessary. But as productivity arises above the level of necessity the variety of choices is multiplied. And as the choices are multiplied, the possibility of an overhead calculation of the relation between demand and supply diminishes.

We may approximate an idea of the order of magnitudes in this field by remembering that during the year 1929 the American people spent approximately ninety billion dollars.\* I have sought in vain to find even a loose estimate of how many different kinds of goods and services they bought. But one can obtain some sense of their infinite variety by thinking of the goods offered for sale in a big department store, by glancing at the names of the corporations listed on the stock exchanges, by thumbing through a city directory and a telephone book, by looking at mail-order catalogues, the help-wanted columns, and the advertisements in the newspapers. The variety of goods and services offered in the markets of America defies description. Now, of the ninety billions spent, some twenty billions went into the purchase of food. This meant a highly varied diet. But even assuming that food is the most nearly calculable of human necessities, the one that can, by simplifying the public bill of fare, be rationed successfully among large bodies of men, there would have remained in 1929 variable expenditures of about seventy billions.

\* William H. Lough, *High-Level Consumption*, App. A.

By what formula could a planning authority determine which goods to provide against the purchases of thirty million families with seventy billions of free spendable income? The calculation is not even theoretically possible. For, unless the people are to be deprived of the right to dispose of their incomes voluntarily, anyone who sets out to plan American production must first forecast how many units of each commodity the people would buy, not only at varying prices for that commodity, but in all possible combinations of prices for all commodities.<sup>9</sup>

Within limits, some narrow and others almost indefinitely elastic, more articles of one sort will be bought at a low price than at a high price. Let us suppose, then, that the planning authority wishes to make a five-year plan for the production of automobiles, and that by means of the familiar mathematical curves used by economists it determines that at \$500 a car the people will buy ten million new cars in five years. The planners could then calculate the amount of steel, wood, glass, leather, rubber, gasoline, oil, pipe lines, pumps, filling stations, needed to manufacture and service that many additional automobiles. This would be theoretically feasible. The problem would not differ essentially from planning to supply an army; the industrial system would be planned to produce ten million automobiles. There would be a single, specific, quantitative objective as the premise of the plan. But such a planned economy would please only monomaniacs.

So let us suppose that the authority has also to plan the con-

<sup>9</sup> See *Recent Social Trends*, Report of President Hoover's Research Committee: "With all the much-discussed pressure for standardization in American life, there is probably to-day a greater variation from house to house in the actual inventory list of family possessions and of activities by family members than at any previous era in man's history. The consumer's problem is one of selection to a degree never before known. Industry in turn faces the necessity of competing not merely against rival makes of the same commodity but, to an unprecedented extent, against the entire field of alternate goods and services. . . ." (Vol. II, p. 858.)

struction of houses. The task immediately becomes more complicated. For now it is no longer possible to stop at determining how many houses the people will buy at, let us say, \$3000 apiece. It is necessary also to decide how they will choose, and in what proportions, between a new car at \$500 and a new house at \$3000. With cheap houses available, some will prefer them to cars; others will prefer cheap cars to houses. The planners would have to predict the choice. They would then find, of course, that since houses also require steel, wood, glass, they would have to recalculate the plan drawn up when they had only automobiles in mind.

But that would not be the end of their difficulties. For there would be a party saying that housing is more important, or, as Mr. Mumford would put it, more vital, than joy-riding, that therefore cars should cost 20 per cent more, or \$600, and houses 20 per cent less, or \$2400. The planners would have to consult an oracle; they could have no objective criterion by which to determine whether freedom of movement or stability of residence was more conducive to an abundant life. But suppose they listened to Mr. Mumford and agreed to raise the price of cars and reduce the price of houses. Everything would have to be recalculated and replanned. For now there would have to be less rubber imported, but there would have to be more cement produced domestically; there would have to be less filling-station equipment and more bathroom fixtures.

In line with the decision to favor a settled as against a nomadic way of life, many other activities would have to be replanned. There would probably be more demand for radios and carpet slippers, less demand for movies and roadside eating places. The state would either have to provide more subways and busses to take the man of the family to work, the woman to the market, and the child to school, or it would have to move factories, shopping centres, and schools nearer to the home. The

authority would have to calculate these shifting demands correctly in order to do away with the chaos and waste of competitive individualism. It would require some mighty arithmetic. As a matter of fact a regiment of Einsteins could not make the calculation because the problem is inherently incalculable. For even if we make the fantastic hypothesis that the planning authority could draw up reliable estimates of what the demand would be in all combinations of prices, for all the thousands of articles that Americans buy, there is still no way of deciding which schedule would fit the people's conception of the most abundant life.

Out of all the possible plans of production some schedule would have to be selected arbitrarily. There is absolutely no objective and universal criterion by which to decide between better houses and more automobiles, between pork and beef, between the radio and the movies. In military planning the criterion exists: to mobilize the most powerful army that the national resources will support. That criterion can be defined by the general staff as so many men with such and such equipment, and the economy can be planned accordingly. But civilian planning for a more abundant life has no definable criterion. It can have none. The necessary calculations cannot, therefore, be made, and the concept of a civilian planned economy is not merely administratively impracticable; it is not even theoretically conceivable. The conception is totally devoid of meaning, and there is, speaking literally, nothing in it.

### *3. Conscription and Rationing in Order to Plan*

The primary factor which makes civilian planning incalculable is the freedom of the people to spend their income. Planning is theoretically possible only if consumption is rationed. For a plan of production is a plan of consumption. If the authority

is to decide what shall be produced, it has already decided what shall be consumed. In military planning that is precisely what takes place: the authorities decide what the army shall consume and what of the national product shall be left for the civilians. No economy can, therefore, be planned for civilians unless there is such scarcity that the necessities of existence can be rationed. As productivity rises above the subsistence level, free spending becomes possible. A planned production to meet a free demand is a contradiction in terms and as meaningless as a square circle.

It follows, too, that a plan of production is incompatible with voluntary labor, with freedom to choose an occupation. A plan of production is not only a plan of consumption, but a plan of how long, at what, and where the people shall work. By no possible manipulation of wage rates could the planners attract to the various jobs precisely the right number of workers. Under voluntary labor, particularly with consumption rationed and standardized, the unpleasant jobs would be avoided and the good jobs overcrowded. Therefore the inevitable and necessary complement of the rationing of consumption is the conscription of labor, either by overt act of law or by driving workers into the undesirable jobs by offering them starvation as the alternative. This is, of course, exactly what happens in a thoroughly militarized state.

The conscription of labor and the rationing of consumption are not to be regarded as transitional or as accidental devices in a planned economy. They are the very substance of it. To make a five-year plan of what a whole nation shall produce is to determine how it shall labor and what it shall receive. It can receive only what the plan provides. It can obtain what the plan provides only by doing the work which the plan calls for. It must do that work or the plan is a failure; it must

accept what the plan yields in the way of goods or it must do without.

All this is perfectly understood in an army or in war time when a whole nation is in arms. The civilian planner cannot avoid the rationing and the conscription, for they are the very essence of his proposal. There is no escape. If the people are free to reject the rations, the plan is frustrated; if they are free to work less or at different occupations than those prescribed, the plan cannot be executed. Therefore their labor and their standards of living have to be dictated by the planning board or by some sovereign power superior to the board. In a militarized society that sovereign power is the general staff.

#### 4. *Planning versus Democracy*

But who, in a civilian society, is to decide what is to be the specific content of the abundant life? It cannot be the people deciding by referendum or through a majority of their elected representatives. For if the sovereign power to pick the plan is in the people, the power to amend it is there also at all times. Now a plan subject to change from month to month or even from year to year is not a plan; if the decision has been taken to make ten million cars at \$500 and one million suburban houses at \$3000, the people cannot change their minds a year later, scrap the machinery to make the cars, abandon the houses when they are partly built, and decide to produce instead skyscraper apartment houses and underground railroads.

There is, in short, no way by which the objectives of a planned economy can be made to depend upon popular decision. They must be imposed by an oligarchy of some sort,<sup>10</sup> and that

<sup>10</sup> Which may, of course, let the people ratify the plan once and irrevocably by plebiscite, as in the German and Italian plebiscites.

oligarchy must, if the plan is to be carried through, be irresponsible in matters of policy. Individual oligarchs might, of course, be held accountable for breaches of the law just as generals can be court-martialed. But their policy can no more be made a matter of continuous accountability to the voters than the strategic arrangements of the generals can be determined by the rank and file. The planning board or their superiors have to determine what the life and labor of the people shall be.

Not only is it impossible for the people to control the plan, but, what is more, the planners must control the people. They must be despots who tolerate no effective challenge to their authority. Therefore civilian planning is compelled to presuppose that somehow the despots who climb to power will be benevolent — that is to say, will know and desire the supreme good of their subjects. This is the implicit premise of all the books which recommend the establishment of a planned economy in a civilian society. They paint an entrancing vision of what a benevolent despotism could do. They ask — never very clearly, to be sure — that somehow the people should surrender the planning of their existence to “engineers,” “experts,” and “technologists,” to leaders, saviors, heroes. This is the political premise of the whole collectivist philosophy: that the dictators will be patriotic or class-conscious, whichever term seems the more eulogistic to the orator. It is the premise, too, of the whole philosophy of regulation by the state, currently regarded as progressivism. Though it is disguised by the illusion that a bureaucracy accountable to a majority of voters, and susceptible to the pressure of organized minorities, is not exercising compulsion, it is evident that the more varied and comprehensive the regulation becomes, the more the state becomes a despotic power as against the individual. For the fragment of control over the government which he exercises through



his vote is in no effective sense proportionate to the authority exercised over him by the government.

Benevolent despots might indeed be found. On the other hand they might not be. They may appear at one time; they may not appear at another. The people, unless they choose to face the machine guns on the barricades, can take no steps to see to it that benevolent despots are selected and the malevolent cashiered. They cannot select their despots. The despots must select themselves, and, no matter whether they are good or bad, they will continue in office as long as they can suppress rebellion and escape assassination.

Thus, by a kind of tragic irony, the search for security and a rational society, if it seeks salvation through political authority, ends in the most irrational form of government imaginable — in the dictatorship of casual oligarchs, who have no hereditary title, no constitutional origin or responsibility, who cannot be replaced except by violence. The reformers who are staking their hopes on good despots, because they are so eager to plan the future, leave unplanned that on which all their hopes depend. Because a planned society must be one in which the people obey their rulers, there can be no plan to find the planners: the selection of the despots who are to make society so rational and so secure has to be left to the insecurity of irrational chance.

## VII

### GRADUAL COLLECTIVISM

#### 1. *The Theory of Democratic Collectivism*

IN countries like Great Britain or the United States there is no manifest disposition to establish a totalitarian order with a regimented population under a militarized autocracy, but for some sixty years these democracies have tended increasingly to seek relief from poverty and disorder by the use of collectivist measures.<sup>1</sup> In fact it may be said that contemporary progressives are gradual collectivists and that they hope by the gradualness of their methods to avoid the violence of dictatorship.

Those who hold this view are at present the overwhelming majority of public-spirited and well-disposed persons in the democratic countries. They are not fanatics who, in order to achieve a planned society, would be willing to sweep away the guaranties of liberty and the responsibility of rulers to the people. Their goal is the public administration of the economy, but they believe that no step must be taken to that goal without popular consent obtained by persuasion in open debate. They hold that in this way the advance into collectivism can be made without class struggle, dictatorship, or the militarization of society.

<sup>1</sup> A. V. Dicey (*op. cit.*, p. 217) says that "English legislative opinion has from about 1870 onwards given a doubtful, if not a negative reply" to the question whether "the evils which bring ruin on a commonwealth" can be cured by "the systematic extension of individual freedom and the removal of every kind of oppression."

For approximately three generations a gradual democratic advance into collectivism has been under way. This movement also has its ideology. But here again, as with the fascists and the communists, the theory is very different from the practice and the results are very different from the promises.

The theory of gradual collectivism rests upon the assumption that majorities express the will and represent the interests of society, and that they have inherited from the king the prerogatives of his sovereignty.<sup>2</sup> The gradual collectivist believes in the absolutism of the majority, having by a fiction identified the mandates of transient majorities with the enduring and diverse purposes of the members of a community. He thinks it absurd that a few oligarchs in the Kremlin or demagogic dictators in Berlin or Rome should pretend that their personal decisions are the comprehensive purposes of great nations. Yet the gradual collectivist, under the banner of popular sovereignty, believes in the dictatorship of random aggregations of voters. In this theory the individual has no rights as against the majority, for constitutional checks and bills of rights exist only by consent of the majority. Even the right of the majority to rule is at the mercy of any passing majority. For there is nothing in the doctrine of the sovereignty of the majority to preclude the abolition of majority rule by vote of a majority. In fact it was under the ægis of this doctrine that Napoleon III and Hitler came to power.

Thus by one fiction the gradual collectivist identifies passing majorities with the nation. By another fiction he treats the legislators as representative of the majorities which elected them. And finally, by a third fiction he pretends that the executive and administrative machine represents the will of a majority of the legislators. The nation is supposed to have delegated its unlimited authority to a majority of the en-

<sup>2</sup> Cf. Ch. XII.

franchised voters. They are supposed to have delegated their unlimited authority to a majority in the legislative assembly. The assembly is supposed to have delegated its unlimited authority to the executive and the bureaucracy. To this central authority the gradual collectivist then proposes to entrust increasingly the administration of the social system.

It is evident that a regime of this sort is afflicted with an insoluble contradiction. In so far as it seeks to administer the economy under a rational and coherent plan, it must somehow prevent one majority from overriding the decisions of a previous majority. For if a plan is to be carried out, it must be adopted and the people must thereafter conform. If they do not conform, if they are free at any time to agitate for amendments, the plan ceases to be a plan. It would not be a plan if its parts were not closely interrelated; if it is subject to continual change at vital points, the whole design has to be remade continually. Suppose, for example, that the Russian people had had a democratic control over the Five-Year Plan, and that, having assented at the outset to the proposal that they manufacture steel before they manufactured clothing, they had changed their minds. They would not have amended the plan: they would have abolished it. It would have been necessary to draft a wholly different plan, and two years after the new plan had been put into effect the people might again have changed their minds. This would have called for still a different plan. But a series of different plans would be no plan at all.

The very essence of the democratic process is that the rulers are continually responsible to popular opinion, and unless that opinion is free to change, and in changing to alter the policy of the state, there is no democracy. The very essence of the conception of planning is that a design can be adopted to which the people will thereafter conform. That is equivalent to saying that a democratic people cannot have a planned economy, and

that in so far as they desire a planned economy they must suspend responsible government.

Yet men of unimpeachable loyalty to democratic ideals are currently expounding the idea that the plan of an ordered society can be drawn up, that the people can be converted to it by agitation and propaganda, and that after the people have ratified it, the plan can be executed. Here, for example, is Professor Beard's idea of how, with "the approval, consent, acquiescence, knowledge and coöperation"<sup>a</sup> of the people, a planned and administered society can be established in the United States. He would create "a single national authority with two divisions: (1) a division charged with the responsibility of fixing a national standard-of-life budget with quantities, qualities, and specifications expressed in the most exact and scientific terms; (2) a division of production specialists empowered to show in how far, and by what methods, the resources and industrial arts of the United States can supply the requisite goods and materials." This national authority would produce a report, "with maps, pictures and other forms of graphic presentation," which would be "the most stupendous and superb presentation of accomplishments, possibilities and projects ever made in the whole history of civilization." Representatives of interests opposed to the plan would be invited to state their objections. "Thus would be disclosed the chief interests and methods standing in the path of realization" and "in this open way would be made clearer the measures and practical steps necessary to proceed with the program." The President would then present the report to the nation by messages, addresses, and radio. There would be an intensive campaign of propaganda. After that the report "would be made the prime document of policy to which all partial measures would be referred for consideration and testing." This "program for

<sup>a</sup> Charles A. Beard, *The Open Door at Home*, pp. 311-13.

America would give direction to public education, now so rudderless."

Thus by unremitting government propaganda a way of life worked out by a government bureau would be inculcated upon the people. Once converted, they would presumably grant to the government all power necessary to carry out the plan. The report, says Mr. Beard, "would be made the prime document of policy." It is not clear who is to establish the primacy of the document. It is not clear what is to happen if the people change their minds about the national standard-of-life budget as drawn up by the national authority. It is not clear whether they would have the right to give up the plan or are supposed to surrender their right to change it. This is the insoluble contradiction of the gradual collectivist. For unless we are to suppose that the initial ballyhoo is to settle the issue, either the national authority will be in a perpetual state of confusion, like a man who might lay down the keel for a boat and is then told he must make it into a wagon, or the people, having once accepted the report, will have to be drilled unceasingly by a stupendous propaganda to keep them from changing their minds, and, the government having become deeply committed to the report, vested interests having been created, the dissenter would have to be treated as antisocial and unpatriotic.

## 2. *The Polity of Pressure Groups*

In the real world the historic advance of democratic collectivism has not been directed by any such rationalized vision of a new society. It is true that visions of this sort have influenced the argument over specific measures, rousing many to action and breaking down resistance, and it would be difficult to exaggerate the practical influence on western society of these collectivists who call themselves social democrats, Fabian

socialists, evolutionary or revisionist socialists, or merely progressives. The collectivists have conquered the intellectual world, to borrow a phrase from Mr. Keynes,<sup>4</sup> as thoroughly as the Holy Inquisition conquered Spain. They have made it seem rather ridiculous and contemptible to hold that mankind can advance by proceeding with the process of liberation; they have persuaded the intellectual world that social improvement must come by magnifying the dominion by public officials. But though collectivists exercise a kind of intellectual monopoly and absolute authority over the assumptions of modern politics, they have not imbued the mass of the people with their own general conception of society as a whole. The doctrines remain the possession of an élite. Electorates and parliaments, though they have been moving rapidly in the collectivist direction, have not consciously been shaping society according to a new design.

Though the movement has been under way for more than sixty years, it is a matter of common knowledge that even in countries where the socialist vote has been considerable it is no measure of the number of genuinely convinced and indoctrinated socialists. There are many more socialist voters than there are convinced socialists. Thus it is fair to say that the advance of collectivism has not been determined by the image of a collectivist society. The advance has consisted of a series of definite measures, all more or less within the same general category, to be sure. But these measures have come not from a general theory but from a series of efforts to deal with specific grievances and to provide particular benefits.

Such has been the inner principle of the gradual and democratic collectivist movement. It is, I believe, its only possible principle. Because a democracy cannot adopt a plan for col-

<sup>4</sup> *Op. cit.*, p. 32. Mr. Keynes is speaking of Ricardo's influence on the classical economists of the nineteenth century.

lectivism, the practical initiative in each measure of its gradual advance comes not from the energy of a general ideal but from organized interests seeking protection and privileges. In practice gradual collectivism is not an ordered scheme of social reconstruction. It is the polity of pressure groups.

The movement advances by measures adopted from time to time at the instigation of aggrieved or aspiring groups of voters. Through their leaders and lobbyists they persuade, cajole, coerce, and occasionally corrupt the electorate or the parliament; often they conspire with other organized interests to form majorities by coalition. Though exceptions could be cited, it is substantially true that, while the moral and intellectual justification for each measure is derived from the general ideology of collectivism, the initiative comes from organized interests. There has been some legislation for the welfare of the weak and the dependent which may be said to be the work of humane and disinterested men. But these measures do not deeply affect the conduct of business and government. Though they are humanly important, they are peripheral and superficial, and by all thoroughgoing collectivists are recognized as such.

The measures which have profoundly affected the social order because they have meant the shift of important social benefits from one group to another, from one region or occupation to another, from individuals to great corporations or from individuals to the government — all such decisive measures have proceeded from the pressure of interested groups upon the electorate and upon the politicians. The particular measures would not have been adopted when they were adopted but for the organized agitation, the lobbying, and the exercise of influence by these interested groups. Thus no serious historian of politics would imagine that he had accounted for the protective tariff or the system of bounties or subsidies, for the monetary



and the banking laws, for the state of the law in regard to corporate privileges and immunities, for the actual status of property rights, for agricultural or for labor policies, until he had gone behind the general claims and the abstract justifications and had identified the specifically interested groups which promoted the specific law.

Such an understanding of the actual history should not be confused with the arbitrary classification of society into a capitalist class and a proletarian class. For while it may serve the purposes of a revolutionary propaganda to say with Marx that the modern state is "nothing more than a committee for the administration of the consolidated affairs of the bourgeois class as a whole," the specific measures taken by modern states are unintelligible on the hypothesis that there is a "bourgeois class" which has "consolidated affairs." Consider, for example, the American tariff as it existed when President Hoover signed the Hawley-Smoot Bill in 1930. It would be admitted by all, I suppose, that with negligible exceptions each item in each schedule originated with at least some of the producers of the article protected by the duty, and that the rate was either a grant of their demands or a compromise between their demands and the objections raised by representatives of some other interest. No one would pretend that this tariff which profoundly affected the whole American economy, not to speak of the economy of the world, was in any sense of the term conceived by "the bourgeois class" as a whole. The very essence of that tariff, and of all its predecessors, was that, far from representing the "consolidated" interests of businessmen as a class, it represented the special interests of some of them.

What "protection," for example, do tariffs on steel, or for that matter on anything else, give to such industries as the railroads, the light, power, telephone, and telegraph companies, the building trades, automobile manufacturers, newspapers,

hotels, bakeries, milk producers and distributors, streetcars, busses, ferries, lake and river steamboats, the freight business, or the service industries, such as garages and filling stations? <sup>5</sup> The anatomy of the tariff bill itself contains conclusive proof that certain producer interests, not American producers as a whole, are responsible for the fact that commerce is being regulated in the particular way that the law regulates it. The Marxian assumption that Congress legislated for "the consolidated affairs" of "the bourgeois class" is as misleading as the assumption of the defenders of the tariff that it legislated for the American people as a whole.

Under gradual collectivism, precisely because it is gradual, the measures of state interference are almost invariably promoted by particular groups. Invariably they claim that their particular interest is identical with the national interest. But it is the particular interest which moves them to raise the issue. The legislature may reject the claim if someone is able to expose its fallacy. But in so far as the legislature acts, it must listen to some petition. It does not move unless it has been provoked by the claim of some group. For it has no other criterion by means of which it can decide where and when and to what end it should intervene. Suppose, for example, that there were no tariff and that no lobbyist could communicate with any member of Congress, and then that Congress, believing in the abstract principle of national protection, were able to hear only from absolutely disinterested economists — let us say from a group of men who had acquired complete knowledge of all the available data after a lifetime of study in a Tibetan monastery. Would the law resemble any existing tariff? Could any law

<sup>5</sup> These items are selected from a larger list compiled by Dr. Benjamin M. Anderson. Cf. his address before the Indianapolis Chamber of Commerce, Jan. 30, 1936, published by the Chase National Bank of New York.

be written by men who were equally interested in helping the automobile industry to obtain cheap steel and the steel industry to maintain a fixed and protected price? In helping the house builder or the manufacturer to obtain inexpensive materials and the producers of those materials to obtain a protected price?

The protective tariff does not stand alone. The same principle is no less evident in the collectivist measures designed to assist farmers or workers. The very fact that they are generally proposed on the ground that something must be done to equalize burdens, privileges, and bargaining power is in itself a most significant indication of the real nature of the process. If we examine such measures in detail we shall rarely fail to observe that in fact they are promoted not by "the farmers" or by "labor" as a whole but by particular interests among farmers and workmen.

The Agricultural Adjustment Act, for example, in its dealings with cotton, paid little attention to the tenant farmers, the sharecroppers, not to speak of the agricultural laborers who were displaced by the curtailment of cotton production. Moreover, the curtailment of cotton production by the method of acreage reduction paid scant attention to the claims of the efficient producer as against those of the less efficient. Moreover, initially the act itself selected seven "basic" commodities which were entitled to benefit payments; by subsequent amendment in response to the pressure of organized interests the number was increased to sixteen. All the other farmers had to contribute to these benefits by paying the processing taxes. Thus a dairyman paid a tax on cotton, wheat, hogs, and corn. But he received no benefit payments. I do not mean to argue that in the critical conditions which prevailed in the year 1933 special legislation of this sort may not have been temporarily in the general interest. My concern is merely to illustrate the underlying

principle of gradual collectivism, which is that its specific measures owe their origin to particular interests and that its design follows the pattern of the influences exerted by pressure groups.

The same principle tends to control labor legislation. Anyone who will analyze the laws passed to benefit labor will find that, apart from some few of a humanitarian character, they reflect fairly well the strategic advantages of certain groups of workers. Thus railroad employees are more highly protected by special laws than any other group, and among railroad employees the members of the brotherhoods are more carefully protected than the shopmen or the unskilled workers who maintain the tracks. The social-security laws providing for insurance against unemployment, for example, and the laws to promote collective bargaining give protection to well-established, strategically placed, and highly organized groups. They are quite unable to give the same degree of protection, let us say, to domestic servants, or to casual workers.

### *3. The Vicious Paradox in the Polity of Pressure Groups*

It appears to make no difference where collectivism of this sort begins. Whether it begins with tariffs for some manufacturers, special laws for certain groups of workingmen, or bounties for farmers, the one certain thing is that in a democratic society the granting of some privileges must be followed by the granting of more privileges. In fact it might be said that when modern states abandoned the Jeffersonian principle of special privileges to none they became committed to the principle of special privileges for all.

Thus a tariff for one industry will make irresistible the demands of other industries for equal protection. At the end of the process, very nearly reached by the United States in 1930,

tariffs became universal and well-nigh exclusive against all products that can be made domestically. But such tariffs only mark the beginning. The agricultural interests will demand protection and bounties in order to achieve "parity." An advanced system of labor legislation always demands the support of an exclusive tariff. Thus under the National Industrial Recovery Act, which sought by federal laws, called codes, to elevate wages and working conditions, it was provided<sup>6</sup> that if "substantial quantities" of any article were imported and might "render ineffective" the "maintenance of any code," such imports could be prohibited.

Now the effect of attempting to give protection to all the interests capable of bringing influence to bear upon the government is to cancel out many of their special advantages. One tariff-protected manufacturer in an economy otherwise committed to free trade will, of course, obtain a substantial advantage. But if the producer from whom he buys his raw materials is also given protection, some of the benefit is canceled, for the costs of production are increased. If, then, bounties and tariffs have to be given to the farmers in order to protect them also, the first lobbyist not only has to contribute to the benefits out of his profits, but he finds that the cost of living has risen for his employees. When they organize to increase their real wages, more of his benefits are canceled.

If the sole effect of this cumulative collectivism were to cancel out the special advantages of the various pressure groups, it might be regarded as a harmless method of letting them enjoy the appearance of special privileges while the community escaped the consequences. If, by making privilege universal, special advantages were neutralized; if, by giving one interest after another a special favor, all the interests came to be on an equal footing, the process might be silly, but it would not be

<sup>6</sup> Cf. Sec. 3 (e) of the National Industrial Recovery Act.

dangerous. The believers in gradual collectivism seem to have some such comforting thought in the backs of their minds.<sup>7</sup>

The notion of equal privileges for every interest has, as it happens, been elaborated into a scheme of social organization. It is known in Italy as the Corporative State. In Russia it is partially embodied in the Soviet system of government. And long before that the idea was adopted by several schools of social reconstruction, among them the guild socialists and syndicalists of many sorts. The theory of these schemes is that government should be "functional" rather than geographical — that is to say, in the state each person should be represented as a worker rather than as a citizen. Many democrats have been attracted by the idea, thinking that the avowed representation of particular interests would be better than the lobbying of pressure groups pretending to be disinterested patriots. They have been tempted to hope that the open avowal of all special interests would neutralize their self-regarding purposes into a realistic but harmonious conception of the general interest.

But the trouble with these schemes is that they sanctify the self-regarding purposes of special interests and do nothing to subdue them. For many particular interests do not in any conceivable combination constitute the general interest; to entrust the government of a nation to such a body would be to turn the sovereign power over to a coalition of its most powerful interests. As a matter of fact, though the semblance of such a political organization exists in Italy, in Russia, and even in Germany, in none of these states is real power entrusted to it. The sovereign power resides in the dictatorship, and in fact only a dictatorship could hope to keep a chamber of special

<sup>7</sup> This was the view current in the spring of 1933 when the New Deal programme under NRA and AAA was adopted. Every interest was to be a monopoly and to have protection; it was hoped that the net effect would be to equalize privileges.

interests from conspiring continually against the national welfare.

There is no reason to think that the self-regarding activities of special groups can be balanced or regulated by organizing more and more of them. In the historical period during which organized interests have been increasingly active and their activities have been treated as more and more reputable, there have been two momentous developments. By organized restrictions of many sorts the production of wealth has been retarded, the method of monopoly being employed to enrich the favored interests. The imprimatur of respectability having been put upon organized privilege, the whole population has become imbued with the idea that as a matter of right everyone is entitled to invoke the law to increase his income.

This is the vicious paradox of the gradual collectivism which has developed in western society during the past sixty years: it has provoked the *expectation* of universal plenty provided by action of the state while, through almost every action undertaken or tolerated by the state, the production of wealth is *restricted*. By these measures modern states have frustrated the hopes which their policies have aroused. They have put into effect measures of scarcity, and all the while they have taught the people to believe that the effect of the policy would be to give them abundance. To that paradox no small part of the dangerous tension in modern society is due.

#### 4. *The Restriction of Wealth*

That a system of gradual collectivism, operating through tariffs and bounties, price fixing and wage fixing, must reduce the wealth of nations has seemed so self-evident to a long line of economists that one of them has been moved to say that "only the feeble-minded and the paid agents of vested in-

terests will be found to deny such propositions.”<sup>8</sup> Yet the proposition is denied in the practice of all modern states, and among the great mass of their inhabitants it is regarded as far from self-evident that to restrict production is to become deliberately poorer.

It is curious and significant, however, that while almost every interest favors collectivist measures, no one defends them all. Thus, for example, the processing tax on cotton — levied in order to pay cotton planters to restrict their output and raise the price — was invalidated in the Supreme Court as the result of a lawsuit brought by a textile mill corporation which enjoys high tariff protection.<sup>9</sup> Manufacturers, who have the legal privilege of exclusive possession of the domestic market at more than a competitive price, have no difficulty in understanding the objections to laws which create artificially high prices for their raw materials. They can see no less easily the fallacy of monopolistic union wage rates. All the reasons for respecting the law of supply and demand, all the arguments against monopoly, restriction, and scarcity, are self-evident to them except in the field where they themselves have an exclusive market under government protection.

The managers of the great corporations are fully aware that the production of wealth is restricted by labor laws and labor contracts which enable their employees to do less work for more pay. But it is not so easy for them to see that when, by means of tariffs or a monopolistic control of prices, they restrict production and raise their prices above the competitive level, they too are practising a policy of scarcity. Though they will shut down their own plant rather than sell at a lower price, and will invoke tariff protection to prevent foreigners from selling at the lower price, they nevertheless understand that the

<sup>8</sup> Lionel Robbins, *The Great Depression*, p. 67.

<sup>9</sup> Hoosac Mills Case.



soundest principles of economics have been violated when farmers are assisted by the government to plough under cotton and slaughter little pigs, when wage earners insist on shorter hours at a high "prevailing wage." These same farmers, however, relying upon the full power of the government to raise their prices by restricting production, will in the same breath denounce the railroads and utilities for not expanding production by reducing the rates.<sup>30</sup>

Thus, in the debate which accompanies the advance of gradual collectivism, particular interests will be found advocating protection for themselves and free trade for those with whom they transact their affairs. If the student is looking for a defense of the system, he can find it by assembling the arguments used by each interest in defending its special privilege. He can obtain a separate brief from some producer to justify every item in the tariff law, a separate brief from some corporation executive to justify every price fixed by monopolistic decision, a separate brief for each subsidy from the interest subsidized, for each restrictive law from the beneficiary. These briefs would be submitted by businessmen, farmers, labor unionists. They would be written by lawyers and economists and experts, some calling themselves conservative and others progressive, and they would provide an impressive defense of the system as a whole. But an equally impressive collection of separate briefs could be assembled, written by spokesmen for the same interests, denouncing as uneconomic, as immoral, as unconstitutional, often as treasonable and subversive, the same practices when carried on by other interests.

These self-contradictory pleadings are such glaring instances of man's ability to see the mote in his neighbor's eye and to

<sup>30</sup> Cf., for example, the price policy of the Tennessee Valley Authority, which has the backing of the farm bloc, with the price policy of the Agricultural Adjustment Administration.

overlook the beam in his own that one is led to ask how the disinterested exponents of gradual collectivism can persuade themselves that they have a rational political philosophy. At the level of practical politics there is the pulling and pushing of interested groups contending for the assistance of the sovereign power. At the level of popular debate there are the special pleas of interests, each insisting that the general interest will be served if the coercive authority of the state is placed at its disposal. The gradual collectivist has to suppose that over and above these special groups and their special pleadings, there exists a sovereign power able to discern the universal in the particular, and to assert it with the force of law. He has to suppose that the electorate and its parliament have a criterion, presumably a body of principles, by which, after they have felt all the pressures and heard all the arguments, they can determine which imports to restrict, which industries and regions and occupations to favor, which prices and wages to fix and at what rate to fix them.

It is important that we make clear to ourselves the real character of the judgments which the method of gradual collectivism requires of the voters and their representatives. They are not expected merely to interpret and enforce a system of established rights among vested interests. On the contrary, they are asked to create a series of new rights, some to replace old ones — most of them, however, in addition to the old ones. Thus they destroy some vested rights and call into being others. The arbitrament required of a democracy under gradual collectivism is, therefore, a peculiarly difficult one. It calls for the continual creation of new special privileges: it has to be assumed that the people and their parliaments can judge correctly which special privileges will be, and which will not be, for the general welfare. For under gradual collectivism the state does not merely enforce existing rights. Nor

does it repeal privileges and liquidate vested interests. It establishes partnerships in more and more fields between the government and certain selected interests. The government has, therefore, to decide continually with which interests it will go into partnership and on what terms.

The real nature of gradual collectivism was made extraordinarily clear in the New Deal, as it existed before the Supreme Court of the United States invalidated it. Under the National Industrial Recovery Act, industries were encouraged to organize themselves as agents of the state. To each of these groups there was then delegated the power to legislate not only for all who were then engaged in that line of business but for all who might wish to engage in it. No clearer, no more naked, illustration could be offered of what is meant by the statement that gradual collectivism means the conferring of privileges upon selected interests. For the right to make laws and to enforce them by fines and imprisonment is the basic attribute of sovereignty, and the delegation of sovereignty to selected interests is exactly what the word "privilege" means. In the case of the NRA privilege was conferred upon certain trade organizations and theoretically at least upon industrial employees also.<sup>11</sup> The industrial codes were in effect charters — like those once granted to the East India Company, like those now granted to municipal corporations — to exercise the sovereign power within a certain jurisdiction.

Under the Agricultural Adjustment Act, and under such ancillary laws as the Bankhead Cotton Control and the Kerr Tobacco acts, the conferring of privilege and the delegation of the state's authority to particular groups was not quite so nakedly evident. Nevertheless, that was the essence of the matter. Out of all the farmers of America and among all the crops they produce, Congress selected seven staples, and authorized

<sup>11</sup> Sec. 7 (a) and also the Wagner Labor Relations Act.

the Secretary of Agriculture to levy taxes and to apply the proceeds in a subsidy to the producers of those seven staples. The producers of these selected commodities were established as a vested interest, protected by laws and by a subsidy in their right to produce their crop as against anyone who might wish to trespass upon their right to produce. It is significant not only that the established growers of the basic commodities were given a privileged position as against all other farmers, but that, among them, the cotton and tobacco growers had a specially favored position. Whether that was due to the fact that cotton and tobacco were peculiarly hard hit, or to the fact that they occupy a strategic position in the political composition of the Democratic Party, is perhaps a matter of opinion. But it is undeniably clear that the privileges were conferred approximately in proportion to the influence of particular pressure groups.

This view of the nature of gradual collectivism is confirmed when we examine the efforts of the Roosevelt Administration to confer privileges of equal value on less powerful interests. The symmetry of the gradual collectivist conception, ordinary considerations of justice, and the personal sympathies of many of the New Dealers required, for example, that if great industries like steel were to be given such extraordinary privileges, if great interests like that of the cotton planters were to be taken into partnership by the state, wage earners should also be given privileges. But the event showed that most wage earners were too weak to exercise the privilege which the government attempted to confer upon them and that the government was not strong enough to make those privileges effective. The system broke down wherever powerful organized interests were lacking which could use the privileges the state was willing to confer. Thus, the railroad brotherhoods are able to use their entrenched position under the law. But agricultural

laborers were offered no legal privileges and could not have used them had they been offered. For them the system of gradual collectivism could provide only charity.

The gradual collectivist has to believe that a mass of special privileges can be distributed among interested groups in such a way as to raise the general standard of life. He has to believe that an elected parliament will distribute its privileges according to some general conception of the public welfare and not according to the pull and push of organized interests. Is this conceivable in a democracy? It is conceivable, of course, under a dictatorship if it be granted that the dictator knows in general and in particular what is for the public welfare. It does not seem likely that an electorate, listening to the babel of special pleadings, would be able to detect the universal interest in the particular, except occasionally and by good luck. There may be, as Professor Carver has said, "at least a theoretical possibility for improvement through restrictive regulation"; conceivably "a system of privileges is imaginable which would be so nicely designed and so delicately adjusted that it would raise the standard of life by increasing the production of wealth and improving its distribution."<sup>12</sup> But no economist has ever designed such a system and the chances are small that a democracy could see through the special pleadings, would be able to resist the pressures, and could know even with approximate accuracy which interests to favor and in what degree. Perhaps if the experiment could be repeated often enough, under the law of chances a democracy might by trial and error hit upon the right system of privileges. But so, as an eminent philosopher once remarked, could a band of monkeys who had learned to hit the keys of a typewriter turn out a play of Shakespeare's — if they kept at it through all eternity.

For while a system of privileges *might* theoretically augment

<sup>12</sup> Thomas Nixon Carver, *Principles of National Economy*, p. 467.

wealth, the chances are overwhelming that most of the privileges granted will be reducible to a common denominator. With few exceptions they will be guarantees, backed by the authority of the state, that the beneficiaries will receive a larger private income for less effort. That means that those who are not beneficiaries will have a smaller income in return for more effort. On the whole, and in the ordinary run of human affairs, tariffs, subsidies, regulated prices, and wages are promoted by men seeking to obtain a larger income, not by producing more wealth but by obtaining a larger share of the wealth produced. "The aim and result of every price-fixing agreement, if effective," says the Supreme Court, "is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices."<sup>18</sup>

Thus when a tariff duty prevents the domestic consumer from purchasing the most inexpensive steel that can be produced in the world, the state has said that the nation must use more expensive steel. The nation must therefore be content with less goods of other kinds. The capital and labor and managerial skill devoted to making the more expensive steel are no longer available to make other goods. The same principle applies to the regulation of particular prices and particular wages. If they are set high, and are effective, they exact a subsidy from others; if they are set low, the victims are sweated to subsidize others. Those who receive the subsidy obtain more income for less effort; those who pay the subsidy have less income for more effort. But since a system of gradual collectivism will always tend to favor the interests that are organized, are identified, and are insistent, since they will be in-

<sup>18</sup> See No. 273 U.S. 392, known as the Trenton Potteries Case. Cited in James Gerald Smith's *Economic Planning and the Tariff*, p. 149.

sistent not because they wish to work harder but only because they wish to receive more by not working harder, the grand effect of the system is to diminish the production of wealth.

No doubt it is sometimes hard to see how a particular measure in the system diminishes the production of wealth. There are some measures which have a negligible effect. There are many which cannot be enforced. In specific instances the pleas of the advocates are often so persuasive that to object on the ground of general principle seems foolishly doctrinaire. In the era of gradual collectivism it has been the fashion in philosophy to decry general principles and attend only to the apparent pros and cons in specific cases. But this is like attempting to examine the claims of every inventor of a machine for perpetual motion while rejecting as doctrinaire the second law of thermodynamics.

While it is not easy to discern the effect of every measure, the total effect of raising prices and wages by restricting markets and limiting the division of labor is to reduce the production of wealth.

### *5. Rising Expectations*

At the same time the people have been taught by the collectivists to believe that the government can and should make them richer. The farmers and wage earners who come asking for tariffs, bounties, monopoly in their markets, fixed prices for their goods and services, are merely following the example of the manufacturers who told them that protection produces prosperity and that concentrated corporate control produces stability and security. In a society which has adopted the collectivist view, there is a standing invitation to everyone to devise some method by which the authority of the government can be used to improve his income. For that reason the great

teacher of collectivism has not been Karl Marx; it has been the example set by the men who, in the course of more than sixty years, have successfully invoked for their own profit the assistance of the state. It is not the socialist propaganda which has converted the nations; it is the practice of gradual collectivism which has caused the people to think that if some can be enriched by the action of the state, then all might be enriched by it.

The older doctrine was that wealth is increased by labor, enterprise, and thrift, and that the way to a just distribution of income is through the repeal of privileges. It has been overwhelmed by the practical demonstration that some men prosper greatly when the government assists them. So the people have had it fixed in their minds that the state possesses a magical power to provide an abundant life. They have come gradually to think that their expectations may be as great as their government is powerful; that the stronger the government, the more certainly it can satisfy their heart's desires. After a while, when the doctrine is completely dominant in the popular mind, a point is reached where men cease to feel that there is any vital connection between production and consumption, between work and wealth. They believe instead that the vital connection is between wealth and the power of the state. It is no longer labor, but the law, the force of the state, the might of the government, that is looked upon as the source of material well-being.

The belief in this miracle is due to an optical illusion. The power of the state, as such, produces nothing: it can only redistribute that which has been produced. Even if the state runs a farm, as in Russia, or a hydroelectric plant, as at Muscle Shoals, the wealth created comes not from the government's power to command and coerce, forbid and defend, but from labor, invention, and the resources of nature. The reason why



the state *appears* by exercising power to create wealth is that it can enrich *some* members of the community.

It is an old illusion. On the River Rhine, the most important trade route of Central Europe, there were, in the twelfth century, nineteen stations at which tolls had to be paid. They were collected by armed forces gathered about the castles whose ruins still delight the tourist. Twenty-five more tolls were added in the thirteenth century and by the end of the fourteenth century their number had grown to approximately sixty-two or sixty-four.<sup>24</sup>

Many of these stations belonged to the Duchy of Cleves, and they were known as the "treasure." Now these tolls added nothing, of course, to the wealth of Europe, but they greatly enriched those who took the tolls. In this example, which is typical of all privileges, political force did not produce the "treasure." It exacted treasure from those who had produced it. The optical illusion arises because men mistake for the production of wealth the enrichment of those who take the tolls.

The popular belief in the efficacy of the state has its empirical support in the fact that under various forms of protection and privilege, such as tariffs, bounties, franchises, patent monopolies, and concentrated corporate control, many have undoubtedly been enriched. If they, why not others? Thus the unprivileged come forward demanding privileges too — privileges to compensate them, to give them parity with, to give them equality of bargaining power with, to give them protection from, those who enjoy the favors that the state bestows. For the inner principle of gradual collectivism — and its radical fallacy — is that it does not dismantle the castles on the Rhine and abolish the privileged toll stations; it attempts — vainly — to turn every cottage into a castle with a toll station of its own.

<sup>24</sup> Hecksher, *op. cit.*, Vol. I, p. 57.

### 6. *The Struggle for Power*

The attempt to universalize privileges, to create privileges for everyone, puts the stamp of official approval on everyone's expectation that the state can ensure his prosperity. At the same time, the measures of the collectivist policy, tariffs, bounties, fixed wages, fixed prices, guaranteed incomes, and the like, have the general effect of enhancing the real costs of production, of reducing the real efficiency of capital and labor, of subsidizing the high-cost producer at the expense of the low-cost. Thus, on the one hand, the state raises the people's expectations, and, on the other hand, it reduces their productivity. The state is expected to perform the miracle of providing everyone with a large and stable income — \$200 a month under the Townsend Plan <sup>36</sup> — by universalizing the privileges of not producing as much wealth as efficiently as possible.

Thus it has come about that under gradual collectivism the struggle for power has become ever more intense. As men learn that their fortunes depend increasingly upon their political position, the control of the authority of the state becomes a prize of infinite value. But because the multiplication of the privileges restricts the production of wealth and perverts its distribution, the standard of living does not rise in proportion to the expectations which have been aroused by the example of those who are enriched by privileges. Thus, as gradual collectivism advances, the competitive struggle for privileges is exacerbated. It culminates in the condition now prevailing, where the internal conflict is transformed into a conflict for the redistribution of national power and privilege throughout the world.

<sup>36</sup> Under this plan persons over sixty years of age would be forbidden to produce and compelled to consume.

## VIII

### THE WARS OF A COLLECTIVIST WORLD

#### 1. *The Road to War*

So long as the productivity of a nation is great, because its resources are ample and its people are industrious and skillful, moderate doses of collectivism can be absorbed. Even though wealth is not produced at full efficiency, there is a margin of safety. But there are countries where the natural resources are meagre, where there is a growing population imbued with the belief that it has the right and the power to achieve through the action of the state an improved standard of life. In these countries the paradox of increasing popular expectation with restricted production at home and abroad has provoked a profound social crisis.

This is the plight of the nations, called the Have-Nots, which think of themselves as proletarian peoples denied their fair share of opportunity. Among them the world-wide system of gradually cumulative collectivism has reached its climax. Among them collectivism has ceased to be gradual, democratic, and pacific, and has become fully militarized. It is because of the threatened aggression of these armed collectivist societies that their neighbors are compelled to adopt a defensive militarism. In this international system, it is demonstrated not merely that total collectivism in one nation is total militarism, but that a world which has given itself over to collectivism must sink into militarism.

This is the end of the road. After the liberal century, in

which the very idea of wars of supremacy had been forgotten, the world is again entangled in the deadly challenges delivered by great powers to other great powers. Once again men are ready to fight for supreme power, having reverted to the belief that by the exercise of power they can improve their lot.

## 2. *The Two Philosophies of Nationalism*

It is a rather significant fact that the tendency towards amalgamation into larger political unions should have reached its climax approximately between 1860 and 1870. In that decade the American Union was preserved, the German and Italian states became united, the Danubian Empire established itself in the form which lasted until 1918, Canada achieved a federal union, and the British Commonwealth came into being. But after 1870 the movement for unification was arrested.

The common assumption is that all the "nations" had by that time become united. However, there are a number of reasons for thinking that this is not a true explanation, but a rationalization after the event. It assumes that the amalgamation of peoples into larger unions depended upon fundamental affinities of speech, culture, ethnic homogeneity, and historical tradition — in other words, that a national consciousness had to exist before national unity could be achieved.

But if we study the unifications up to 1870 we find many important instances where strong political union preceded the appearance of a strong national consciousness. That might be said of the states that entered into the United States, of the cantons that entered into the Swiss federation, of such unions as that of the Flemings and Walloons to form the Belgian state. We find, moreover, that in this historical period political union did not depend upon ethnic or cultural homogeneity; on the contrary, that peoples of different language, ethnic origin, re-

ligion, and political history overcame their particularism and became politically united.

It is even more significant that, beginning about 1870, a centrifugal tendency appeared and that for the past sixty years the principle of nationality has been invoked not to unite but to divide. As nationalism was understood before 1870, the movement towards unification had by no means been completed. The political federation of Belgium and Holland, of the Scandinavian states, of the Balkan states, of the Central American republics, for example, was no more inconceivable to the older nationalists than the union of Prussia and Bavaria, of Piedmont and the Papal states, of the Flemings and Walloons, of the German-, French-, and Italian-speaking peoples of Switzerland. But these potential unions have not been realized. On the contrary many unions that existed have disintegrated. Thus Norway and Sweden have separated; there are five successor states in the Danube basin, and six on the western marches of the former Russian empire. What is more, the centrifugal tendency is very strong even where the existing union has not actually been ruptured. There are sub-nationalist movements in Belgium by the Flemings, in Jugoslavia by the Croats, in Czechoslovakia by the Germans and Slovaks, in Poland by the Ruthenians, in Spain by the Catalans.

The philosophy of nationalism has in this period been curiously transformed. Originating as a passion to overcome the particularism of petty states, it has since become the justifying principle of particularism. Where once it supported the sentiments that liquidated conflicting loyalties, it now instigates the sentiments that accentuate separatism. Thus while the intellectual exponents of the current nationalist ideology imagine that they are carrying on the tradition of Washington and Hamilton, Cavour and Bismarck, they have in fact reversed

it. The point they have missed is that the older nationalism reached out for unity among particularists by cultivating a common consciousness, whereas the current nationalism emphasizes an increasingly exclusive particularism. So, while the older nationalism was the support of political unification, the newer nationalism is the agent of disunion.

There is, therefore, a profound difference between these two nationalist philosophies, the one inclusive in its tendency, the other exclusive. Under the older one a tenuous general sense of common nationality was invoked in establishing political unions. Then, because the unions proved to be beneficial, a much stronger feeling of common nationality developed. One has only to read the anxious admonitions in Washington's Farewell Address to realize how little certainty he felt that the people would feel themselves to be not merely Virginians but Americans. The modern ideologists of nationalism, who are protectionist, collectivist, and authoritarian in their premises, have forgotten how little developed when the British, the French, the Americans, the Germans, and the Italians first achieved political unity was the sense of their nationality. Seeing only the powerful sense of nationality which has developed *under* these unions and as their consequence, they make the wholly unwarranted, indeed the false and destructive, assumption that only those should or can be joined together politically who already possess an overpowering sense that they are one nation.

They have turned history upside down. They argue that people can live together politically only if they have a strong national feeling, whereas the fusion of the innumerable wandering tribes into nations is inexplicable except on the hypothesis that national feeling develops from the experience of living together successfully. By treating strong nationalism as the antecedent condition rather than the consequence of polit-

ical union, the modern nationalists have given the world a doctrine which divides mankind into ever-smaller particularist communities.

It is worth noting that the rationalism which eventuated in larger political unions flourished in the interlude between the fall of the mercantilist conception of state policy and the revival of that conception. The period from, say, 1776 to 1870 was the golden age of free trade and of political emancipation throughout the western world. It was an age when the reforming passion of men was centred upon the abolition of privileges, the removal of restraints, the restricting of the authority of the state. It was an age when men were dominated by the conviction that it was by the method of emancipation, rather than by authoritative planning and regulation, that mankind could most surely achieve its promise. And it was in that age of diminishing political interference that so many great political unifications were achieved.

But about 1870, when the reaction against free trade began, the movement towards political unification was arrested and then reversed. The correspondence between the ascendancy of the liberal philosophy and political unification, between the authoritarian revival and political disunion, is striking. The question is whether it signifies a real correlation of cause and effect or is merely a curious coincidence.

The thesis that the diminution of authoritarian government promotes unity and that its increase is divisive could be fortified by many suggestive historic examples. One could cite the fact that the American Revolution took place at the culmination of the mercantilist regime,<sup>1</sup> and that the grievances of the colonists, as outlined in their Declaration of Independence, were in sub-

<sup>1</sup> It happens also that 1776 was the year in which Adam Smith's *Wealth of Nations* was published. The American revolt was a powerful advertisement of the truths he taught.

stance that an absentee government was exploiting them by restrictive and discriminating laws, that King George III had established "an absolute tyranny over these states . . . cutting off our trade with all parts of the world." It was the cumulation of these grievances that led to the "separation." One might then cite the fact that it was the discord of the separated states, each exercising its own sovereignty, which led to their subsequent union.

If we examine the powers expressly granted to the new national government, the powers expressly denied to it, and the powers expressly taken away from the states, we find that the liberals who wrote the Constitution were inspired throughout by the conviction that, on the one hand, federal union was an escape from the vexatious particularism of the sovereign states, and, on the other, that a union could be maintained only if it, in its turn, was a drastically limited sovereign. Thus among the powers granted to Congress we find the exclusive right to regulate foreign and interstate commerce, a mighty provision against the practice of a mercantilist policy by the separate states; we find, too, the power "to coin money, and regulate the value thereof," to make uniform rules of bankruptcy. It is evident that the design was to establish free trade throughout the union, unobstructed by state tariffs, separate monetary systems, and widely differing systems of commercial law. To make certain that the states would not become little mercantilist sovereigns on their own account, they were explicitly forbidden "to lay any impost or duties on imports or exports" in the interests of a separate economic policy.<sup>3</sup> Then in the Bill of Rights, which was the condition of ratification, the federal government in its turn was expressly denied the powers that

<sup>3</sup> Art. I, Sec. 10, par. 2. A state may lay them if they are "absolutely necessary for executing its inspection laws," but the net produce must be handed over to the Treasury and "all such laws shall be subject to the revision and control of the Congress."



were then recognized as the instruments of tyranny. In short, the union was a method of emancipating the people from what we should now call the regimentation of the separate states; the federal government was given the power to maintain freedom of trade and intercourse and denied the power to establish an authoritarian regime. Nor is it wholly irrelevant to note that the issue which was to imperil the preservation of the union had its origin in the use of political coercion to maintain and promote human slavery.

American history does, therefore, lend weight to the hypothesis that there is a close connection between the diminution of state authority and the evolution of political unity. The presumption could be strengthened by innumerable other historical examples. It has often been demonstrated, for example, that the aggrandizement of the national monarchy in England and in France found its great support among people seeking emancipation from the intimate tyranny of petty princes and local magnates; it is well known that the unification of Germany and of Italy was the culmination of experiments in customs unions and currency agreements and the like which represented a longing for relief from parochial interferences. Nor is it irrelevant to note that the Hapsburg and Romanoff empires, the two most intricately governed, most centralized, most bureaucratic states of the western world, collapsed during the World War; and that both were dismembered.

### *3. The Divisive Effect of Collectivism*

But these citations, though they are, I think, suggestive, are not proof. To show that authoritarianism divides and that liberalism unites, one must go beyond random historic examples to an explanation. It is only by understanding the reasons that the examples are convincing.

If we take the simplest example of the authoritarian principle, a protective tariff, we have only to ask ourselves whether anyone would be interested in a tariff wall which encircled at a uniform height all the commercial powers of the world. Suppose that the British Empire, Germany, Japan, France, and the United States had one common tariff against the rest of the world, but no tariffs as against each other. Is it not obvious that the protectionists in each of these countries would say that this gave them no protection? They would insist that in order to make protection effective the trading area would have to be divided into national tariff systems.

This is the logic of the process by which the use of political power to direct human affairs forces men to segregate themselves into smaller and smaller communities. For only in so far as the protection is exclusive is it valuable.<sup>8</sup> Unless it creates a special privilege it is ineffective. Thus in a territory as large as the United States, the national tariff alone has never given sufficient "protection" to those seeking the privilege of more or less exclusive control of markets. They have supplemented the peripheral tariff with internal tariffs applied through railroad rates, devices like the so-called Pittsburgh plus, monopolistic agreements, local quarantine regulations, and the like. The monopolist who would exclude a competitor must generally retire into a more exclusive stronghold. The larger the area, the more precarious will be his monopoly, the more diluted his advantages.

That is the reason why social legislation can be put into effect more easily in small states than in large ones, why those who sponsor such measures are apt to oppose not only freedom of international trade but local autonomy within a free-

<sup>8</sup> The effective reason for the granting of independence to the Philippines was the desire of certain American interests to put the Filipinos on the other side of the tariff wall.

trade area as large as the United States, where, says Mr. Beard, "regions once industrial and prosperous have been blighted by the wholesale migration of capital to sections of cheapest production — the lowest standards of life, unorganized labor easily regimented by employers, absence of labor legislation, exploitation of children, long hours, and social squalor in general."<sup>4</sup> The logic of this argument would call either for an exclusive tariff around every established manufacturing centre in the United States, or national legislation prohibiting, in effect, the more "backward" states from entering into competition with the industries of more "progressive" regions. Mr. Beard has the courage of his convictions. He recognizes that when, by the exercise of authority, prices are fixed above the competitive level the economic area must be contracted to exclude competitors. The principle was recognized in the National Industrial Recovery Act of 1933, a great collectivist measure which envisaged the organization of American industry under a system of codes closely regulating production, prices, and labor conditions. The vital essence of the whole conception was that each codified industry would enjoy an approximate monopoly of the American market, and that its monopoly profits would enable it to pay high wages. But in order to protect the monopoly, competitors had to be excluded. Thus, in the more "advanced" codes, barriers were raised against new enterprises and new processes, and the whole establishment was then protected not by a mere tariff but by the power to lay an absolute embargo against any imports.

And so, because the increase of state regulation requires a more and more exclusive territory if it is to be effective, the early nineteenth-century dream of international socialism has given way to the twentieth-century nightmare of national so-

<sup>4</sup> *Op. cit.*, p. 78.

cialism. Collectivists of all descriptions — socialists of the Second International, communists of the Third, fascists with their international congresses, democratic planners — may cheer each other on across national frontiers and may exchange tracts and resolutions and propagandists, but the inexorable goal of all collectivism is the isolated and self-contained community. That is not because mankind is unable to fraternize: it is because an authoritarian regime has to be exclusive. The great military autocracies of the seventeenth and eighteenth centuries were highly regimented mercantilist states; the most highly regimented mercantilist states of the twentieth century are military autocracies.

The realistic, full-blown collectivists — Stalin, Mussolini, Hitler — are national collectivists; the internationalism which the idealists of socialism and communism cling to is, as Mussolini and Hitler have proclaimed, a remnant of the nineteenth-century liberalism with its faith in the supra-national development of commerce, the arts, and human personality. This residual hankering for brotherhood is, as Stalin has demonstrated, a useful instrument of Russian policy abroad when it is not a downright nuisance at home.

The increasing exercise of sovereign power is a centrifugal force in society. Collectivism moves towards autarchy, the totalitarian states towards isolation. The obverse of this rule is that emancipation, the removal of privileges and restraints, promotes political union, that large societies must be lightly governed, that an increasing freedom of trade and intercourse within a state makes for an increasing participation in the common life of mankind. For the overhead direction of human affairs by the sovereign state is in the last analysis their regulation by physical force: the sanction of the law resides ultimately in the power of the state to command and forbid under penalty of death. This power can be invoked only when it

can be effective. It can be effective only where it cannot be challenged. The more writs the king issues, the less far do they run: the greater the number of those who will be disposed and able to resist them. Thus, as the state moves in the direction of more elaborate and more intense intervention, it must contract its jurisdiction.

When authoritarianism dominates policy, the line of evolution is ever toward more exclusive but less comprehensive monopolies, more autocratic but more particularist states. It is, in short, a regression from the ideal of large political unions evolved within the larger world economy of the arts, the sciences, and commerce; it drives men backwards to such a congeries of petty, exclusive, tyrannical, and bellicose states as our fathers had supposed men would never see again.

#### 4. *Proletarian Imperialism*

We have seen that people became habituated in the belief that the state has the power to raise their standard of living. When the state responded with collectivist measures restricting opportunity and diminishing the efficiency of production, there was bound to be an intensified social conflict. It was naturally least severe in those nations where the margin of safety was greatest, where there was a considerable surplus which could be redistributed to satisfy popular expectations. But in countries like Germany and Italy, especially after they had been impoverished by the war, there was no adequate margin of safety, and an acute class struggle developed. This struggle was abated for a few years by foreign loans which were in effect subsidies made by the richer nations out of their surplus. But when these subsidies were cut off, the struggle was renewed fiercely.

In its initial phases it appeared to be a class struggle accord-

ing to the Marxian pattern. But in its origins and in its issue the German and Italian struggle did not conform to the Marxian hypothesis. It is true that there was an aggressive movement of the masses to encroach upon the property of the great landlords and the large incorporated industrialists. But this was resisted and defeated by an armed insurrection ending in a coup d'état. The Marxian formula does not explain why at the crucial point the masses lost faith in socialism. For in both Italy and Germany, fascism, however much it may have been financed and instigated by landlords and big industrialists, acquired a large popular following among those who, according to the Marxian interpretation, should have rejected fascism and adhered to communism.

The event is explained, I believe, when we recognize that the Italian and German masses could not have improved their situation by seizing the estates and the factories, that on the contrary the only effect could have been to increase their misery. For there did not exist in the hands of the few any substantial amount of wealth which could be expropriated. The total national income was so meagre that a more equal distribution of it would not even theoretically have made any important difference. But above all, what income there was depended fundamentally not upon the natural riches of the country but on an extremely delicate and precarious human organization of labor, technology, credit, and management. Those who seized a factory soon saw that they had obtained only an inert heap of bricks and steel: that this capitalist property was incapable of producing income except as part of an economy of credit and international trade that ceased to exist when the managers and directors had been ousted. Those who tried to be more moderate and attempted by legal methods to expropriate the shareholders and creditors and controlling directors of these enterprises found that they were gaining

nothing, but were in fact impairing the productivity of the industries. The socialist movement was able to bring the industrial machine to a standstill; it gave no evidence of being able to make the machine yield more for the people.

Socialism was a failure in Central Europe because it sought to encroach on a capitalist order that was already almost completely impoverished. In a rich capitalism, where there is a large surplus, some wealth can be redistributed. But a poor capitalism, like that of post-war Germany, has almost no reserves which can be tapped: the attempt to find them, whether by law or by direct action, strikes not at excess profits but at capital assets, at working capital, and at those minimum profits without which capitalist production cannot be maintained. Now it is from the middle class that the executives and managers are recruited, it is the middle class who have their savings invested directly or indirectly in capitalist enterprises. Their savings and their income are drawn upon when the social services of the poor are financed by taxes or inflation. One can understand why socialism in these poor countries provoked a middle-class revolution. When industry was paralyzed by strikes and expropriatory laws, it was the middle-class industrial officer who lost his position and who saw his invested savings impaired and his standard of living reduced by rising prices, increasing taxes, and the deterioration of the currency. He realized that in a poor country socialism, even of a gradual and democratic variety, does not mean merely the redistribution of the profits of capitalism; it means the gradual paralysis of capitalism — if carried far enough, its total destruction — and the decline of the whole community to a proletarian level.

Thus the members of the middle class came to realize that for their country at least, though in essence it is true of all countries, the deepest need was — and is — not a different

distribution, but a greater production, of wealth. Once they had grasped that truth, if the situation was desperate and the struggle critical, they were disposed to follow leaders who promised to crush a movement that was paralyzing what productive capacity the nation possessed.

So the middle-class fascist became passionately anti-Marxist. But having gone so far, and realizing that there could be no real relief except through an increased production of wealth, he came up against the brute fact that the materials for increasing wealth did not exist within his frontiers, and that the world markets in which he could earn the money to buy those materials were greatly restricted or closed altogether. At this point he became not only an antisocialist but an aggressive nationalist. For, as he saw it, he was the victim of an economic encirclement, and unless he broke through he would be suffocated.

With the instruments of the terror, censorship, and propaganda, the fascist leaders indoctrinated the mass with the view that their real enemies were not the privileged classes at home but the privileged nations abroad. The transition from the psychology of class war to that of nationalist war is a very easy one. The fascist appeal combines the emotions of patriotism with the grievances of the proletariat. Those who have been socialists become national socialists. The class war is diverted toward international war. The people, habituated in the class struggle to appeals calling upon them to fight for their rights and for better opportunities, to strike at privilege and oppression, are told by the fascists that they must continue to fight, not as traitorous members of a class, but as patriots in a national cause. They do not have to stop loving their country, as orthodox international socialists are supposed to do. They can have for their leaders not mere workingmen and agitators, but all the best people in the land — princes, generals, and



great gentlemen. It is the class struggle de luxe, with all the pomp and circumstance that the diffident poor find reassuring. As fascists they do not have to fight on the barricades as solitary and helpless bands against the police and against troops whose weapons they know to be deadly. If in a dim way they realize that they will have to fight later in the trenches, they believe that at least the fighting will not be at their own front door; the brunt of it, moreover, will be borne by very young men after their courage has been disciplined in barracks rather than by middle-aged men who have listened to socialist oratory.

Thus, under fascism, the proletariat becomes imperialist and imperialism becomes proletarian. The nation, organized under military rule, prepares for a struggle against the nations which it looks upon as the wealthy landlords, the monopolists, the privileged owners of the rich territories, natural resources, and main highways of the world. Communism and fascism are not only much alike as systems of government; they are alike in the inwardness of their purpose. When the basic natural wealth exists within the national frontiers, as in Russia, the proletarian aggression is domestic; when the basic national wealth does not exist within those frontiers, as in Italy and Germany, the proletarian aggression is nationalized. It is turned outward beyond the frontiers, toward the conquest of the colonies and of the territories of more pacific but richer neighbors.

This explains what would otherwise be an inexplicable phenomenon, the alignment of communist Russia with the nations that arm for defense. The Russian communists have recognized that they have no need of conquests because Russia has ample natural resources. It is this fact, rather than the pacifism of the communists, which accounts for the adoption of a policy of nonaggression, thereby giving to militarized Soviet Russia

a common interest, along with the British Empire, France, and the United States, in the present territorial boundaries of the world. On the other hand, because the fascist states do not have within their own borders wealth to meet the expectations of their people, no promises of nonaggression they can give are credible. So long as the principal nations of the modern world are committed to the principles of national collectivism, the Have-Not powers are under compulsion to pursue an aggressive policy because the sources of wealth, to which they must have access in order to live as well as they believe they have a right to live, are under foreign sovereignty.

### 5. *The Revival of Total War*

It may be said that about the year 1900 the nations became aware that they were crossing the great divide, leaving behind them the promised land of progress in peace, to enter into an epoch of deadly struggle for mastery and survival. The turning point is most clearly marked by the challenge to British maritime supremacy formulated in the German Navy Law of November 1897.

For several generations a general peace, broken only by short and local wars, had prevailed. During that peace Britain exercised an unchallenged supremacy on the seas and pursued a policy of free trade. The dominion which Great Britain exercised over a quarter of the people of the earth, and the preponderant influence which she exercised on the European continent through the balance of power, were not felt to be intolerable because in matters of trade and of human rights Britain was committed to the principles of freedom. Even to the subject peoples of the empire, the Irish, the Indian nations, the Egyptians, the struggle for autonomy was never hopeless. It was always supported by a large body of British

opinion and could always find its ultimate justification in the principles of the British state. When Britain ruled harshly and denied to the people of the dependent empire their human rights, she was violating rather than acting upon the British ideal in human affairs. Eventually those who were struggling for autonomy were bound to win, as in fact they have. In the realm of economic opportunity free trade prevailed; the empire was not a closed preserve for the benefit of British subjects.\*

Within the framework of this international system, Germany, Italy, Japan, and the United States achieved their national unity and made great material progress. The rise in the general standard of life was probably greater in that period than at any time before or since. There were wars; but they were local wars of short duration, more like duels to settle an argument than battles of life and death. During the Crimean War, for example, English merchants were allowed to import goods from Russia through neutral countries; a Russian loan to pay interest on Russian bonds was floated in the English market; and during that same war France invited Russia to participate in the Exposition of Arts and Industries.<sup>6</sup> Bismarck's three wars were short, sharp, localized, and for limited objectives.

The conception of a total war — such as Rome had waged against Carthage, or even such wars as those which England had waged against Spain, against the Netherlands, and against France until the fall of Napoleon — was not entertained in the nineteenth century. The people of Europe did not feel that their lives, their liberties, their fortunes, and the pursuit

\* In spite of the great extensions of the British Empire in the nineteenth century, British trade with British countries was 26.3 per cent of the total in 1854–1863 and 26.7 per cent in 1904–1913. Cf. Grover Clark's *A Place in the Sun*, p. 153.

<sup>6</sup> Robert C. Binkley, *Realism and Nationalism*, p. 176.

of their happiness were bound up in a struggle for the political mastery of the world.

But the wars which began in 1914 differ in kind, not merely in degree, from the wars which were fought in the preceding century. To find wars of the same order, one would have to go back to the struggle between Spain and England, between England and Holland, between England and France, between Rome and Carthage, between Athens and Sparta. They may conveniently be called total as distinguished from limited wars. These are not fought for tangible stakes—say the unification of a national state, or the acquisition of an Alsace-Lorraine or an African colony. In total war the issue is complete supremacy, the power to settle any issue by superior force. Total wars cannot end, therefore, except by the destruction of the vanquished as an organized power in the major affairs of mankind, the fate that befell Carthage and Spain and Holland. Until the issue of supremacy is settled, men are doomed in an era of total wars to fight incessantly. There are intervals of armed truce, periods of recuperation, rearmament, and the regrouping of allies before the struggle is renewed. But there can be no settlement. For total wars are fought not for specific objects, but for supremacy.

In the war of 1914–1918 Britain and France were convinced that they were fighting such a war; that, if they lost, Germany would deal with them as Rome dealt with Carthage. In the dictated peace of 1919 at Versailles they in their turn sought to impose a Carthaginian peace upon Germany. Clemenceau and Foch felt that they had failed to win the war when they were prevented from dismembering the German Empire, from exacting tribute which would keep the Germans prostrate, from occupying Germany as a conquered province. In 1933 the allies of 1914 again became convinced that Germany,

renascent under Nazi leadership, would in its turn seek to annihilate all rival powers in Europe.

These total wars should not be confused with limited wars like the Crimean, like the Danish, Austrian, and French wars waged by Prussia, much less with colonial wars like the Boer or the Spanish-American. It is an open question, it seems to me, whether even the Napoleonic Wars are to be regarded as total wars. For, while the victory of Bonaparte would have given him the mastery of the European world, his defeat was followed by a peace which was most remarkable in that it was not a Punic peace. The Congress of Vienna not only did not mutilate France; it did not even attempt to destroy France as a great power.

It used to be the fashion to heap scorn upon the Congress of Vienna. But in the longer perspective, considering the centuries of incessant wars between England and France, considering the state of Europe since 1914, it would now appear that the Congress of Vienna made a settlement which was unique in the history of great wars. It may be that the refusal to destroy France as a European power, that the willingness to live with her and let her live, reflected that great change in human opinion which crystallized during the eighteenth century in the liberal doctrines of free trade and the rights of man.

In any event, the dominant fact in the contemporary world is the return of the European and Asiatic great powers to the conception of total war. It is this fact that needs to be thoroughly understood, for otherwise the effort to preserve the peace is doomed not only to be frustrated but actually to augment the violence and frequency of wars. A pacifist movement which has not clearly grasped the essential difference between the era of total war in which we find ourselves and the era of limited wars which preceded it will merely confuse and

disorganize the peoples who are in mortal danger and thereby invite the aggressors to proceed.

### 6. *International Security and Total War*

The manner in which pacifist opinion has misconceived the real nature of the problem can be seen in the series of pacts signed in the name of collective security. The Covenant of the League of Nations, for example, provides a method of settling international disputes based entirely on the assumption that all potential wars are limited wars. The machinery of peaceable adjustment is conceived on the analogy of lawsuits as a substitute for the duel, on the premise that violence can be eliminated by interpreting contracts or compromising claims. The Covenant envisages wars as contests dealing with justiciable issues, or at least with specific collisions of interest. But the war of 1914, the Japanese advance into Asia, the Italian advance into Ethiopia, and the Nazi conception of the German destiny<sup>7</sup> have national supremacy as their real objective.

The postulates of the League, on the other hand, being derived from the experience of the liberal nineteenth century, do not even begin to deal with the issue of national supremacy. It is not an issue that can be taken to the World Court or dealt with by votes in the Council and Assembly. Collective security, as it was organized after the war of 1914, rested on the assumption that the issue of national supremacy would not be raised, more particularly that Germany was altogether too much prostrated to raise it again.

<sup>7</sup> Cf. passage from Hitler's *My Battle*: "For Germany the course to be adopted is clear. She must never allow two Continental Powers to arise in Europe. She must regard any attempt to organize a military Power on her frontiers, even though merely in the form of a State capable of becoming military, as an aggression against Germany, and must consider it not only a right, but a duty to prevent it by every means, even to the extent of taking up arms." P. 286.

In the Kellogg-Briand Pact this illusion is most clearly exhibited. For in that pact nations voluntarily renounced the ambition to resort to war as an instrument of national policy, implying that those who had world power would keep it, that those who did not have world power would not seek it. There is pathos in the Kellogg Pact. For it embalms an ideal of international relations that was by no means unrealizable had the world remained faithful to the ideas of public policy which were current when Mr. Wilson, Mr. Kellogg, and M. Briand went to school. The pacific settlement of limited wars is a practicable ideal, and mankind might well have entertained the hope that it would gradually limit such wars until eventually it abolished them.

The post-war system of collective security was devised by British and American publicists and statesmen acting on the preconceptions of the nineteenth century. It is not accurate to say, as so many have said, that they intended as citizens of the dominant and "satisfied" powers to freeze the world for all time in statu quo. On the contrary, they were quite prepared for, were in fact prejudiced in favor of, great alterations in the political constitution of mankind. They promoted the rise of new national states not only as measures of war to disrupt Germany and Austria-Hungary: the sponsors of the League were on the whole also the supporters of Irish, Indian, and Egyptian nationalism, of the autonomy of the Dominions, the independence of the Philippines, of the renunciation of American hegemony in Latin America. They even hoped through the method of mandates to strike at the idea that colonies were national properties. They hoped to lower economic barriers<sup>8</sup> between nations, and to bring about the reduction of armaments<sup>9</sup> to a point where they would be little more than a domestic police force

<sup>8</sup> Point III of Woodrow Wilson's Fourteen Points.

<sup>9</sup> Article VIII, Covenant of the League of Nations.

or a territorial militia. In substance, the sponsors of the League were prepared to relinquish more and more of the prerogatives of their own mastery of the world, to liquidate by generous, but, as they believed, enlightened concessions the prerogatives of their own supremacy.

The pacific system which they envisaged was one in which existing rights were to be regarded as the public law of the world and enforced<sup>10</sup> until amended by concession and compromise.<sup>11</sup> They founded their system on the premise that discontent with the existing international order would arise from specific grievances, some of which were justiciable, some arbitrable, the rest capable of being rectified or compromised. But what the sponsors of the League did not envisage was discontent arising from the ambition to exercise the supremacy which they possessed. They were prepared to contemplate the relinquishment of more and more of the prerogatives of their own supremacy; but they did not propose the transfer of their supremacy to new empires. They hoped to rule the world lightly, to exercise their world power so magnanimously that all the world would assent to it, but having just defeated Germany's attempt at world power, they intended to hold on to their own world power. Rather they than someone else. They reasoned, not without prejudice of course, but plausibly, that no one was any *better* fitted than they to exercise world power. So they made many proposals to limit armaments by the method of ratios under which the relative power of the great states was to be recognized by treaty.

Thus the post-war system of collective security proposed to conserve the existing order of things in the field of ultimate power, but to concede an increasing equality of rights in all other fields. This was in essence the international system of the nine-

<sup>10</sup> Articles X and XI, Covenant of the League of Nations.

<sup>11</sup> *Ibid.*, Article XIX.



teenth century. Supremacy was exercised by an empire so much committed to the principles of free trade, national autonomy, cultural self-determination, and personal liberty that when the empire violated its principles in Ireland, for example, in Egypt, and in India, it was morally on the defensive among its own people. The League of Nations was to be in substance a perpetuation of that order of things: Great Britain and the United States were to form a partnership, exercising, under the postulates of liberalism in other matters, a joint supremacy in the realm of power.

The event showed that the policies of the great powers did not correspond with the postulates of the international system they had designed. This was revealed at once in the terms imposed upon the vanquished nations. The military and economic clauses of the treaties, and certain of the territorial provisions as well, were designed to keep them for at least a generation weak and disorganized, and in a status of moral inferiority. The vanquished were treated as, presumably, they would have treated their enemies had they victoriously achieved world supremacy. But in imposing a Punic peace, the Allied and associated powers demonstrated that they were no longer acting on the nineteenth-century principle of supremacy restricted in its exercise by the tenets of liberalism. By the terms they dictated at Versailles, terms appropriate to the conception of total war, terms which had as their objective the perpetuation and exaggeration of their own supremacy, they committed Europe to a struggle for supremacy rather than to the settlement of specific grievances.

The dictated peace was followed by the American rejection of the partnership in so far as it entailed responsibilities for the enforcement of the European settlement. But the United States did not reject partnership in supremacy. The United States rejected the League. It ratified the Washington treaties.

Under these treaties supremacy at sea was shared with Britain, and in the region of the Pacific and Eastern Asia this supremacy was to become the guardian of existing rights. Simultaneously, the United States drastically restricted its own markets against imports of foreign goods and then used its financial and political power to promote its exports. Other nations followed the same course. Thus supremacy in the realm of power was unmitigated anywhere by a liberal policy. The masters of the world were completely imbued with the idea that power may be used to create prosperity through privilege.

Yet their institutions for the maintenance of peace were founded on a diametrically opposite conception of public policy. The system of collective security envisaged an order in which privileges would be steadily reduced, in which the question of who had the ultimate power would become less and less important. But the minds of men had become thoroughly impregnated with the belief that the state could through its power make them prosperous. Therefore the control of the state at home, its power abroad, became the foci of universal interest.

Under the liberal conception, dominant in the practice of the nineteenth century and formally enacted into the treaties of collective security, the threat of total wars for supremacy was to be ended by liquidating the privileges that made supremacy valuable to those who possessed it and onerous to those who did not. The liberals had said, in effect, that men would cease to fight for political power when they became indifferent to it, and that they would become indifferent when its influence on their lives was negligible. This was how the religious wars had ended when men no longer believed that eternal salvation could be determined by the force of the secular arm. But in matters of income, of trade, property, and wages, the post-war generation believes fervently that earthly salvation can be

determined by the secular arm. Thus supremacy, instead of becoming a matter of indifference in men's feelings because it is increasingly negligible in fact, has become the paramount and all-embracing issue of their lives.

When supremacy is the issue, the world is in a period of total wars in which there can be no decision except by the extinction of one of the antagonists as a power in affairs. This issue is not justiciable nor can it be compromised. When it exists, peace is only an armed truce during which the warriors prepare for the next battle. Then the normal condition is not that of peace, occasionally interrupted by a local war. When the question of supremacy is raised, there is a condition of continuing war with intervals in which there is no fighting.



**BOOK III**

**THE RECONSTRUCTION OF LIBERALISM**



## IX

### THE GREAT REVOLUTION AND THE RISE OF THE GREAT SOCIETY

#### 1. *The Outlawry of War by the Modern Conscience*

THE modern revival of total wars has occurred in an age when almost all men feel intuitively that wars are a monstrous anachronism. This marks a revolutionary change in the human outlook. For not until the nineteenth century did men in the mass come to regard war as utterly irrational and immoral. There had been protests by minor religious sects; during the seventeenth and eighteenth centuries there was some effort to limit the scope of wars, and there was an increasing amount of more or less academic speculation about schemes for perpetual peace. But pacifism as a general human conviction affecting the practical conduct of governments is something new in western civilization.

Only a hundred years ago, for example, the citizens of London felt they were honoring Lord Chatham when they erected a monument bearing the inscription, written by Burke, that under his administration "commerce for the first time" had been "united with, and made to flourish by war." To-day, when men hear Mussolini saying that "war alone brings up to its highest tension all human energy and puts the stamp of nobility upon the people who have the courage to meet it,"<sup>1</sup> — when they hear Hitler saying that "in everlasting battles mankind has

<sup>1</sup> Cf. "International Conciliation No. 306," p. 7. Published by Carnegie Endowment for International Peace.

achieved greatness; in everlasting peace it would be doomed to destruction,"<sup>2</sup> — they are not much less startled than if they heard eulogies on chattel slavery and the exposure of newborn infants. For though all nations still prepare for war, and though most of them still pursue policies that cause wars, war as an instrument of national policy has been outlawed in the conscience of modern men.

So radical a change in human feeling is not likely to have been the result of sudden enlightenment and spontaneous good will. For modern wars, once begun, are as savage as any that men have ever fought; there is then no reason for thinking that the modern revulsion against war is due to a change in human nature. Nor can this revulsion be ascribed to a general recognition that modern weapons are terrifically destructive. As a matter of fact, the physical devastation of modern wars is usually exaggerated. For while guns and bombs and gas do maim, kill, and destroy on a great scale, the capacity of a modern nation to repair the damage is also very great. The devastated regions in the battle areas of the World War were reconstructed in a very few years, and while, humanly speaking, the individual dead are irreplaceable, their numbers are soon replenished.

We come closer to the truth when we remember that in the Great War more human beings were maimed and killed by disease and famine than by weapons, and that this maiming and killing continued for years after the armistice. Moreover the destruction of property in battle was a very small part of the destruction of wealth. Germany and Britain, for example, were never invaded by a hostile army; yet in both countries the capacity to produce wealth was deeply impaired, and still is, by the dislocation of the markets and the sources of supply to which their economies had been adjusted. The havoc of a modern war is infinitely deeper and more far-reaching than

<sup>2</sup> *Mein Kampf*. Cited in Florinsky, *op. cit.*, p. 73.



the casualty lists and the devastation of the war zone. The irreparable damage only begins when the whole nation is mobilized and the war is carried to the civilian population by blockade and by aerial bombardment. The lasting damage is caused by the war itself when it ruptures and dislocates the economy to which all the belligerents belong.

For all great wars are now civil wars. They are not battles against an alien foe but internecine struggles within one closely related, intricately interdependent community. Modern war tears apart huge populations which have become dependent upon one another for the maintenance of their standard of life — in some degree, for the maintenance of life itself. That is why modern war is so devastating to victor and to vanquished alike. That is why war can no longer be employed successfully as an instrument of national policy.<sup>3</sup> That is why those who preach and provoke war are regarded as rebels against the peace and order of the community of peoples, and why, in attacking their prey, they arouse the encircling hostility of that whole community of nations. That is why pacifism has so recently ceased to be an other-worldly aspiration and has become the working doctrine of practical men. For it was in the nineteenth century that the self-sufficiency of nations, of local communities, and of individuals, gave way to a deep and intricate interdependence. Men found themselves living in a Great Society.<sup>4</sup>

## 2. *The Division of Labor*

It is no exaggeration to say that the transition from the relative self-sufficiency of individuals in local communities to their interdependence in a world-wide economy is the most revolu-

<sup>3</sup> Cf. Sir Norman Angell's *The Great Illusion*.

<sup>4</sup> Cf. Graham Wallas's *The Great Society*.

tionary experience in recorded history.<sup>5</sup> It has forced mankind into a radically new way of life and, consequently, it has unsettled custom, institutions, and traditions, transforming the whole human outlook.

No exact date can, of course, be fixed as the beginning of this revolution. It can be traced back to the close of the Middle Ages, though, of course, in the Roman world a complex exchange economy prevailed until the Dark Ages. But about the middle of the eighteenth century men of our culture first began to experience enough significant change in their daily lives to realize that they were entering a new epoch in human affairs. The realization came first of all to the people of England and Scotland, for they were the first large western communities to augment their wealth by losing their local self-sufficiency.

Yet at the beginning of the eighteenth century, even in England, the sustenance economy of the village was still the rule. While there was some interlocal and some international trade, it was unimportant in size and above all in its character, being concerned only "to a comparatively small extent with the transport of necessaries or prime conveniences of life. Each nation, as regards the most important constituents of its consumption, its staple foods, articles of clothing, household furniture, and the chief implements of industry, was almost self-sufficing, producing little that it did not consume, consuming little it did not produce."<sup>6</sup> The export trade of England in 1730 con-

<sup>5</sup> "Humanity developed the exchange habit very late and . . . by primitive peoples . . . peaceful exchange is at best an exceptional practice. Even the Carthaginians, according to Herodotus, still found peoples in the Mediterranean area with whom they could deal only by depositing goods on the shore and withdrawing." Cf. Frederick L. Nussbaum's *A History of the Economic Institutions of Modern Europe*, particularly Ch. 1, 2. This book is based on Werner Sombart's *Der Moderne Kapitalismus*.

<sup>6</sup> John A. Hobson, *The Evolution of Modern Capitalism*, p. 32 (1910 ed.). (London: George Allen & Unwin Ltd.)

tinued to be "woolen goods and other textile materials, a small quantity of leather, iron, lead, silver and gold plate, and a certain number of reëxported products, such as tobacco and Indian calicoes. The import trade consisted of wine and spirits, foreign foods, such as rice, sugar, coffee, oil, furs and some quantity of foreign wool, hemp, silk and linen-yarn as material for our specially favoured manufactures."<sup>7</sup> But it is even more significant that the internal trade of England was carried on predominantly in more or less self-sufficing districts. "The internal trade," says Hobson, "between more distant parts of England was extremely slight."<sup>8</sup> The carriage of goods was difficult; "agricultural produce was almost entirely for local consumption, with the exception of cattle and poultry, which were driven on foot from the neighbouring counties into London and other large markets." On the whole, industry was operated for local markets. Moreover, within the districts there was, compared with later times, relatively little specialization by individuals. The weaving industry of Norwich, for example, "was executed in the scattered cottages over a wide district."

For more than a hundred and fifty years the revolution which converted these relatively independent and self-sufficing local communities into specialized members of a great economy has been proceeding at an accelerating tempo. In the struggle for survival the less productive economy of self-sufficiency has not been able to withstand the superior effectiveness of a mode of production which specializes in labor and natural resources, and thereby promotes the use of machinery and mechanical power. In some degree the world-wide division of labor has been checked by tariffs, immigration laws, and other barriers to the movement of capital and labor. But they have only retarded the process. Inside the nations which consider them-

<sup>7</sup> *Ibid.*, p. 40.

<sup>8</sup> *Ibid.*, p. 45.

selves most civilized there are now few communities left which are in any substantial sense self-sufficing. The self-sufficing household has virtually disappeared. Some nations, taken as a whole, depend less on foreign trade than others, but none could even begin to maintain its present standard of life if it were isolated from the rest of the world.

Yet the revolution is by no means completed. Only in recent decades has it begun to penetrate the great populations of Asia and of Africa and of South America. It would, moreover, appear to be an irresistible revolution.

The revolution, which still engages the whole of mankind and poses all the great social issues of the epoch in which we live, arises primarily from the increasing division of labor in ever-widening markets; the machine, the corporation, the concentration of economic control and mass production, are secondary phenomena. When I say that they are secondary, I mean that the inducement to invent and install machines exists only when men have already begun to specialize their industry for a wide market. And while it is true that the machines themselves promote the specialization, the fundamental fact is that machines are not invented until labor is already specialized. The famous inventions in the English textile industry which are so often regarded as the immediate cause of the industrial revolution were made by "practical men, most of them operatives immersed in the details of their craft, brought face to face with some definite difficulty to be overcome, some particular economy desirable to make."<sup>9</sup> The process of invention became cumulative as the textile industry expanded. But it is clear enough, I think, that invention began in the one industry which was already most specialized.

<sup>9</sup> Hobson, *op. cit.*, p. 80. Hobson also notes that scientific men, "strictly so-called, had very little to do with these great discoveries. Among the great textile inventors, Cartwright alone was a man leading a life of thought."

The same observation holds for the corporation. It did not come into general use as a form of industrial organization until the middle of the nineteenth century when the division of labor was still more advanced.

Only by recognizing the primacy of the division of labor in the modern economy can we, I believe, successfully distinguish between truly progressive and counterfeit progressive phenomena. If we are to find our way through the practical difficulties and the intellectual confusion of our time we must go back to the first principle of the economy in which we live, and fix clearly in our minds that its determining characteristic is the increase of wealth by a mode of production which destroys the self-sufficiency of nations, localities, and individuals, making them deeply and intricately interdependent.

### 3. *The Cultural Lag*

For more than a thousand years after the disintegration of the Great Society in the Roman world, the western peoples lived in small, relatively self-contained communities. To that kind of existence our traditional habits and preconceptions, our customs and institutions, have been adapted. Our social intelligence has been shaped to a mode of life which was organized on a small scale, and, in respect to the duration of any particular generation, was static. But the industrial revolution has instituted a way of life organized on a very large scale, with men and communities no longer autonomous but elaborately interdependent, with change no longer so gradual as to be imperceptible, but highly dynamic within the span of each man's experience. No more profound or pervasive transformation of habits and values and ideas was ever imposed so suddenly on the great mass of mankind.

The whole experience of the epoch since the revolution

began, from the diplomacy of the Great Powers to the subtlest and most intimate issues of religion and taste and personal relationship, has been radically affected by this transformation of the way men live. Thus there is no secular government which to-day resembles except in outward form any government of the pre-revolutionary era. Most of the governments that existed in the eighteenth century have been overthrown; some few have been peaceably reconstructed. But all of them have been fundamentally altered. State, law, property, family, church, human conscience, conceptions of right and wrong, of status, of expectation, of need, have all been unsettled. This revolution at the foundation of men's existence has called for a stupendous readaptation of the human race to a strange and puzzling material and social environment.

The readaptation is, of course, slower than the revolutionary changes, and therefore at all times in this epoch there has been what sociologists call "a cultural lag"—that is to say, men have brought to the solution of present issues ideas and habits appropriate to a situation that no longer exists. Like passengers looking backward from the end of a swiftly moving train, they have seen only the landscape which they have already passed by. Multitudes of men have had to readapt themselves not merely to a new mode of existence but to one in which the newest situation has soon been transformed into a still newer one. It has not been easy, and the sense of spiritual confusion, frustration, and insecurity which has pervaded all of modern culture has truly reflected the misery and the difficulty of the readaptation.

Men have not known whether to bless the new order or to curse it, and whether they did the one or the other has depended upon which aspect of the revolution they chose to dwell upon. To multitudes it has brought a very great improve-

ment of their standard of life; to others a brutal disruption of their habits. Thus to some the nineteenth century seemed a century of progress, to others a century of degradation. Ample testimony could be given to support either view. For the division of labor produced much more wealth. But it also produced a proletariat. The division of labor made men interdependent and therefore founded their prosperity on the principle of peaceable collaboration with reciprocal benefits. But it also made them dangerously insecure against those who did not collaborate.

Thus the revolution has been marked by an endless series of disconcerting paradoxes. There was progress and poverty. There was democracy and insecurity. There was the interdependence of nations and their fiercely competitive imperialism. There was legal equality and social inequality. There was a great moral enlightenment which abolished slavery and caste, enfranchised men and women, purged and elevated the treatment of criminals, provided schools and universities open to all, liberated conscience and thought from the censorship of authority. And, on the other hand, there were the newly rich who were far less attractive lords of creation than the nobility whom they supplanted; there were the multitudes in the great cities, uprooted from the soil, deprived of their ancestral traditions, without significance to dignify their lives or faith to console them.

In the fullest sense of the term, the industrial revolution is a revolution. It is the general revolution of which the specific revolutions from Cromwell's onward have been incidents. The accelerated phase of the revolution has now lasted for approximately five generations, and while for short periods in favored places there has been some tranquillity, it is certain that it will take many more than five generations to complete the revolution. In much more than half the world the

displacement of the self-sufficient economy has just begun. That displacement will continue. No Gandhi can withstand this tide in men's affairs. Nothing can prevent the whole of mankind from being drawn out of its ancestral isolation into the world-wide economy of interdependent specialists. For the new mode of production is incomparably more efficient in the struggle for survival. The men who adopt it not only grow wealthier than those who do not, but they overrun and dominate those who do not. So the revolution will continue. But since it requires not only an alteration of the economy but a readaptation of human nature and of usage, it will be a long time before men have caught up with their changing circumstances and have acquired the necessary knowledge to remake their habits and their institutions accordingly.

#### 4. *The Collectivist Counter-Revolution*

And therefore, as the revolutionary transformation proceeds, it must evoke resistance and rebellion at every stage. It evokes resistance and rebellion on the right and on the left — that is to say, among those who possess power and wealth, and among those who do not. The movement of the left is socialistic and tends logically toward communism. The movement of the right, composed of men of property in alliance with statesmen and soldiers, operates through economic nationalism, preëemptive imperialism, corporate monopoly, and becomes in its extreme and desperate form what is now called fascism. Though these two movements wage a desperate class struggle, they are, with reference to the great industrial revolution of the modern age, two forms of reaction and counter-revolution. For, in the last analysis, these two collectivist movements are efforts to resist, by various kinds of coercion, the consequences of the increasing division of labor.



In order to demonstrate this thesis, it will be necessary to remind ourselves of the first principles of the new economy which men have begun to practise on a large scale during the past hundred and fifty years.

It is not, as was the ancient economy, regulated by custom. That is to say, wealth is no longer produced by men who inherit from their fathers a plot of land, their station in society, their occupation, or a tradition of craftsmanship. In the modern economy, not only is the occupation of each man much more highly specialized, but, what is more significant, his choice of occupation and his success in practising it are regulated not by established usage but by fluctuating prices established in very extensive markets. The ancient economy may be said to have been one in which production was carried on for use.<sup>10</sup> Men produced directly for their own consumption, or at least for the reasonably fixed and well-known needs of a few regular and identified customers. In the modern economy the personal motive of production is profit — that is, to sell the article for more than it has cost; goods are consigned not to the producer's own household or even to regular and identified customers, but to a distant and impersonal market.

The prices which a man's products fetch in those markets determine whether he will prosper or fail — that is to say, whether he has invested his labor and his capital successfully. The market is, therefore, the sovereign regulator of the specialists in an economy which is based on a highly specialized division of labor. It does what the planning board is supposed to do in a planned economy. It determines by offering high prices for certain goods that more of them shall be pro-

<sup>10</sup> "So much wine and salt came to our monastery," says Cæsar of Heisterbach, "that it was simply necessary to sell the surplus." Cf. Nussbaum, *op. cit.*, p. 32. "Cæsar thought of the function of the monastery's estates as being primarily to supply the monastery. Only a surplus created the 'necessity' of selling some of the product."

duced. By means of high prices the market calls upon more men to apply their labor and their capital to the production of such goods. By offering low prices the market warns them to stop producing those goods and to withdraw part of the labor and the capital that would otherwise have been invested.

No economist invented this method of regulating what man shall produce.<sup>11</sup> The classical economists have merely tried to describe it. But it is clear that as men cease to be as self-sufficient as Robinson Crusoe, they must have some way of knowing what kind of work to specialize on. If they did not know, if they chose their specialty at random or merely followed their tastes, they might all choose to be locomotive engineers only to discover that no one had had the ambition to build the locomotives. In specializing they must know what others are specializing on in order that their divided labors may fit together. It is not enough to know what others would like to specialize on. Everyone might still insist on being a locomotive engineer. There must be some power which induces or compels everyone to choose a specialty which fits in with the other specialties. The prices offered in the market do just that. They do it roughly and, because most markets are imperfect, they do it with great friction and human suffering. But still they do it with a kind of large brutal effectiveness. To those who choose the right specialty at the right time they give large rewards; upon those who do not, they inflict failure and destitution.

It is certain that this method of regulating production is economically more efficient than custom and inheritance in a small, self-contained community of Jacks-of-all-trades. It has resulted in such a substantial improvement of the standard of

<sup>11</sup> Cf. F. A. von Hayek's "The Trend of Economic Thinking," *Economics*, May 1933.

life, measured in command over material goods, that the modern Marxians no longer insist on the original thesis that capitalism causes increasing poverty among the working classes. But it is equally certain that the progressive increase of wealth leaves behind it a trail of misery and failure and frustrated lives which has shocked the conscience of mankind. The statistics of improvement are not sufficiently impressive to obscure the statistics of waste or to drown out the cries of the victims. While it is perfectly true that the market determines how labor and capital can be effectively invested to satisfy popular demands, the market is, humanly speaking, a ruthless sovereign. In practice those who misjudge the market must pay for their mistakes with their fortunes and by defeat in their lives.

These tragic consequences are due to certain facts which the classical economists and the naïve eulogists of nineteenth-century capitalism recognized in theory. But they passed them over without appreciating their human significance. Economists spoke often about the immobility of labor and capital. This colorless term means that all men cannot and will not learn new trades and leave their homes and neighborhoods, or even change their investments, as rapidly as the market dictates. Men are not as adaptable as a fluctuating market demands. They are not abstract economic units but creatures of habit with deep attachments to their own ways of life. Moreover, partly because labor and capital are not perfectly mobile, and partly for other reasons which we shall presently examine, markets for goods and labor are often unreliable indicators of what men who have labor or capital to invest ought to specialize on. The market to-day cannot prophesy accurately enough for human purposes just where young men can profitably specialize for the next twenty years. Broadly speaking, the market does regulate the allocation of capital and labor with some efficiency. But there is a very large margin of error, which in human terms

means personal misery, arising from the fact that the choice of careers and the investment of personal savings are long commitments; whereas the short-term fluctuations of prices are often misleading, and yet sufficiently violent to wreck many lives before men can readapt themselves.

It is easy to understand, therefore, why almost all men have felt that they must escape the ruthless dictation of the open market. The collectivist movement in its many manifestations is, I believe, precisely that — a rebellion against the market economy. It may appear as a demand for protection. The word is well chosen. The energy of the tariff movement, which has swept all the great nations in the past seventy years, comes from the conviction that world-wide free trade causes intolerably rapid and violent dislocation of the established interests of capital and labor. The search for protection against the open market leads to tariffs, to laws which exclude immigrants, to laws which fix minimum hours and wages in certain restricted market areas, to trade-union agreements, apprenticeship regulations, and licensing provisions for particular trades. The desire for protection may cause a demand for the exclusion of foreign capital from certain industries and from colonial territories. It may appear also as an attempt to control investment through bankers who keep new capital from competing too readily with vested capital. It may take the form of all manner of pools, trusts, combinations in restraint of trade, patent monopolies, and other devices for protecting those who are in an industry against competitive rivalry among themselves and against new enterprises.

But in many different ways men seek also to become the masters of the market. And here their motives are usually so mixed that no one can say where the desire to protect vested interests ends and where the desire to exploit and profiteer begins. Side by side and entangled with the protectionist

movement, there is a movement of aggression. It too employs collectivist methods. The aggression may be effected by industrial monopoly which withholds goods until they fetch a higher price than a free market would offer; so manufacturers organize restraint of trade and labor unions impose the closed union in the closed shop. The objective of the aggression is to obtain more than the market price, by controlling the supply of goods, by concerted restriction of production, by preëmpting scarce and necessary raw materials, by exploiting exclusive franchises, by holding patents, or by sheer aggregation of economic power through interlocking corporations or tacit agreements dictated by community of financial and personal interest.

Such measures of protection and aggression are those which, in a previous chapter, I have called gradual collectivism. Their common characteristic is the refusal of those who participate in them to let the division of labor be regulated by a free market. Their grand and total effect is to make the whole economy less and less adaptable, less and less productive, and to subject the social order to the increasingly violent conflicts of the pressure groups. In the richer countries, where the market is wide and the economy productive, the conflicts are compromised. In others they cannot be compromised and gradual collectivism becomes total collectivism. Men begin by seeking protection from or mastery of the market. They end by rejecting the whole conception of an economy in which the division of labor is regulated in markets. Instead they adopt the conception of regulation by intelligent authority.

##### *5. The Basic Difference between Liberalism and Collectivism*

We are now in a position to see that collectivism and liberalism are different ways of answering the paramount technical and human questions which have been posed by the division

of labor. Abstractly the question is how the allocation of capital and labor shall be determined. In human and concrete terms it is the question of where savings shall be invested and at what jobs men shall work and what goods they shall be able to consume. Here, obviously, is the greatest of all social questions, for in determining what goods shall be produced, at what places, of what quality and quantities, the whole worldly existence of men and of their communities is decided. To regulate the division of labor is to determine whether men shall work on farms or in factories, whether particular regions shall be agricultural or industrial, what opportunities shall be offered to individuals, what standard of life they may expect.

The collectivist method is to have these questions answered by a planning board and to have its decisions enforced by the coercive authority of the state. Under gradual collectivism, the authority of the state or the private power of vested interests is used to resist or to dominate the decisions of the market. Though the market is not abolished, it is not allowed to function wherever there is an organized interest strong enough to interfere with it. In any complete collectivism—in war time everywhere and in peaceful periods in the totalitarian states—the market as the regulator of the division of labor is abolished and supplanted by government bureaus. Officials then direct production by conscripting labor and savings and by rationing goods for consumption.

The first principle of liberalism, on the contrary, is that the market must be preserved and perfected as the prime regulator of the division of labor. It was the historic mission of liberalism to discover the significance of the division of labor; its uncompleted task is to show how law and public policy may best be adapted to this mode of production which specializes men's work, and thereby establishes an increasingly elaborate interdependence among individuals and their com-

munities throughout the world. The liberal philosophy is based on the conviction that, except in emergencies and for military purposes, the division of labor cannot be regulated successfully by coercive authority, whether it be public or private; that the mode of production which mankind generally began to adopt about a hundred and fifty years ago is in its essence a market economy, and that, therefore, the true line of progress is not to impair or to abolish the market, but to maintain and improve it.

The liberal conviction that there can be no other satisfactory regulator of work, investment, and consumption rests on the realization that when men specialize their labor, they must live by exchanging the product. If they are to exchange their own product for another product that they need, they must make a product that some other specialist needs. So there must be a place where the things they can and are willing to make are matched with the things that other men need or would like to have. That place is the market place. When the collectivist abolishes the market place, all he really does is to locate it in the brains of his planning board. Somehow or other these officials are supposed to know, by investigation and calculation, what everyone can do and how willing he is to do it and how well he is able to do it and, also, what everyone needs and how he will prefer to satisfy his needs. From the liberal point of view it is naïve to suppose that any body of officials could perform that function in time of peace and in an economy of abundance and for the whole wide world.

If a planning board announced that, henceforth, machines in factories would be run not by electrical power generated in dynamos but by decrees issued by public officials, it would sound absurd. Yet the pretension to regulate the division of labor by abolishing the market and substituting authoritative planners is an idea of the same order. For what placed those

dynamos in those particular factories and dedicated that much capital and labor to that particular kind of production was a calculation based on data furnished by the markets. Only when a nation is devoting all its energies to some specific task like mobilizing for war or satisfying elementary human needs in-time of dire emergency is there any way of directing production without the regulatory guidance of the market. So the market is as integral a part of the system of production as the machinery, the labor, and the materials. There is no other conceivable way in which the infinitely varied ambitions and capacities of men can be matched with their infinitely varied needs and tastes. The totalitarian state merely suppresses this infinite variety of capacity and choice by the rationing of standardized goods and the conscription of standardized labor.

The market is not something invented by businessmen and speculators for their profit, or by the classical economists for their intellectual pleasure. The market is the only possible method by which labor that has been analyzed into separate specialties can be synthesized into useful work. The wheat farmer would die for want of a crust of bread, the cotton planter would go naked, the carpenter would have to live in a cave, if markets did not bring together wheat farmers, millers, and bakers, cotton planters, spinners, weavers, and clothiers, lumbermen and carpenters. This bringing together at the right time, in the right quantities, in accordance with the ability to produce and the desire to consume, cannot be organized and administered from above by any human power. It is an organic, not a fabricated, synthesis which can be effected only by the continual matching of bids and offers. For the division of labor and its regulation in markets are two inseparable aspects of the same process of producing wealth, and the failure to understand that truth is a sure sign of a failure to understand the technical principle of production in the modern world.



*6. Adam Smith and Karl Marx*

Adam Smith discerned the basic truth that the new industrial technic consists in the division of labor regulated in markets. For that reason, though he was an incomplete and limited prophet, he was a true one. He saw that the increasing division of labor was the essential revolution in modern times, a revolution comparable in its profundity and pervasiveness with the change from the pastoral pursuits of nomadic tribes to the tillage of settled agriculturists. Karl Marx, on the other hand, seems never to have grasped the inner principle of the industrial revolution which he sought to interpret. He did not understand that because the radical novelty of the new system of production is technical and economic, the exchange economy of the division of labor is a more fundamental and enduring phenomenon than the laws of property or the political institutions which existed in the nineteenth century. He fixed his attention on the title deeds to property rather than upon the inherent necessities of the economy itself. So he did not distinguish between the technic of the new economy and the laws under which it happened to be operating when he wrote. This confusion made him a false prophet. For, in his failure to see that the new mode of production depends upon the division of labor through markets, he evolved a doctrine which, instead of re-forming the social order to adapt it to the new mode of production, strikes at the vital technic of the economy itself. It was as if he had lived during the early days of settled agriculture in a community where the customs of pastoral nomads still persisted; and had then, with a feeling of righteous indignation against the resulting abuses, preached a crusade which made settled agriculture impossible. In an analogous sense, the Marxian conclusion that the elaborate division of labor throughout the world should be planned and administered by all-powerful officials is incompatible with the division of

labor. It invokes a reactionary political method to deal with the problems of a progressive economy.

Because he did not understand the economic revolution amidst which he lived, Marx was quite unable to describe the principles of the new socialist order. He even made a virtue of his failure by deriding as "utopian" and "unscientific" the attempt to discover the principles of socialism. The Marxian doctrine is totally devoid of the principles of socialism, and its only practical effect is as an incitement of the proletariat to seize the coercive authority of the state.

Thus the Marxian doctrine has proved to be quite useless to socialists once the coup d'état has been achieved. For there is nothing in it, as Lenin and Stalin soon discovered, which defines how the economy shall be organized and administered. What happened in Russia up to 1917 was perhaps inspired and even directed by the Marxian dogma. But what has happened *since*, the whole gigantic effort to make the Russian economy a going concern, has had either to be improvised ad hoc without benefit of Marx, or imitated from German and American industrialism. For Marx was no student of the economy brought into being by the industrial revolution, and because he never discerned its principles he could not give his followers the postulates of policy by which they could operate this economy once they had the political power to control it.

He misled them completely by teaching them to think that the division of labor could be regulated without markets, by the overhead administration of all-powerful officials. So thoroughly miseducated was Lenin, for example, when he first seized power in Russia, that he thought the administration of a socialist economy was no more than "keeping the records of labor and products," a matter which could be done easily enough "by the whole people."<sup>22</sup>

<sup>22</sup> Cf. Ch. V, Sec. 6.

But a little experience soon taught Lenin that it was not so simple as that. Experience did not, however, teach him the principles of a socialist order. For, as we have seen, such principles do not exist and are in the nature of things undiscoverable.<sup>13</sup> What saved Lenin from meeting the real issue, and made it possible for the communist dictatorship to make the experiment of a planned economy administered by overhead authority, was, first, the civil war and the foreign intervention, which required general military mobilization; second, the famine and the dire scarcity of all goods which required immediate production of necessities for use without raising too many difficult questions about what to produce; and, finally, the grand mobilization under the Five-Year Plan by which Russia was to be made a self-contained military power prepared for war on two fronts.

All this has had nothing whatever to do with the Marxian doctrine, and so the Russian "experiment" is not a demonstration of how a socialist order could be administered. To be sure, it is a planned economy authoritatively administered and it has abolished the market as the regulator of production. But the Russians have been able to regulate production without markets only because production has been regulated for them by famine and by military necessity. And it may be predicted confidently that if ever the time comes when Russia no longer feels the need of mobilization, it will become necessary to liquidate the planning authority and to return somehow to a market economy.<sup>14</sup>

On the other hand, with the rise to power of men who

<sup>13</sup> Cf. Chs. V and VI.

<sup>14</sup> This is true of all the totalitarian regimes. They are unmanageable except under conditions approximating those of war, and for that reason the reciprocal antagonism of fascist and communist dictators is necessary to the perpetuation of both of them. So, for their own salvation, they may be counted on to threaten each other.

followed Adam Smith, his doctrines suffered no such sudden obsolescence. For more than a century his principles have been a guide to policy among flourishing nations. To say this is not to suggest that Adam Smith revealed the whole truth once and for all, and that his writings are like the Koran or the fundamentalist Bible or the Marxian canon as viewed by naïve Marxists. There have been many, to be sure, who thought so, and an Adam Smith fundamentalism has been the source of much confusion among capitalists, jurists, and social thinkers during the nineteenth century. But Adam Smith's basic insight into the division of labor was a genuine and a momentous scientific generalization which cannot be obsolete until some radically new mode of production comes into being. For that reason, though Adam Smith's teachings have needed to be refined and supplemented, though his obiter dicta are often obsolete, his central ideas are alive. Whatever is added or taken away is still consistent with his deepest insight. The authentic progressive thought of the modern world is an evolution from his discovery that the wealth of nations proceeds from the division of labor in widening, and, therefore, freer, markets.

Thus the fundamental difference between Karl Marx and Adam Smith, between collectivism and liberalism, is not in their social sympathies, nor in their attachment to or rebellion against the existing social order, but in their science. Liberalism is the line of policy which seeks to re-form the social order to meet the needs and fulfill the promise of a mode of production based on the division of labor; collectivism is the line of policy which promises to retain the material advantages of the new economy, yet would abolish the inner regulative principle, namely, the widening and freer market, by which the division of labor becomes effective.

And so, though Marx as an historian saw truly enough that

“production, and with production the exchange of its products, is the basis of every social order,”<sup>18</sup> he never did realize clearly what the modern mode of production is. He became confused by failing to distinguish between the injustices and miseries of laissez-faire capitalism set in its Victorian context of feudal landlordism, on the one hand, and, on the other, the new mode of producing wealth which must henceforth prevail in any modern society. And so, while his indignation was righteous, because his science was wrong he enlisted the progressive sympathies of the western world in a reactionary cause.

### 7. *Latter-Day Liberals*

Karl Marx was not the only thinker of the nineteenth century who failed to make this distinction. Marx merely accepted uncritically the prevailing assumptions of his time and he must be absolved of any unique responsibility. For his error was shared by almost all the influential, latter-day liberals. They, too, identified the existing laws of property with the new mode of production. Indeed, his teachings would not have found such wide acceptance in the learned world, or have proved so hard to refute, had not liberal thinkers and capitalist leaders made the same assumption as Marx — that the status quo *was* a liberal society completely achieved. By this general failure to recognize the economy as a mode of production distinguished from the prevailing social order as a complex of laws and institutions, the essential issue between collectivism and liberalism was obscured. Since the Marxians and latter-day liberals had the same premise, that the social order of the nineteenth century was the necessary, the appropriate, and a completed reflection of this new mode of production, their quarrel was merely whether the order was good or bad.

<sup>18</sup> Cf. discussion in Engels, *op. cit.*, p. 294.

In this argument the latter-day liberals<sup>16</sup> were bound to lose. For (by any criterion of conscience) the status quo was far from good. Moreover, there was not, if I may put it in this fashion, any particular status quo for any appreciable period of time. The new economy is dynamically progressive; the social order was relatively static. As a consequence, the apologists and eulogists of the status quo soon found themselves defending positions which had in fact been abandoned by events, and latter-day liberals like Herbert Spencer<sup>17</sup> became the apologists for miseries and injustices that were intolerable to the conscience, and the rationalizers of institutions and practices that were absurdly antiquated to the critical intelligence. Their position became utterly untenable and their teaching entirely sterile.

<sup>16</sup> By the term "latter-day liberals" I refer to the representative liberals of the second half of the nineteenth century, of whom Herbert Spencer may be regarded as the most uncompromising. Since 1870 the United States Supreme Court has been a rather consistent exponent of latter-day liberalism.

<sup>17</sup> Spencer, for example, persuades himself that for the state to license physicians, and forbid unlicensed quacks from prescribing medicine, "is directly to violate the moral law . . . the invalid is at liberty to buy medicine from whomsoever he pleases; the unlicensed practitioner is at liberty to sell to whomsoever will buy." This was written in 1848. Cf. chapter on "Sanitary Supervision" in *Social Statics*.

## X

### THE DEBACLE OF LIBERALISM

#### 1. *An Inquiry to Be Undertaken*

A HUNDRED years after Adam Smith published *The Wealth of Nations* the liberal philosophy was decadent. It had ceased to guide the progressives who sought to improve the social order. It had become a collection of querulous shibboleths invoked by property owners when they resisted encroachments on their vested interests.

It is now the fashion to explain this debacle by saying that the liberal philosophy was originally no more than the rationalization of the manufacturers and merchants in their struggle against the feudal landlords and the established churches, and that once the businessmen were masters of the situation their zeal to reform became the zeal to conserve.

But this explanation does not satisfy me because it fails to explain the fact that for more than sixty years the learned men in the capitalistic nations have been increasingly vehement critics of the existing order. It is not true that they have been the defenders of established property using their learning to glorify the dominant businessmen. Complacent apology has not been the prevailing tone of academic teaching in the leading universities of pre-war Germany, or of England and America in the past two or three generations. At the present time it is certainly not the prevailing tone in the social sciences, as taught by scholars or popularized by intellectuals, in any country where thought is free. For more than fifty years the influential

thinkers of the western world have been deeply critical of the existing social order.

The real question is why they turned away from liberalism and embraced collectivism as a method of ordering affairs and of realizing men's hopes. Had they become conservatives, it might be argued that they had been forced to serve the dominant businessmen. But what they actually did was to abandon the débris of liberalism to the vested interests, and then they attacked those vested interests with a body of learning constructed on socialist premises.

This would appear to indicate that at some point in its development the liberal philosophy became scientifically untenable, and that, thereafter, it ceased to command the intellectual respect or to satisfy the moral conscience of the leaders of thought.

What happened? Why did it happen? And what shall be done about it? On this voyage of discovery I venture now to ask the reader to embark.

## 2. *The Fallacy of Laissez-Faire*

We may well begin, I think, by exploring what may be called the cardinal fallacies of nineteenth-century liberalism. We come at once upon a most extraordinary confusion in the whole field of relations between the law and the state and the institution of property on the one hand, and human activities on the other. This confusion is entitled the doctrine of laissez-faire.

No one seems to know who first invented this doctrine or gave it its title. It is said<sup>1</sup> that the idea can be traced back to

<sup>1</sup> Cf. "Laissez Faire," by G. D. H. Cole, in *Encyclopedia of the Social Sciences*, Vol. IX, pp. 15-16.



Italian economists of the seventeenth century, but that the phrase "laissez faire, laissez passer" was first used by a French merchant of the eighteenth century, named Gournay, who was pleading for relief from the intricate local customs tariffs, guild restrictions, and other interferences with the freedom of production and trade that had grown so elaborate since the Middle Ages. But whatever its historical origin, it is clear that the purpose of the maxim was to break down the restrictions of more or less self-contained communities which practised a low degree of division of labor.

In the beginning laissez-faire was, therefore, a revolutionary political idea. It was propounded when men found it necessary to destroy the entrenched resistance of the vested interests which opposed the industrial revolution. It was a theory formulated for the purpose of destroying laws, institutions, and customs that had to be destroyed if the new mode of production was to prevail. Laissez-faire was the necessary destructive doctrine of a revolutionary movement. That was all it was. It was, therefore, incapable of guiding the public policy of states once the old order had been overthrown.

For when the old restrictions of law and custom had been removed, a process which was substantially accomplished in western Europe and America between 1776 and 1832, the real question was this: what laws were to govern the new economy? At this point, as so often happens among old and triumphant revolutionists, the dynamic ideas which had brought the liberals to power were transformed into an obscurantist and pedantic dogma.

The liberals turned to writing metaphysical treatises on the assumption that laissez-faire is a principle of public policy. They sought to determine by abstruse and a priori reasoning what realms of human activity should and what realms should

not be regulated by law.<sup>3</sup> John Stuart Mill, for example, after examining the pros and cons, arrives at the conclusion that "laissez-faire, in short, should be the general practice: every departure from it, unless required by some great good, is a certain evil." But since he had no criterion by which to measure the greatness of a great good, the best he could do was to give his personal opinion as to what exceptions to laissez-faire were justifiable. They happened to be much more numerous exceptions than Herbert Spencer thought justifiable. But that was not because either Mill or Spencer had clear principles to guide him; it was because Mill was a sensitive man in touch with practical affairs, whereas Spencer was a secluded doctrinaire.

The whole effort to treat laissez-faire as a principle of public policy, and then to determine what should be governed by law and what should not be, was based on so obvious an error that it seems grotesque. The error was in thinking that any aspect of work or of property is ever unregulated by law. The notion that there are two fields of social activity, one of anarchy and one of law, is false. Yet that is what Mill and Spencer assumed when they sought to define the proper jurisdiction of the law. I suppose that a solitary man cast ashore on an undiscovered island could be said to have freedom without law. But in a community there is no such thing: all freedom, all rights, all property, are sustained by some kind of law. So the question can never arise whether there should be law here and no law there, but only what law shall prevail everywhere. The latter-day liberals who made a political dogma out of laissez-faire had merely elevated the historical objection to

<sup>3</sup> Cf., e.g., John Stuart Mill's *Principles of Political Economy*, Vol. II, Bk. V, Ch. XI: "Of the Grounds and Limits of the Laissez-faire or Non-Interference Principle," p. 569. Mill speaks of "laissez-faire" rather than of "laissez-faire."

antiquated laws into the delusion that no new laws would or should replace them.

But new laws did replace them. For in a society there cannot for long be such a thing as a legal vacuum. There may of course be a period of disorder when the law governing rights and duties is unsettled or unenforced, and in such periods force, fraud, and chicanery are rife. But some system of law must eventually crystallize as the turbulence of anarchy subsides. A system of capitalist law crystallized in the nineteenth century. In the English-speaking countries it was the common law modified by judicial decision and legislation. While the latter-day liberals were gravely considering what the jurisdiction of the law ought to be, the jurisdiction was at all times universal throughout the economic order.

By virtue of that jurisdiction there was property, there were corporations, there were contracts, there were rights, duties, and immunities, there was money with which to exchange goods and services, there were standards of weights and measures. While the theorists were talking about *laissez-faire*, men were buying and selling legal titles to property, were chartering corporations, were making and enforcing contracts, were suing for damages. In these transactions, by means of which the work of society was carried on, the state was implicated at every vital point. All these transactions depended upon some kind of law, upon the willingness of the state to enforce certain rights and to protect certain immunities. And therefore it was wholly unreal to ask what were the limits of the jurisdiction of the state.

It is most important to fix this clearly in our minds, for then we shall be spared much confusion. Let us examine an extreme case: in 1848 Herbert Spencer argued against Boards of Health.\* It is "within the proper sphere of government," he

\* *Social Statics*, p. 406 (1866 ed.).

says, "to repress nuisances." So if a man "contaminates the atmosphere breathed by his neighbor," he is "infringing his neighbor's rights" and the government may be called upon to deal with him as a trespasser. But for the state to "interpose between quacks and those who patronize them" is, said Spencer, "directly to violate the moral law." Thus he was arguing that if I annoy my neighbor by blowing smoke into his house, I may be punished, but if I kill him by deceiving him into thinking that I am a physician, I go scot-free, and my victim's widow is forbidden to shoot me. Spencer thought he was distinguishing between two realms, one where the state intervenes and one where it does not. But actually the state intervenes in both instances. The only difference is that in the case of the trespasser Spencer would have the law protect the victim, in the case of the quack he would have the law protect the aggressor.

Let us consider next an example of how the law may change by altering the balance of rights and duties. Under the old common law of England a workman who was injured could sue the master for damages. If he had been injured by a fellow workman's negligence, he could still sue the master because the law held the master liable for his servant's acts. Under this system of law the state was ready to intervene on behalf of an injured workman and recover damages for him from his employer. In 1837 this system of law was changed in a decision<sup>4</sup> rendered by Lord Abinger. After that, it became the law that the master was not liable for an injury to a workingman when the injury was due to the negligence of his fellow workingman. So after 1837 the state would not help the injured worker to recover damages from the employer. This was pleasant for the employer. But for the employee it was not so pleasant.

<sup>4</sup> *Priestly v. Fowler* (3 M. & W. 1). Cf. *Encyclopedia of the Social Sciences*, article on "Employers' Liability," by Edward Berman. Vol. V, p. 515.

He could now sue only his fellow servant and might expect to get nothing. Years later new laws were enacted designed to increase the employer's liability and improve the rights of the injured employee. These laws worked badly, and finally workmen's compensation laws were enacted based on the principle that an injured workman should not have to sue, but should receive damages according to a definite schedule; the costs were to be covered by compulsory insurance which was carried by the employers. Now surely it would be misleading to interpret these oscillations of the employer's liability and the worker's rights as instances where the state interfered or practised *laissez-faire*. Before Lord Abinger's ruling the worker had a right which he no longer had after the ruling. The employer had a new immunity. When the compensation laws were enacted, the employer had a new obligation and the employee a new right.

All of this is by way of illustrating the point that the latter-day liberals were deeply confused when they set out to define the limits of the jurisdiction of the state. The whole regime of private property and contract, the whole system of enterprise by individuals, partners, and corporations, exists in a legal contract, and is inconceivable apart from that context.

Just how the latter-day liberals came to overlook something so obvious as that is rather obscure. But apparently they had some sort of notion that because the existing law of property and contracts had not been formally enacted by a legislature, but had evolved by usage and judicial decision under the common law, it was somehow a natural law originating in the nature of things and valid in a superhuman sense. They came to think of these traditional laws of property and contract as prevailing in a realm of freedom, and when statutes they did not like were enacted to amend the traditional law, they thought of them as interferences by the state.

But, of course, the old unamended traditional law depended upon the implied willingness of the state to intervene: the rights which existed under that law could enlist the services of the policeman, the jailer, and the hangman. Without the implied willingness of the state to intervene with all its power, the rugged individualist who preached laissez-faire would have been utterly helpless. He could not have obtained or given valid title to any property. He could not have made a contract, however free. He could never have organized a corporation with limited liability and perpetual succession. The rugged individualist may have imagined that in his economic life he was the person that God and his own will had made. But in fact he was a juristic creature of the law that happened to prevail in his epoch. For, as Ernest Barker has said: "It is not the natural Ego which enters a court of law. It is a right-and-duty-bearing person, created by the law, which appears before the law."<sup>5</sup>

Were there any question about the thesis that capitalism developed in a context of historic law and not in the free realm of Nowhere, the conclusive evidence would be found in the fact that the substance of law has been continually modified. What is it that courts and legislatures have been doing these hundred and fifty years if not defining, redefining, amending, and supplementing the laws of property, contract, and corporations, and of human relations? They have done other things, too, such as to raise armies, provide social services, and distribute benefits and privileges. But at the same time they have never been letting alone, on the theory that they are not within the jurisdiction of the state, the rights and duties which are the legal foundation of the division of labor. And in the course of their lawmaking and adjudicating, they have been adding to and

<sup>5</sup> From the Translator's Introduction to Otto Gierke's *Natural Law and the Theory of Society*. Vol. I, p. lxxi.

taking away from the ever-changing rights and duties which are the substance of property and of contract and of corporations.

The preoccupation of the latter-day liberals with the problem of laissez-faire is a case of the frustration of science by a false problem. It is not an uncommon occurrence. It is something like the persistent effort of astronomers to explain the motions of the solar system by treating the earth as the fixed centre of it; the progress of astronomical science was arrested until it had been observed that the earth was not the fixed centre of the solar system. Now the progress of liberalism was, I am convinced, halted by the wholly false assumption that there was a realm of freedom in which the exchange economy operated and, apart from it, a realm of law where the state had jurisdiction.

The consequences of the error were catastrophic. For in setting up this hypothetical and nonexistent realm of freedom where men worked, bought and sold goods, made contracts and owned property, the liberals became the uncritical defenders of the law which happened actually to prevail in that realm, and so the helpless apologists for all the abuses and miseries which accompanied it. Having assumed that there was no law there, but that it was a natural God-given order, they could only teach joyous acceptance or stoic resignation. Actually they were defending a system of law compounded from juristic remnants of the past and self-regarding innovations introduced by the successful and the powerful classes in society.

Moreover, having assumed away the existence of a system of man-made law governing the rights of property, contract, and corporation, they could not, of course, interest themselves in the question of whether this law was a good law, or of how it could be reformed or improved. The derision poured out upon the latter-day liberals as men who had become complacent

is not unjustified. Though they were probably not more insensitive than other men, their minds stopped working. Their unanalyzed assumption that the exchange economy was "free," in the sense that it was outside the jurisdiction of the state, brought them up against a blank wall. It became impossible for the latter-day liberals to ask the question, much less to find the answer, whether the existing law was good and how it could be reformed. That is why they lost the intellectual leadership of the progressive nation's, and why the progressive movement turned its back on liberalism.

### 3. *The Enchanting Promise*

But though the development of liberal ideas was halted, it was halted, so to speak, on the main road of human progress. The liberals had come upon the fundamental clue to the only kind of social order which can in fact be progressive in this epoch. They had discerned the true principle of the mode of production which the industrial revolution was introducing. They had understood that in the new economy wealth is augmented by the division of labor in widening markets; and that this division of labor transforms more or less self-sufficient men and relatively autonomous communities into a Great Society.<sup>6</sup>

It was no accident that the century which followed the intensified application of the principle of the division of labor was the great century of human emancipation. In that period chattel slavery and serfdom, the subjection of women, the patriarchal domination of children, caste and legalized class privileges, the exploitation of backward peoples, autocracy in

<sup>6</sup> Cf. Graham Wallas, *op. cit.* My own *Public Opinion* is a study of democracy in the Great Society; *A Preface to Morals* is a study of certain moral and religious consequences of this social transformation.



government, the disfranchisement of the masses and their compulsory illiteracy, official intolerance and legalized bigotry, were outlawed in the human conscience, and in a very substantial degree they were abolished in fact. During this same period petty principalities coalesced voluntarily into larger national unions, at peace within their borders; in this period, too, the interdependence of the peoples became so evident a fact that the older empires went through a spectacular transformation into federations of self-governing states, and among all civilized nations peace became the avowed aim, even if it was not always the real aim, of foreign policy.

All of this did not happen by some sort of spontaneous enlightenment and upsurge of good will. The characters of men were not suddenly altered. We can be certain of that, now that we live in an epoch of reaction where obscurantism is again an official policy in several nations and there is so much bad will in all the nations. What did change in the nineteenth century was the condition in which men lived, and the liberal enlightenment reflected it. The new mode of production, since it was based on the profitable exchange of specialized labor, envisaged a social order based on the harmony of interest among widely separated but collaborating men and communities. We have become insensitive and forgetful about the revolutionary change in human life. But to our great-grandfathers it was an intoxicating promise that had suddenly been revealed to mankind, and only by recapturing the original insight of the pioneer liberals can we fully appreciate the evangelical fervor with which they preached that the freedom of trade was a new dispensation for all mankind.

For the first time in human history men had come upon a way of producing wealth in which the good fortune of others multiplied their own. It was a great moment, for example, in the long history of conquest, rapine, and oppression when David

Hume could say (1742) at the conclusion of his essay, "Of the Jealousy of Trade": "I shall therefore venture to acknowledge, that, not only as a man, but as a British subject, I pray for the flourishing commerce of Germany, Spain, Italy, and even France itself. I am at least certain that Great Britain, and all those nations, would flourish more, did their sovereigns and ministers adopt such enlarged and benevolent sympathies toward each other."<sup>†</sup> It had not occurred to many men before that the Golden Rule was economically sound. Thus the enlarged and benevolent sympathies of the eighteenth and nineteenth centuries had a material foundation in the self-interest of men who were growing richer by exchanging the products of specialized labor in wide markets.

They actually felt it to be true that an enlightened self-interest promoted the common good. For the first time men could conceive a social order in which the ancient moral aspiration for liberty, equality, and fraternity was consistent with the abolition of poverty and the increase of wealth. Until the division of labor had begun to make men dependent upon the free collaboration of other men, the worldly policy was to be predatory. The claims of the spirit were other-worldly. So it was not until the industrial revolution had altered the traditional mode of life that the vista was opened at the end of which men could see the possibility of the Good Society on this earth. At long last the ancient schism between the world and the spirit, between self-interest and disinterestedness, was potentially closed, and a wholly new orientation of the human race became theoretically conceivable and, in fact, necessary.

It is the unfinished mission of liberalism to discover the guiding principles by which this revolutionary readaptation of mankind can proceed.

<sup>†</sup> David Hume, *Essays Moral, Political, and Literary*. Vol. I, Part II, No. VI.

#### 4. *The Dismal Science*

Having seen the vision of the Promised Land, the nineteenth-century liberals began to feel that they had reached it. After all, they saw astounding progress in almost every field of human activity, not merely in the general standard of life but in a succession of scientific discoveries and inventions and in an elevation of man's sense of decency. That the nineteenth century was one of the very great creative periods in all history is not easily evident to us who take these achievements for granted. But it was evident to our great-grandfathers, who remembered what had gone before. So in justice to the older liberals we must remember, when their dithyrambs sound unduly complacent to our ears, that their eyes were fixed on the achievements of their epoch, whereas ours are fixed on the grave problems they neglected and left for us to solve.

Not only did their social science fail them as a guide to public policy because of their preoccupation with the false problem of *laissez-faire*; but they fell into a complementary fallacy which was equally destructive to the development of liberal science. Just as they had assumed that the economy of divided labor operates by natural laws outside the context of a legal system, so they also assumed that these natural laws were the laws formulated in their economic science. This is the fallacy of the classical economics which descends from David Ricardo and has permeated the outlook of successful businessmen, of conservative statesmen, and so much of the jurisprudence of the past seventy years. The fallacy, here, was subtler but none the less stultifying than that connected with the dogma of *laissez-faire*. It consisted in the drawing of tremendous practical conclusions from the first phase of an incompleting scientific inquiry.

The purpose of the inquiry, as Adam Smith defined it in 1776,<sup>8</sup> was to ascertain the causes of the "improvement in the productive powers of labour, and the order, according to which its produce is naturally distributed among the different ranks and conditions of men. . . ." But in fact it was chiefly upon the second part of this programme that the attention of the classical economists after Ricardo was centred. Adam Smith, who wrote in the early days of the new industrial system, was concerned with its promise, and Malthus, who began to speculate during the French Revolution, was concerned with its disappointments; but by the time of Ricardo the new economy was triumphantly established in England. Ricardo was not concerned with the increase of wealth, for wealth was increasing and the economists did not need to worry about that. He even persuaded himself that to inquire into the causes which increase the total quantity of wealth was "vain and delusive." But the distribution of wealth was not so readily to be taken for granted. That was a problem made manifest by the social discontent in England after the Napoleonic Wars. Ricardo took this problem to be the subject matter of political economy, and set out to ascertain "the laws which determine the division of the produce of industry among the classes who concur in its formation."<sup>9</sup>

In separating the production of wealth from the distribution of wealth, Ricardo thought he was eliminating from economic science those things about which "no law can be laid down" and was directing it to the field where "a tolerably correct one can be laid down respecting proportions." The separation was almost certainly an error. For the amount of wealth which is

<sup>8</sup> *Op. cit.*, p. 2.

<sup>9</sup> In a letter to Malthus, Oct. 9, 1820, cited in Keynes, *op. cit.*, p. 4. See also Preface to *The Principles of Political Economy and Taxation* (1821 ed.): "To determine the laws which regulate this distribution is the principal problem in Political Economy."

available for distribution cannot in fact be separated from the proportions in which it is distributed. In a poor society the proportion of the national income which goes to the owners of capital will be relatively larger, though of course absolutely smaller, than in a rich society. We can see this illustrated, curiously enough, in Russia to-day, where the rate of interest, free of inheritance and income taxes, is between 7 and 8 per cent, whereas in America it is between 3 and 5 per cent; <sup>10</sup> moreover, in Russia the proportionate income of the poorest-paid workers to that of the so-called Stakhanovist workers is as one is to twenty, and to the directing specialists it is as much as one is to eighty or a hundred. This is a much more unequal distribution of incomes paid for producing wealth than is to be found in America,<sup>11</sup> and it arises because in a poor society the scarcity of capital, of special technical and organizing ability, will make the wages of capital and of ability relatively higher than in a country where they are more abundant.

Moreover, the proportion in which wealth is distributed must have an effect on the amount produced. Thus an unequal distribution of wealth will have different effects on production depending on whether it is a small amount, a moderate amount, or a large amount of wealth which is unequally divided. In a very poor country, the poor have such a hopelessly low standard of life that they cannot buy enough goods to make profitable the use of the capital which the rich might invest. In such a country, the rich will tend not to save but to live in profligate luxury. In a moderately rich community, the rich

<sup>10</sup> Cf. Max Eastman's "The End of Socialism in Russia," *Harper's Magazine*, Feb. 1937.

<sup>11</sup> I am talking of interest paid on capital and of wages and salaries, and not, of course, of windfall fortunes accumulated from successful speculation in land or natural resources, from the monopolistic control of a market, whether by a great corporation or a moving-picture star, or even from pioneer enterprises, like Henry Ford's production of a cheap automobile.

will tend to save and invest capital, and to increase the national dividend. In a very rich country where the general standard of life is comfortable, the people will tend to prefer more leisure to more wealth; the returns on capital will, therefore, tend to fall because the supply is greater than the demand, and the rate at which wealth increases will tend to diminish.

This goes to show that in concentrating on the distribution of wealth the position of the classical economists after Ricardo was not even theoretically tenable. The initial error led to greater errors. In order to analyze the fictitious problem of distribution as such they had to construct an hypothetical economy. For no laws could be deduced from what William James once called the blooming buzzing confusion of the real world. The real world was a blooming buzzing confusion to the economist because the economy operated in a context of ancient habits, prejudice, usage, and law. They had to simplify the facts by supposing that all men would and could behave in certain definite ways. Thus they assumed that all labor and all capital were perfectly mobile, and, therefore, free and able to move without friction from one kind of production to another. They assumed that each laborer and capitalist knew infallibly where to move. That he knew when to move. That he was willing to move. That he had the facilities for moving. That he was not held down to a particular job by inveterate habit, to a particular place by family ties, by love of his own neighborhood, by friendships and social connections, by the ownership of a home which could not be disposed of without sacrifice. They assumed that all men are born free and equal, and have equal opportunities to develop and to use their differing native gifts. They assumed that workers and managers and entrepreneurs are capable of being highly specialized and at the same time capable of adopting a different specialty at any period in their active careers. They assumed that there were

no legal privileges, no natural monopolies, no conspiracies in restraint of trade, but only perfect and fair competition among equally intelligent, equally informed, equally placed and universally adaptable men.

In such a society all values would be "natural" values — that is to say, the wages of each laborer and superintendent and manager would be what he produced, the interest earned by each capitalist would be what his abstinence had contributed, and the profits of the entrepreneur would always approximate zero. In such a society the perfect competition of men with absolutely equal opportunities, infallible foresight, complete adaptability, and no prejudices about what they wished to do or where they wished to live would produce perfect justice. The laborer would be worthy of his hire and would always get it.

This seemed so delightful that the classical economists forgot that they had deduced from their hypothesis the conclusions which they had put into it. The subtler minds among them were, of course, aware that in the real world there were "disturbances" of one kind or another which they had left out of their science. But the general public which read Ricardo, the publicists who popularized economics, the businessmen and the politicians who read the popularizations, ignored all reservations about the "disturbances" and proudly exploited political economy as a demonstration that the existing order was the perfection of reason and justice. The economists, alas, did not protest very loudly when they found themselves promoted to the status of oracles. For it was a pleasant rôle, full of dignity and honor, and, moreover, they were profoundly confused.

For the imaginary system they had constructed was enough like the actual system to provide continual and reassuring verification for their conclusions. Thus while labor and capital were not perfectly mobile in the real world, they were much more mobile than they had been in any previous epoch of human

history. While opportunities were not equal for all men, they were much more nearly equal than they had ever been before. With the removal of caste privileges, mediæval and mercantilist restrictions, the diminution of class prejudice, opportunity was becoming more nearly equal. While competition was not perfect, it was much freer than it had been in former days under the chartered monopolies and licensed occupations. So the actual world did vaguely tend to approximate their imaginary world, and impressive evidence could be found to show that society was in fact progressing towards a higher standard of life and greater justice and enlightenment.

The best of the classical economists knew that they had constructed an hypothetical social order. But they did not appreciate the immense scientific implications or the practical consequences of the particular hypothesis they adopted. For their science was not the mere creation of a wayward fancy or an idle speculation with meaningless abstractions. Ricardo was a man of genius, and one of the marks of genius is the ability to leap over the apparent facts into hypotheses which open up fruitful inquiries. The imaginary social order of the classical economists was an act of creative imagination. It described an order in which the frictions and abuses of the actual world had been removed, in which the facilities, the adaptability, and the foresight that are actually lacking had by hypothesis been supplied. This imaginary order, let us note clearly, was not an impossible world such as a poet might construct by assuming that all labor was a pleasant exercise and that the necessities of life would be miraculously supplied. The imaginary order of the economists supposed a real world of the division of labor where men have to earn their living by the sweat of their brows. It supposed a real world in which men desire their own advantage. It was not the Garden of Eden before the curse fell upon Adam. Yet it was not the world they lived in. It was the



world they lived in drastically purged and reformed and reconstructed.

So what the political economists had conceived in their science was not a picture of the world as it is but a picture of the world as it needs to be remade. They had imagined the kind of human society in which the social problems arising from the division of labor are solved. Thus inadvertently, in the act of trying to simplify the facts in order to understand them, they had been inspired to discover the criterion by which these social problems can be truly defined and the true solutions can be indicated. By making certain assumptions they had described a just society based on the division of labor; then it followed that in the real world of injustice and maladjustment these assumptions were the proper objectives of policy. What they overlooked was that in order to imagine how the division of labor would work with perfect justice, it had been necessary to assume a reformed society of reformed individuals. It should have followed, then, that, in order to achieve the result in practice, it is necessary to make the reforms in practice.

Instead of the classical economics being an apologetic explanation of the existing order, it is, when properly understood, a searching criticism of that order. It is a theoretical measure which reveals how far short of the promise, how unadjusted to the needs of the division of the labor, is the actual society in which we live. Had the liberal economists realized this implication of their own hypothesis, they would have embarked at once upon the task of exploring the legal, psychological, and social circumstances which obstructed and perverted the actual society. They would not have left the criticism and the reform of society to those who did not understand, or were determined to abolish, the new mode of production. They would have seen that the mission of liberalism was to develop the principles by which mankind could readapt its habits and institutions to the

industrial revolution. They would have carried on the tradition that Adam Smith founded, and, like him, they would have been the critics of the status quo and the intellectual leaders of its necessary reform.

They did not do this. The liberal economists from Ricardo until recent times were obsessed by the deadly confusion that their imaginary world was not a critical introduction to research and reform but the delineation of an order to which the real world conformed approximately, and sufficiently. This error sterilized the scientific advance of liberal thought, paralyzed the practical energies of liberal statesmen, and destroyed the prestige of liberalism. So the economists were properly rebuked by Carlyle, who had his eyes on the real world, as the teachers of a Dismal Science.<sup>18</sup>

<sup>18</sup> Thomas Carlyle, "The Nigger Question."

## XI

### THE AGENDA OF LIBERALISM

#### 1. *The Inexorable Law of the Industrial Revolution*

THE debacle of liberalism in the nineteenth century occurred when the thinking of liberals was arrested by their misunderstanding of laissez-faire and of the classical economics. It is a case of a great scientific movement suddenly inhibited by intellectual error, and it is by no means the first or the only instance of its kind in history. The progress of ancient science appears to have been halted in the fourth century B.C. by an analogous deflection of the Hellenic mind from a progressive examination of experience to circular, metaphysical speculation. Liberal thinking was inhibited in the metaphysics of laissez-faire, and the effect was to make the political philosophy of liberalism a grand negation, a general non possumus, and a complacent defense of the dominant classes. It was inhibited no less completely in the circular dialectics of the classical economics. The effect here was to shut off the minds of the liberals from the study of social readjustment, and to close their imaginations and their sympathies to the crying need for reform.

There is no reason to suppose that as men they were peculiarly deficient in sensibility or in the feeling for justice. But they had gone up a dogmatic blind alley in which their doctrines forbade them to trust their sympathies or to entertain the notion that man's lot could be improved. And it must be admitted that when liberalism had become frozen in its own errors, it attracted an undue proportion of mediocre place-hunters and time-servers, and repelled the generous, the brave, and the discerning.

To the debacle of liberal science can be traced the moral schism of the modern world which so tragically divides enlightened men. For the liberals are the inheritors of the science which truly interprets the progressive principle of the industrial revolution. But they have been unable to carry forward their science; they have not wrested from it a social philosophy which is humanly satisfactory. The collectivists, on the other hand, have the zest for progress, the sympathy for the poor, the burning sense of wrong, the impulse for great deeds, which have been lacking in latter-day liberalism. But their science is founded on a profound misunderstanding of the economy at the foundation of modern society, and their actions, therefore, are deeply destructive and reactionary. So men's hearts are torn, their minds are divided, they are offered impossible choices. They are asked to choose between the liberals who came to a dead stop — but stopped on the right road up to wealth and freedom and justice — and the collectivists who are in furious movement — but on a road that leads down to the abyss of tyranny, impoverishment, and general war.

Yet this impossible choice exists only in the minds of men, in their doctrines and their prejudices, and not in the nature of things. The impasse in which men find themselves is subjective. It is the consequence of human error and not of fate. There is no reason to think that the time has come when the social order cannot adapt itself to the economy brought into being by the industrial revolution, and that, therefore, men must destroy the new economy. For that would mean that the industrial revolution itself had come to a dead end. It would mean that the new mode of production which underlies all social systems and all institutions and all public policies can no longer be tolerated by mankind. It would mean that men must dismantle and reverse the industrial revolution itself — as the autarchists are doing in Germany — and that by

painful steps they must retrace the path back to isolated communities practising a relatively low degree of division of labor.

That is why such momentous conclusions hang upon the question of whether the debacle of liberalism was due to the error of the liberals or, as the collectivists believe, to some kind of inescapable historic necessity. In raising the question I am certainly not concerned to rehabilitate the word "liberalism," which is now a battered ornament that evokes the most equivocal sentiments. But I am concerned with the substance. And that substance, as I see it, is that men cannot undo the consequences of the industrial revolution, that they are committed to the new mode of production, to the division of labor among interdependent communities and individuals. This is the truly inexorable historic necessity. They can no more reverse the industrial revolution by an act of will and by political coercion than they could return from manufacture to handicraft, from settled agriculture to a pastoral economy. Nor do men wish to do this. Nor would they willingly consent.

And so I insist that collectivism, which replaces the free market by coercive centralized authority, is reactionary in the exact sense of the word. Collectivism not only renders impossible the progressive division of labor, but requires, wherever it is attempted, a regression to a more primitive mode of production. We can see this amply demonstrated in the totalitarian states, most clearly in Russia, where there have been two attempts to establish socialism, and two retreats, one in 1921 and another in 1931, from a planned and directed economy to an economy directed by the market.<sup>1</sup>

<sup>1</sup>The first retreat was by Lenin in 1921 and was known as the New Economic Policy. It was regarded as a temporary repeal of communism. The second retreat was by Stalin in 1931 when he reintroduced differential wages, the conduct of enterprises for profit, the personal responsibility of licensed management, called "socialist ownership," trading in open shops. Communism is now outlawed in Russia, its adherents being known as Trotskyites.

The first of these retreats is usually ascribed by sincere communists to the practical genius of Lenin, and the second to the wicked ambitions of Stalin. But we may be reasonably sure that both were dictated by inexorable necessity: Russia, though it is primitive, is in the earlier stages of the industrial revolution. It is substituting the specialized division of labor for the autonomous village and isolated regional economy, and the new mode of production cannot be made to operate, even by omnipotent dictators over a docile and terrorized people, without the reestablishment of at least relatively free markets.

Marx, who was very fond of expounding the inexorable laws of history, had the misfortune not to discern what law it was that was so inexorable, and thus his disciples in Russia and elsewhere, after twenty years of communist supremacy, are murdering one another in the name of the true faith. The really inexorable law of modern society is the law of the industrial revolution, that nations must practise the division of labor in wide markets or sink into squalor and servitude. Those who do not practise this new economy, the so-called backward nations, will become the prey of those who do; they must enter the new economy if they are to survive, and only by practising it can they hope to escape conquest or economic and cultural absorption. The advanced nations where the new economy is established must preserve it. In no other way can they maintain their large populations at the standard of life to which they have become habituated. So when advanced nations adopt collectivism, and its inevitable corollary, the self-contained economy, they are doomed to a descending standard of life and driven to unspeakable brutality in order to crush the ensuing discontent.

A free choice between a liberal and a collectivist order does not exist in fact. That is to say, it does not exist for ordinary men who wish to maintain and to improve their standard of life.

There is no choice because men are committed to the division of labor, and it is as impossible for them to live by any other means as it was for their ancestors in the villages clustered around regional market towns to exist without a high degree of self-sufficiency. The *apparent* choice between a liberal and a collectivist order exists only in the mind, only *until* collectivism is put fully into practice, only in the realm of hopes and projects where men discuss what they think they would like to do. The choice does not exist when they come to find out what they can do. For there is no way of practising the division of labor, and of harvesting the fruits of it, except in a social order which preserves and strives to perfect the freedom of the market. This is the inexorable law of the industrial revolution, and while men may disobey that law, the price of their disobedience is the frustration of all their hopes.

For that reason the debacle of nineteenth-century liberalism may confidently be ascribed to intellectual error rather than to historical fate. The renaissance of liberalism may be regarded as assured. Behind the liberal philosophy is the whole force of man's commitment to the economy of the division of labor, and that necessity must compel the invention of an appropriate social order. The name "liberal" may be forgotten, those who call themselves liberals may relapse into humiliated silence, but still the necessities of the mode of production will compel men to rediscover and to reestablish the essential principles of a liberal society. That is the lesson of the Russian experiment where we see a nation which has no liberal tradition, which has been indoctrinated with contempt for liberalism, and is nevertheless compelled by sheer economic necessity to rediscover by trial and error the rudiments of liberalism.

So we may ascribe the eclipse of liberalism to errors that inhibited necessary reforms. The latter-day liberals became mired in statu quo by the political dogma of laissez-faire which

held them to the idea that nothing should be done, by the confusion of the classical economics which held them to the idea that nothing needed to be done. In the time of Adam Smith and Jeremy Bentham, — from, say, 1776 to 1832, — liberalism was a philosophy which led the way in adapting the social order to the needs of the new industrial economy; by the middle of the nineteenth century, liberalism had become a philosophy of neglect and refusal to proceed with social adaptation. The impasse to which liberalism had come may be studied in the later teachings of Herbert Spencer and in a line of decisions of the United States Supreme Court under the “due process” clause. But this need not have happened. The classical economics, properly understood, was not an apologetic description of the status quo; it was a normative science which criticized the status quo, disclosing the points at which reform was necessary, and indicating the kind of reform that was desirable.

Those points were recognized in the classical economics as the “frictions” and “disturbances” which caused the real world to behave differently from the theoretical system. But though the economists recognized the frictions and disturbances, they grossly underestimated their human and social significance. The choice of such colorless terms as “friction” and “disturbance” in itself reveals the insensibility of doctrinaire thinking. In the eyes of the victims the frictions and disturbances were cruel injustices, misery, defeat, and frustration. It was idle to tell the victims that on the whole, in the abstract, and in the long run, all was for the best in the best of all possible worlds. It was foolish to tell the victims that no relief or reform could be given and that none was needed; that the system was just even though it seemed unjust to them. The maladjustments, which the economists called frictions and disturbances, which the victims called injustice and misery, were too numerous to be dismissed by the teaching of resignation to



the masses. They should have been the primary concern of the liberals, the main subject of their inquiries, the constant care of their statesmanship. For the cumulative neglect of the abuses vitiated respect for the system. It led to the conviction, which has since 1870 taken hold of the working classes and of the leading thinkers of all nations, that the existing order is radically unjust and intolerable.

This conviction was humanly creditable. Yet the liberals were right in their initial assumption that the abuses were incidental rather than fundamental. They were right because the basic economy of the division of labor regulated in markets is a mode of production, like village agriculture or pastoral nomadism. Men may like it or dislike it. That is an æsthetic preference, such as preferring the life of a hunter or a shepherd to that of a farmer or a factory worker. But a mode of production cannot be judged to be fundamentally just or unjust. Questions of justice can arise only out of the maladjustment of laws, institutions, education, and social custom to a particular mode of production.

Present-day men can reform the social order by changing the laws. But by political means they cannot revolutionize the mode of production. Until invention, which is as yet not even within the speculative possibilities, creates a more efficient and radically different method of producing wealth, mankind is committed to the division of labor in a market economy. The kind of revolution which would make obsolete the market economy would be a series of inventions which enabled men by their own self-sufficient effort to achieve a more satisfactory standard of life than they now aspire to. It might be done by a machine that would with a little muscular energy produce food, clothes, shelter, comforts, and luxuries out of any soil and a little sunshine; or it might be done by a medicine which would make men cease to want the diversified products of modern industry.

In the actual world and with the knowledge we now possess, it is beyond the power of the Lenins, Stalins, Hitlers, and Mussolinis to revolutionize the mode of production; they can merely attack it, and impair it. In the end their peoples must return to the division of labor in an exchange economy as surely as the farmer must return to his land if he would harvest a crop. It is the social order that has to be reformed. That is the truth which the early liberals grasped when they were the persistent critics of the laws, the institutions, and the public policy of their day. This truth the latter-day liberals ignored when they became complacent and apologetic. This truth the collectivists have missed when, under the impression that they are striking at social injustices, they deliver their blow at the free market which regulates the division of labor.

But the truth will prevail. When I say that the renaissance of liberalism is assured, I do not mean, of course, that it must come in our own time, or that it will come before mankind has gone through the disaster which the descent into collectivism has prepared. I do not know whether the disaster is avoidable by intelligence and resolute action. But I do believe that there is no escape from the disaster and no way of restoring the civilization which it would shatter except by a social philosophy which obeys the law of the industrial revolution. Either men will find this social philosophy by their intelligence, or they will learn it by bitter experience when, as in Russia, they have passed through ordeal by fire. But learn it they will. For they must. It is the condition of their survival as civilized men.

## *2. The Social Problems*

I have suggested that the "frictions" and "disturbances" which the classical economists recognized — only to neglect them — were, in fact, the social problems which should have

been, and in a society practising the division of labor must always be, the paramount concern of enlightened men. For the frictions and disturbances mark the points at which the social order is in conflict with the economy. They are the points where for one reason or another men fail to adapt themselves successfully to the way in which mankind earns its living. The causes of the maladaptation are numerous and mixed; it is certain that they cannot all be traced, as socialists think, to the single fact that the residual legal titles to property in the means of production are vested in private persons and not in the state.<sup>3</sup> The maladaptation arises from the fact that a revolution in the mode of production has occurred. Since it is proceeding among men who have inherited a radically different way of life, the readjustment required must necessarily take place throughout the social order. It must almost certainly continue as long as the industrial revolution itself continues. There can be no moment at which "the new order" is in being. A dynamic economy must in the nature of things inhabit a progressive social order.

The real problems of modern societies arise where the social order is not consistent with the requirements of the division of labor. A survey of all the current problems would be a catalogue of these inconsistencies. The catalogue would begin with the pre-natal endowment of the human stock, would traverse all customs, laws, institutions, and policies, and would not be complete until it had included man's conception of his destiny on earth and his valuation of his soul and of the souls of all other men. For where there is conflict between the social heritage and the manner in which men must earn their living, there will be disorder in their affairs and division in their spirits. When the social heritage and the economy do not form a seamless web, there must be rebellion against the

<sup>3</sup> Cf. Ch. V, Sec. 5.

world or renunciation of the world. That is why in epochs like our own, when society is at odds with the conditions of its existence, discontent drives some to active violence and some to asceticism and other-worldliness. When the times are out of joint some storm the barricades and others retire into a monastery. Thus it is that the greater part of the literature of our time is in one mood a literature of revolution and in another, often completely fused with it, a literature of escape.\*

### 3. *The Field of Reform*

This malaise of the spirit reflects, like the discomfort of a badly fitted shoe, the maladjustment of men to the way they must obtain a living. There are those who are born handicapped; by the deterioration of the stock from which they spring they are without the capacity to make their way. Others grow up handicapped by disease in childhood, by malnutrition and neglect. Others are the casualties of a vicious or stupid family life, carrying with them forever the scars of inferiority and perversion. They do not adapt themselves easily. Then there are those who have been broken by the poverty and squalor of their youth, and who never do obtain an equal opportunity to develop their faculties. There is the whole unresolved task of educating great populations, of equipping men for a life in which they must specialize, yet be capable of changing their specialty. The economy of the division of labor requires, and the classical economics assumes, a population in which these eugenic and educational problems

\* E.g., Mr. Stuart Chase's alternating admiration for the machine technic and Mexican primitivism, his simultaneous disgust at industrialism and his enchanting vision of an engineering Utopia. Or the fascination exerted by D. H. Lawrence — who fled from reality into sexual sensation with the fanaticism of an ascetic — upon so many ardent sympathizers with Marxian socialism.

are effectively dealt with. But they are not yet dealt with. Nor do they settle themselves, as the dogma of laissez-faire supposes. And so they must take their place upon the agenda of liberal policy.

The economy requires not only that the quality of the human stock, the equipment of men for life, shall be maintained at some minimum of efficiency, but that the quality should be progressively improved. To live successfully in a world of the increasing interdependence of specialized work requires a continual increase of adaptability, intelligence, and of enlightened understanding of the reciprocal rights and duties, benefits and opportunities, of such a way of life.

But there is required no less, and again the classical economics takes this for granted, the conservation of the land and of all natural resources, and their progressive improvement by clearing, reclamation, and fertilization. The land and what is under it, the seas and the highways, are the patrimony of all the generations to come, and all rights of private property in this patrimony must, therefore, be subject to the condition that this natural inheritance will not be wasted or destroyed, that it will, on the contrary, be enriched. Since it would be as impossible for the new economy to produce wealth in an exhausted land as it is for a Chinese peasant to eke out a decent living on an eroded hillside, the conclusion is undeniable that conservation, in its broadest sense, including the zoning of urban and agricultural land, is a paramount obligation of a liberal state. That anyone who thought he was preserving the system of free enterprise should have persuaded himself to believe that the law must leave men free to destroy the patrimony of their children is one of the curiosities of human unreason.

The system requires not only great adaptability in men, but an even higher degree of mobility in capital. On the whole,

the machines must come to the men rather than men to the machines. A civilized life is impossible for nomads who settle nowhere and do not put down deep roots in a particular place. For men who have just arrived and will soon depart tend to be crudely acquisitive. They are transients who have no permanent stake in any community, and there are no ties, other than the cash nexus, between them and their neighbors. They live only in the present, having no ancestral tradition fixed on any place and no care for posterity. The good life finds little encouragement where men do not feel themselves to be links in a chain from the past into the future, where they live from day to day without deep associations and long memories and more than personal hopes. There is no doubt that the industrial revolution decivilized great masses of men when it drew them out of their ancestral homes and gathered them together in great, bleak, anonymous, congested slums.

It follows that if the necessities of a civilized life are to be accommodated with the new economy, the stipulation of the classical economics, that labor and capital must both be perfectly mobile, has to be modified. Capital has to be more mobile than labor, sufficiently more mobile to compensate for the inevitable and desirable human resistance to a migratory existence. This is not to say that all the generations must remain forever rooted in the place where they happen to be. But it does mean that the tides of population must move slowly if old communities are not to be devitalized by emigration and new communities overwhelmed by unassimilable immigration. It should, therefore, be the aim of policy to mitigate this human evil by using social controls to induce inanimate capital, rather than living men to achieve high mobility. It should be the aim of educational policy to make most men versatile and adaptable in the place where they were born, and of economic policy to make capital mobile.

In the early industrialism of the nineteenth century it was, perhaps, technically impossible to move capital and therefore it was necessary to uproot and move men. But the technical obstacles can be overcome. They are not nearly so formidable as they were a hundred years ago when the power to operate machines was generated by steam engines or waterfalls, when only products high in value as regards their bulk could be transported cheaply, when the capital available for investment was personal and under the personal direction of its owner. Modern inventions enable men to generate power almost anywhere and to transmit it long distances; cheap transportation permits the movement of bulky raw materials; the development of the limited-liability corporation has separated the ownership of capital from the management of enterprise. All these things make it feasible to use the infinitely greater mobility of capital to accommodate industrialism to the human need to live in settled communities. It is technically possible now, as it was not a hundred years ago, for capital to move to communities and thus to lift the curse of urban congestion and of ruthless migration.

But if this is to be done, it must be the aim of law and social policy to facilitate and encourage the mobility of capital. Capital must be given security when it has moved to distant places and is under the control of remote managers. Thus there must be required stringent liability on the part of promoters for the worth and good faith of the securities they issue, and stringent liability on the part of managers for their stewardship of the shareholders' capital.

But that is not all. If capital is to achieve the necessary mobility, it must not become entrenched, uneconomically bottled up, in certain favored corporate structures. This is what happens when the managers are permitted to retain the profits, over and above sinking funds and working reserves, and to re-

invest them, without submitting to the test of the competitive capital market. The effect of this is to aggrandize certain corporations beyond their true economic worth, and to cause a congestion of capital at the wrong places. No one who really believes in the principle of a free market as the regulator of the economy can, I think, fail to see that the limited-liability corporation must be deprived of the right to retain profits and invest them, not according to the judgment of the market but at the discretion of the managers. For the retention of the profits immobilizes capital, whereas the economy of the division of labor requires that capital shall move readily to the places and to the men who make the highest bids for it.

Furthermore, although the separation of ownership from management is necessary to the operation of the economic order, the separation of control from management is not. The development of holding companies, that is to say, of corporations which own the control of the management of other corporations, is an exceedingly dubious innovation. They establish industrial empires within which planning and administrative discretion supplants the market as the regulator of enterprise. Their size is often mistaken for evidence of their economic success, but actually they suffer from the same vices which are inherent in any administered economy. There is no true ascertainment of costs and prices within the corporate empire. The constituent enterprises deliver goods to each other, not at the cost which would be set in a free market, but at a cost fixed by the supreme management. Thus the management of a giant corporation which dominates dozens of distinct industrial operations is, in the economic sense, irrational. It does not really know whether its rolling mills are subsidizing its captive coal mines or are being exploited by them. It has no true economic criterion to determine whether its investments in blast furnaces or in railroads should be in-



creased or retarded. I am talking, of course, of big business, which is big because it controls many separate enterprises, and not of separate enterprises which have grown big. The two are often confused, though they are wholly distinct: the little business which has grown big by making more and more of the product it makes is a success by the test of the market; but the business which has been made big by use of the holding company, or by some other corporate device, or by community of financial control, is the result of a deliberate attempt to evade the test of the market.

Big business of that sort is wholly inconsistent with the principles of a free economy, and is, in fact, the form which collectivism takes among businessmen. In this connection it should be remembered that the socialist movement is based on the notion that when big business has suppressed free enterprise and substituted administrative discretion for the market, the business is ripe for socialization and the transition will be easy: all that is required is to expropriate the shareholders and to make the managers civil servants. In practice it would not be so easy as that, as Lenin quickly discovered in 1918. But it is true that if the collectivist tendency of big business is encouraged, the nationalization of big business will certainly be attempted. So much sovereign power outside the objective regulation of free markets can never remain long in private hands. Just as the East India Company was transformed into the government of India, so the giant corporations will, if they are allowed to continue, become in effect departments of the government.

Big business of this sort is regarded alike by socialists and big businessmen as the result of the inevitable evolution of capitalism. On this point Karl Marx and Judge Gary were in complete agreement. But they were mistaken. The United States Steel Corporation did not grow. It was con-

trived. It is a product not of a victory in the struggle to survive but of a bold and ingenious manipulation of the law governing corporations. The holding company could not have been created without exercising privileges that the law offered, and since those privileges of the law can be withdrawn or modified in accordance with public policy, it cannot be true that the giant corporation represents the necessary evolution of modern industry. It is a fortuitous evolution from the condition of the law, and it marks a vital point at which the law was maladjusted to the economy, and has perverted it. Thus the renovation of corporate law so as to prevent business from becoming any bigger than it can become in the test of the market is a necessary item on the agenda of liberalism.

The reader will by this time have become aware of how far removed from laissez-faire are the requirements of liberalism. But even this cursory survey is by no means concluded. The economy of the division of labor in free markets depends upon the assumption, not only that men will save in order to invest in capital goods, but that the savings will in fact be invested, that the capital goods will in fact represent savings. The earlier economists preached the virtue of thrift, but they made the assumption that all savings were automatically invested, that all investments were necessarily savings. The assumption may have been substantially correct in an age when men invested their own savings in their own business, or borrowed directly the savings of some other person. But the assumption is incorrect in an age when men deposit their savings with bankers who finance investment with credit based on fractional reserves.

Under this system saving and investment are widely separated and distinct operations, and it does not by any means follow that what is saved is invested or that what is invested has been saved. This is, it would now seem, one cause, perhaps

a principal cause, of the business cycle. For when less is invested than is saved, there is deflation — that is to say, an insufficient demand for goods; where more is invested than is saved, there is inflation — that is, an excessive demand for goods. In the deflation, purchasing power, which is merely goods and services available for exchange, is locked up; in the inflation, artificial purchasing power, which represents no goods and services available for exchange, is enabled to bid for goods and services.

The evil effects and the dangers of the business cycle need no elaboration. It is clear that social controls are required which will keep the real savings and the real investments of the community equal to each other. The development of these social controls was, until this generation, almost completely neglected by liberal economists and statesmen. They failed to realize that when saving and investment become distinct, the value of money becomes the accidental by-product of the transactions between bankers and their clients. The principal money of a modern society consists not of coin stamped in the government mint but of bank deposits that expand and contract with the creation of private credit. Thus the money which is the medium of the exchange economy, the standard in which are expressed the prices that regulate the division of labor, was until recent times dependent upon accident.<sup>4</sup> The value of money has fluctuated violently during the century and a half in which the industrial revolution has been under way. Yet the intricate interdependence of mankind is inconceivable without money. For this interdependence consists in countless exchanges of an infinite variety of goods and services made

<sup>4</sup> Such as upon the discovery of gold deposits, of new metallurgical processes in the production of gold and silver, upon speculative booms, bank failures and panics, and always upon banking transactions necessarily entered into without thought of their effect on the value of money.

every hour of every day in countless markets. These exchanges could not be made by direct barter: they are possible only because all goods and services are reducible to a common denominator. They are valued, not in relation to each other, say a bushel of wheat against a music lesson, but in relation to money. They have a price, and in so far as money is not neutral, prices will be unjust and all economic calculation impaired.

The measures which would be effective to maintain a neutral value for money do not concern us here. We are engaged in staking out the field of required policy in an exchange economy, noting the main headings of the agenda of liberalism. It is enough to say here that the experience of more than a century has demonstrated that the automatic gold standard, if in fact such a standard ever existed, does not provide a sufficiently neutral money for a mode of production based on the world-wide division of labor. Monetary reform, and what is now called monetary management, are, therefore, necessary.

We come next to the fact that the actual markets in which the economy is regulated are very far from being the ideal markets which the classical economics assumes. All buyers and sellers of goods and services are not equally aware of the real state of the market, are not equally able to make free, genuinely informed bargains.<sup>5</sup> Those who can wait have a great advantage over those who must sell at once. Thus the farmer with a perishable crop has less bargaining power than one whose crop can be stored and will keep. The owner of the land can in general wait longer than his tenant. But the man with the least bargaining power is the man who has only his labor to sell. If he does not work to-day, the product of that day's work is totally lost forever. The longer the seller

<sup>5</sup> Cf. J. A. Hobson's *The Industrial System*, Ch. IX, "The Mechanism of Markets."

can afford to wait, the more time and opportunity he has to study the market in order to obtain the maximum price. Thus there are enormous differences in the efficiency of the various markets. In some the price comes close to expressing the true equilibrium of supply and demand; in others the price represents little more than the ignorance and helplessness of one party confronted by the informed resourcefulness of the other.

Inequality of bargaining power afflicts particularly farmers dealing with middlemen, unskilled workmen dealing with large employers, the poor in their purchases, and the investors of small savings. They cannot wait. They do not know. They transact their affairs in exceedingly imperfect markets. Quite properly they distrust the markets and remember the many occasions where they have been outwitted, out-traded, and victimized. These wretched markets are an invitation to all the fraud and sharp dealing, the usury, jerry-building, and shoddiness, the quackery and shystering, of the capitalistic underworld.

Obviously, it is the duty of a liberal society to see that its markets are efficient and honest. But under the *laissez-faire* delusion it was supposed that good markets would somehow organize themselves or, at any rate, that the markets are as good as they might be. That is not true. The improvement of the markets must be a subject of continual study in a liberal society. It is a vast field of necessary reform. In its first phase it is merely the elaboration of a principle universally accepted from earliest times, that it is the function of government to see that weights and measures are honest. Applied to the complexities of the modern exchange economy, where goods are made by technical processes which only experts understand, the principle of honest weights and measures must mean a drastic modification of the old rule, *caveat emptor*. The buyer is no longer able to judge the technological honesty of the

goods he is offered in the market. He does not know whether they are what they are advertised to be. So it becomes necessary to make the seller liable for an untruthful presentation of his wares, to make it unlawful to sell harmful products, to stipulate that only goods of the same quality shall bear the same label, to provide the purchaser with effective means of finding out whether he is getting the best that can be had for the money.

Along with measures to make the markets genuine it is necessary to take steps to reduce the evil of necessitous bargaining. Thus a liberal state cannot be neutral as between those who have too little bargaining power and those who have too much power. It must, by its own principles, encourage and protect the coöperative organization of producers, such as farmers and workingmen, who must sell at once, and at any price offered, and in ignorance of the true supply and demand if they bargain individually. Just as the state, by granting the privilege of incorporation with limited liability, has made possible the collective employment of individual savings, so it might well devise a form of incorporation which would create collective rights and corresponding duties for organizations of farmers, workingmen, and consumers.

That such organizations would be under the temptation to become monopolies in restraint of trade is obvious. We know this from the fact that business corporations do so often yield to that very temptation. Thus an indispensable principle of liberal policy is to outlaw monopoly and the unfair trade practices which lead to monopoly. There is a rather general impression that all business tends towards a condition of monopoly, and that may be true in a society which is drifting without a clear conception of the nature of its own economy. But once men take seriously the idea that they are committed to a mode of production which can be regulated only in free markets, they

will reëxamine the laws under which monopoly flourishes. They will find, I am convinced, that few effective monopolies have ever been organized and that none can long endure except where there is a legal privilege. It may be a franchise, or the exclusive possession of a limited natural product, or a patent, or a tariff, or simply an exploitation of the corporate device. But if monopoly depends upon a privilege that the law concedes, then monopoly can be destroyed and prevented by changing the law.

Still we have not come to the end of our survey of the fields in which liberal policy must operate in order to adapt the social order to the exchange economy. By its very nature the economy is dynamic — that is to say, the technic and the localization of production is in continual change. Industries die and others are born, and within industries some enterprises are growing and others declining. Industries which were established in one place are replaced by industries in another place, sometimes halfway around the world. In the long view this is industrial progress, but in the close view its human evil is tragic. At no point, perhaps, were the latter-day liberals more insensitively doctrinaire than in the complacency with which they accepted the human costs of industrial progress.

Yet there is nothing whatever in the necessities of the new economy which compels society to be indifferent to the human costs. There is no reason whatever why some part of the wealth produced should not be taken by taxation and used to insure and indemnify human beings against their personal losses in the progress of industry. If technological improvement increases wealth, — and, of course, it does, — if society as a whole is richer when an industry moves from a place where costs are high to one where they are lower, then some part of that increased wealth can be used to relieve the victims of prog-

ress. It can be used to tide them over while they are changing their occupations, to reëducate them for new occupations, to settle them in new places if they have to move.

Not only is there no reason why a liberal state should not insure and indemnify against its own progressive development, but there is every reason why it should. For if it is properly devised, such a system of social insurance would facilitate the necessary technological changes, and reduce the very human resistance which comes from those who now see themselves the appointed victims of progress. No one can blame a man for hating a machine that will place him in the bread line and unfit him for the only job he has learned to do.

It is not only the industrial workers, however, who suffer from industrial progress. All producers are subject in some degree to the same risk when new processes are invented, when more efficient competitors arise, or when tastes change. To be sure, they cannot all be insured and indemnified out of the public treasury. But their losses can be reduced. How that is to be done is a problem of great complexity which I would not pretend to be able to solve. But the character of a possible solution may be indicated by suggesting that business enterprise would be better able to face the risks of industrial progress if corporations were required to amortize their capital debts within the efficient life of the machines and processes that the capital has bought, and were required to obtain new capital in the money market rather than out of accumulated profits. This would no doubt make for smaller corporations. But smaller corporations are more mobile than big ones. They can dissolve more easily and new ones can be created more easily. Such corporations would be more efficiently adapted to a dynamic economy, and they would not raise the problems and the tragedies of semi-obsolete corporate leviathans that are unable to live and unable to die.



It will be seen that the agenda of liberalism is long and yet I should make no claim that mine is complete. The adaptation of the social order to the division of labor is of necessity an immense undertaking since it is the finding of a new way of life for mankind. In all its ramifications it must, therefore, transcend the understanding of any man who lives in the midst of it, or the programme of any party, or the reforming energies of any one generation. I have sought only to indicate the more urgent and obvious points at which modern society is maladjusted to its mode of production, and then to illustrate the unfinished mission of liberalism. The agenda refute the notion that liberalism is the sterile apologetic which it became during its subjection to the dogma of laissez-faire and to the misunderstanding of the classical economists. The agenda demonstrate, I believe, that liberalism is not the rationalization of the status quo, but the logic of the social readjustment required by the industrial revolution.

If, now, we consider the agenda as a whole, we shall see, I think, that they imply a different distribution of incomes from that which now obtains in most organized societies. For one thing the effect of these reforms would be drastically to reduce the opportunities for making money by necessitous bargains and by levying tolls through the exercise of legal privileges. These reforms strike at the source of the big incomes which arise from the various kinds of monopoly, from exclusive rights in land and natural resources, from bad markets in which the ignorant and the helpless are at a disadvantage. Income arising from these inequalities of opportunity and legal status are unearned by the criterion of the exchange economy. They are parasitical upon it, not integral with it, and if the actual world corresponded with the theory of the classical economists, these unearned incomes would not be obtained. They are not the wages of labor or management, the interest on capital, or

the profits of enterprise, as determined in free and efficient markets, but tolls levied upon wages, interest, and profits by the subversion or the manipulation of the market price for goods and services.

The reformers of liberalism must aim, therefore, at correcting the conditions under which such unearned incomes arise, and in so far as the reforms are thoroughgoing and effective the unearned incomes will not arise. Now the correction of the conditions involves, as we have seen, large social expenditure on eugenics and on education; the conservation of the people's patrimony in the land and natural resources; the development of the people's estate through public works which reclaim land, control floods and droughts, improve rivers and harbors and highways, develop water power, and establish the necessary facilities for transporting and exchanging goods and services; providing the organization of markets by information, inspection, and other services; insurance and indemnification against the risks and losses of technological and economic change; and many other things, such as providing the opportunities for recreation which would not otherwise exist in specialized and congested communities.

These public investments and social services are, of course, expensive, and the process of financing them is a redistribution of income. In a society in which there was no unearned income, the taxation to pay for them would be in effect a form of forced saving for investment in the people's estate, diverting a part of the income spent on private consumption to such forms of social consumption as schools, playgrounds, museums, and the like. But in society as it now is, where a progressive proportion of most of the larger incomes is unearned, the primary cost of the public investments and social services can be properly charged in a graduated scale against the larger incomes. If the science of taxation were highly developed, and the meth-

ods of public budgeting were refined, the cost of reform,<sup>6</sup> as distinguished from the support of government and of social consumption, could be fixed with a nice discrimination, not on the size of an income,<sup>7</sup> but on the unearned portion of all incomes. And in the higher refinements of a just system of taxation, that part of an unearned income now spent for private consumption by the possessor would be completely expropriated. It would be recognized that while an unearned income which is reinvested replenishes the capital goods of the whole society, unearned income spent on consumable goods is sheer privilege. These refinements of public finance are still beyond our knowledge of the science of taxation, and above all beyond the present competence of officials to administer them. They indicate, however, the direction in which reformers can work. In the practical present a cruder policy is unavoidable: one which redistributes large incomes by drastic inheritance and steeply graduated income taxes.

There need be no reluctance in the avowal that a greater equalization of incomes, *if brought about in the way outlined here*, is the necessary objective of a liberal policy. I stress the manner because a mere leveling of incomes by taking from the rich and giving doles to the poor would defeat itself and would merely paralyze and impoverish the whole economy. The equalization must be effected by measures which promote the efficiency of the markets as regulators of the division of labor; they must strike, therefore, not at the profits of successful competition but at the tolls of monopoly.

The taxes levied on the rich must be spent not on doles to

<sup>6</sup> The tolls of the monopolist and the gains made from necessitous bargains, from sweating, adulterating, bootlegging, racketeering, would by public justice be applied to remedying the evils on which they batten.

<sup>7</sup> Thus the large profits of a successful entrepreneur in a freely competitive market would be taxed at a lower rate than the smaller income of the rentier.

the poor but on the reform of the conditions which made the poor. The dole, by which I mean cash given by the government directly to the poor, is a relief of, but not a remedy for, their poverty, whereas money spent on public health, education, conservation, public works, insurance, and indemnification is both a relief and a remedy. It improves the productive capacity both of the individual and of the national patrimony from which he must earn his living. By improving the marginal productivity of labor, it raises the minimum wage of all labor<sup>8</sup> out of an increased national dividend. This is equivalent to saying that some portion of the national dividend must be invested, in order to conserve and improve the foundations of the economy, in the people and in the national estate from which they earn their living.

The returns on these investments are real enough. But they are imponderable and deferred. Values created by the schools in educating the next generation, by public works to preserve the fertility of the soil, do not have a market price and would, therefore, not be undertaken by ordinary private enterprise. This is the realm of investment by public authority which does not have to pay its way and show returns measured in money within a short span of time. For the most farsighted private investment cannot look much beyond one generation; only the exceptionally prudent plant trees for their children. But a society, as Burke so eloquently said,<sup>9</sup> comprehends the dead, the living, and the unborn. And as the living inherited the national estate from their ancestors so they must transmit it to their posterity. This carries with it the obligation to plough back some portion of the current income into the foundations of the social economy.

<sup>8</sup> Cf. John Bates Clark's *The Distribution of Wealth*, passim.

<sup>9</sup> "Reflections on the Revolution in France," *Works* (ed. by H. G. Bohn, London), Vol. II, pp. 368-69.

What proportion it is necessary and wise to plough back I should not pretend to say: the answer to that lies in the field of contemporary policy rather than of principle. But it is clear, I think, that the proportion increases with the increase of the national dividend per capita. For as more and more persons achieve a comfortable standard of life and still have income to spare, the urgency of the demand for investment in ordinary capital goods declines. Beyond a certain point men would rather work less than earn more. Beyond a certain point they would rather save than spend. So in the relatively richer societies there is a strong tendency for the supply of capital to become so large that the rate of interest falls to a level where there is little inducement to invest it in new enterprise. There is a strong preference for liquidity and security.<sup>20</sup> In a rich society the psychology of the rentier tends in some measure to supplant the psychology of the entrepreneur. Under these circumstances the use of the taxing power is indicated in order to pump the surplus funds of the rich out of the ordinary capital market and into public investments. The very fact that the rate of interest is so low that there is not sufficient inducement to attract capital to private enterprise would appear to be proof that unless the excess savings are publicly invested they will be hoarded and wasted. For these excess savings do not fructify industry; on the contrary they represent wealth withheld from use, and this withholding, whether in hoards or in imprudent investment, is accompanied by the unemployment and the extreme poverty of the marginal workers.

When these conditions obtain, wealth is maldistributed, and in so far as the maldistribution is not corrected at its source by the suppression of the unearned increments of monopoly and necessitous bargaining, it has to be corrected by taxation and

<sup>20</sup> Cf. J. M. Keynes's *The General Theory of Employment*.

public investment. To divert excess savings from the hoards of the rich and to plough them back into the improvement of the quality of the people and of their estate is, therefore, required not only by the long view of the imponderable national interest, not only as an expedient to allay discontent, not only as a matter of social justice, but as a requisite for preserving the equilibrium of the exchange economy itself.

The earlier economists could not foresee this because in their time the private demand for capital was so urgent. They assumed that it would always be urgent. But they underestimated the productivity of the new economy and they overestimated the acquisitiveness of human nature. Gradually we have learned to see that men do not care to go on accumulating wealth ad infinitum. When they attain a middle-class standard of life the wants of most men are sated; they do not have the tastes for spending a lot more money. To earn it is not worth the trouble; to spend it is more trouble than it seems when in the abstract they envy the very rich. To be sure, the middle-class standard of life rises. But it is not true, as someone has said, that wealth must go on increasing until the last Hottentot lives like a millionaire. At least it is not true that the last Hottentot would wish to work hard enough to be a millionaire, or would care to devise ways of spending a millionaire's income. Long before that point is reached in the actual world the profit motive loses its incentive, and men prefer leisure, security, and intangible values to further economic gains. The acquisitive psychology of the nineteenth-century economic man is no longer the psychology of real men who have reached the slowly rising level of middle-class comfort.

It will be evident from what I have said that this maldistribution of wealth in modern society arises from two interesting causes: in brief, from unearned increments on the one hand and

on the other from the capacity of the economy to produce more wealth than those who enjoy a middle-class standard care to consume or can profitably invest.

The maldistribution due to unearned increments has to be corrected at the source — by reforms which strike at monopoly, privilege, and necessitous bargains. In so far as these reforms are effective they will tend to equalize, though, of course, they will not level out the distribution of income. Under a regime of equal opportunity, there could not be any such gross inequality of income as obtains to-day in a country like the United States. There would not be the large inheritances; under true competition only the successful pioneers would earn very large profits. In fair markets, with adequate mobility of capital and adaptability of labor, interest rates would be low. The disproportion of the highest salaries and the lowest wages would be greatly modified, for while there are rare persons, say motion-picture stars, whose abilities have a unique value in the market, most successful men do not have such unique abilities. As equalized inheritance and education made opportunity more nearly equal, the increasing supply of able entrepreneurs and managers would reduce the salaries and bonuses they now command in the market.

Correction of the maldistribution arising from unearned increments would, by equalizing incomes, tend to bring some men up and others down to a middle-class standard of life. At that standard, consumption would increase and excess savings would diminish. But the reforms would not in practice correct at their source all the injustices of monopoly, privilege, and necessitous bargains. In a wealthy society, there would still remain maldistribution, arising not from injustice, but from the accumulation of more wealth than its possessors need for the then prevailing middle-class standard of life or than they can effectively use in private enterprise. This

maldistribution has to be corrected by public investment in the eugenic and educational improvement of the people, in the conservation and basic development of their patrimony in the land and its resources. These public investments would draw upon the excess capital through the levying of taxes and through borrowing at the lowest possible rate of interest.

Thus the two methods converge upon the same end, which is to equalize very considerably the distribution of income. This is greatly to be desired. Since the time of Aristotle it has been recognized by the wise that extremes of riches and poverty, that spectacular differentials of income, are dangerous and pernicious in any society. The enlargement of the middle class as against the poor and the rich must, therefore, be sought by anyone who wishes a society to live soundly and endure long. For the great inequalities do not represent the true inequalities in men's native endowment, or in their characters and their diligence; thus the inequalities obscure and distort the whole moral conception of income as the reward of useful work, of poverty as the punishment for laziness and imprudence. Because to-day it cannot be said sincerely that wealth is the reward of virtue, the very notion that man must earn his living by his own effort is gravely discredited. And inasmuch as the maldistribution of income causes capital to accumulate excessively in the presence of destitution and want, we have the paradox of poverty in the midst of plenty which makes the whole economy appear irrational and unjust.

#### *4. The Radical Conservatism of Liberal Reform*

These agenda are not to be taken as a definitive and comprehensive outline of liberal social reform. If, as I am arguing, it is the mission of liberalism to discern the guiding principles of the transition from the primitive way of life in relatively



self-contained communities to a way of life in a Great Society of interdependent specialists, then liberalism is concerned with nothing less than a readaptation of the human race to a new mode of existence. .

That this is no small enterprise we know from the experience of the Romans, who established, but could not maintain, a Great Society on the shores of the Mediterranean Sea. For nearly a thousand years after the decline and fall of that Great Society, western men followed once more a self-contained bellicose way of life. Then the enterprise of living in an exchange economy was resumed, and, as a matter of course, men became interested once more in the classical philosophy which had reflected the needs and guided the policy of the men in the Great Society of the ancient world. This was the renaissance of a highly civilized way of life after the long reaction to the primitive way of life in the Dark Ages. Naturally enough, the first centres of the renaissance were the commercial cities, like Florence and Paris, and naturally enough England and the Netherlands, the first western countries to revive an extensive international commerce, were the first homelands of modern liberalism. For only a people living in an exchange economy needs, or can hope to conceive, a liberal philosophy. It is no coincidence that the very conception of equal rights under a common law to which all men, including rulers and sovereign states as well, are subject should have been formulated by men like Coke, Selden, Locke, and Grotius, who were members of a society where men lived by large transactions. It is no coincidence that the expansion of English commerce under Queen Elizabeth was followed by the struggle for responsible government under the Stuart kings; or that Adam Smith should have been moved to write *The Wealth of Nations* at the very time when the American and the French Revolutionists were proclaiming the Rights of Man.

The modern phase of the readjustment of man to the division of labor reaches back at least to the beginnings of the seventeenth century in England. It is not completed. For long ages it will not be. Thus the agenda of liberal reforms which I have ventured to survey is intended to illustrate the character and the order of magnitude of the reforms which are obvious and urgent in our time. In so far as they are truly discerned they will be deeply consistent with the classical heritage and with the liberal tradition as it has been progressively discovered over this period of three hundred years; they will be the continuation of, and not a reaction against, the work of men whom we properly revere as the liberators of mankind.

If, then, it is said that the agenda of liberalism would disturb many vested rights, there is no denying it. It has never been the true tradition of liberalism that its function is to defend the status quo; on the contrary, its function has been to reform the status quo in order that laws and institutions may conform to the agricultural and industrial economy by which, since the close of the Middle Ages, men have had to live. If it is said that the liberal reforms recognize the same abuses as the collectivist reforms, that also is true. Are not the social maladjustments obvious? Is not the discontent they provoke warranted? Surely the question is how to cure the maladjustments, not how to suppress or ignore the discontent. It would be a sorry political philosophy which taught that blindness is insight, that indifference is wisdom, and that inertia is a policy.

The collectivist reforms, as I see them, are a mistaken remedy for real abuses. The abuses *are* real, but the collectivist mentality belongs to the ages before the industrial revolution: it is the ideology of a more primitive, self-contained economy. That is why totalitarian collectivist states revert so quickly to the caste system at home and to depredations against their

neighbors. For the collectivists are in rebellion against the interdependence of mankind arising from the division of labor. Their doctrine is based on a radical failure to understand the true nature of the exchange economy: so even partial collectivist measures paralyze the economy of production and engender indecisive and unending struggle among groups and classes and nations.

I have called gradual collectivism the polity of pressure groups and I think the description is correct. But now that we have examined the maladjustment of the social order with the economy, I must add that the pressures of the groups are due to the pressure of genuine circumstance. They crystallize at those points where the social order is in fact humanly maladjusted to the economy. When men feel that their accustomed way of life is jeopardized by the dynamic changes resulting from the progressive division of labor, the pressure groups are defensive and their policy is in the broad sense of the term protectionist. Aggressive pressure groups appear where inadequate social controls provide opportunities for exploitation. But almost always both are symptomatic of urgent practical difficulties arising from the frictions and disturbances of a revolutionary economy in an incompletely reformed social order.<sup>11</sup>

<sup>11</sup> A reëxamination of the demands of the principal pressure groups in the light of this hypothesis would, I think, be suggestive. It is, of course, beyond the scope of this book and also beyond the range of my own detailed knowledge of the facts to attempt here anything like a thorough and comprehensive survey. That is a task for many specialists in many branches of a revived political economy — a political economy, let us note, which reunites once more the study of politics and of economics. This false separation, which has caused scholars to drop the term "political economy," is almost certainly the consequence of the two cardinal errors which we have examined, of the preoccupation with *laissez-faire* in politics and of the misconception of the significance of the classical economists. Politics and economics have lived in two separate intellectual worlds only in the era when political science was the study of what could not be done and economics was the rationalization of what need not be done.

I realize that since the existing rights of property and contract are greatly affected by the liberal agenda, many will regard such a disturbance of the status quo as socialism. But that is sheer obfuscation of the mind. It is true that liberalism recognizes the same social problems as does gradual collectivism, and that its reforms cut deep. How could it fail to recognize the problems and still pretend to guide human action? It is true, also, that the liberal remedies require the liquidation of some, and the modification of many, vested rights. How can social maladjustment be cured except by altering vested rights? The status quo cannot be reformed and yet preserved as it is. But, except to the prejudiced, it will be clear that liberal reforms differ radically from collectivist reforms. The difference is that liberalism seeks to improve the exchange economy whereas collectivism would abolish it. Liberalism is radical in relation to the social order but conservative in relation to the division of labor in a market economy. In the liberal philosophy the ideal regulator of the labor of mankind is the perfect market; in the collectivist philosophy it is the perfect plan imposed by an omnipotent sovereign.

Thus, while liberalism must seek to change laws and greatly to modify property and contract as they are now recognized by the laws, the object of liberal reforms is to preserve and facilitate the division of labor in the existing exchange economy. It is in order to fit men for their new way of life that the liberal would spend large sums of public money on education. This does not mean only the training of versatile specialists, though that is necessary. It means also that the whole population must be provided with the cultural equipment that men must have if they are to live effectively, and at ease with themselves, in an interdependent Great Society. The liberal reforms lay great emphasis on the conservation of natural resources and their development: the purpose of these

reforms is to maintain the physical foundations of the division of labor. The liberal attack on monopoly, unfair competition, and necessitous bargaining has as its guiding purpose the maintenance of that equal opportunity which the exchange economy presupposes and a high degree of divided labor requires; the method by which liberalism controls the economy is to police the markets, to provide in the broadest sense honest weights and measures, to make the bargains represent the exchange of true equivalents rather than the victory of superior strength, inside information, legal privileges, conspiracies, secret combinations, corruption, and legalized sharp practices.

Necessarily the liberal reforms run counter to much that the law now tolerates or protects. This is inevitable because the law now tolerates and protects many practices which make it impossible for men to live successfully in the economy of the division of labor. But liberalism, unlike collectivism, is not a reaction against the industrial revolution. It is the philosophy of that industrial revolution.<sup>13</sup> The purpose of liberal reform is to accommodate the social order to the new economy; that end can be achieved only by continual and far-reaching reform of the social order. So however much they may re-

<sup>13</sup> That it is correct to describe liberalism as the philosophy of the division of labor in an exchange economy is attested by the historical evidence. The prophets and the heroes of liberalism — from Grotius to Adam Smith and Bentham, from Coke and Pym and Cromwell to the American and the French Revolutionists — were the heroes of the movement which enabled the new exchange economy to establish itself in place of the older self-sufficient and isolated local economy. That liberalism is the philosophy of the exchange economy is acknowledged by the collectivists who deride it, calling it the philosophy of a "business civilization." Cf. Laski's *The Rise of European Liberalism*. Since they seek to destroy the exchange economy and to erect in its place an authoritarian ordering of the life and labor of society, they are, of course, irreconcilably hostile to the liberal philosophy. Whether they are fascists, communists, or gradual collectivists, they recognize that liberalism is their great antagonist. In this they are right. The real issue is not among the collectivist sects but between liberalism and all the collectivists. For liberals seek to preserve and perfect the economic order which collectivists would destroy.

semble each other superficially, the difference between the two philosophies is radical and irreconcilable. The collectivist uses the power of the state to direct, and in the last analysis to administer, the production and the consumption of wealth; the liberal uses the power of the state to preserve and promote that freedom of exchange which is the essential principle of the new mode of production.

If, as in the second half of the nineteenth century, the need for progressive readjustment is misunderstood, neglected, and resisted, the accumulated maladjustments must lead to illiberal reaction. In our time the liberal philosophy is engaged in a struggle to survive and to be reborn, and in this struggle its own failings are the chief strength of its opponents. Liberalism is the normal philosophy of men who live in a Great Society. But for the fact that the liberal philosophy became frozen in its own errors, and could no longer guide the readaptation of the social order to the economy, it would never have been conceivable that men who had prospered in free countries should be tempted to regard the primitive tyrannies in Russia, Italy, or Germany as the beginnings of a better life for mankind. That incredible paradox, which causes men who have fought gallantly for the civil rights of cranks and fools in America to condone the suppression of all civil rights in Russia,<sup>28</sup> would never have infected the progressive movement

<sup>28</sup> E.g., cf. *The New Republic*, February 17, 1937, on "Russian Politics in America," discussing the trial of Karl Radek and other Old Bolsheviki: "It is not in accord with the principles of civil liberty to convict accused persons on the basis of confessions unsupported by other evidence. But the court stated there was documentary and other conclusive evidence, brought out in the preliminary hearings, but excluded from the public trial for reasons of policy (protection of secret agents, or avoidance of international complications?). This evidence was what forced the confessions." *The New Republic* then concludes that, considering the pros and cons, "believers in civil liberty" should keep an open mind as to the guilt of the defendants, and ignore the procedure by which the Russian State convicted them!

had not the latter-day liberals gone up a blind alley and come to a dead end.

So I am proceeding on the assumption that liberalism is a true but imperfectly developed insight into the real nature of the industrial revolution. I do not identify liberalism with the writings of Herbert Spencer or with the rulings of the Supreme Court under the due-process clause. No one feels it necessary to identify the science of chemistry with every theory that Davy or Faraday propounded, and there is no more reason for identifying liberalism with all that liberals, or men who supposed they were liberals, have at one time or another promulgated as the gospel. They may very easily have been mistaken, and, in so far as what they regarded as liberalism has produced illiberal consequences, they surely were mistaken.

They must have been mistaken wherever the conclusions they arrived at contradict their original insight and defeat their aims. Thus if liberal thinkers adopted a theory of free contracts which in fact results in arbitrary compulsion, then there was an error in their theory. If, with a view to promoting the free exchange of goods and services by contracts in open markets, they adopted a theory which sanctioned monopoly and necessitous bargains, their theory must in some important respect have been wrong. If they adopted a theory of private property which results in the destruction of the soil, wastes limited natural resources, or creates slums which impair the vitality of the people and degrade their lives, then their theory of private property must have been gravely defective. If, with a view to promoting the capitalistic mode of production, they adopted a theory of corporate rights which leads to the suppression of the market economy and the rise of collectivism in Big Business, then their theory of the corporation was, in some fundamental aspect, wrong. If they had a theory of the state which forces men to choose between anarchy and despot-

ism, their theory of the state must have been wrong. If they had a theory of human rights which refused protection to many human interests, including those of posterity, then their theory of human rights was grossly inadequate.

The development of the later liberalism led to all these self-defeating consequences, and the dogmatic temper of the later liberals prevented a thorough reëxamination of their errors. But that reëxamination is now under way by a new generation of liberal thinkers, who have been shaken out of their complacency by the debacle of liberalism and out of the easy acceptance of the collectivist alternative by the horrors of the collectivist reaction. It is evident to them that mankind cannot stand pat with the aging Herbert Spencer or move on, except to its ruin, with the young men in their colored shirts.



## XII

### THE POLITICAL PRINCIPLES OF LIBERALISM

#### *1. The Nature of the Problem*

IT would be beyond the scope of this book and of my own technical competence to attempt a detailed reëxamination of what in its decadence passed for liberalism on the subject of property, contract, the corporation, the state, and individual rights. But I shall venture to make a general reëxamination of certain fundamental ideas which must, I believe, be clarified, if liberalism is to be reborn.

We may begin by recognizing that, as philosophers of the industrial revolution, liberal thinkers were greatly impressed with the need for the security of transactions and of property. If men are to exchange the products of specialized labor in distant markets, they must be able to count upon the delivery of what they have bargained for. They must be able to own things at a distance, when the things are out of sight, and to feel sure that the bird in the bush, if it is their bird, is as much theirs as if they had the bird in hand. When men have all their property in sight, and can defend it with their own strength, when they go to a near-by market and barter face to face with their near neighbors, there is no great need to emphasize the sanctity of contracts and the inviolability of property. The exchange economy, however, is based on credit, not merely in the narrow sense of loans, but in the broad sense that it relies upon the good faith of multitudes all over the world.

In inaugurating this credit economy, the pioneers of liberal-

ism had to overcome not merely the primitive incapacity of men to feel bound by distant and impersonal obligations, but the immemorial habits of the marauder and of the predatory state. The ordinary man was far from having acquired the habit of dealing faithfully with men who could not hold him to his promise. "Naturally," says Dean Pound, "contract loomed large in juristic thought"<sup>1</sup> during the seventeenth and eighteenth centuries. Moreover, the highways were infested with brigands, the seas with pirates, and the world generally with sovereigns and local despots who looked upon merchants, particularly those from another locality, as their natural prey. From the year 1600 to about the year 1800, a great part of the efforts of progressive men went into establishing the elementary security which was indispensable to an exchange economy. They tamed kings by decapitating them. By waging wars against pirates and predatory governments they cleared the seas. They imposed respect for property and contract by what seems to us savage punishment of thieves and defaulters; and they sought by every possible means to make business transactions secure.<sup>2</sup>

So conscious were the pioneer liberals of the need for security in the transactions by which men earned their living that they sought to make them completely inviolable, not only as against thieves and defaulters and mobs, but as against kings, parliaments, and state officials. Remembering the historic circumstances, it is not difficult to appreciate the reasons which led the liberals to embrace the theory that the rights of contract

<sup>1</sup> Roscoe Pound, *The Spirit of the Common Law*, p. 94.

<sup>2</sup> "Thus by the nineteenth century the area of enforceable promises has been greatly extended. In the latter part of the eighteenth century, in deed, Lord Mansfield came very near establishing a doctrine that no promise in writing and no business promise should be *nudum pactum*." *Nudum pactum* is a doctrine of the Roman law that "an action does not arise from mere agreement." Roscoe Pound, "Contract," *Encyclopedia of the Social Sciences*, Vol. IV, p. 326.

and of property were "natural" and, therefore, beyond human interference. The theory was what Georges Sorel has called a "vital lie," a useful fiction in dealing with the practical necessities of a particular time. But though it served a good purpose temporarily, it was an untruth, and only the truth can in the end prevail. The pioneer liberals did not really mean that property and contract were beyond the jurisdiction of the state. On the contrary, they meant that the authority of the state should be consecrated to the security of property and the enforcement of contract.<sup>3</sup> They developed their fiction at a time when the state did none of these things adequately; and so when the merchants and manufacturers obtained control of the state, they used the government to make property secure and to enforce contracts. They made the law the guarantor of the new social needs, and they called the guarantee a natural right. Thus, as Roscoe Pound has said, the legal rights of eighteenth-century Englishmen came down to us as the rights of man.<sup>4</sup>

The pioneer liberals convinced themselves that the legal rights enforceable in the courts were in essence superhuman. They taught that the laws merely declared inalienable and, therefore, unalterable rights with which men had been endowed by their Creator, that the laws were not laws formulated by legislators and judges and the custom of the community, but were "the Laws of Nature and of Nature's God." By means of this great myth the pioneer liberals dissolved the ancient restrictions of caste and obstructed the interventions of authority. They used the myth to make possible the emergence of the new social order. But to their descendants they transmitted a collection of dogmas which obscured the problems of governments. For the legal rights which were actually en-

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<sup>4</sup> *Ibid.*

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forceable in the courts were not in fact the Laws of Nature and of Nature's God. It was difficult to argue that there was a Law of Nature which required the eldest son to inherit all of his father's property, or made it the unalterable rule of human societies that the bankrupt should go to jail.

By placing legal rights on a superhuman foundation, the inquiry into the justice, the suitability, and the social convenience of laws was inhibited. The effort to adapt the laws to the dynamic economy was driven underground and out of sight. It was removed from the realm of scientific inquiry and rational debate. Thus the convenient myth of the pioneer liberals became the dogmatic fundamentalism of the latter-day liberals, and, in the guise of loyalty to unalterable principles, legislatures and courts shaped the laws to meet the pressures of interested groups. In their theory the law was already completed: but, in fact, the need for new law was brought home to them by popular agitation, by legislative lobbying, by the impressive briefs of the lawyers. They met the new need by improvisations, and reconciled the new laws with the unalterable law by employing an elaborate legal casuistry.

Only by recognizing that legal rights are declared and enforced by the state is it possible to make a rational examination of the value of any particular right. The latter-day liberals did not see this. They fell into a deep and confusing error when they failed to see that property, contracts, corporations, as well as governments, electorates, and courts, are creatures of law, and have no existence except as bundles of enforceable rights and duties. A judge is only a man whose writs are effective and whose judgments are obeyed; if the writ is not respected, the man is not really a judge in that cause. A voter is a person who is entitled to cast a ballot which has certain specified consequences; to cast a vote if nobody has to pay any

attention to the vote is to cast a straw vote. A corporation is an association of persons who have rights and duties which they would not have if they were not incorporated. A contract is an agreement which the courts will enforce; an agreement which the courts will not enforce, say that John Smith is to jump over the moon, is not a contract. Property is a varying collection of enforceable rights to use in certain ways some of the things that are not provided in unlimited quantity and without effort. Thus the purse which the thief has just stolen is not his property; for if another thief steals it, the first thief cannot persuade a court to return it to him.

Property is an extremely intricate and subtly differentiated complex of rights. Landed property in the heart of New York City does not, for example, include the right to raise pigs on it. In some states landed property includes the ownership of everything down to the centre of the earth; in others the landlord does not own the minerals that lie just under the surface. Until recently it was supposed that the landlord owned the air above him to the top of the sky. Now he owns it only up to the level where, by law, airplanes are permitted to fly. In some places a man's eldest son must inherit all his property, in others it must be equally divided among his children; in some he can designate his heirs, in others the law designates his heirs; in almost all modern communities, the government takes some considerable part of the inheritance.

It follows that these complicated and variable rights which are the substance of property and contract are not only established by the law that the state recognizes, but that they may be, and that from time to time they must be, modified by the state.

The problem that perplexed the liberals arose from the fact that they had very good reason for feeling that nobody — no king, no parliament, no collection of voters, and no judge — was

good enough or wise enough to be trusted with the authority to modify the rights upon which the security of property and of transactions and of the person depended. This is the fundamental problem of the constitution of the liberal state, and, though we have about three hundred years of experience behind us, the problem is as yet only partially understood and imperfectly solved.

## 2. *The Ultimate Power of the People*

The development of constitutional theory for the liberal state began in England during the seventeenth century, although continental thinkers, such as Grotius, contributed greatly to it. England was the first large country to experience the industrial revolution; it was in England, therefore, that the need to adapt the social order to the new economy first became urgent.

But, though the debt of mankind to the English pioneer liberals is immeasurable, the historic circumstances in which English liberalism was formulated have tended to obscure the real issues for later epochs. What the English did was to adapt a feudal monarchy to the modern social economy, and their method was to convert "the feudal duties of the paramount lord toward his tenants into legal duties of the king toward his subjects."<sup>5</sup> In the course of their struggle against the Stuart kings, the English developed the conviction that the essential principle of a free government was to impose fundamental limitations upon the state and its rulers, that, as Chief Justice Coke told James I during their historic conference in 1612, the King is "under God and the law."<sup>6</sup>

<sup>5</sup> Pound, *op. cit.*, p. 88.

<sup>6</sup> Coke was quoting Bracton. Cf. Pound and Plucknett's *Readings on the History and System of the Common Law*. Third edition, pp. 185-87.



In this struggle against the prerogatives of an absolute king the theory of our liberties was forged. It is an incomplete theory. While we have learned from the English experience the great principle that the officials of the state must have limited powers defined in a law which is above them, the theory does not disclose how the supreme law itself is to be adapted to changing circumstances and new moral standards.

For a variety of reasons the British people did not have to face that question during the formative period of modern liberalism. They achieved a reasonably workable compromise in their special circumstances; they had a Parliament elected until recently by a limited franchise, and hedged in by an enlightened aristocracy, a civil service with strong traditions, and the deeply settled respect for the common law. Thus for a long time the balance of forces within British society maintained an equilibrium between security and change, between the supremacy of the established law and the emerging supremacy of the populace. But the fictions and compromises of the British system were effective only in the relatively homogeneous portions of the British Isles. They did not work at all in Ireland or very well in the rest of the British commonwealth, and in order to maintain their empire, and perhaps even to preserve a liberal state at home, the British are now at last being compelled to consider the basic problem of constitutional government.

It was this problem that the American Revolutionists had to face over a hundred and fifty years ago. They had disowned the monarchy and the whole aristocratic structure of the British state. They had no choice. There was nothing left but the irresistible power of the mass of men. What the American Revolutionists did with the constitutional problem is, therefore, incomparably the most significant political experi-

ment undertaken in modern times. Fortunately, they happened to be men of extraordinary political genius, and they were able to discern, though they did not solve completely, the fundamental political problem of a liberal society.

Their epoch-making contribution to the modern science of government lay in the discovery of the distinction between the people and the state. As inheritors of the English tradition, they were prepared for the discovery by the long struggle, going back to the Norman Conquest, between the common law of the people and the prerogatives of the king. In the English tradition it was assumed that the people limited the power of their king, and not that the people ruled the state. For the American Revolutionists the situation was reversed: the people were in power when the Constitutional Convention met. No one had lawful or effective authority which could prevail over the local governments and the direct action of lawless groups. So the task of the Americans was to organize popular rule, and not, as in England, to check the power of the king.

Their discovery of the distinction between the people and the state was based not on hope, belief, or a doctrine, but on an observable fact. The ultimate power *was* in the hands of the people, and if there was to be a state it had to operate through powers delegated to it by the people — that is to say, by consent of the governed. In recognizing this fact and formulating it as a theory of government, the Americans between 1776 and 1789 made a contribution to the science of government which is the necessary premise of all political thinking in the modern world. Once the ancient order of habitual obedience in a caste society has dissolved, the power to rule is the formless power of the mass of the population. That power has always been potentially stronger than any government: the most absolute despot does not rule by virtue of his own strength but only by the loyalty of his guards and the servility of his subjects. It

is not until the habit of subjection has been dissolved that the latent power of the people becomes a manifest and undeniable fact. It became manifest in the popular uprising which began in America in 1776 and spread to France. Though attempts were made after that to reassert the principle of legitimacy, they were vain. At the beginning of the nineteenth century all men who did not wish to deceive themselves understood that any government, despotic or liberal, is an organization of power drawn out of the reservoir of popular force.<sup>7</sup>

In the rather confused writings of the totalitarian philosophers this fact is sometimes denied. But in practice even they must acknowledge it. They deny it when they assert that the people and the ruling officials are one and the same, and when they pretend that the will of the dictator is simply the will of his people. But they acknowledge the difference between the people and the state when they set up concentration camps and ministries of propaganda. These instruments of deception and repression would not be needed if the rulers did not have to compel the assent of the people to the authority they have usurped. So we may say that since the revolutions of the eighteenth century, all governments have known that they rest on the consent of the governed. The ruling officialdom has known that it will fall when the troops refuse to march and the people rise up and rebel; and that somehow or other, by hook or crook, all governments must obtain the consent of the people. Whether the officials obtain it by cajoling half the people into terrorizing the rest, or whether they obtain it surreptitiously by manufacturing opinion, or openly by discussion and debate, the fact remains that the state is not the people but that it derives its power from the people.

Having made this scientific discovery, the authors of the American Constitution undertook to organize a state in which

<sup>7</sup>. Cf. José Ortega y Gasset's *The Record of the Masses*. (London: George Allen & Unwin Ltd.)

this gross and formless power of the people would, as James Madison put it, be "refined." For, of course, they did not fall into the error of supposing that the unorganized populace *know how* to rule. They had recognized that the populace had the *power* to rule. They had acknowledged that it had the *right* to rule. They then knew that the problem was to *enable* the populace to rule. Undoubtedly that is what Madison had in mind when he spoke of the need for refining the will of the people.

The devices which the Constitutional Convention adopted to achieve this end are well known. They are the checks and balances of the American Constitution. Whether these mechanical arrangements were the best possible is not the question here. The point is that the authors of the Constitution conceived of the people as subjecting themselves to a legal system in which their power to rule was carefully organized. They defined in specific terms the manner in which the people should rule. This is the great conception of the American Constitution. It recognizes the irresistible power of the people as a fact, and acknowledges that power as the ultimate source of all authority. Then it raises the question of how this formless power can be organized for good government. The Constitution does not have the only possible answer to this question, nor a wholly satisfactory answer. For the mechanical checks and balances have many inconveniences. But the question which the Constitution seeks to answer is absolutely fundamental and cannot be evaded.

The authors of the Constitution themselves were by no means convinced that they had found the answer, and their contemporaries were even less certain. So deeply impressed were they all with the dangers of arbitrary government that they felt the need of additional guaranties. So to the basic conception of the Constitution, which is that the people must

rule but that their will must be refined, there was added a Bill of Rights which was intended to limit drastically the scope of government action. Yet the Bill of Rights was not really inconsistent with the original conception of popular rule. For it could be amended or repealed. It simply provided that certain essential liberties could not be impaired except by virtually the whole people after prolonged examination. Thus the Bill of Rights merely adds some more powerful checks and balances for refining the popular will.

### *3. Representation of the People*

One of the hallmarks of genius, someone has said, is the faculty for asking the right questions. The leaders of the American Revolution proved their genius by going straight to the heart of the question to which any modern society must find the answer or perish. For as the progress of the industrial revolution destroys legitimacy, prescription, and habitual obedience to established authority, the fundamental question is how the formless power of the masses shall be organized, represented, and led. In the generation after the Revolutionary War, the American leaders faced this question. It is an even more urgent question to-day than it was a hundred and fifty years ago.

For in the interval the acids of modernity have dissolved, more thoroughly than the constitutional Fathers could have anticipated, the psychological bonds of the ancestral order.<sup>6</sup> Since their time virtually the whole traditional social organization of Europe has decayed or has been uprooted, and even in the very depths of Asia and Africa the mass of men have begun to assert their power. The question which the American founders raised was how the inchoate mass of the people,

<sup>6</sup> Cf. *A Preface to Morals*, Part I, Ch. IV. (London: George Allen & Unwin Ltd.)

as they assert their power, could be organized into a civil society.

So, as in previous ages men had studied the personal history of kings, they studied the biography of the masses. From books and from their own observation they had learned that unless the people are successfully organized in a state, so they can act through officials who represent them under laws to which they have consented, the people's power is mere ineffective, self-destroying violence. Without civil organization the people are at one time a helpless crowd, at another a horde trampling all before them; then they are mobs which destroy each other; then isolated individuals, each man against all the others in a life that is "solitary, poor, nasty, brutish, and short";<sup>9</sup> until again, in the cycle of their impotent violence, they become a horde led by a master of the crowd.

It has been said that the authors of the Constitution were not democrats, and their warnings against the irrational power of the formless mass are cited as evidence. But to credit this is to misunderstand their genius. They did not identify the power of the masses with democracy. They were able to see that the essential problem is to organize this power of the masses so that it may function as a democracy. That is why they made a lasting contribution to political thought and made so great a mark on the history of mankind. Had they been "democrats" in the sense which their confused critics have in mind, the ensuing turmoil and impotence would have made America, not the land of promise, but a gigantic Macedonia.

The American founders saw that the problem was no longer what it had been under the Stuart kings against whom their ancestors had rebelled: to obtain protection for the com-

<sup>9</sup> Thomas Hobbes, *Leviathan*, Ch. XIII, "Of the Natural Condition of Mankind as concerning their Felicity and Misery."

mon man as against his masters. In their time the common man already had the power of his former masters; the captains and the kings had departed. Their problem was how to organize the indubitable and inalienable power of the mass in order that it might achieve its own best interests. And since it was obvious that no mass of men can as a mass make more than the simplest decisions of yes and no,<sup>10</sup> and is physically incapable of administering its affairs, the practical question was how a government could be made to represent the people.

It was here that the founders set themselves apart forever from the naïve theorists of democracy. They saw, in Burke's phrase, that the constitution of a state is not a "problem of arithmetic." So they refused to identify the will of the people with the transient plurality of the voters in one constituency. They did not say, for example, that if the whole mass of persons votes once, and if one party has 34 per cent of the votes and the other two have 33 per cent each, the winner in the contest is the true representative of the people. They thought of "the people" as having many dimensions in space, in time, in weight, in quality. They thought, as Burke did, that a society is "a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection," and "as the ends of such a partnership cannot be obtained in many generations," a civil society is "a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born."<sup>11</sup> The American founders sought to represent this many-sided people and they thought of the people's will as an equilibrium of its many elements.

And so in their practical arrangement they sought to make

<sup>10</sup> Cf. my *Phantom Public*.

<sup>11</sup> Burke, "Reflections," *op. cit.*, pp. 368-69.

the government as nearly representative as possible of the many facets of the popular will, of the people acting as citizens of local communities, acting as citizens of regions, of states, of the nation, acting with remembrance of the past, acting as they felt at the moment, acting as they would feel after fuller consideration. For they gave no credence to the idea that one periodic count of heads could elicit the real will of a large population.

The founders sought to approximate a true representation of the people by providing many different ways of counting heads. For the national government, itself a federation of states with complex forms of representation, they provided a House elected for two years from fairly small constituencies of equal size; a Senate in which one third only was elected every two years from the states — that is, from constituencies of varying size; a President, chosen, as they conceived it, by electors from the separate states, and for a term of four years, which did not correspond with that of any one group of the legislators; a judiciary appointed for life after confirmation by the Senate. Thus no two branches of the government were chosen by the same constituency or for the same term of office.

They provided that for ordinary laws a majority of both Houses and the President must concur, that a two-thirds majority may prevail over the President, that for treaties two thirds of the Senate must concur with the President. They then provided that all the powers exercised by the legislative and the executive branch were subject to the supreme law of the land, and that their specific acts would be invalid if contrary to the Constitution. They provided that the supreme law of the Constitution could be amended only by a complex vote which would ensure as nearly as possible that the decision had been fully considered, that all men had had a



chance to hear the issues debated, and that many more than a mere majority had been convinced.

How different is this conscientious attempt to ascertain the true will of the people from the cynical plebiscites conducted by dictators, where there is no choice, no opportunity to discuss the issues, and where the momentary, manufactured, majority opinion is treated as the will of the nation. Yet what the dictators do cynically, many who think themselves democrats would do naïvely: they would identify the will of the transient majority with the people, and stake everything on its decisions. The logic of their ideal would call for the election of all officials in one universal ballot empowering these officials to do anything they chose as long as they were in office. If the naïve democrats had the full courage of their convictions, they would break down all the complex and differentiated forms of representation and would remove all legal restraint upon the power of the representatives. This is sometimes described as pure democracy. But a little reflection will show that it emasculates the sovereignty of the people; for if the supreme lawmaking power is entrusted to the representatives of a transient majority, they can at any time disfranchise not only the minority but the majority as well, and confirm themselves permanently in the seats of authority. A "pure" democracy, as the American Founders saw so prophetically, is really brute, inchoate democracy, and the certain foundation of absolutism.

No doubt it is true that the mechanical devices of the American political system are defective, and could be improved. Much more pertinently it may be said that all mechanical devices are necessarily inadequate to ensure true representation, and presently we must explore what I believe is the unrecognized corollary of popular rule. But before we come to that we must appreciate fully the deep wisdom of the original Con-

stitution in its demonstration that the will of a people can only be refined and ascertained by a complex system of representation differentiated in time and space. The devices were only the means and have no universal importance: but the end, to which they were the means, has far greater importance to-day than when the Founders first discerned it.

Its importance will increase. For with literacy general in the whole population, with inventions for communicating instantaneously with the population of the entire earth, a political system that will refine, rather than respond abjectly to, manufactured mass opinion is more than ever indispensable. The Founders of the American Republic realized that the demagogue is not a romantic fellow who appears now and then, but that he appears whenever government is not effectively representative. Demagoguery is the falsification of representative government, the cultivation of the transient and apparent rather than of the considered and real will of the people. James Madison would not have been astonished at Hitler. He had studied carefully the classical demagogues. That is why the Constitutional Convention attempted to set up truly representative government; in order to protect the masses from the hypnosis of the moment, they invented devices for balancing the constituencies and delaying their decisions. They sought to make the people safe for democracy. What they meant to do every civilized people has to do, and if the checks and balances of the American Constitution are now antiquated, others will have to be devised to replace them.

#### *4. Distrust of the People*

Yet since the beginning of the American experiment there has existed always a feeling that the will of the people could

not be refined successfully enough. Men have felt that something more was needed than mechanical checks and balances designed to elicit a truly representative public opinion. For after all the mass itself might become so thoroughly indoctrinated with false ideas that it would, despite all the safeguards of debate, will the destruction of its own vital interests. At the outset, therefore, men insisted upon a Bill of Rights which would protect, as against mass action, their vital interests as individuals and as members of historic communities. After the Civil War they supplemented the Bill of Rights with a view to protecting the vital interests of the enfranchised Negro and of all other individuals against mass action in the states. And later they consented to a judicial interpretation of these individual rights which extended protection to the property not only of individuals but of corporations.

Thus in the course of time the checks and balances were re-enforced by dogmatic inhibitions. American jurisprudence and political theory adopted the idea of a supreme law more absolute than the Constitution itself. This super-law was never enacted. It was customary law which judges, lawyers, lawmakers, and publicists developed and imposed through judicial opinion and executive veto and legislative obstruction. In the case of *Fletcher v. Peck*, a statute of Georgia was set aside by Chief Justice Marshall, not because it violated particular provisions in the Federal Constitution, but because it was contrary to the "general principles which are common to our institutions."<sup>12</sup> This was the beginning of that supreme, yet unenacted, law above the Constitution itself which caused Mr. Justice Holmes to protest that the Fourteenth Amendment did not enact Herbert Spencer's *Social Statics*, and has in our own day caused a collision between the courts and popular majorities.

<sup>12</sup> Pound, *op. cit.*, p. 97.

It was in the second half of the nineteenth century that American jurists in their efforts to adapt the enacted laws to changing circumstances found and enforced the details of this supreme law, and set it up as a barrier to the people's will. These lawyers came "very close to a judicial assertion of legislative incompetence to deal with ordinary legal relations."<sup>13</sup> In a series of decisions the judges circumscribed the power of the states to regulate corporate bodies which the states had created, to control the franchises of monopolies which the states had granted, to set the terms of the contracts which the states had to enforce.<sup>14</sup>

These judicial inhibitions upon the legislature were not derived from the plain language of the Constitution. No one reading the Fourteenth Amendment, for example, and remembering that it was designed to protect the personal rights of the newly emancipated Negro, would reach the conclusion that the reference to due process of law meant that a corporation was a person and that the states could not freely fix the terms on which these legal creatures could do business. This super-law was not ordained by that "refined" popular will which the original Constitution recognized as the sovereign power. It was supposed to be the law which all civilized men recognize as the obligation to deal justly with one another. In fact it was merely the status quo. This super-law, disguised as the higher law, was made by judges and lawyers who approved of the current purposes of the promoters of the corporate form of business enterprise; they chose to regard existing, historic property rights as the reflection of supreme

<sup>13</sup> Pound, *op. cit.*, p. 107.

<sup>14</sup> Cf. Walton H. Hamilton's "Freedom of Contract," in *Encyclopedia of the Social Sciences*, Vol. VI, p. 450. Robert E. Cushman's "Due Process of Law, *ibid.*," Vol. V, p. 264. Also Pound's "Contract," *ibid.*, Vol. IV, p. 323.

law based on absolute reason, valid everywhere and always.<sup>15</sup>

And so into the development of the liberal American state there was introduced the contradiction between popular sovereignty and the dogmatic absolutism of this counterfeit natural law — which the judges made and then found. As the issues were raised in practice, the two notions were irreconcilable. For if the people have the right to exercise the power which in fact they possess, the highest law of the state must be the law which the people declare. The latter-day liberals had lost their understanding of the great political discovery which inspired the original Constitution. Instead of recognizing that the will of the people must prevail, and that the function of a constitution is to refine that will, they sought to set up judicial dogma which inhibited the popular will. They reënfirmed the dogmas by appealing to the piety of the people, their reverence for the Constitution, and their respect for the courts. The latter-day liberals sought to obstruct, rather than to refine, the popular will. And in that enterprise they found themselves in some very bad company, protecting many predatory and antisocial interests.

This deep contradiction has provoked a conflict between the mass of the electorate seeking to assert their power and the beneficiaries of the dogma who seek to restrain the people's power. It is a dangerous conflict. For it jeopardizes not only the rights of property and the security of transactions

<sup>15</sup> The views of these jurists "were confirmed by the teachings of the classical economists and by the individualistic social theory of Herbert Spencer and of a William Graham Sumner who had not yet discovered the folkways. They had begun the reading of law with Blackstone's *Commentaries*, in which the individual is the hero and the state the villain in the piece; sampled Coke's *Second Institute*, which was a by-product of revolt against authority; learned from Cooley the constitutional limitations upon government; and shared Maine's discovery of the cultural significance of the replacement of status by contract." Hamilton, *op. cit.*

but the popular sovereignty as well. The effect of persistent obstruction to the popular will is not to refine it but to degrade and to brutalize it. When at last the popular will prevails, it is capable of overthrowing the vested rights of property; but it is incapable of exercising any rights of its own. The momentum of the rebellious mass, if dammed up at the obstruction, will finally overwhelm the obstruction and become an inchoate power. In breaking down the intolerable obstruction to the popular will, the defenses of all individual rights will collapse, and out of the common ruin of property and democracy a collectivist dictatorship will in all probability arise.

Thus the latter-day liberals fell into a tragic error when they failed to hold fast to the original insight of the Constitution: that it is upon the refinement of the popular will that a progressive society must depend. In an unchanging world where men are habituated to a definite status, the status quo persists. Under such circumstances absolute dogmas merely make men feel that it is reasonable to do what they would never think of not doing. But after the industrial revolution and the political and social revolutions which it caused, the only conceivable source of authority is the power of the people and the only hope of good government is the progressive refinement of the people's will.

### *5. Social Control by the People*

We shall, however, misunderstand the real problem if we do not fully appreciate the fact that the American faith in democracy has always been accompanied by efforts to limit the action of the democracy. Distrust of popular rule has by no means been confined to the well-to-do. It has been general and continuous. At one time men fighting for liberty of

conscience have defied the enacted will of the people; at another men defending the privileges of business corporations have sought to circumvent it. In our own day, for example, the very same men who have defied the will of the people — when it imposed national prohibition, outlawed revolutionists, censored books and the stage, prohibited the teaching of methods of birth control — are enthusiasts for the national regulation, the more authoritative the better, of all phases of economic activity. The Democratic Party, which was the habitual defender of the sovereignty of the separate states, is to-day the advocate of a centralized nationalism which would have astonished Alexander Hamilton and John Marshall. Most of us are for the people when we think the people are for us, and against them when they are not. The Republicans, having for fifty years after the Civil War countenanced the impairment of state sovereignty under the due-process clause of the Fourteenth Amendment, had by 1936 become the ardent disciples of Thomas Jefferson and James Madison. It is evident that the American people as a whole have never consistently believed that all their interests could be placed unreservedly at the disposal of the people, however refined the representation, however conscientiously the people's will was checked and balanced.

They have not believed whole-heartedly that democracy was safe for the world. This unbelief is, I believe, an intuition that there is something lacking in the theory of democracy, that somewhere the doctrine of popular sovereignty as conceived by its apostles is inconsistent with essential facts of human experience. Popular government has not worked out as promised, and all through the nineteenth century democrats speculated on the reasons for their disappointment.

They had various answers to the riddle: if they were impressed with the evils of demagoguery, they said that in the

long run popular education was the remedy and that the supremacy of a static law was the immediate defense. If they were impressed with the evils of plutocracy and of political corruption, they said that the cure for the evils of democracy was more democracy. They have tried all the remedies. They have spent immense sums on education. They have developed a popular press which is by and large the most informative in the world. They have also developed a technic of propaganda which was, until the totalitarian states put their minds to it, the most effective in all history. They have elaborated judicial restraint to a remarkable degree. And they have widened the electoral franchise and greatly facilitated the direct election of their officials.

Though I regard the American passion for education as noble, and the technic of propaganda as pernicious, the super-constitutional law of the judges as untenable, and so-called "pure" democracy as a mistake, I mention these diverse things together at this point in the argument because they are all evidences of the same thing: the intuitive conviction of the people that democracy will not work merely by making it accurately representative.

The propaganda, the pressure groups, the formulation of a law that is higher than the Constitution, and the breaking down of the checks and balances are evidences, it seems to me, of a radical defect in the conception of democracy. Thus the reliance upon education, in the sense of schools, and lectures for adults and popularized knowledge in books and magazines, is, it seems to me, merely begging the question. It is true, of course, that a people thoroughly educated in mind and character would find the answers to their problems. But it is a mere truism. For the question is how a democracy is to become so well educated, and we may be sure, I think, that the necessary education for popular government cannot be ob-



tained in the schools and colleges, from books, newspapers, lectures, and the radio, alone. Popular education is indispensable, and I should be the last to decry it. But it is insufficient.

The kind of self-education which a self-governing people must obtain can be had only through its daily experiences. In other words, a democracy must have a way of life which educates the people for the democratic way of life. The pioneers of democracy, particularly in America, dimly apprehended but never, I think, fully comprehended this truth. They had made the great discovery that henceforth the people would rule, that they have the right to rule, and that the government through which they rule must be made truly representative. But what they did not master was the corollary of their discovery: that *if the people do rule, they must rule in a particular way*. I am not suggesting that they were altogether oblivious of the question: it would perhaps be accurate to say that they took the answer for granted and did not examine it.

For during the formative period of democratic ideas, the assumption was general that any good government would remain consistent with the spirit of the English common law. The early democrats did not, it would seem, expect the people to legislate much or to legislate radically. So they did not recognize the urgency of the problem which arose later when radically new legislation was needed and desired. As a consequence they handed down to us a conception of democracy which is deeply discerning about the importance of truly representative government, but is without guiding principles as to how the people shall legislate.

The lack of these guiding principles has caused the profoundest confusion. For in the absence of a well-defined conception of how a democracy shall govern, the sovereign people simply took to themselves the attributes of the kings whom

they had deposed. It was supposed that the powers of the monarchy had passed to the people, that every man, as Senator Huey Long put it, was a king. "All that was necessary," says Duguit, "was to substitute the nation for the king. The king was a person, a subject of right, the holder of sovereign power; like him, the nation will be a person, a subject of right, the holder of sovereign power."<sup>16</sup> Since the theorists of democracy had not come to grips with the problem of how the people can rule, they thought of the people as the inheritors of the kingly power.<sup>17</sup> They did not fully appreciate the radical nature of the revolution in which they were engaged, and so they failed to realize that when the people rule they must rule in a radically different manner than a king.

When the people's representatives have sought to govern as if they had inherited the royal prerogatives, they soon produced the same evils which men had complained about under royal government. Officialdom aggrandized itself and escaped accountability. It became corrupt, arbitrary, exacting, inefficient, parasitical, irresolute, and insensitive. Instead of hereditary rulers, there were political machines self-perpetuated at the expense of the taxpayers; instead of courtiers there were place hunters. For the social order needed adjustment to the progressive economy. The representatives of the people had to legislate. Having no clear conception of how a democracy can legislate appropriately, they drew upon the ideas which they had inherited from the kings. They aggrandized the number and power of public officials.

<sup>16</sup> Leon Duguit, *Law in the Modern State*, p. 11. Translated by Frida and Harold Laski. (London: George Allen & Unwin Ltd.)

<sup>17</sup> Cf. Otto Gierke's *Political Theories of the Middle Age*, p. 92: "And so they came to the opinion that in every state some one visible Ruler, a man or a ruling assembly, is the 'Subject' of a Sovereign Power over the Ruled. And then, when . . . men developed the theory of a Popular Sovereignty, . . . transferred it [i.e., the Ruler's Sovereignty] to an Assembly which represents the People."

The effect was to cause confusion and disappointment in democratic societies. Those who saw the need of reform, or hoped to profit by it, knew no way of achieving reform except by inflating the executive and the administrative branches of the government; those whose interests were threatened, as well as those who remembered the experience of the past, resisted reform by pointing to the perils of a powerful, ubiquitous, and self-perpetuating bureaucracy. Reformers justified the return to an authoritarian state by the fiction that the state now belonged to the people: as a matter of fact, the official state has grown so large that the legislature has only the vaguest idea of what the officials are doing, and is wholly incapable of holding them to account. Conservatives justified their resistance by appealing to the indubitable lessons of history, that the aggrandized state becomes eventually a tyranny tempered only by its incompetence. Reformers made the unanswerable argument that the laws must change in a progressive economy, and the conservatives retorted that the remedy was worse than the disease. The reformers exalted the rights of the state, the conservatives the rights of the individual: the one doctrine became collectivism, which ends in militarized despotism, and the other doctrine became *laissez-faire*, which meant at last that no one must do anything.

But this is a false issue. For it is not necessary to choose between social control administered by the aggrandized state and a self-assertive individualism subject to no social control. That supposedly exclusive choice, which causes such furious party antagonism in our society, overlooks entirely one of the oldest, best established, and most successful methods of social control in human experience. It is social control, not by authority from above commanding this man to do this and that man to do that, but social control by a common law which defines the reciprocal rights and duties of persons and invites

them to enforce the law by proving their case in a court of law.

This method of social control is, I submit, the appropriate method for a self-governing people to use. The pioneers of liberalism fought successfully to vindicate this method of social control as against the prerogatives of the king. From the early days of the Norman Conquest they stood for the common law as against the commands from the king on high.<sup>28</sup> This method of social control the founders of the American Constitution took for granted, like the air they breathed. So much did they take it for granted that they neglected to define it and fix it in the tradition of democracy. But in the debacle of liberalism during the delusion of *laissez-faire*, this method of social control was unappreciated and then forgotten. The reformers forgot it when they multiplied officials instead of revising the rules of the game; the conservatives forgot it when, in effect, they announced that the existing rules were immutable.

### 6. *The Passage to Political Maturity*

Truly conceived, a democracy is not the government of a people by elected representatives exercising the prerogatives of their former lords and masters. It is the government of the people by a common law which defines the reciprocal rights and duties of persons. This common law is defined, applied, and amended by the representatives of the people.

Merely to enfranchise the voters, even to give them a true representation, will not in itself establish self-government: it may just as well lead, and in most countries has in fact led, to

<sup>28</sup> For two centuries after the Conquest, "Parliament was occupied only with laws recognizing the Anglo-Saxon laws previously existing, or laws removing abuses of the royal power; and the desire of the king to tax the people was used as the lever to get him to assent to these laws." Frederic Jesup Stimson, *Popular Law-making*, p. 24.

a new form of absolute state, a self-perpetuating oligarchy and an incontrollable bureaucracy which governs by courting, cajoling, corrupting, and coercing the sovereign but incompetent people. For the people cannot govern by entrusting their representatives with the prerogatives of the king. They can govern only when they understand how a democracy *can* govern itself; when they have realized that it cannot govern by issuing commands; that it can govern only by appointing representatives to adjudicate, enforce, and revise laws which declare the rights, duties, privileges, and immunities of persons, associations, communities, and the officials themselves, each in respect to all the others.

This is the constitution of a free state. Because democratic philosophers in the nineteenth century did not see clearly that the indispensable corollary of representative government is a particular mode of governing, they were perplexed by the supposed conflict between law and liberty, between social control and individual freedom. These conflicts do not exist where social control is achieved by a legal order in which reciprocal rights are enforced and adjusted. Thus in a free society the state does not administer the affairs of men. It administers justice among men who conduct their own affairs.

This definition of popular rule is not an abstraction which I have invented because I think it is desirable. It is, I believe, a deduction from historic experience in the long struggle to disestablish the dominion of men over men. The idea must gradually crystallize in men's minds as they deny that their kings, their lords and masters, and their leaders, are appointed by God to rule over them. For when they no longer think of government as the liege man thinks of his king, the slave of his lord, the servant of his master, then they must think of government as a legal order in which individuals have equal and reciprocal rights and duties.

This change of mind marks the beginning of the manhood, the ending of the childhood of the race. Men do not accept this conception of government easily. For psychologically it calls for a profound change of attitude, and the change is accompanied by all the troubles of adolescence; the individual is too grown-up to be treated as a child, he is too immature to bear the responsibilities of an adult. But those who grow up must grow up. The change is irrevocable. Though here and there whole nations find the burden of self-government intolerable, and relapse for a moment, seeking to live securely once more as children, the manifest destiny of mankind is to become adult and to replace paternal authority with fraternal association.

### 7. *Social Control by Law Rather than by Commands*

In distinguishing between the regulation of affairs by reciprocal rights and duties on the one hand, by overhead administrative order on the other, we can, I believe, clarify what Burke called "one of the finest problems in legislation," which is "What the state ought to take upon itself to direct by the public wisdom, and what it ought to leave, with as little interference as possible, to individual discretion."<sup>19</sup>

This problem baffled the influential thinkers and statesmen of the nineteenth century, and their failure to elucidate it successfully caused that popular bewilderment in which men came to think that they must make an exclusive choice between the anarchy of unrestrained property owners and the management of property by public officials. They thought they had to decide between doing nothing and administering almost everything. Those who wished to let things alone called themselves individualists and said they believed in liberty. Those

<sup>19</sup> "Thoughts and Details on Scarcity," *Works*, Vol. V, p. 107.

who wished to direct the course of affairs became collectivists and appealed to the desire for security, order, and equality.

The choice is not, I think, exclusive, and it has been posed only because of faulty observation and an insufficient analysis. There is no exclusive choice between direction by the state and noninterference with individual behavior, between state collectivism and laissez-faire as understood by the latter-day liberals. This supposed choice ignores the whole immense field occupied by the development of private rights and duties, and, therefore, it is not true that individuals must be left to do what they like or be told by officials what they must do. There is another way, the way of the common law, in which abuses are regulated and public policy is made effective by altering the private rights that are enforceable in the courts.

This becomes self-evident when we remember what the laissez-faire theorists forgot: that the individualism they are talking about exists by virtue of lawful rights that are enforced by the state.<sup>30</sup> The title to property is a construction of the law. Contracts are legal instruments. Corporations are legal creatures. It is, therefore, misleading to think of them as existing somehow outside the law and then to ask whether it is permissible to "interfere" with them. Thus the English law governing the inheritance of real property produced a different distribution of property from that produced by the French law. For in England the oldest son had different legal rights from those he had in France. Property of any kind, contracts of any kind, corporate organization of any kind, exist only because there are certain rights and immunities which can be enforced, when they have been legally established, by enlisting the coercive authority of the state. To speak of letting things alone is, therefore, to use a meaningless and a deceptive phrase. No one who

<sup>30</sup> Cf. Ernest Barker's Translator's Introduction to Gierke's *Natural Law and the Theory of Society*, LXX.

asks to be let alone really wishes to be let completely alone: what he asks is that he be enabled to enjoy the undisputed exercise of the rights which he enjoys. But he expects the state to interfere promptly and effectively if anyone disturbs him. He insists that his rights shall be enforced.

For some curious reason, the debate between individualists and collectivists has been carried on with both factions assuming that the *existing* system of private rights must either be left undisturbed or that it must be abolished; that existing rights must be maintained absolutely or extinguished absolutely; that either "property" must be what it happened to be when they were quarreling about it or the means of production must be administered by officials of the state. The dilemma is unreal and unnecessary. The system of private land tenure which happens to prevail at one moment in some country is not the only possible system of land tenure. The only possible alternative is not the nationalization of the land. The alternative may be any one of innumerable other systems of private land tenure. The only possible alternative to the existing system of private contract in industrial relations is not the replacement of private contracts by public administration. There are many alternatives, many possible ways of changing the kinds of private contracts that the law will require the courts to enforce. The only alternative to the concentrated corporate control of industry is not a concentrated government control of business corporations. It may be any one of many possible modifications of the law of corporate rights.

But in the nineteenth century individualists and collectivists alike persuaded themselves that the existing system of private rights could not be modified: that it had either to be maintained or to be superseded. Thus they created for themselves the fatal dilemma which has divided mankind into those who merely wish to preserve the status quo with all its abuses and those who wish



to make a new social order by the authoritarian power of the state. Collectivists and individualists had lost sight of one of the most obvious facts in human experience, that great and salutary changes in human relations can be and usually have been effected not by commands from on high but by amending the laws under which men deal with one another.

Any student of history could have told them that laws have changed radically in the course of history. Yet it was somehow assumed that laws were absolute, and therefore incapable of serious modification. So the debate has proceeded on the assumption that the choice lies between stubborn conservatism and complete revolution, that the rights of property as they stood in the nineteenth century have either to be confirmed and protected or that property owners have to be expropriated and their possessions administered by the state. The latter-day liberals, having committed themselves to the fallacy that existing rights are absolute, have been inhibited by their own fallacy from working out any programme to relieve the evils of modern society. The collectivists, believing in the same fallacy, merely drew an opposite conclusion. They turned to the state as *deus ex machina*, believing that the relief which could not be obtained by a readjustment of personal rights could be obtained by authoritative commands.

The essential intellectual difficulty may be seen in Burke's statement of the problem. He assumes that the state must either "direct" or must not "interfere." But suppose I invent a new mousetrap and suppose the law says that no one may use my invention during my lifetime without paying me the royalty I choose to charge. Is this *direction* or is it *interference*? Now suppose the state amends the law, saying that I have an exclusive patent for five years only: after that anyone may copy my mousetrap without being liable to a suit for damages. That amendment of the law will radically alter the mousetrap

situation. But is this act of social control to be called *direction* or is it to be called *non-interference*? From my point of view I suppose I have been interfered with. But my neighbors might say that they have been released from an undue interference on my part with their right to catch mice more successfully; that I was levying an unjust toll for an invention that was probably suggested to me, in part at least, by someone else's invention.

Is it not clear that the terms of the discussion do not really fit the facts, and that the debate could go on forever? A change in the law governing my right to patent the invention does not fit into either of Burke's categories. Yet the change in the law causes a real change in the situation. Though the state has not undertaken to direct the invention or to administer the manufacture of mousetraps, it is not letting me "alone" without social control. The change is brought by a readjustment of the rights of my neighbors and of myself. Impressive social changes may have been effected — the public health improved, a new industry brought into being, I prevented from becoming a millionaire, my neighbors relieved of a bitter grievance, good feeling promoted. But these things have been done without appointing new officials empowered to issue commands to anyone.

There are not, then, as Burke and so many after him assumed, only two realms, one in which there is no regulation of men's behavior, another in which men must obey the commands of their superiors. To state the problem in this fashion is to overlook the realm of private rights and duties where significant relations are regulated by general laws impartially applied to specific controversies, not by commands issued by some men to other men. Except where a few solitary individuals subsist in a wilderness, the actual choice is between the regulation of social affairs by adjudicating and adjusting private-

rights on the one hand, by arbitrary sovereign commands on the other. The one is the method of a common law; the other the method of the prerogatives of superior persons. The one is the system of democratic liberalism, the other of authoritarian collectivism.<sup>21</sup>

In the light of this distinction much unnecessary confusion is dissipated. We shall not, for example, fall into the error of regarding the existing law of property, of contracts, of corporations, as marking a realm in which the state does not or should not intervene. We shall recognize it for what it is, as a structure of rights and duties, immunities and privileges, built by custom, judicial interpretation, and statute, and maintained by the coercive authority of the state. We shall not think of all this as subsisting somehow outside the law, and then become involved in an empty debate as to whether the law may interfere with it. The whole of it, all property, and everything which we include in the general name of private enterprise, is the product of a legal development and can exist only by virtue of the law. This is evident enough in periods of social disorder when for want of law observance and law enforcement the whole private economy may collapse in a day.

We shall not compound the error by thinking that the law of property contracts and corporations is immutable.

### 8. *The Regulation of Property*

It was, as we have already seen, at this point that nineteenth-century liberalism came to a dead end: where it chose to treat property and the powers of the business corporation as in effect absolute and untouchable. Then it was that liberal states-

<sup>21</sup> See Chs. IV and V for the dependence of collectivism on authoritarianism.

men, being unable to regulate property and corporations effectively, had to give way to the collectivists.

The latter-day liberals had a vague notion that they must regard private property as approximating, to use Blackstone's words, "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe."<sup>22</sup> But no such sole and despotic dominion exists or can be established, and it was a signal disservice to the maintenance of free enterprise when men attempted to claim and to exercise such a sole and despotic dominion. For the rights of property have no existence outside the law: they are simply the rights which courts of law will recognize. No man can hold or enjoy property openly and securely except by virtue of the readiness of the state to enforce his lawful right. Without a lawful title, he has no property; he is merely a possessor without recourse against those who are strong enough to help themselves to his goods.

Not only is all property a right established by law and enforceable at law: all property is a complex system of rights. This system is not the same system in respect to all kinds of things. It is not the same system at all times in respect to the same things. It is not the same system in all places at the same time in respect to the same things. In other words there is no such thing as an absolute, immutable, and indefeasible system of property rights.

Thus the system of private property is not uniform for urban land and for land at the frontier. The title to urban land may, for example, be subject to zoning ordinances which completely nullify any pretension that the owner exercises a sole and despotic dominion, "in total exclusion of the right of any other individual." If, in defiance of the zoning ordinance, he

<sup>22</sup> Blackstone, *Commentaries*, Bk. II, Ch. I.

attempts to establish a garage, his neighbors have rights which they can enforce. The landowner has no absolute rights in his property; he has only conditional rights which vary from place to place. He cannot put up a jerry-built structure on Broadway, but he can, if he likes, go out into the open country and build himself a house of wood and paper held together by safety pins. Moreover, he holds his property on Broadway subject not only to the existing building laws but to future changes in those laws. And the same is true of his house in the country: if, for example, it were judged to be a fire hazard, his neighbors by a change in the law might be invested with the right to protect themselves by bringing suit or entering a complaint.

The same property rights do not adhere to land which contains minerals, to land which controls water power, to land usable for bridgeheads, ferry landings, and highways, for railway tracks and conduits in city streets. The rights of property are not uniform in patents, in animals, in news gathered by reporters, in radio channels, in the air traversed by flying machines, in gold, silver, and platinum, in an author's manuscript, in all inheritances and in all gifts. Though we think of all these rights as property, in fact property consists of an extremely varied collection of rights.

What is more, the special rights which make up different kinds of property are not immutable. Before the appearance of the airplane the owner of a piece of land was held to have a title to a pyramid which had its apex at the centre of the earth and an infinitely wide base out in infinite space. Under a recent decision in an American court, his rights in the air extend no higher up than a safe distance above the roof of his house. The conditions on which the title to land can be enjoyed, acquired by sale, transmitted by gift or inheritance, have been profoundly modified again and again. Less than three hundred years ago, for example, the obligation of the English

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tenant to render personal services to the lord of the manor was commuted to the payment of a pecuniary rent. The right of the landlord to appropriate the monopoly rent of the land is by no means absolute, being subject to the power both of eminent domain and of taxation.

If we ask ourselves whether in this bewildering complex of rights which men call property there is any clarifying principle of order, we must, it seems to me, take as our premise the principle enunciated by Sir William Blackstone that "the earth . . . and all things therein are the general property of all mankind, exclusive of other beings, from the immediate gift of the Creator."<sup>28</sup> This does not mean that the earth and all things therein should be administered by a central collectivist authority or that individuals should not or cannot be made secure in the enjoyment of private rights. But it does mean that no individual can or should exercise a sole and despotic dominion over any portion of the earth or of the things therein. The earth is limited in size and its use is necessary to every man's existence. Therefore, the rights of any man upon the earth must be reconciled with the equal rights of other men, not only of living men but of the unborn generations. No one in his senses can therefore believe in an absolute right of property which would permit the transient possessors of the land to destroy its fertility, to burn down forests, to cause the streams to dry up, to squander at will the minerals under the surface. These owners did not make these resources. They are unable to re-create them. What title have they then to claim that posterity has no rights which they must respect? The true doctrine surely is that men hold property in limited and necessary natural resources, not as sovereigns, but as tenants — who have rights and also duties — of mankind.

And likewise, no one believes in an absolute right of property

<sup>28</sup> *Op. cit.*, Bk. II, Ch. I.

which gives such exclusive possession that property owners can so monopolize the land and the resources that other men can live only by paying the price they choose to exact. Men may pretend to believe in such a theory of property. In practice it is unworkable. The dispossessed and the disinherited will haunt them and terrorize them. The desperate insecurity of all private property in the modern world is due to the fact that the propertied classes, in resisting a modification of their rights, have aroused the revolutionary impulse to abolish all their rights. Modern bolshevism is the product of the attempt to make property an absolute right.

The real security of private property must rest not on a fatuous longing for a sole and despotic dominion over the necessities of all men's existence but on a reconciliation of all men's claims in a system of substantially equal rights. It is not loyalty to the cause of private property to confirm the monopolists in their privileges. To do that is to prepare the extinction of private property either by general disorder and pillage or by the establishment of an administered collectivism. The true principle is to be ready to liquidate these rights of possession which enable some men, by excluding all other men from access to land and to the resources of nature, to exact a tribute based not on their own labor but on mere legal possession.

If all property is a complex of legal rights, the business corporation, with its privilege of limited liability and perpetual succession, is even more obviously a legal creation. It is no exaggeration to say that without the corporate device modern capitalism could not have been evolved. Now an aggregation of individuals can, when they are incorporated, do things which they could not possibly do as separate individuals nor as an informal association of individuals. They can do these things only because of legal rights acquired in their charter. But for

that charter they would have separate and unlimited liability for the acts done by their association; when one of them died or resigned, the association would have been dissolved, like a marriage or a partnership.

It is plain that a corporation enjoys great advantages as against unincorporated individuals. It can assemble the property of great masses of individuals, administer it collectively, and, though its directors or managers fall sick or die, the corporate organization goes on. Now all of these advantages are created and maintained by the law which says that under certain conditions individuals have the right to incorporate and as a corporation to enjoy certain privileges and immunities. How can such rights be regarded as inalienable and immutable? Is it not evident that in granting the privilege of incorporation the state may fix the conditions, that it may say what the rights of an incorporated body are, that it may say that the privilege of limited liability and perpetual succession shall be enjoyed only in so far as the corporation meets certain specific obligations?

Yet for reasons which it is not necessary for us to examine here, the ability to incorporate came to be regarded in the nineteenth century not as a privilege granted by law but as some sort of unquestionable right. The founders of the American Republic had no such notion and the liberals of the eighteenth century would have regarded it as preposterous.

A charter of incorporation to use property for profit is a state-created privilege, particularly when it grants to its members the partial immunity of limited liability. There is, therefore, no reason why that charter should be vague and general: it can be made as specific in its definition of what rights the corporation may exercise and what duties it must perform as the lawmakers choose to make it. In the charter and in the statutes governing corporations they can stipulate any public



policy they deem desirable. They can stipulate that the members of the corporation shall not enjoy limited liability or perpetual succession if the courts find that they have violated the terms of the charter. The lawmakers can stipulate the grounds on which competitors, customers, employees, creditors, and debtors may sue for violations of the charter and the law. Moreover, the lawmakers may stipulate, if they deem it wise, how much land a corporation may own and no title in excess of that amount would be a good title. They may stipulate as to whether one corporation may own another, for how long and on what terms it may own patents, in what measure it may own natural resources, whether it shall be capitalized through the issue of bonds or equity shares, what shall be the rights of its security holders. They may stipulate the manner in which the accounts shall be kept, and what information must be made public and how often.

Thus, without overhead direction, a very comprehensive regulation of corporate activity is feasible. It can be achieved by defining in the law the respective rights of a corporation and of those with whom it transacts business. Yet such a system of regulation does not invest public officials with the authority to administer the affairs of the corporation or to issue commands and prohibitions to the corporate managers. It does not increase the power of officials over the life and labor of citizens. It merely readjusts, theoretically in any degree and in any manner, the rights of citizens with one another, and then relies upon individuals to put the law in motion when they believe they can prove in court that their rights have been violated.

But though, theoretically, the lawmakers could set any conditions they chose upon the right to incorporate, in fact they could not legislate capriciously. For as they approached the point where they were converting the privileges of incorpora-

tion into a risk and a burden, men would simply turn in their corporate charters and revert to some form of partnership. At that point the social advantages of the corporation would be lost, and the excessive rights against corporations granted to customers, employees, investors, or competitors, would have defeated their own purposes. Thus the system would have to be reasonable in order to be effective. It would have to represent a wise reconciliation of collaborating and competing interests. But that is one of the paramount virtues of the liberal method of regulating human affairs through the adjustment of private rights: that it is compelled to work, not by the compulsion of irresistible authority from on high but by conciliation, justice, and comity among persons.

It has been a great illusion to think of the modern business corporation as a kind of autonomous principality with inherent power derived from some mysterious source that is independent of the state. The power of the business corporation is entirely a power granted by the state, dependent from day to day upon the continued enforcement of the law by the state which has invested it with its privileges and immunities. It cannot be true, as so many lawyers have argued, that corporate rights are inalienable and immutable and indefeasible. Previous to about 1850 a special act of the legislature was needed in order to charter a corporation. Fifty years ago no common-law lawyer would have thought it conceivable that one corporation could own the stock of another. The business corporation, as we know it, is founded on the fact that legislatures and courts gradually invested incorporated associations with new rights, rights which did not exist a hundred years ago, rights which can, therefore, by no stretch of the imagination be regarded as anything but conditional and subject to alteration.

By the same token it is no less untrue that modern corporate capitalism is a predestined development due to some mysterious

necessity of the machine process, or to some inexorable tendency to the agglomeration of wealth and power. The promoters of the giant corporation were not giants to whom ordinary men had to yield. They were ordinarily enterprising men who made the most of legal privileges with which legislatures and courts had inadvertently endowed them. The essential elements out of which the giant corporations were assembled were titles to land and natural resources and patents, limited liability for debts and damages, perpetual succession, their chartered right to set up an internal government of the corporate organization.

Any or all of these elements could have been and can at any time be redefined and subjected to new conditions. In short, their existing rights are not absolute. The development of private corporate collectivism is in no sense inevitable. The potentialities of regulation are as numerous and varied as the points at which the corporation has relations — with its customers, its employees, its competitors, its providers of raw materials and transportation, its stockholders and bondholders, its neighbors in the places where it operates, and the tax collector. The field of the business corporation is not an immunized area which is sterile to the possibility of reform and regulation. The business corporation can be reformed and regulated by a readjustment of private rights, and there is no reason whatever for the assumption, made both by individualists and by collectivists, that corporations must either be allowed to enjoy all their present rights or be taken over and administered by the state.

## XIII

### THE GOVERNMENT OF A LIBERAL STATE

#### *1. The Function of Officials*

THE prospects of freedom depend very largely upon whether the intellectual leaders of the modern world can recover the intellectual habit of looking for a solution of social problems by the readjustment of private rights rather than by public administration. In the debacle of liberalism this habit was lost, and the art of free government has been almost forgotten.

When contemporary men are confronted with a problem, they no longer inquire whether it can be solved by altering the reciprocal rights and duties of individuals: the preferred solution is almost invariably to invest officials with authority to enforce a solution. Intellectually, this is the easier way. For it requires no great genius, or even much thinking, to deal with an evil by advising someone to order it cured. Any fool, it has been said, can govern under martial law and any tyro can enjoy the delusion of having advanced the interest of mankind by establishing an armed official with a mandate to advance the general welfare. But it is only a delusion to think that the infinite complexity of human affairs has been put in order by calling in an omnipotent official. All that the thinker has done is to relieve himself of his own perplexities by passing them on to the bureaucracy. He has solved no problem. He has merely appointed officials with a mandate to solve the problem for him.

Officials can, for example, regulate the traffic on the roads: they can see to it that the ruthless and the reckless do not interfere with the other drivers. By progressive refinements of the rules, they can make it more and more possible for all the drivers to reach their destinations as safely and as conveniently as circumstances permit. But if, instead of defining the rights of all the drivers, the officials seek to prescribe the destination of each driver, telling him when he must start, by what route he must go, and when he must arrive, some few, those who have the ear of the authorities, will undoubtedly go just where they want to go, more swiftly, more pleasantly, than under a free system of equal rights. But the rest will be going where they do not wish to go, and it must become their ambition to oust the existing traffic officers and install officers who will direct the traffic to their advantage.

Yet many arguments can be advanced in favor of the authoritarian system. It can be said that by intelligent discrimination it might be arranged that those who have the most important errands shall not be held up by a clutter of cars full of persons who are merely out for a ride, or are on their way to some frivolous pastime, perhaps to an immoral one. It can be said that the biologically finer breeds, or those with the higher intelligence quotients, or those with the best moral character, ought to get to their destinations first. Much can be said, and has been said, about how an intelligently planned direction of the traffic would overcome the chaos of individuals going hither and yon, using up gas and oil, wearing out rubber and steel, indulging their taste for low amusements rather than dedicating themselves to high æsthetic, hygienic, intellectual, and spiritual aims.

Though many think they could direct not only the traffic on the highways but all the occupations of all the people, in fact no one knows how to do that. There is no way of agreeing

on what the destinations of all the drivers shall be. But it is possible to agree on traffic regulations which offer the same rights and the same obligations to all the drivers who choose to take to the road. That kind of government officials and motorists can understand. Its problems are problems which they can study and debate, and the solutions can be perfected progressively. To dispense the justice of equal rights is an intelligible, an objective, a human, criterion. But the other kind of government, by authoritative direction, is speculative and subjective in principle, and in practice it is almost certain to be predatory and acquisitive — government by officials for their favorites.

The conception of equal rights establishes a norm which fixes what ambitious politicians may promise, what individuals expect. But when officials are appointed to act as little tin gods over men, as Moses and Cæsar rolled into one, they are merely arbitrary and capricious — even if well-intentioned — human beings who have more authority than they know how to exercise.

So we must ask ourselves what is the true function of the official. We have defined the liberal state as one in which social control is achieved mainly by administering justice among men rather than by administering men and their affairs by overhead authority. It follows that the temper of officialdom in a liberal society must be *predominantly* judicial: that holds not only for the judges themselves but for the legislators and executives as well, indeed for all who wish to serve the public interest. Except, of course, in emergencies when a community must temporarily renounce its freedom in order to defend itself against attack, upheaval, and disaster, the primary task of liberal statesmanship is to judge the claims of particular interests asking a revision of

laws, and to endeavor amidst these conflicting claims to make equitable decisions.<sup>1</sup>

Owing to a rather artificial classification of the powers of government, we are not accustomed to think of legislators and executives as exercising an essentially judicial function. We think of them as exercising not only separate but radically different functions. But this is a naïve theory. It supposes that the legislature is a kind of Moses, which ascends Mt. Sinai at stated intervals, hears the voice of God in the voice of the People, and then descends bearing with it additional commandments to the executive; as Cæsar, or perhaps I should say Joshua, the executive then leads his hosts to battle and into the Promised Land.

For the ordinary and the enduring development of a modern society such images are quite misleading. If we observe closely how legislative and executive policies are arrived at, we find, I feel sure, that they are usually adopted by the official after he has weighed the claims of various conflicting interests. He listens to the advocates, some of whom actually appear before him, some of whom write him letters, many of whom shout at him through the newspapers and over the radio. In his own mind he holds a kind of court judging the claims by whatever criterion he happens to respect.

But the more clearly he understands what he is doing, that he is not there to impose his will but to judge among visible claimants and invisible interests, the more likely he is to set himself a sound and workable criterion of the public interest. For in thinking of himself as judge rather than as lawgiver or leader, he will come to see that the essential question for him

<sup>1</sup> Cf. E. Pendleton Herring's *Public Administration and the Public Interest*, p. 7, on "the fundamental necessity of achieving a working compromise among class and sectional interests."

is not what he personally may think is the best way but what is the fairest decision. Which of these parties is the aggressor seeking to obtain special advantages for himself? If the official seeks justice, he will decide against the aggressor. What interests, for example, of posterity, are not represented in the controversy? He will see that they are represented and properly heard. If, on the other hand, he fancies himself the contriver of the human destiny and its master, he will have no criterion for his decisions: he will be lost in confused subjective speculation as to which of the parties asking his support is more likely to shape the world according to his haphazard notions of what that shape ought to be.

In so far as there is any fundamental distinction between the functions of judge and of legislator, it is that, strictly speaking, the judges attempt to apply the law as they believe it to be, while legislators amend it to make it more equitable. But this distinction is a matter of practice rather than of principle. The earliest great representative assembly, the Anglo-Saxon Witenagemot, was "primarily judicial, in the first instance always judicial; that is, it never made new laws. It got together to try the people for the breach of law; and that incidentally brought up the validity of the old law, and then decided whether the old law was valid or not."<sup>2</sup> Our modern distinction between the legislative and the judicial functions has a certain practical value in that it helps to preserve the judicial temper of at least one branch of the government. But by over-emphasis we have obscured the real nature of lawmaking; we have established a twilight zone between constitutional or statutory law, which is necessarily general in character, and the law which the courts enforce in specific cases; in this twilight zone judges and legislatures have waged a struggle. But most

<sup>2</sup> Stimson, *op. cit.*, p. 9.



of all we have invited the modern legislator to forget that the making of laws is no less a judicial function than the disposition of cases under the laws.

For the enactment of a new law is a judgment rendered for certain interests and against certain others. If the new statute changes, let us say, the law of contracts or of real property or of the employer's liability, it is a judgment rendered by the legislature among contending private interests. If the statute authorizes public officials to levy taxes and raise armies, it is a judgment rendered by the legislature as between the government and private interests. If the statute establishes a privilege, bestows a franchise or charters a corporation, or gives a patent of monopoly, it represents a judgment placing the state in partnership with certain private interests as against other private interests. But in modern times men have come to think that because there are practical reasons for separating and specializing the legislative and judicial functions, they are morally and psychologically distinct.

They are not. When the legislator ceases to think of himself as an impartial judge among contending interests, he soon adopts an imperial view of his function. He ceases to judge causes among the people: he issues commands to the people, and regards himself no longer as the representative of their true will but as the providential contriver of their destiny. Against this imperial view of the state, which comes down from the Byzantine emperors and was revived in Europe by the study of Roman law during the Renaissance,<sup>3</sup> the liberal movement has always fought. The imperial view is that the official decrees the law according to his will rather than that the official finds the law by judging causes. This is the legal theory of absolutism. To that theory the modern collectivists and all

<sup>3</sup> Pound, *op. cit.*, p. 77.

the believers in legislative or executive supremacy have returned.

The growing complaint of legislators that judges are legislating is the obverse of the fact that lawmakers have ceased to be judges. Legislators have come to think of themselves as the lineal descendants of the Cæsars, and the heirs of their sovereignty. Against this revival of the absolute state, the courts have sought to provide a refuge. They have given refuge to many interests that probably ought not to have it. They have also given protection to many vital human interests against the tyranny and arbitrariness of legislative majorities. But their "judicial usurpation" would not have received so much popular assent had men not realized that its complement was the growing dictatorship of lawmakers. Yet two wrongs do not make a right. Both are perversions of the liberal state, arising from the failure to recognize that the legislative function is only a more generalized form of the judicial.

The separation of the two functions is a question of expediency rather than of principle. In the United States the separation is supposed to be very sharp. In Britain it is much less sharp. In so far as the distinction can be defined it may be said that the concern of the legislature is with the improvement of the law. When the amendments required are rather substantial, then judges, who are not directly responsive to the popular will, cannot properly take the responsibility of amending the law. But in the nature of things the distinction between judicial and legislative development of the law is not sharp. For judges and parliaments deal with the same body of laws. These laws must change with changing circumstances. They must be adapted to the unforeseen details of human affairs. The changes are necessarily effected by judicial interpretation, by statute, and by administrative practice.

## 2. *The Enforcement of Law*

I return to the main line of the argument, which is that in a liberal democracy the law must seek primarily to regulate human affairs by a system of individual rights and duties rather than by administrative commands from the ruling officialdom. For the convenience of the argument I have called this the reciprocal method of social control as distinguished from the overhead method of regulating human relations. In broad terms we may then say that liberalism seeks to govern primarily by applying and perfecting reciprocal obligations, whereas authoritarianism governs primarily by the handing down of decrees. The liberal system seeks to define what one man may expect from all other men, including the officials of the state, and to guarantee that expectation. The authoritarian system permits the official to declare what he wishes other men to do and to enforce his will.

In the liberal order the state exerts social control chiefly through the judicial hearing of individual complaints and the provision of individual remedies — in legal parlance, through private suits for breach of contracts and private action based on torts; and then finally through legislative action on complaints against the law itself. The aggrieved individual may go to law and may invoke the coercive power of the state if he can prove his case. But he does not have to go to law or into politics: he may, if he chooses, make a private settlement which on the whole seems more suitable in the circumstances, more advantageous all around, more productive of good will, than an appeal to the force of the state. For the liberal order, which has developed legally out of the customary law of the people rather than out of the promulgated law of the sovereign, is true to its origins. It has a respectful prejudice in favor of the arrangements men arrive at by usage in their transactions with

one another, and it permits customary law to grow by using a method of control in which men may, but need not always, invoke the authority of the state. It leaves them room to adjust their differences as well as to enforce their rights.\*

In the authoritarian system, transactions are not among individuals but between the authorities and the individual. The law gets itself enforced not through suits between Smith and Jones but in suits between the Sovereign and Jones. The authoritarian prefers to translate torts into misdemeanors and felonies: his prejudice leads him to make private wrongs into public crimes and to characterize them as treason. In his view the injury is not done by Jones against Smith but by Jones against the majesty of the state. Thus in Russia the stealing of public property is a capital offense, though a private murder is punished by ten years' imprisonment. In the reciprocal system large allowances can be made for all manner of private compromise, of man-to-man conciliation. But in the overhead method of social control an offense is more than the offense itself: it is a defiance of the sovereign, an impairment of his majesty, and compromise by negotiation is a breach of discipline, a blow at the prestige of the state, a symptom of weakness and corruption.

It will readily be seen why the authoritarian system is so suitable to crises, and particularly to the waging of war. In so far as large masses of men have to do unusual things promptly, they can be manoeuvred only if they are well regimented to obey commands from headquarters. The pattern is military and, as we have seen, all authoritarian societies become highly militarized. The liberal order, on the contrary,

\* On the question of when individuals should enforce their rights and when they may compromise them, cf. Rudolph von Ihering's *The Struggle for Law*. Translated from the fifth German edition by John J. Lalor, with introduction by Albert Kocourek.

is intensely civilian in method and tendency: individuals transact their affairs with individuals, and the mass has no collective purpose to which individuals are merely the means.

Although the reciprocal system is obviously unsuited to the waging of war, and has to be suspended in all great social crises, it has very great advantages of its own. It does not, for one thing, require the recruitment of a great bureaucracy supported by an army of inspectors, detectives, policemen, and informers. Thus if the people wish to regulate a social evil, let us say excessive drinking, they can, if they wish to employ the reciprocal method, define the grounds on which a sober man can promptly get satisfaction against a drunkard who injures or annoys him. For liberals the problem of social control is to devise means by which the sober man can, without undue inconvenience and with some advantage to himself, bring the drunkard into court, and, having gotten him there, obtain reparation if the accusation can be proved. It is true that such a system is often cumbersome. For this method of social control has long been neglected by theorists and statesmen, and no great effort is currently devoted to perfecting it. It seems so much easier to pass a law and appoint some officials rather than to make it feasible, by mitigating the law's delays and inconveniences, for a sober citizen to proceed against the drunkard.

The authoritarian method looks less cumbersome. But it is really much more cumbersome. It involves an attempt to inspect the behavior of all men, the drunkard and the temperate alike, to have officials omnipresent, to endow them with an all-seeing eye, and to pretend that they are remorselessly diligent. But such a great corps of officials continually inspecting everyone's affairs is not only expensive; its certain tendency is to become tyrannical if it is strong, or to become weak because it is corrupt. In theory authority ought to deal more effectively with drunkenness than a system which makes the drunkard

liable to the neighbors whom he injures; in practice, among a people habituated to freedom, the overhead system of social control is almost certain to be ineffective. For the sober citizen is likely to condone the drunkenness in order to frustrate the tyranny, saying with the English Bishop that he would rather have England free than sober.

In relying wherever feasible upon private actions, the law tends to get itself enforced when the offense causes real damage rather than when it is a merely theoretical departure from an abstract rule. This is an advantage. It is better that the coercive power of the law should not be too persistently or pervasively employed, that petty offenses and minor irregularities should be forgiven, forgotten, or somehow expiated without involving the majesty of the state. Many a controversy is very satisfactorily settled when one man has received another's apology and has accepted his invitation to lunch. But the inspector has to watch his step before accepting an apology, and, if he seals the settlement by accepting the invitation to lunch, he is likely to be suspected of corruption. When shall he prosecute, when shall he accept the apology? Among individuals, once the presumption of good faith is established, this is no moral problem.<sup>5</sup> But in controversies between the individual and the state, discretion and forgiveness, which are salutary virtues in private life, become suspicious opportunities for favoritism and bribery. Thus the safety valve of tyrannies has usually been their inefficiency and their corruption. They have been made tolerable only because men found ways of frustrating them, of opening up breaches in the iron organization through which the vital organic forces of social development could be carried on.

When the initiative to law enforcement is in the injured party rather than in the government inspector, the government

<sup>5</sup> Cf. von Ihering, *op. cit.*

does not normally have to exercise much power in order to carry out the award made by the courts. The defeated litigant will rarely think of resisting: a constable or two can generally collect the damages. Thus there is in this method of social control the highest degree of economy in the use of coercion, and the greater the society the more necessary it is to economize in the exercise of coercion. The law rules easily, by disuniting those who might resist, by dealing not with masses but with individuals engaged in private controversies with other individuals. The overhead method of control, which has to be enforced wholesale on multitudes, tends to consolidate men into refractory masses; that is why the authoritarian state has then to mobilize an enormous official force and official propaganda to make itself effective. But when human affairs are regulated through the judicial determination of rights, there is so little display of force that many have been mystified by the spectacle of the nine elderly men in black robes on the Supreme Court of the United States exercising such undisputed authority.

The secret of the mystery is that they decide only specific controversies, and their rulings stand only because all the lower courts will decide all similar controversies in the same way. If the highest court has ruled that Jones can collect from Smith, then the other courts will rule that in an analogous case Black can collect from White. White, advised as to what the decision will be, refrains from doing the thing which would allow Black to collect damages. The government does not have to maintain a perpetual inspection of White's behavior and take action whether or not Black thinks the injury important enough to have something drastic done about it. The government allows Black and White to worry along as they see fit until Black thinks it important enough to bring the police into the matter. Then the government stands ready, if Black can prove

his case in a court, to enforce his right, if necessary with the whole force of the army and navy. But until Black moves, the government is under no obligation to watch White, and with him the rest of the population. The government does not have to discover by its own inspection the occasions when it must intervene. It acts when it is called upon to act in a specific private controversy, and not because it has the people under constant official surveillance. And when the government acts it seeks rather to judge a dispute than to prescribe a course of action.

### 3. *Government Suited to Human Capacity*

Thus the questions presented to officials and to citizens in a liberal society are at once more intelligible and more objective than they are where officials are attempting to administer the social order. They are questions of justice: whether in their dealings with each other some men are artificially privileged and others artificially handicapped; whether or not men are dealing with one another arbitrarily; whether they are using fraud, violence, or corruption to obtain their ends. On such matters ordinary men are capable of reaching conclusions by listening to the advocates, and a public opinion representing the consensus of their sentiments can be achieved.<sup>6</sup> But when legislatures and electorates are asked to settle, not more or less specific and present issues of justice, but the purposes, plans, and management of a social order in the future, they have no rational criterion for their opinions. They are adrift upon an uncharted sea of mere speculation. It is possible for ordinary men to decide whether individuals are dealing justly with each other; it is even possible for them to take the long view and to say whether the rights that are being exercised,

<sup>6</sup> Cf. my *Phantom Public*.



say in exploiting the land or employing child labor, injure the interests of posterity. But who can say that this man's scheme for administering the social order is better than that man's? No one can prove his case; each can only make promises. Because none can be verified, the claims are then asserted all the more willfully. The result is to degrade the consensus of opinion into an irresolvable conflict of particular interests. But to aim at justice among the interests of individuals is to keep opinion wholesome by keeping it close to intelligible issues: to aim at a purposeful collectivism is to go off into the empty air and encourage a collective madness in which, for want of rational criteria, the darkest and most primitive lusts are churned up.

The liberal conception of the state as conciliator and arbiter among the private interests of particular men is derived from experience. It was not formulated in the fantasies of Jean Jacques Rousseau and the fanaticism of the Jacobins: those were merely the loose verbalizations of men who seized upon, without having become habituated to, the ideas which had been wrought out empirically in the long centuries during which the English common law and English constitutional practice were being developed. The romantic democrats made a heady wine out of the grapes that had been patiently cultivated in an ancient vineyard; and often they become so intoxicated by the wine that they forget to tend the vines — or wantonly trample upon them. Had they understood the lessons of the experience in which their whole ideology must find its justification, the romantic democrats would not have fallen into the tragic error of thinking that once they had cut off the head of the king, they could give to the people his sovereign prerogatives. They would not have enticed mankind into the great reaction which has overwhelmed it ever since the collectivists persuaded the democracies to regard the state, not as judge and

conciliator among them, but as the providential planner and giver of the abundant life.

The business of the state must be based on an understanding of the limitations of coercive authority; the art of governing must call for not more than the ordinarily available wisdom of average men. If government is to be carried on, it must be suited to human faculties. There are few supermen. There has never been a succession of supermen. When, apart from making the community secure against attack and of meeting authoritatively the occasional emergencies and disasters which cannot be prevented, the state sets up as the administrator of enterprises, the planner of the social order, and the director of the daily life and labor of the people, it attempts what only a god could do well.

A state commanded by finite men cannot afford to have a more grandiose purpose than to dispense justice. When it confines itself to that, the state will arouse no false expectations. It will be protected by a general recognition that though it does not dispense ideal justice, its judgments are guided by the intention to be fair, that they are arrived at after the parties have had their day in court, that they represent no capricious ipse dixit of authority, that they are human judgments which may be reconsidered and reversed. Such judgments can be accepted as the best under the circumstances: they do not tend to become issues which must be fought over intransigently. So the liberal state does not have to be supremely wise. That is more than a state can hope to be: the liberal state has only to create a sincere conviction that it means to be fair.

To convince men of that is to provide a solvent of violent assertiveness, an emollient of the highest potency in protecting the state against the sense of irremediable wrongs. An authoritarian regime has no such protection. If it is not wise enough to be successful in its great purposes, it must repress

discontent, distract it by adventures, or be overthrown. A judging and conciliatory state subjects itself to no such desperate test of its wisdom. The knowledge required for judging among rival claims, chiefly to determine which is the more equitable, which is the less arbitrary, is a wholly different kind of knowledge from that required to administer collectively the functions of all claimants. For in an administered order the officials must have all the wisdom of all the technicians and entrepreneurs and the greater wisdom needed to select and forecast the consequences of adopting a particular plan. A state which leaves these decisions to the citizenry and judges rights and duties according to general rules, improving the rules as equity requires, needs officials whose chief intellectual equipment is a sense of the value of evidence. That is a practicable requirement. For it is proved by experience that men can render good decisions as judges in affairs which they would be entirely incapable of initiating and administering.

#### 4. *Officialdom under Law*

While the liberal state must in general prefer the regulation of affairs by defining individual rights and duties and by adjudicating private controversies, it is obvious enough that this method is not universally applicable. The detection and prosecution of murder cannot, for example, be left to private initiative. Moreover, in a modern community it is necessary to do much public work and to provide many social services<sup>†</sup> which, as Adam Smith said, "it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expense to any individual or small number of individuals, though it may frequently do much more than repay it to a great so-

<sup>†</sup> Cf. Ch. XI.

ciety.”<sup>8</sup> Thus any modern state is bound to recruit a large body of officials charged with the enforcement of public rights against individuals and with the furnishing of public services.

The question then is whether such an expansion of government activity is to be regarded as an unavoidable departure from liberal principles. Herbert Spencer thought so and in his crabbed old age we find him denouncing public-health measures as an unwarranted interference with human liberty. If he was right, then liberalism would indeed be bankrupt because it would be unable to deal with the most obvious practical necessities. But we have taken no such view, and we have seen that the agenda of liberalism is a long one. I believe that it is precisely here, where the liberal agenda appear to be at odds with the liberal method of social control, that the political principles we have been examining are peculiarly indispensable and specially relevant. For if we consider the matter closely we must come to the conclusion, I think, that the greater the public enterprises which are undertaken, the more necessary it becomes that the ultimate sovereign power of the state should be employed as judge and conciliator in controversies between private interests and public enterprises and among the different public enterprises themselves.

The question becomes clarified when we ask ourselves whether the officials who inspect, prosecute, and administer public enterprises are to be regarded as having the attributes of majesty or as exercising merely certain specific rights and duties. It is customary to speak of them as exercising delegated authority. But this term is ambiguous. At one time it may mean that the government department is specifically chartered to do certain things, its rights and duties stipulated and subject to challenge and review before a tribunal. Thus the charter

<sup>8</sup> *Op. cit.*, Bk. IV, Ch. 9, p. 540.

itself can be challenged and reviewed, and any action by public officers can also be challenged and reviewed to determine whether it conforms to the charter. This is the liberal meaning of delegated power. But there is another meaning, if there has been delegated to the department the sovereign power to define its own rights and duties and to be the judge in controversies to which it is a party. This is authoritarianism. And between the two the distinction is radical.

For the liberal conception holds fast to the supremacy of law, treating the official as invested with rights which may be different from, but are in no sense superior to, the rights with which the individual is invested. The official and the citizen are equals under the law. The fact that the official wears the government's uniform, or has the insignia of the sovereign on his letterhead, does not mean that he inherits any of the royal prerogatives. He is simply a man among men, with certain lawful rights which he may not exceed and certain lawful duties which he may not neglect.

The prejudice which liberals entertain against the multiplication of government enterprises has come not from their basic principles but from practical experience of how difficult it is to keep a powerful bureaucracy under the law, how great is its tendency to take to itself the attributes of a Byzantine emperor. On the whole it is a sound prejudice in a world where so many men have an insatiable lust for power and are as yet so little habituated to respect the law rather than their own capricious impulses. But, nevertheless, in a modern society it is necessary to conduct large public enterprises, to rely in part on public initiative in enforcing laws, to provide many public works and social services. The essential safeguard against the tyranny of arbitrary officials is to be found in applying steadfastly the liberal conception of the official as a man with

specific rights and duties rather than as a man touched with the divinity that hedges the King.

### 5. *The Regulation of Officials*

Additional difficulties would seem to arise from the fact that a representative legislature is often unable to formulate effective rules dealing with the intricate and technical concerns of the modern economy. Therefore, the statutes which contain the charter of the officials' rights and duties are phrased in general terms rather than as specific rights and duties. "Congress," says Mr. Herring, "has to an increasing extent escaped the onus of directly settling group conflicts by establishing under vague legislative mandates independent regulatory boards."<sup>9</sup> No one can doubt that the development of adequate laws covering the whole range of a great civilization is beyond the capacity of any legislative body. It is beyond the capacity of ordinary judges.

For the modern economy is regulated through many markets. The manager of a business enterprise is a buyer and seller in markets for funds, materials, labor, services, inventions, commodities, and his many transactions are correlated by the monetary standard. It is evident that these transactions cannot be carried out intelligibly or justly if the monetary standard is not reliable, if the value of the currency is subject to sudden and arbitrary changes owing either to special manipulation or to impersonal circumstances which inflate or deflate it. It is equally true that these multitudinous transactions between sellers and buyers who rarely meet face to face cannot be carried out intelligibly or fairly if there is no reliable standard of weights and measures. Nor can the bargains be intelligible and fair if the buyer does not know the truth

<sup>9</sup> *Op. cit.*, p. 7.

about the supply, and the seller the truth about the demand.

The perfecting of an adequate system of rights and duties for the modern exchange economy requires a degree of technical discrimination and expertness that no representative assembly can hope to possess. The management of the currency, the determination of weights and measures, the regulation of public markets, are not simple functions in the modern economy. Yet they have to be performed in order to make effective and to make equitable the system of individual rights and duties on which the division of labor depends.

It would be mere confusion of mind to argue that these are not functions of the liberal state. They are inherent in its primary function, which is to adjust the social order to the economy. Yet it is obvious that these functions can be performed only by experts using specialized technical procedure. So it is as certain to-day as it was during the development of the law merchant that the perfecting of the markets cannot be effected by the general legislature. Such a function has to be delegated. But is it not evident that the more the power to legislate is delegated to boards and commissions and courts, the more necessary it becomes that the ultimate sovereign power should think of itself as the final court of appeal? There must be some place where the actions of the commissions can be reviewed; there must be tribunals where those who exercise delegated power can be called to account.

It is, therefore, a misleading fiction to think of the commissioners as agents of the legislature automatically carrying out its implicit intentions, as invested with its sovereign authority in a particular jurisdiction. The commissioners may much more properly be looked upon as men entrusted with tentative legislative authority subject to review by the representatives of the people.

Thus the more the legislature delegates its authority to

specialized organs of government and the less it endeavors to define the precise law for complex human affairs, the more indispensable is it that the state, through the courts and through the legislature itself, should regard itself as a tribunal to review the conduct of these specialized lawmakers. Unless the commissioners are to become autonomous and irresponsible, the state must not identify itself with them. For if it does identify itself with them, it has not delegated its authority — it has abdicated its sovereignty.

For these reasons the liberal conception of the state becomes increasingly appropriate as a social order becomes more complex. In so far as it is necessary or expedient to multiply commissions and boards, to set up additional government agencies, the ultimate authority of the state must become less and less concerned with detailed legislation and administration, more and more concerned with the conflicts of citizens with bureaus — and of bureaus with one another. If the representative state renounces the function of judge and conciliator, it really has no function left: under the pretense of delegating its authority to its ministers, it will in reality have entrusted the control of affairs to an irresponsible and discordant bureaucracy.

#### 6. *The Control of Public Works and Social Services*

The questions raised when it is deemed desirable to have the government undertake public works and provide social services involve the same fundamental principles. If the officials who conduct these enterprises are regarded as members of a public corporation chartered by the state, they will behave in one way; if they regard themselves as viceroys with the unlimited prerogatives of the sovereign, they will behave in a very different way.



The nature of the problem has been most clearly defined in the relations between the army and the civilian authorities in a constitutional state. There is no question that an army must be publicly administered. But in a constitutional regime the army commanders have none of the prerogatives of sovereignty. They can recruit only as many men as the civilian legislature authorizes. They can spend only as much money as it appropriates. They have no general powers to conscript men or money or goods. They cannot determine the purposes for which the army shall be used. They cannot declare war or make peace. Within defined boundaries the commanders have a certain authority under military law. But the military law itself is effective only after it has been reviewed and approved by a civilian authority.

When an army remains within these limitations, it is compatible with a free society: when an army takes to itself general authority to conscript, to declare war, to determine the national policy, to make its own laws and enforce them as it sees fit, the condition known as militarism prevails. It means that the military have ceased, as Coke told King James, to be under God and the law. When a bureau of civilian officials does the same sort of thing, it is called a bureaucracy.

Now the great difference between public works and social services undertaken in a liberal regime and those undertaken in an authoritarian is this: in the liberal regime the sovereign, that is to say the people through its representatives, thinks of itself as chartering public enterprises; in an authoritarian regime the public enterprises are regarded as the right hand of the sovereign and filled with his majesty. A liberal society must, of course, provide schools, hospitals, recreation centres, and all manner of social services just as it must have a police force and an army. But it remains liberal only if the social servants, the school authorities or the managers of electric plants, perform

specific chartered functions and are accountable under the law, like the army in a constitutional state.

Obviously a liberal society cannot dispense with officials, and under the complexity of modern industrial civilization it must employ many officials. But always the official under liberalism must be recognized as having an altogether different status from that which he enjoys in an authoritarian regime.<sup>10</sup> He is simply a citizen employed in a corporate body, which is authorized by law to do certain things, as the private owner of a piece of property is authorized to do only certain things, as the member of a business corporation is authorized to do only certain things.

The acts that the official, the property owner, the corporation member, may do are set forth in the law which stipulates their rights and duties. They may be challenged if they appear to have exceeded their rights or neglected their duties. They may be haled into court. Moreover the stipulations in the law itself may be challenged. The claim may be set up that existing lawful rights are inequitable — that is to say that they invest certain men with arbitrary powers, with special privileges, that they neglect the interests of others. Then the law may be haled before the legislature sitting as a kind of high court of equity, and at last before the court of public opinion. In advanced liberal societies the decisions of the legislature, the executive, and even of the people are themselves subject to challenge and review, and there is a final appeal from Philip drunk to Philip sober, from the transient opinions of the majority to the more thoroughly considered opinion of a still larger majority.

<sup>10</sup> Cf. Gierke's "The Beginnings of the Modern State," *Political Theories of the Middle Age*, p. 99. ". . . Whence spread a process which transmuted the Mediæval concept of Office, in such a wise that every office appeared merely as a commission to use the Power of the State."

### 7. *Collective Agencies of a Liberal State*

We begin to see now, I think, that the distinction is thin between the business corporation, on the one hand, and the subordinate public agencies on the other. Both exist because of legal rights established and enforced by the state — the business corporation by virtue of its charter and the laws of corporation, the social agency by virtue of an enabling statute. They are two means of collective action and the sharp distinction between them is recent. It is, I think, untenable. If we examine the history of business corporations and of social agencies we see that the business enterprises were originally based on grants from the sovereign and that the social agencies, such as hospitals and schools, and even road commissions, were as often as not voluntary organizations which received the patronage of the sovereign.<sup>11</sup> Thus most, if not all of the American colonies, were settled by chartered companies which later became governments; the western part of America was opened to settlement by companies which built railroads and canals and highways under government patronage, and then later some of these enterprises became “private” and a few wholly “public.”

The private profit-making business corporation soon loses, if it ever really had, its status as an enterprise subject to the uncontrolled will of its owners. If it operates a “public utility,” which is in fact any enterprise upon which the community is highly dependent, it must furnish the service required by the community. The owners of the telephone company cannot decide suddenly that they choose not to provide telephone service to-morrow morning. They do not have the same sort of right to do what they like with their property as they have when they decide whether to wear their hats or throw them.

<sup>11</sup> Blackstone, *op. cit.*, Bk. I, p. 472.

away. It is evident enough that the business corporation which operates an important enterprise, employs large numbers of workers, is indebted to a multitude of bondholders, is owned by a multitude of shareholders, is operated by salaried employees, is controlled by men who only in theory represent the shareholders — that such an organization is no one's private and personal enterprise.

The organization is, in effect, an agency fostered by the state for the service of the community, and the only essential difference between a large business corporation and a public school is that the business corporation is operated for profit to meet the demands of the market, whereas the public school is supported by taxes to meet a recognized social need which does not have a market price. But even this distinction is tenuous. For there are many business enterprises which would have to be perpetuated even if they were run at a loss. We can see that when the government is impelled to grant subsidies. And there are many public enterprises which are wholly or partially self-sustaining. So both the business corporation and the social service are in effect agencies created in order to conduct certain collective affairs of a community.

They are not the only possible agencies. There is no reason for thinking that the field must be divided exclusively between profit-making business corporations and tax-supported social services. All manner of intermediate forms exist, and others could be invented. There are limited-dividend corporations. There are regulated corporations which, like the American railroads, are quasi-public. There are public corporations whose obligations are guaranteed by the taxing power of the state. There are public corporations whose capital is partly or wholly subscribed from tax revenues, but which are required to operate in the commercial market. There are privately endowed corporations, which, like some of the universities, receive sup-

plementary grants-in-aid from the public treasury. There is no reason why new types of corporation should not be created to facilitate and encourage producers' and consumers' coöperatives. There might well be, particularly in the field of education, publicly endowed colleges and institutes of research entrusted to the control, not of public officials or of the legislature, but of special constituencies, such as their faculties, their alumni, or professional guilds.

Thus there is no ground for thinking that the liberal state is frozen in an inflexible formula. It is hospitable to all manner of concerted action. It can create and promote whatever agencies men may find expedient or desirable. But if it is to be a liberal state it must not regard these agencies as arms of the sovereign, endowed with the king's prerogatives and above the law. It must resolutely regard them as creatures of the law invested with specific rights and duties which can be enforced and may be repealed or amended. The powers of these creatures came from the people acting through their representatives; their powers are stipulated in the laws which the representative state recognizes; and always the state which created them stands ready to judge among these its creatures and all who may challenge their conduct, or to judge the law itself upon which all rights of any kind depend.

What the liberal state does *not* do is gather up all rights into the state and then exercise them through officials. That is authoritarian collectivism, and in that system only officials have rights. Then the state is not only the maker of the law; under the law it is the only party and the sole judge of its own conduct. In the liberal theory the people through the state have created and maintain the rights which make up property, contract, business corporations, and social agencies. These rights the representative state enforces. These rights it can amend. It judges causes under its laws. It judges its laws. It appoints

officials and it establishes collective enterprises. But both remain under a law by which they can be judged.

The task of defining, adjudicating, enforcing, and revising the reciprocal rights and duties of individuals and corporations is the vocation of the representative state. There is no other way in which the people can govern.

### 8. *Natural Associations*

Though it is clear, I think, that the business corporation is a creature of the state, there are many other forms of human association which are born and flourish and yet do not depend for their existence upon a legal privilege. The family is such an association, and so is a community, a religious fellowship, a learned society, a clan, a guild.

A business corporation and a bureau of public officials are organizations which could not be assembled without specially recognized enforceable rights bestowed by the state. In regard to government bureaus this is obvious enough; in regard to the business corporation jurists and publicists have in the past two or three generations been divided. Yet it would seem to be plain enough that the modern business corporation could not be organized or operated without the legal privilege of limited liability, without the right of some proportion of the owners to select managers who dispose of the property of all the owners. Surely an organization like General Motors Corporation is a wholly different type of association from a family, a club, a church, a trade-union, a bar association, a medical society, or a political party.

Though here, as in all human phenomena, there are borderline cases which it would be hard to classify, it would be doctrinaire not to recognize the practical difference between a business organization and a natural association. The one is

held together by a cash nexus in a framework of legal rights; the other is bound together by kinship or fellowship. So when in the year 1900 the great Maitland declared that "the age of corporations created by way of 'privilege' is passing away,"<sup>12</sup> he was undoubtedly describing correctly the course of events during the second half of the nineteenth century; it was true that legislatures and courts had combined in regarding the business corporation as no longer the subordinate creature of the state. But the question is whether this view of the business corporation was sound in fact and socially desirable. Maitland apparently thought it was, and exclaimed that "it has become difficult to maintain that the state makes corporations in any other sense than that in which the state makes marriages when it declares that people who want to marry can do so by going, and cannot do so without going, to church or registry." I should, however, suppose that the state made business corporations in a radically different sense from that in which it makes marriages; for no promoter could marry the capital of the half a million shareholders of the American Telephone Company without the legal rights contained in a corporate charter. But men and women will mate and found families whether they go to the registry office or not. No one, on the other hand, has ever suggested that the United States Steel Corporation was made in heaven.

The associations into which men group themselves spontaneously, naturally, instinctively, voluntarily, present a very different problem of social control from those which are deliberately contrived and organized. In the case of the business corporation and the public agency the problem is to define the purposes of the legal creature and to see that it conforms to them. This is the problem of regulating business corporations and government bureaus in the public interest. But in the case

<sup>12</sup> *Op. cit.*, XXXVIII, Maitland's Introduction to Gierke's *Political Theories*.

of natural associations the problem is not how the state shall regulate an organization it has created, but how it shall accommodate the smaller associations to each other and to the social order as a whole.

This has been a perplexing problem throughout the development of the modern state. For if the natural associations are let entirely alone, a chaotic struggle for survival ensues in which certain groups, be they family clans, or churches, or guilds, or political parties, become dominant and tyrannical. This was so much the condition of affairs in the seventeenth and eighteenth centuries that from the time of the civil wars in England to the French Revolution, from Hobbes to the Constituent Assembly of France which made the Declaration of the Rights of Man, there was a growing disposition to deny all autonomy to any association. "The Nation is essentially the source of all sovereignty; nor can any individual or any body of men, be entitled to any authority which is not expressly derived from it."<sup>23</sup> But it was soon evident that to deny to any body of men any authority which is not *expressly* derived from the nation — that is to say, from the national legislature — was to found what we now call a totalitarian state.<sup>24</sup> It was to bring the individual, the family, the local community, the church, and the guild directly under the centralized authority of the officials of the state. Thus, as Gierke pointed out,<sup>25</sup> the isolated individual was left confronting the absolute state with no "groups that mediated between the State and the Individual."

So the pioneer liberals felt that they were on the horns of a dilemma, compelled either to let clans, local communities, guilds, churches, fight it out and tyrannize over each other, or

<sup>23</sup> Declaration of the Rights of Man.

<sup>24</sup> It is one of the ironies of history that Mussolini and Hitler should have taken their conception of sovereignty from the extremist doctrinaires of the French Revolution.

<sup>25</sup> *Political Theories of the Middle Ages*, p. 99.



to suppress them all under the dominion of an absolute state. In practice a *modus vivendi* was arrived at. But liberalism has never had mature convictions on the principles which it requires for mastering this problem. Thus there has always been a latent conflict, which may now and then become overt, when, for example, the question is raised as to whether the state or the parents or the church shall control the education of youth, whether the state or private persons shall control scientific investigation, whether men working at the same trade may organize for their own advantage, to what extent professional guilds and labor unions may control their own callings.

These are among the unsolved problems of liberalism and they indicate how much remains to be learned before men will have mastered the art of governing the Great Society. We must not in our turn fall into the error of the latter-day liberals who imagined that they had a complete and perfected doctrine. The liberal philosophy is the product of a long development: we are still in the midst of that development and we cannot hope to see the end of it. So while we cannot pretend to have a satisfactory theory as to how the interests of society as a whole can be reconciled with the autonomy of natural associations, we can, I think, say that the road to a reconciliation is through definition, detailed adjudication, and revision of the reciprocal rights and duties of all groups.

This method recognizes that all men in all their relations, whether they are acting alone or in combination with others, are under the law. That much it concedes to those who proclaimed that no body of men is entitled to any authority not expressly derived from the nation. But at the same time it insists that the nation shall not exercise its authority by treating the family, the local community, the church, the learned society, the guild, as government departments; that it shall treat them as associations whose rights are defined and may be amended by a state

which thinks of itself as a judge rather than as a dictator. Liberalism has no reason to deny that everyone is under the law. But it does deny that anyone is under the authority of public officials.

Thus it is able to reconcile the freedom of religion with, let us say, the prohibition of burnt offerings; it can recognize the autonomy of the family along with prohibitions against parental neglect, infanticide, incest, child marriages, and burning widows on the funeral pyre; it can maintain the freedom of the press and still have laws against libel; it can recognize guilds and labor unions and yet make it unlawful for them to practise discrimination and monopoly; it can recognize the right of assembly and yet prohibit the assemblage of armed men in uniforms. The alternatives to liberalism are either to do nothing, which is in effect to abrogate civil society and return to a state of nature, or to treat individuals and groups as conscripts under official command, which is to institute a totalitarian state.

The liberal method of social control by defining reciprocal rights and duties avoids both horns of the dilemma. While the practical application presents many difficulties, we may be reasonably certain that no other method of social control is more promising. Indeed we may go further and say that laissez-faire as understood in our times is mere social uncontrol, and that the new absolutisms do not seek to solve the problem but to suppress it.

## XIV

### THE REGIME OF PEACE

#### 1. *By Centralization of Power*

FOR want of a clear understanding of how a liberal state exercises social control, a whole series of dilemmas have risen to confuse and frustrate the progress — so brilliant in the years before 1870 — towards the peaceable union of free and peaceable communities. The dilemmas are known in public controversy as the choice between centralization and home rule, between national sovereignty and international order.

It may be said, I think, that the dilemmas are insoluble by men who believe that the only way to exercise social control is through commands from a sovereign. For no one can imagine a sovereign — be it a man, an oligarchy, or a ruling party in colored shirts — powerful enough to command the whole human race. Nor is it conceivable that mankind would long submit to him if by drastic revolution and total wars a greater Cæsar made himself the master of mankind. Against social control by command nations will resist in the name of their independence, regions will resist in the name of their autonomy, individuals will resist in the name of freedom. For the effective jurisdiction of government by the rule of commanding persons can never be extensive. It is impossible for an authoritarian government to inspect all the transactions of a large population, to issue enough orders to cover them all, to transmit its orders, and to see that its orders are carried out. Government by command from above can be efficient only in a small and

simple society; in a large one, it is impracticable except in brief emergencies and, when it is attempted, must soon become incompetent and corrupt, and in the end be overthrown by rebellion.

The *reductio ad absurdum* of reforms which seek to achieve control by overhead planning and command is to be seen most clearly in the collectivist theory of world peace. Mr. H. J. Laski, for example, tells us in a recent book<sup>1</sup> that "the instruments of property" — that is to say, land and capital used in production — must be administered by the state. Up to this point Mr. Laski is a national collectivist. But that leaves him with the problem of maintaining peace among these high-powered states. So he goes on to call for "the subjection of the discretion of each individual state to the common good" of an "international system."<sup>2</sup> This, then, is the way Mr. Laski, as a full-blown collectivist, envisages the prospect of peace: national governments administering the economic life of their peoples are to "subject" themselves to an international society which does "economic world-planning." Presumably, if they do not subject themselves voluntarily, they are to be subjected by a planetary super-state. For unless the World Plan is enforced, it is merely a good resolution. This terrestrial sovereign is to be so powerful and so wise that it can decide how much cotton the planters in Georgia and in Brazil and in Egypt and in Turkestan shall raise; is to be so powerful that it can compel Oklahoma, which has oil, to provide Italy, which has no oil, with the oil that the world planners think Italy should have.

It is a mystery to me how anyone can persuade himself that this is possible even if it were desirable: how any serious student of human affairs can be so wishful as to think that peoples living on rich lands will submit to "plans" of this sort, and that com-

<sup>1</sup> *The State in Theory and Practice*. (London: George Allen & Unwin Ltd.)

<sup>2</sup> *Ibid.*, p. 222.

elling them to submit is the road to peace. As a matter of fact we know from the experience of our own time that administered economies are invariably self-contained and militarized, that socialist states are national socialist states,<sup>3</sup> and that national socialist states find it excessively difficult to maintain peace within their frontiers or to live with each other in peace. We do not have to theorize about these matters: since 1914 we have seen authoritarian government in action on a large scale. One large region of the world from Germany and Italy in the west to Japan in the east is, except for a few islands of liberalism, under authoritarian government. And in this region each government is at war with large masses of its own subjects and all the governments are in warlike postures *vis-à-vis* one another. How could it be otherwise? The rulers of these states know of no method of establishing peace except by making themselves absolutely supreme over their peoples at home and over their neighbors abroad.

## 2. *By Uniform Law*

Yet there is no doubt that the great majority of enlightened and progressive men, though they abhor the methods and many of the consequences of absolutism, are deeply tempted to believe that there is no other way. They feel that these states do at least achieve some kind of law and order in place of the anarchy of private acquisitiveness,<sup>4</sup> and that the liberal states of the

<sup>3</sup> The rebellion of Trotzky against Stalin is due to the fact that Stalin has acknowledged the reality of socialism by making a national, militarized collectivism, whereas Trotzky clings passionately to his unrealized and unrealizable hopes.

<sup>4</sup> Thus American publicists like Mr. Soule in *A Planned Society*, Mr. Chase in *The Economy of Abundance*, Mr. Beard in *The Open Door at Home*, though they are confirmed pacifists, look back upon the American war economy of 1917-1918 as at least a tentative sketch of a rationally ordered society.

nineteenth century could not do this. From the observation that a firmer social control is necessary, they are led on to the conclusion that small states and local communities cannot exercise that control, and that a high degree of centralized authority is desirable, or, at least, is unavoidable.

But they are, I believe, confusing notions which need to be carefully distinguished. They have confused the aggrandizement of the executive power with the uniformity of the law. They have confused law which comes from the usages of the people with the governing power which comes from the prerogatives of conquerors and masters.

Historically and practically they are wholly different things. The social control which is achieved through law is radically different from that which is achieved by official discretion and command. If, for example, the law regulating inheritances, contracts, corporations, property, bankruptcy, were made uniform throughout the United States, it would not mean that any public official had any more power than he has to-day to dispose of the lives and possessions of the people. It would mean that throughout the United States all individuals and associations transacted their affairs with one another under the same rules. There would be a high degree of uniformity in the law, but there would be no aggrandizement of the executive. If, however, the executive is given the authority to own and manage property, to make the contracts, to direct the corporations, then in place of uniform and equal laws there is centralized government for particular ends.

But in ordinary debate uniformity of law is continually identified with centralization of government. It is very confusing. Men who really want the social control which adequate laws would provide find themselves agreeing to the aggrandizement of a centralized bureaucracy. And men who know the evils

of absolutism find themselves opposing social control through more adequate laws. This is a false dilemma. It is necessary to have the same rules for all who wish to play whist. But it is not necessary that the Whist Club, which legislates on the subject, should tell every player what card to play. The pioneers of liberalism in England understood this distinction very well: they were the great promoters of national union under a common law and of international peace under international law. They believed that the same rules of justice should govern men's transactions everywhere, and they broke down the particularism of petty principalities, guilds, monopolies, and the mercantilist states. But their conception of uniform and equal laws caused them to resist not only the particularism of little sovereignties but the aggrandizement of big sovereigns.

Thus they supported the king as against the feudal barons because they could get wider and more equal justice in the courts of the king. They did not mean, however, to invest the national king with all the vexatious prerogatives of the feudal barons. So they cut off one king's head and exiled another king in order to make it plain that the business of the sovereign was to provide justice under the law and not to command his subjects by the exercise of the royal prerogative. The founders of the American Republic understood the distinction. When they came to enumerate the powers entrusted to the federal government and the powers denied to the separate states, they were guided by this principle. For though it is sometimes said that they reserved to the separate states all the authority which they did not specifically grant to the federal government, this is a misunderstanding of what they did. They also denied to the separate states the authority to make laws which would interfere with the freedom of commerce within the nation, and by that proviso they showed that they intended that a common law

should prevail.<sup>5</sup> What they did not intend was that the federal government should administer many of the affairs of the people. They remembered that authority is voracious. And so they enumerated carefully the affairs that the government might administer.

Being liberals, they were in favor of the extension of a common law and opposed to the aggrandizement of the government. They understood what their successors have forgotten, that the increasing uniformity of equal laws is not only not the same thing as the centralization of government, but is, in fact, its opposite.

### 3. *The Civil Society*

We have only to look about us to find the confirmation of this truth. In that part of the contemporary world where the authoritarian system has not yet been established, men living under separate national governments think of themselves as living under essentially the same rules of law. Thus Englishmen, Frenchmen, Americans, Danes, Swedes, Norwegians, Swiss, Dutchmen, Argentinians, act on the assumption that they are members of the same civilized society: they transact their affairs under laws which are not identical but are fundamentally similar, and in important matters are administered impartially to citizens and aliens alike. But when they cross the frontiers of a totalitarian state, they leave the region of common laws and enter closed compartments where official discretion is the only rule.<sup>6</sup> Here discrimination, administrative arbitrariness,

<sup>5</sup> Under this system the colonies achieved national union. But it was a precarious union as long as the status of labor was not uniform throughout the nation. Thus slavery caused a civil war and the national disunion was healed only by abolishing the "peculiar institution," thus giving to all labor, at least theoretically, the same legal rights.

<sup>6</sup> Cf. C. H. McIlwain's "Government by Law," *Foreign Affairs*, Vol. XIV, No. 2, Jan. 1936.



and the absence of equality or certainty in the law are proudly proclaimed as a new dispensation. It is no accident that in the region of common law the separate nations live at peace with their neighbors, but that whenever the boundaries of this region run with the boundaries of authority, men arm themselves in a warlike mood.<sup>7</sup>

In the end no nation can fail to enter this system where common law prevails: if it is backward, unable or unwilling to make its portion of the earth secure for the new economy of the division of labor, its certain destiny is to be conquered.<sup>8</sup> Unless it is as remote as Tibet, in one way or another it will be brought within the necessary jurisdiction of the Great Society. Nor can any portion of the earth permanently secede from the society of common law: in the end the rebellion will be overcome. For the necessity of common laws throughout the world economy is the necessity of all the multitudes of mankind in all their daily transactions, and its cumulative force is invincible.

This necessity is, it seems to me, the true explanation of the rise and fall of modern empires. It is a phenomenon about which the nineteenth century was confused both in practice and in theory, and we have inherited the confusion. The promoters and the critics of imperialism have usually failed to distinguish between the movement which opened all the continents to a world-wide division of labor and the antagonistic and parasitical imperialism by which special interests within separate nations sought to preëempt and exploit undeveloped regions of the earth.

It is easy enough to see why these two contradicting movements should have been lumped together as "imperialism." For the movement to open the world and make it safe for trade and investment has been continually entangled with the con-

<sup>7</sup> Cf. Hamilton Fish Armstrong's *We or They*.

<sup>8</sup> Cf. my *Stakes of Diplomacy*.

trary movement to preëempt opportunity by closing the doors. The concessionaires and bankers, the adventurers and exploiters, the militarists and bureaucrats, who took the lead in opening the door of backward countries were readily tempted to close the doors once they were inside.

But while the two opposite movements have been confused and their differences obscured by hypocrisy, the course of modern history is not intelligible until they have been differentiated. Though their work has been stained with blood, cruelty, and injustice, the men who open the world to economic development are completing the work of the explorers who set forth at the end of the fifteenth century. Men like Andrew Jackson and Cecil Rhodes and Lord Cromer and Elihu Root carried on what Columbus and Magellan began. By advancing the regime of law and order throughout the globe, they have facilitated the world-wide division of labor and a stupendous improvement in the standard of life.

The net effect has been to multiply beyond all precedent the number of self-governing peoples. For while empires have been conquered by imperialists, though favored concessionaires collected the initial profits, there is no permanent empire in the Great Society. Within a relatively short time, as measured by the life of a people, the growing prosperity under law and order calls into being independent nations which cast off their subservience to the mother country and acquire the strength to resist exploitation. Thus British imperialists once held North America; the legatees are the United States and the Dominion of Canada. They conquered South Africa, and within a short time their colony has become an autonomous nation. Spain conquered South and Central America: her empire is the seat of twenty Latin-American republics. The British conquered India and Egypt. The United States conquered the Philippines. These empires are in liquidation.

Thus preëemptive imperialism, the policy of the closed door, the attempt to make colonies a field of exploitation for special interests, must be regarded as a pathological disease, a reactionary but transient phenomenon, which has accompanied the progressive movement to open the planet to settlement and to a world-wide division of labor. It is perfectly true, as Marxian socialists contend, that the capitalist system had to expand all over the world; it is true that it has accomplished its expansion by imperialism. But the socialists are demonstrably wrong in thinking that what capitalism needed was closed colonies to be exploited for huge profit by capitalists with excess savings.<sup>9</sup> That is merely what some capitalists hoped. What capitalism as a whole has needed was security and equal opportunity for the division of labor.

That this is the truth of the matter is evident from the fact that only a small fraction of the capital exported by the creditor empires has been invested in their subject territories. The greater bulk of it has gone to independent foreign countries and to self-governing dominions: it has gone not to the territories that could be exploited because the empire had political supremacy but to those where commerce flourished and property was secure. Thus there has indeed been enormous pressure from the capitalists to open territories to trade and investment and to establish law and order. But while this pressure may have been initiated by concession hunters, the sustaining motive to political expansion has been the need to overcome the disorder and insecurity which interrupt trade and imperil investments. Thus no one has planned the conquest of Holland or of Scandinavia, and Mexico has been in peril only when it was in disorder.

<sup>9</sup> Cf. J. A. Hobson's *Imperialism*, Part I, Ch. VI, "The Economic Taproot of Imperialism." Mr. Hobson is not a Marxian socialist but an English radical. His analysis has, however, been adopted by modern Marxian socialists. Cf., e.g., Laski's *The State in Theory and Practice*, Ch. III.

The regime of peace is coterminous with the organized communities in which governments and individuals live under equal laws. The region of common law is the pacified region of the globe. Within it big states and little ones, creditor and debtor nations, "Haves" and "Have-Nots," exist together in peace and are drawn together for the defense of their peace.

The United Kingdom, for example, belong to the Have-Nots; it does not have the natural resources with which to feed its people or to supply its factories with raw materials. Does it obtain the food and materials it needs by the power of its navy and the might of its empire? Not at all: the people of the United Kingdom buy what they need from "their" dominions and colonies at prices fixed in world markets. They do not take what they need as conquerors exact tribute. They are able to obtain their supplies because they can buy and sell in markets where there are common laws and usages regulating contracts, and promises to pay, and the media of payment, and weights and measures, and titles to property. It is utterly naïve, the untutored delusion of a primitive mind, to suppose that the United Kingdom lives by exploiting its empire. There may be individual Britons who make fat profits from special privileges under the ægis of empire. But the British people live successfully in a condition of deep interdependence with the outer world only because in a large portion of the world the security of transactions is protected by law and can be relied upon.

Among the nations that have entered into the regime of a common law there is peace. It does not depend upon their size, their navies, their forts, their diplomatic status as Great Powers or Neutrals. The United States is ten times as great a military power as Canada but the frontier between the two nations is profoundly pacific. That is not because the two peoples speak the same language or are predominantly of the

same ethnic stock: Germany and Austria speak the same language and are of the same ethnic stock. It is because Canada and the United States live under the same regime of law — not under identical laws, but under the same conception of law as equal for all and above all equally. There is no problem of the relative size of armaments, no need for promises of nonaggression, as between Canada and the United States, or between Great Britain and the Netherlands, or France and Belgium, between Britain or America and France. These nations are positively at peace with one another. They are not merely restrained from waging war against one another. And the substance of that peace is that they have become, by the evolution of events over two centuries or more, members of the same civil society.

The troubled and troublesome areas of the world are those where this civil society is not yet established. Thus the weak and disorderly states are vulnerable because they are unable as yet to participate in this world-wide civil society which maintains the world-wide division of labor. They have no real independence because the condition of independence is the capacity to provide the minimum standards of law and order which the Great Society requires. So the backward state is subject to continual foreign intervention, and to the risk of conquest. Whereas the weak and disorderly state is vulnerable, the strong but lawless state is predatory. It, too, has not acquired the habit of civilian life in a regime of law; it has not yet reached that political maturity which the peaceable order requires. And just as the backwardness of weak states provokes intervention which continues until they have entered the civil society, so the backwardness of strong states provokes leagues of defense against their aggression. For by one means or another, as their interdependence increases, all the peoples of the earth are destined to come under a common law.

Thus peace is not to be conceived as something to be im-

posed by a supreme world authority operated by a Parliament of Man. It is to be conceived as the consequence of an increasing acceptance throughout the world of the inner principles of a common law which all the various parliaments representing the separate communities of mankind respect and adapt to the variety of their conditions. To conceive of peace as based on one identical statute book enacted for all the world by one supreme legislature is to imagine the impossible and to seek what no one would in fact desire. The inverse is the true conception. It is that all the statute books of all the parliaments shall have as their minor premise the diverse needs and notions of the separate peoples, but as their major premise the same conception of the supremacy of equal law.

#### 4. *The Ideals of the Great Revolution*

The common law which the free and peaceable nations have partially achieved is not the product of noble sentiments about equal and certain laws. The sentiments are, indeed, noble. But they are noble, not as Don Quixote's sentiments were noble, but because they express the highest promise of the deepest necessity of these times. For another age it may well be that other sentiments will be nobler because they are more appropriate: among the warring city-states of the ancient world, it may well be that Plato discerned the highest promise of their necessity in the rule of a privileged but self-denying caste.

The ideal of equal and certain laws is hardly conceivable in an age of small, self-sufficient communities, and it would certainly have been unrealizable. The ideal has taken root gradually in the minds of men as they found the need of rational principles to express their real needs. It is in fact the necessary consequence of the industrial revolution. It reflects that revolution. It has developed with the progress of that revolution. It was formulated by men who have lived in the midst of it,

and has been applied by men who found that they had to apply it. For the conception of equal and certain laws is the political corollary of the division of labor.

The method of social control by defining, adjudicating, and amending reciprocal rights and duties, rather than by authoritative commandments, is the legal framework evolved by men who have become interdependent by exchanging specialized work in widening markets. Because they live by an economy which can be regulated only by markets, they are compelled to resist overhead direction by coercive political planners. They are compelled by their practical necessities to bring the sovereign government itself under equal and certain laws. They find they must have equal and certain laws so that men, though they never see each other, can count upon the behavior of others.

So it is no accident that the division of labor, common laws, the ideals of equal justice, the restraint of prerogative and privilege, the conception of international law and of peace as the paramount policy of states, should all have evolved together in the same regions of the earth. They are merely different aspects of the same momentous change in which men have been passing out of their primitive self-sufficiency into the intricate interdependence of the Great Society.

Ever since the earliest beginnings of the industrial revolution men have been advancing the frontiers of the region in which dependable law exists, making the world habitable for men who live by the division of labor. This movement, known to doctrine as liberalism, has behind it the irresistible energy developed by an immeasurably superior mode of obtaining a living from the earth, and no human power can long withstand it. Though men fall back into reaction, and have to fight their way out of it through bitter and bloody strife, yet at long last they will be free under equal laws because in no other way can they prosper, or even survive, in the economy by which they are destined to live.





**BOOK IV**  
**THE TESTAMENT OF LIBERTY**



## XV

### THE STRUGGLE FOR LAW

#### *1. Lawless Legality*

THROUGHOUT this book I have maintained that the active contenders for power in the modern world are engaged in an indecisive, and, therefore, an incessant struggle for supremacy because at bottom they all believe the same thing: that by the exercise of their own unlimited authority they can make themselves secure and that by the coercive direction of human affairs they can shape the destiny of great societies.

Their essential principle becomes visible when we look beneath their intentions and their promises for the future to their claims for power in the present. We then begin to see that while the warring factions propose to use power for very different ends, each seeks absolute power to achieve its own ends. That the dictators and oligarchs of the totalitarian states insist upon absolute power is, of course, self-evident. They assert the unqualified right to command the life and labor, and to dispose of the property, of all who are within reach of their power. There is no law to which their subjects can appeal as against the decisions of the masters; in so far as any legal rights have been assigned to their subjects, there are no tribunals which can be relied upon to enforce these rights when, in the opinion of the rulers, the interests of the state are involved. Though in practice the gradual collectivists are more moderate, yet the same principle is implicit to their claim that popular majorities, or even pluralities, must legislate without restraint. Absolutism

is no less the principle invoked by those who insist that the rights of property, of contract, and of business corporations are founded upon superior natural right which must not be interfered with. The same principle is asserted by organized labor wherever it claims the right to paralyze the life of a community by the stoppage of essential services. And it is, of course, the principle of aggressive nationalism when it holds that no law can bind a nation seeking its place in the sun.

The recognition that the chief partisans make the same fundamental assumptions has been for me at least a necessary and decisive clarification. It has brought me to the realization that however bitterly they may fight each other, they are all in rebellion against the moral heritage of western society, and that upon the foundations of that heritage men must make their stand against another relapse into barbarism. I am not oblivious of the differences which distinguish the embattled communists, fascists, conservative nationalists, and gradual collectivists; I realize the existence of sub-species: that there is a Second International, a Third under Stalin, and a Fourth under Trotzky; that Italian fascism and German national socialism have a somewhat different complexion; that Old Guard Republicanism in the United States, with its patronage of corporate collectivism, serves other interests than the collectivism of the New Deal. There are also important differences between lions and tigers, even between African and Indian lions. But from the point of view of, let us say, a goat or a lamb, the common characteristics of all the great carnivores are more significant than their differences.

Thus in treating the contemporary contenders for power as members of the same genus I do not deny that, like the Capulets and the Montagues, they fight sincerely and furiously. It is obvious enough that they are locked in a struggle in which their

fortunes and their hopes, often their very lives, are at stake. But I do claim that they have committed their purposes to the same ultimate idea of human relations, and that under the dominion of this idea they are doomed to a perpetual struggle which can be ended only as men call down a plague on all their houses, and reassert as against all the fractious partisans the principles which they all deny.

It is upon their common claims to absolute power that we must fix our attention. For the assertion of these claims provokes the actual struggles in which contemporary men are engaged. We must note particularly that the only limitation or control upon power which any of the partisans is willing to recognize is that he will confer benefits in the future. The big businessmen argue that if they have their own way they will make the country prosperous; the fascists that they will make their people strong and glorious; the socialists that they will plan and provide for the welfare of all. "Give us power," they cry, "and see what good will come of it." The end, they tell us, will justify the means. So men are asked to choose among conflicting promises about an unpredictable future and, in the light of these promises, to assent to the exercise of unlimited power.

The struggle to determine who shall exercise unlimited power is the turbulence of this modern world, and the indeterminateness of the promises is its moral and intellectual confusion. One man's promises are as good as another's; power controlled by guesses about the future, not by rules of law in the present, is arbitrary. So we must fix our attention upon the radical lawlessness of the contending factions and we must not let ourselves be misled by the fact that they employ lawyers, or use the machinery of the state, or enact duly engrossed statutes, and are careful to act in the forms of law. There is such a thing as lawless legality and it is to be found where men

## 2. *The Intimation of Law*

The conviction that there is a higher law, higher than statutes, ordinances, and usages, is to be found among all civilized peoples. It springs from a dim apprehension which mankind is forever perceiving, and then losing, and then seeking to rediscover and repossess. For at least twenty-five centuries men have been formulating it. They have stated it in a thousand different ways. They have debated it since they learned to debate general ideas. Usually the conception of a higher law has been denied by the masters and invoked by their subjects. For the belief in a higher law is in effect a prayer invoking against the material powers of an actual ruler some immaterial power which he can be compelled to respect; it imputes to the nature of things universal principles of order to which human caprice can be held accountable.

Though the existence of any such higher law in human societies is constantly repudiated in practice and is even condemned in theory, it derives from an intuition which mankind is unable to abandon. For if there is no higher law, then there is no ground on which anyone can challenge the power of the strong to exploit the weak, there is no reason by which arbitrary force can be restrained. So it is no mere coincidence that from the time when the Stoics first challenged human slavery, down through the long struggle for constitutional government, for the rights of man, and for the freedom of trade, the emancipators of mankind have invariably appealed to some higher and more universal law than the enacted will of their adversaries. Upon the acknowledgment of a higher law rests whatever power constitutions, treaties, and engagements may have to bind the stronger party. In the absence of a higher law there can be tyranny and there can be anarchy, there can be periods when the ruling power is irresistible and others when rebellion is so

general that no power can prevail. But a free and ordered society, resting chiefly on persuasion rather than on coercion, on the pacific adjudication of human conflicts, on the security of known rights and duties, and on their revision, is inconceivable in theory and unworkable in practice unless in the community there is a general willingness to be bound by the spirit of a law that is higher and more universal than the letter of particular laws.

But in the nineteenth century, as we have already seen,<sup>4</sup> the defenders of vested interests appropriated the conception of a higher law and identified it with their privileges. They were challenged by men who denied that there was such a thing as the spirit of law above and beyond the letter of the statutes and judicial decisions. The idea was attacked by a formidable array of philosophers from Bentham to Pareto, and the restraints it imposes on speculation and on action have come to be thought of as naïve and old-fashioned. What, they asked, is this higher law? To whom has it been revealed? What are its credentials, its sanctions, and its authority? These questions were raised by Jeremy Bentham in 1776, as it happens, in the very year when the American colonists declared their independence by appealing to "the Laws of Nature and of Nature's God," in the very year too when Adam Smith published *The Wealth of Nations*, advocating "the obvious and simple system of natural liberty." To Bentham the appeal to a higher law by which governments were limited was

but womanish scolding and childish altercation, which is sure to irritate and which never can persuade, — "I say, that the legislature cannot do this — I say it *can*. I say that to do this, exceeds the bounds of its authority — I say, it does *not*." It is evident, that a pair of disputants setting out in this manner, may go on perplexing and irritating one another for everlasting, without the smallest chance

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<sup>4</sup> Cf. Bk. III.

of ever coming to an agreement. It is no more than announcing, and that in an obscure and at the same time, a peremptory and captious manner, their opposite persuasions, or rather affections, on a question of which neither of them sets himself to discuss the grounds.<sup>5</sup>

More than a hundred years later Pareto,<sup>6</sup> in much the same mood of irritated rationalism, declared that theories of natural law and the law of nations "are another excellent example of discussion destitute of all exactness." He reviews various attempts from Cicero to Grotius to formulate a higher law to which human action ought to correspond.

The law of nations [he exclaims] is declared to be imposed by natural reason. This natural reason is a beautiful creature to whom one may resort in distressing predicaments and use to demonstrate many fine things. It is also called right reason, true reason, just, honest reason, and the like. It is not explained how the reason worthy of these exalted epithets is to be distinguished from the reason which has to go without them. But at bottom the former is always the one that meets the approval of the writer who bestows the laudatory epithet.<sup>7</sup>

The irritation of Bentham and of his successors, who have attacked the conception of a higher law, has had plenty of practical provocation. For, time and again, when the vested rights of property were concerned, the letter of the existing law with all its injustices has been held to be the immutable expression of the spirit of the higher law. So, in order to reform the injustices, men have felt they had to break down the authority of the higher law. But in fact the reformers fell into the same error as the defenders of vested rights: for the reformers were insisting that the letter of the new laws must be the highest authority on earth and the conservatives that the letter of the

<sup>5</sup> *A Fragment on Government*, pp. 126-27.

<sup>6</sup> *Op. cit.*, Vol. I, Sec. 401, p. 245 *et seq.*

<sup>7</sup> *Ibid.*, Sec. 422, p. 252.

old laws was the highest authority on earth. Between the will of the reformers and the will of the conservatives there was thus no mediating standard. The conservatives, by identifying the higher law with their vested rights, tried to raise their own interests above criticism and challenge. The reformers, by denying a higher law, made their own impulses the highest authority.

Because men have abused and perverted a truth is no reason for abandoning it. If, as we were taught by so many thinkers of the nineteenth century, the belief in a higher law is a mixture of sentimentality, superstition, and unconscious rationalization of private interest, then the state of affairs into which we have sunk is the only possible one. We must give up the hope of an ordered civilization on this planet and resign ourselves to an interminable struggle for existence in a war of all against all. But surely it is philistinism and pedantry to dismiss the conception of a higher law because the formulations are vague and confusing, or because the conception has been grossly exploited. We are not so full of wisdom, and so comfortably masters of our fate, that we can afford summarily to reject the underlying conception upon which so many sages and saints and heroic leaders have based their hope of a happily ordered existence.

The company of the witnesses to the idea is a great one: Aristotle and the Stoics, Aquinas and Grotius, the founders of English constitutional government, the creators of the American Republic. They are not to be dismissed out of hand as men who indulged in "womanish scolding and childish altercation." Granted that they put their intuitions into words which the modern dialectician can riddle, it may still be that the intuition, upon which they all relied, is an insight into the depths of the human condition; that, however imperfectly it may have been formulated, it represents a groping of the human spirit ex-

pressing itself in successive rough approximations of the truth. We must remember that the whole truth has not yet been fully revealed. The truth is only partially revealed, and the persistent search by the noblest men of our civilization for a higher law which would bind and overcome the arbitrariness of their lords and masters, of mobs at home and barbarians abroad, and the vagrant willfulness of their own spirits, is too impressive to be lightly disregarded.

### 3. *Classic Examples*

We can perhaps make clear to ourselves the spirit of the higher law by examining one or two specific instances where it has been successfully invoked.

In 1612 King James I summoned the judges of England to appear before him.<sup>8</sup> The Church had set up an administrative tribunal for the regulation of its affairs. This tribunal, which was unknown to the English common law, had reached out to deal with temporal matters and with lay offenders. It rendered its decisions by no fixed rules. They were subject to no appeal. When the tribunal attempted to arrest a lay offender, the Court of Common Pleas stopped the proceedings with a writ of prohibition.

The King then declared that he might take away from the common-law judges any cause he pleased and decide it himself, and at the conference to which the judges had been summoned this view of the royal prerogative was expounded. The Archbishop of Canterbury argued that the judges were merely the delegates of the King, and that, therefore, the King could judge

<sup>8</sup> The account of this incident is taken from Roscoe Pound, *op. cit.*, p. 60. I have condensed and paraphrased Dean Pound's text, omitting quotation marks for the sake of typographical lucidity. For the original source see Coke's own report of the conference in Pound and Plucknett, *op. cit.*, pp. 185-87.

causes which were usually left to his delegates. To this the great Coke, the Chief Justice, replied on behalf of the judges that "by the law of England the King in person could not judge any cause; all cases, civil and criminal, were to be determined in some court of justice according to the law and custom of the realm." The King then said that he "thought law was founded upon reason, and I and others have reason as well as the judges."

To this Coke made a response which is pregnant with great significance. "True it was," he said, "that God had endowed his Majesty with excellent science and great endowments of nature; but his Majesty was not learned in the laws of his realm of England, and causes which concern the life or inheritance or goods or fortunes of his subjects are not to be decided by natural reason, but by the artificial reason and judgment of the law, which law is an art which requires long study and experience before that a man can attain to the cognizance of it."

At this the King was much offended, saying that in such case he should be under the law, which it was treason to affirm. Coke answered that the King ought not to be under any man, but that the King was "under God and the law."

This conference between the King and the judges is of historic importance because it marks the opening of that great struggle with the Stuarts in which the lawful rights of Englishmen were vindicated as against arbitrary action under the royal prerogative. We must note particularly that the law which Coke said was above the King was not an abstract formula, but the common law of England interpreted in English courts. This law was not a series of commandments promulgated by the sovereign. It was the product of the gradual judicial development of immemorial usage through the decisions of specific controversies under an established procedure. That is what Coke meant by objecting to "natural reason" — that is, the King's own opinion. The common law, he insisted, had come

out of something very different from the fiat of any man, and so it was to be regarded not as the product of a lawgiver, but as the deposit of progressive discovery of law in the very nature of things. No doubt if the exact history were known in all its detail, it would be evident that every rule in the law had its origin in some human decision. But because no one man or set of men made the whole law, the law was felt to be transpersonal, to override the ordinary human will, even of the King, and to establish rights and duties for all men founded upon something besides the will of any man. Because it was detailed and specific, the common law provided a measurable security for their lives, their inheritances, their goods, their fortunes, against sudden and arbitrary changes in the law; because it could not be altered by fiat, it gave them freedom from the exercise of arbitrary power. Thus Coke could find the assurance to say to the King that there existed a law and custom of the realm which was higher than the royal prerogative.

We have here a classic example of what I have ventured to call a rough approximation to the formulation of a higher law.

We must not let ourselves be confused by the realization that the English common law of the seventeenth century was full of cruelty and injustice. The essential point is not whether the common law conformed to the dictates of the highest moral insight of mankind. It obviously did not. The essential point is that Coke and his supporters had arrived at the conception of a law governing human affairs which does not originate in the arbitrary fiat of the sovereign.

We can, I think, elucidate the conception further by considering one of the decisive achievements of modern times, the perfecting of the writ of habeas corpus.

During the reign of James I a dispute arose between the Commons and the Crown over whether the King could, without consulting Parliament, raise the customs duties on imports.

In the year 1622 the Commons declared that as English subjects they inherited the right to debate their grievances and that members could not be imprisoned for what they said. But "King James tore the protest out of the Journal with his own hand, dissolved Parliament, and imprisoned several leading members, including Pym, Selden and Coke. The warrant for the imprisonment, signed by five of the Privy Council, directed their committal to the Tower, 'for certain reasons of state known unto his Majesty.'"<sup>9</sup> His successor, Charles I, continued the practice of committing men to the Tower for reasons of state known only to His Majesty; in the most important instance his reason of state was that certain of the Puritan gentry had refused, without a vote of Parliament, to give him money for his foreign war. In 1627 Sir Thomas Darnel and four other knights were imprisoned for refusing the money. They applied to a court for writs of habeas corpus. The court granted the writs, directing the warden of the jail to produce his prisoners and to state why they were imprisoned so that the court might decide whether they were lawfully imprisoned. Henry Liloe, the warden, did produce them and replied that he was holding them "by the special command of His Majesty."

The case, known as Darnel's Case, was argued by one of the greatest English lawyers, John Selden. "The main question to which he addressed himself was whether an English freeman could be lawfully imprisoned by the special command of the King or his Council *without any other cause than the will of the King being stated.*"<sup>10</sup> Selden argued that since Magna Carta it was one of "the ancient laws and privileges of this realm" that "no freeman whatsoever ought to be imprisoned but according to the law of the land."

He lost his case, for the Chief Justice decided "that the

<sup>9</sup> Francis W. Hirst, *Liberty and Tyranny*, p. 46.

<sup>10</sup> *Ibid.*, pp. 48-50.

special command of the King was a sufficient return to the writ of habeas corpus, that no other cause need be shown." But fifty years later, after Charles I had lost his head, after the Cromwellian revolution and the Restoration, Parliament passed and the King agreed to the Habeas Corpus Act (1679) under which "no freeman ought to be committed or detained in prison by command of the King or Privy Council, or any other, unless some cause of the commitment . . . be expressed, for which by law he ought to be committed. . . ." <sup>11</sup>

#### 4. *The Two Modes of Thought*

In this historic controversy the Crown and Parliament employed radically different modes of thought. The King's party conceived the law as originating in the will of the King, and the relation between the King and his subjects as that of the master to his slave, the patriarchal father to his children, the victor to his vanquished foe. This is an ancient and distinct pattern of human thought. It has a logic of its own. It might be called the logic of authority or the logic of the supremacy of men over men. In the Petition of Right the law is conceived as originating in the nature of things, and the relation of the King to his subjects, and of each man to other men, is thought of as established by impersonal rules binding on everyone. This too is an ancient and distinct pattern of human thought with a logic of its own. We may call it the logic of liberalism or the logic of the supremacy of law over men.

By these two modes of thought the logic of authority is, so to speak, the more instinctive in that it rationalizes the primitive and persistent impulse to dominate, to submit, to stand in awe of power and to seek its protection. The logic of liberalism, on the other hand, is not instinctive or habitual. And,

<sup>11</sup> Hirst., *op. cit.*, p. 53.



therefore, it is as yet far from being established as a universal way of life; it is rather a precarious and tentative thing, like the clearing for a garden in the jungle, which has to be tended continually if it is not to be quickly submerged in the primeval forest. For the logic of liberalism calls for the restraint of material power by immaterial powers, and, therefore, for the inordinately difficult conquest of man's lower nature by his higher nature.

There is an immeasurable difference between these two modes of dealing with human experience, and until that difference has been thoroughly explored, the more primitive logic of authority will tend to prevail in all periods of perplexity and danger. The truth of the matter is that the logic of liberalism is as yet too rudimentary and inadequate to provide a sufficient mastery of human affairs. We possess it in about the same sense as Roger Bacon and William Ockham possessed the logic of experimental science. We have a general intuition of the possibilities of freedom through law; we have certain practical demonstrations in the history of free nations. But the whole mode of thought is not fully explored, or completely implemented, and it is unfamiliar and uncongenial to the natural man.

So the promise of liberty to mankind will be unrealized and continually frustrated until the logic of liberalism has been much perfected. We can see the promise, as Francis Bacon in *The New Atlantis* could see the promise of the physical sciences. But we cannot proceed fast or far from promise to performance until we have really learned the grammar of constitutionalism, have acquired it as the intuitive habit of our minds, as the normal idiom of our behavior.

No one who appreciates how wide is the gulf which separates the two conceptions will imagine that the newer logic of liberty can be perfected easily and learned quickly. To think that would be to suppose that we can find suddenly that which the

wisest and best of mankind have sought patiently and persistently in the twenty-five centuries of our conscious civilization. It is not an easy task nor one which we in our time can hope to complete. For it is not concerned with the superficial movements of political life but with the formative principle of civilized behavior.

### 5. *The Higher Law*

It will now be profitable, I think, to scrutinize more closely the postulates upon which Coke and Selden based their claim that the King was under God and the law. For the law which they made supreme over the King was the English common law developed by the courts out of immemorial custom. Thus Selden construed the right affirmed in the Magna Carta that "no freeman shall be imprisoned without due course of law" as meaning exactly what it said. The villeins, who were bound to the soil under feudal law, did not possess this right. They could be imprisoned at the will of their lords or of the King, and they had no remedy.<sup>12</sup>

Now obviously if the higher law of the state is simply the traditional law as it has evolved in the course of history, to insist upon its supremacy is to put the living under the dominion of the dead, and to deny to them the power to remedy injustice and improve their condition. The attack which Bentham made upon Blackstone<sup>13</sup> was the forerunner of the popular hostility in the United States to the judges and lawyers who identified the English common law not only with the Constitution but with the higher law of the Universe, and then opposed the redress of grievances. Thus while it was undoubtedly a great achievement to bring the King under the English common law, the attempt to keep the newly enfranchised people under this same

<sup>12</sup> Hirst, *op. cit.*, p. 49.

<sup>13</sup> In the passage cited above from the *Fragment on Government*.

traditional law appeared to them what in effect it was — an attempt to deprive them of their right to reform traditional privileges and immunities.

That, as we have already seen, was the reason why the progressive thinkers of the nineteenth century rejected the supremacy of law and poured contempt and ridicule upon the conception of a higher law. They had found that in practice the higher law meant either the traditional law, with all its historic injustices, or the vague, subjective, and irresponsible fantasies of doctrinaires agitating the crowd. The traditional law was in many vital respects intolerably unsuited to the modern world. The doctrinaires, when they appealed to the supposedly universal law, were observed to be violently unable to agree on what it was. Thus the whole conception was lost, and by the twentieth century political thinking had ceased to have any criteria beyond those of immediate expediency, self-assertiveness, and momentary success.

The rediscovery and the reconstruction of general political standards can be carried forward only, I believe, by developing the abiding truth of the older liberalism after purging it of the defects which destroyed it. The pioneer liberals vindicated the supremacy of law over the arbitrary power of men. That is the abiding truth which we inherit from them. But the law which they vindicated was in many respects the mere defense of ancient privileges and immunities. Thus they made it easy to invoke the supremacy of the law in order to prohibit the improvement of human affairs. In the decadence of liberalism the conception of higher law was used to defend vested rights and obstruct reform. That was its fatal defect and the cause of its downfall. But in the debacle there was swept away not only the mistaken insistence upon the supremacy of the traditional law, but the nobler intuition that liberty and human dignity depend upon the supremacy of the spirit of law.

We can, and I believe that we must, disentangle the general theory of liberalism from its historic identification with the common-law rights and privileges and immunities enjoyed by Englishmen and Americans in the nineteenth century. When Coke told James I that the King was under God and the law, the enduring part of the reply is not to be found in any pretension that the law itself as it happens to be is perfect and immutable; that, for example, the lawful right of the lord of the manor arbitrarily to imprison the villein is not to be challenged. The essential and enduring part of Coke's reply is the denial that the King may act arbitrarily. The denial that men may be arbitrary in human transactions *is* the higher law.

That is the substance of the higher law. That is the spiritual essence without which the letter of the law is nothing but the formal trappings of vested rights or the ceremonial disguise of caprice and willfulness. Constitutional restraints and bills of rights, the whole apparatus of responsible government and of an independent judiciary, the conception of due process of law in courts, in legislatures, among executives, are but the rough approximations by which men have sought to exorcise the devil of arbitrariness in human relations. Among a people which does not try to obey this higher law, no constitution is worth the paper it is written on: though they have all the forms of liberty, they will not enjoy its substance. The laws depend upon moral commitments which could never possibly be expressly stated in the laws themselves: upon a level of truthfulness in giving testimony, of reasonableness in argument, of trust, confidence, and good faith in transactions; upon a mood of disinterestedness and justice, far above anything that the letter of the law demands. It is not enough that men should be as truthful as the laws against perjury require and as reasonable as the rules of evidence compel a clever lawyer to be. To maintain a constitutional order they must be much more truth-

ful, reasonable, just, and honorable than the letter of the laws. There must be more than legal prohibition against arbitrariness, against overreaching, deception, and oppression. There must be an habitual, confirmed, and well-nigh intuitive dislike of arbitrariness; a quick sensitiveness to its manifestations and a spontaneous disapproval and resistance. For only by adhering to this unwritten higher law can they make actual law effective or have criteria by which to reform it.

By this higher law all formal laws and all political behavior are judged in civilized societies. When the principle which Coke affirmed against the King is recognized, then the privileges of the lord of the manor no longer stand impervious to criticism and to reform. If the sovereign himself may not act willfully, arbitrarily, by personal prerogative, then no one may. His ministers may not. The legislature may not. Majorities may not. Individuals may not. Crowds may not. The national state may not. This law which is the spirit of law is the opposite of an accumulation of old precedents and new fiats. By this higher law, that men must not be arbitrary, the old law is continually tested and the new law reviewed.

To those who ask where this higher law is to be found, the answer is that it is a progressive discovery of men striving to civilize themselves, and that its scope and implications are a gradual revelation that is by no means completed. In the beginning of law men could aim no higher than to keep the peace.<sup>14</sup> They had made a great advance when the injured man agreed to take in vengeance no more than an eye for an eye. They advanced further when the dominion of the strong over the weak was legalized as caste, and bounds were put on their superior strength. They advanced still further when the masters had duties towards as well as rights over their subjects. The advance continued as the rights of the masters were progres-

<sup>14</sup> Cf. Pound, *op. cit.*, p. 85.

sively checked and liquidated as having no intrinsic justification.

The development of human rights is simply the expression of the higher law that men shall not deal arbitrarily with one another. Human rights do not mean, as some confused individualists have supposed, that there are certain sterile areas where men collectively may not deal at all with men individually. We are in truth members of one another, and a philosophy which seeks to differentiate the community from the persons who belong to it, treating them as if they were distinct sovereignties having only diplomatic relations, is contrary to fact and can lead only to moral bewilderment. The rights of man are not the rights of Robinson Crusoe before his man Friday appeared. They stem from the right not to be dealt with arbitrarily by anyone else, and the inescapable corollary of the rights of man is the duty of man not to deal arbitrarily with others.

The gradual encroachment of true law upon willfulness and caprice is the progress of liberty in human affairs. That is how the emancipation of mankind has been begun and must be continued. As those who have the power to coerce lose the authority to rule by fiat, liberty advances. It advances by the continual struggle of men against the possessors of arbitrary power.

Thus William the Conqueror had to recognize limitations upon his sovereignty when he granted his charter to the city of London affirming that the citizen was "worthy of all the laws ye were worthy of in King Edward's day."<sup>15</sup> For more than two centuries, says Stimson, Parliament, by refusing to vote funds, was occupied with the task of compelling the Norman conquerors to recognize the old Anglo-Saxon laws. As a consequence, though the laws bore, and still bear, the legend,

<sup>15</sup> Cited in Stimson, *op. cit.*, p. 24.

"Le Roy le veult," in fact legislation originated in Parliament because the Kings were not strong enough to levy taxes without the assistance of those represented in Parliament. Because Parliament would not levy taxes until its grievances had been redressed, it came to be acknowledged that laws could not be enacted except "by the common consent of the realm." In this gradual substitution of agreed laws for the ipse dixit of the King's supremacy the foundations of English constitutional liberties were laid.

At first there were only a few powerful barons who had sufficient equality of power to make agreements with the King rather than to submit absolutely to his will. Below them was a disenfranchised population over whom the great lords and the King were in varying degrees absolute. The historical process of emancipation has consisted in the gradual emergence of new classes with sufficient power to resist the promulgation of laws by command of their superiors, to insist that the laws should issue from transactions among equals.

Then men began to perceive that the existing law must be wrong, that it was arbitrary, in so far as it failed to make individuals equal under the law. Thus men discerned a standard by which they might judge and reform the laws themselves. The standard was the disestablishment of privilege and the organization of human rights. In the deepest slavery men are at the absolute disposal of their lord, to be bought and sold without recourse, to be kept alive if he chooses or killed if he prefers. Then, perhaps, the former slaves can no longer be bought and sold but are bound as serfs to a particular land. Then they no longer owe their master the whole produce of their labor, but only certain customary dues. As they advance in freedom the general subjection of the slave to his master is replaced by specific transactions under specific rules. It is completed when the former slave and the former master

deal with one another as equals under law and custom and are unable and undisposed to take arbitrary advantage of each other.

This process of emancipation is a long one. In England, for example, not more than three hundred years ago the great mass of the agricultural workers "had no access to the King's Courts against the arbitrary power of their lords."<sup>16</sup> During the fourteenth and fifteenth centuries their personal services had been in part commuted for fixed cash rentals. But the workers had no real security, for in the sixteenth century the landlords, "after the general rise in prices, began wholesale evictions of their tenants and increased their rentals." Then new courts were set up by the King and the judges restrained the landlords by the rule that "a lord could not at his will and pleasure change the customs attached to lands held by a particular tenure" and "even the customs themselves were refused recognition if they seemed to the judges oppressive and servile."

By the early 1600's, when Coke wrote his *Complete Copy holder*, the emancipation had reached a point where he could say: —

But now copiholders stand upon a sure ground, now they weigh not their Lord's displeasure, they shake not at every suddaine blaste of wind, they eate, drinke, and sleepe securely; onely drawing a speciall care of the maine chance to perform carefully what duties and services soever their Tenure doth exact, and Custome doth require; then let Lord frowne, the Copy holder cares not, knowing himselfe safe and not within any danger, for if the Lord's anger grow to expulsion, the Law hath provided severall weapons of remedy; for it is at his election either to sue a Subpena or an Action of Trespasse against the Lord. Time hath dealt very favorably with Copy holders in divers respects.<sup>17</sup>

<sup>16</sup> Commons, *op. cit.*, p. 221.

<sup>17</sup> *Ibid.*, p. 222.



Liberty, as Coke describes it in this passage, is no rhetorical abstraction, but an array of specific rights against "the Lord's displeasure" which the peasant could exercise because the law had provided "severall weapons of remedy." A few generations earlier, and before the liberty which Coke describes had been made effective, the fundamental principle had been grasped by some Englishmen — by Sir Thomas Smith, for example, who was an ambassador, and a secretary to Queen Elizabeth. In his book on *The Common-wealth of England*<sup>18</sup> he says that "a bondman or a slave is as it were (saving life and humane reason) but the instrument of his Lord, as the axe, the sawe, the chessyll and gowge is of the charpenter" and between the master and his slave "there is no mutual Societie or portion, no law or pleading between thone and thother . . . there is no right, law nor common-wealth compact, but onely the will of the Lord and segnior."

Here, in a valuation of human affairs which proclaims that one human being shall not be the instrument of another, shall not be a thing like the carpenter's axe or his saw, but shall be the member of a mutual society with law and pleading between its members — in this denial that anyone shall be only at "the will of the Lord and segnior," there comes alive the conception of a society which is good because it is free.

<sup>18</sup> Cited in Commons, *ibid.*, p. 223, published first as *De Republica Anglorum* (1567), and reprinted (1589) under the English title.

## XVI

### THE PURSUIT OF LIBERTY

#### 1. *A Human Affirmation*

OF the development of liberty we have, however, seen only the beginnings: the emancipation even of Englishmen, let alone mankind, was not completed in 1859 when Mill wrote his *Essay on Liberty*. At best the foundation for the advancement of liberty had been laid in a few countries. But the advance itself has no visible end. Always there will remain to be liquidated subtler privileges and immunities; always there will remain to be checked the refinements of violence, fraud, intrigue, and conspiracy by which men bedevil themselves and their fellows. The ideal of a society in which all are equally free of all arbitrary coercion is a receding goal. From each new plateau in the ascent higher levels become visible.

If we scrutinize the progress of human emancipation, it appears to consist largely in a series of restraints upon the exercise of power by men over men. The organized liberty of mankind is established by laws and usages which seek to limit coercive authority, traditional prerogatives, vested rights, and all manner of predatory, violent, fraudulent dealing among men.

But though in practice the organization of liberty is achieved largely by restraints and denials, these bounds have been set upon arbitrary power by men who had to be free, by men who would rather have been dead than submit to it any longer. Now men have not staked their fortunes and their lives simply

because it was irrational that their kings and their lords and masters should have so much power: the pursuit of liberty has not been inspired by a pedantic, a doctrinaire, an ideological predilection. Men have rebelled against arbitrary power because they collided with it in their work and in the enjoyment of their faculties. So while the constitutional means to liberty are in the main a series of negatives raised against the powerful, the pursuit of liberty is a great affirmation inspired by the positive energies of the human race.

Once we have discerned the character of these energies, we cannot but recognize that they are inexhaustible and irresistible. By virtue of these energies mankind will, because it must, seek its happiness, not by submitting to providential authority but by organizing its liberty. Those energies we must affirm once more as we call upon men to resist and overcome the great reaction of our times.

## *2. The Will to Be Free*

When the Inquisitors summoned Galileo before them, they told him he must not find that the earth revolves around the sun. Galileo had been observing the heavens through a telescope: he had become convinced that the evidence warranted his conclusion. But the Inquisitors did not look through the telescope. They knew all about astronomy from reading the Bible. So against Galileo's telescope the Inquisitors employed another instrument: the rack. And by the rack, which could inflict pain on the astronomer's body, they undertook to cure the astronomer of his scientific error. Thus they prohibited the exploration of the heavens by the exercise of their physical power.

But the rack is not an instrument for exploring the heavens. A concentration camp is not a political seminar. Burning men

at the stake is not a mode of religious revelation. Firing squads are not commissions for observing and analyzing the economic situation. Censorship is not testimony and argument. As regards the intrinsic issues, these exercises of power are nothing but senseless interference, sheer brute irrelevance like the incursion of a herd of wild asses. What Galileo needed was the criticism of other astronomers: what he suffered was the meddling of powerful ignoramuses. Galileo was unfree to be an astronomer because these ignoramuses insisted on weighting the scales with the terror of prisons, torture chambers, and the stake; he had to take his astronomy from men who had never studied it.

The movement which drives human life forward is exemplified by Galileo's impulse to explore the heavens. The forces which hold mankind back, pinned to the ignorance they happen to be in, are exemplified by the Inquisitors insisting that the preponderant force and not the preponderant evidence shall determine whether the sun is the centre of our solar system. Thus we may think of the creative, the productive, and the adaptive energies of mankind as struggling to release themselves from the entanglements and perversions, the exploitation and the smothering, the parasitism and the obfuscation and the discouragement of aggressive, acquisitive, dogmatic, and arbitrary impulses. Men are moved to plant, but the seeds bear fruit with difficulty, so rank are the weeds which choke them. The cutting back of the weeds, the clearing of little spaces in which good things can grow, has been the task of human emancipation. Its method is to restrain arbitrariness. But its object is to disengage the human spirit in order that it may flourish.

Thus liberalism, which in its moral essence is a challenge to all arbitrariness, to all who would use the rack rather than the telescope, is not itself the substantive principle of the good

life. The substantive principle is in Galileo's curiosity and his genius: in fostering and protecting curiosity and genius, liberalism is the guardian principle of the good life. It stakes its hopes upon the human spirit released from and purged of all arbitrariness. It does not say what such a spirit can or will or ought to make of men's lives. For men have never yet known but a little of such freedom. And they cannot hope to imagine what they have never yet known. But they have known enough of freedom to know that the arbitrary power of men over men is parasitical, that it perverts, that it sterilizes and corrupts.

Though liberalism has often been identified with indifference, inaction, and nonresistance, it should now be evident that this is mere confusion. A doctrine which is opposed to all arbitrariness must mean the determination to resist arbitrariness, to check it, to cut it down, to crush it, wherever and whenever it appears. It cannot mean, for example, that in the seventeenth century the King was under God and the law, but that in the nineteenth century the owners of property were not, that in the twentieth century majorities, pluralities, mobs, or dictators are not, under God and the law. For liberalism all arbitrary power is evil. It matters not what are the titles or the pretensions or the promises of arbitrary power. It must be resisted and brought under control.

So liberalism is not quietism and weak government. That is the corruption of liberalism. In its vigorous periods liberalism has always meant rebellion against oppression and a determination to police aggression and acquisitiveness. Liberalism, therefore, is not the doctrine of *laissez-faire*, let her rip, and the devil take the hindmost. It does not envisage the demobilization of the police, the repeal of the laws, the disestablishment of legislatures and courts. On the contrary, the effective liberals have always been concerned

with the development of the law, with the definition of rights and duties, with the organizing of constitutions, with the absorption of all power to coerce in the hands of duly constituted authorities, with the liquidation or regulation of all kinds of private and petty powers within the community. For the liberal, as distinguished from the anarchist, holds that mere unrestraint does not give the freedom of a voluntary society, that unrestraint merely inaugurates a competitive struggle in which the ruthless will exploit the rest. He insists that the promise of a voluntary life can be realized only as the law is strong enough to restrain aggressors at home and abroad.

But in the liberal view the reward for restraining the aggressor is that the creative and productive faculties can then begin to work. Suppose that Galileo had been able to study the heavens without having at any time to consider whether he would be punished for his conclusions. Suppose that he had needed only to argue with the theologians and to debate with other astronomers. Suppose that his opponents and his critics had been unable to invoke the threats of prison and the rack, or even of ostracism and the muttering of the mob. Suppose that his relations with his contemporaries had been purged of all the irrelevance of arbitrary power, that he had felt that if he was wrong his only punishment would be the knowledge that he had been wrong. Suppose that those who opposed him could have thrown into the scales only the immaterial weight of tradition, experience, observation, and dialectic. Is there any question that in such a community Galileo's faculties would have been enhanced, that others would have been encouraged to use theirs, that immense energy devoted to the coercive enforcement of a particular dogma would have been available in the search for the truest cosmology?

The essence of the matter is that arbitrariness is a disturbing intrusion in the creative life of mankind. It may be a mere

annoyance, like the buzzing of a fly around the nose of a philosopher; or it may be like a great catastrophe, say an earthquake, which stops his work by bringing down the house around his ears. We can appreciate the real energy of freedom if we think of men, working, studying, collaborating, but beset by conquerors, exploiters, adventurers — by men who do not work, but appropriate the work of others; who do not produce, but take tolls; who do not invent, but impose prejudices; who do not create, but coerce those who do. The pursuit of liberty is the affirmation of those who produce the really good things of life.

When a Galileo is coerced by a more powerful but a more ignorant inquisitor, his scientific genius is arbitrarily leveled down to the obscurantism of his masters. It is only by freeing him from the bondage of authority that his superiority as an observer and thinker can be exercised. In our time there are governments which enforce an official culture by exile, proscription, the axe, firing squads, castor oil, and imprisonment in concentration camps: they are using arbitrary force to reduce scholars and artists, and in fact the whole population, to the cultural level of the dominant politicians. The opinion of unqualified men is artificially, by the mere arbitrary intervention of the police, made to prevail over the opinion of men who are specially gifted and have labored to qualify themselves.

The same kind of obscurantism results from the exercise of all privileges. The man who has built himself a castle above the highway in order that he may exact a toll from the merchants on their way to market acquires wealth not by producing it but by seizing it. His predatory incursions arbitrarily yield the returns which would otherwise go to invention, industry, and thrift. But for his castle and his armed hands he would be poorer than the passing merchant whom

he despoils: because he is more powerful but is unrestrained, he reaps a greater reward from highway robbery than other men can make by producing wealth. Thus the ideal of equal rights for all and special privileges for none is inseparable from the pursuit of liberty. A free society is one in which inequalities in the condition of men, in their rewards, and in their social status do not arise out of extrinsic and artificial causes — out of the physical power to coerce, out of legal privilege, out of special prerogative, or out of fraud, sharp practice, necessitous bargaining.

This is no forcible leveling of men to a uniform condition of life. That is the tyrant's way. The libertarian does not demand that all the runners in the race must keep in step and finish together; he asks that they start from scratch and that none shall be permitted to elbow his rival off the track. Then the winner will be the best runner. The winner will not be the competitor who wangled a handicap from the judges, or obtained an advantage which had nothing to do with his ability to run the race. Manifestly, the liberal conception of equality does not promise to make all men equal in riches, influence, honor, and wisdom. On the contrary, its promise is that as the extrinsic inequalities imposed by prerogative and privilege are reduced, the intrinsic superiorities will assert themselves.

This, I believe, is the insight at the heart of the liberal conception of society. I am only too well aware of how imperfectly I have understood it, how imprecisely I have been able to put it into words. But I think it is not misleading to say that some such dim but pregnant apprehension as this has been hammered out on the anvil of long experience, that it is no abstract and a priori speculation arrived at in the eighteenth century and declared to mankind by William Ewart Gladstone, but that it is much older, has its roots in centuries



of confused struggle with all manner of censorship and inquisition, prerogative and privilege.

In those struggles men gradually perceived that they must disengage creative and productive labor and the friendly adaptability of men to one another from the exactions and interferences of the predatory, acquisitive, parasitic, prejudicial, domineering, and irrational elements of human life. This is the "obvious and simple system of natural liberty"<sup>1</sup> which the classic liberals discerned. Though their history was wrong when they adopted the naïve belief that this natural order prevailed in the childhood of the race, though they greatly underestimated the length and the complexity of the struggle, their insight was true and their hearts were in the right place.

We must not deny the prophet because he speaks in parables and ephemeral myths: the classic liberals arrived at a profound and enduring insight into the difference between the real and the factitious in human affairs. They were on the side of Galileo because by protecting Galileo the knowledge of astronomy is advanced. They knew that to find truth is to add to the real values of human existence. They were against the Inquisitors because they knew that astronomy cannot be advanced by imprisoning astronomers, or by compelling them to obtain a license from the secret police and the minister of propaganda.

The ultimate concern of the liberal is with the enhancement of real values by men who actually observe, reason, meditate, invent, dig, construct — seeking to arrange the world to satisfy human demands. To this end the laws, constitutions, bills of rights, courts, and social philosophies are but the means which allow creative labor to proceed without arbitrary interference.

Thus the challenge to oppression arises from the productive energies of men. The movement toward human emancipa-

<sup>1</sup> Adam Smith, *op. cit.*, Bk. IV, Ch. 9.

tion is the rebellion of those who plant and till, dig and make, invent and construct, explore and understand; they cannot work and reap their rewards until they have subdued those who exploit and throttle and dominate their productive labors. Men withdrawn into an ivory tower can be indifferent to oppression and can come to terms with it; but those who must earn their living in the sweat of their brows cannot be indifferent, nor those who have the instinct of workmanship, or are curious and must understand the world and their destiny in it.

Among them the liberators have found their followers — among rebellious slaves, serfs demanding land and peace, merchants crying out against the robber barons, small men resisting the monopolists, industrial workers demanding recognition and status and equality of bargaining power, among artists and men of science and educators and parents crying out against the conscription of all they have created.

Their impulse to create has been their impulse to be free. And as they create it becomes more and more necessary that they should be free. For as men work, and perfect their work by invention and skill, they lift themselves out of the primitive condition in which they lead a meagre and self-sufficing existence. The improvement of their skill, the development of their special aptitudes, the use of their particular opportunities, result in the specialization of their labor. Because they do the work they are able to do, they are no longer self-sufficing and must live by the exchange of their products. They enter into the economy of the division of labor.

The division of labor was not invented by economists; it was not invented by the inventors of machinery and steam railroads. The division of labor in an exchange economy is implied in the very essence of productive labor itself. In order that Galileo might study the heavens it was not sufficient that the

Inquisitors should let him alone; it was necessary that someone else should grow the food he ate and make the clothes he wore and grind the lenses through which he observed the heavens. He had to be liberated not only from the oppression of arbitrary authority but from the sterile drudgery of a self-sufficient existence. And because by the division of labor he was liberated from the drudgery, he was able to be an astronomer who necessarily rebelled against authority.

Thus the connection between liberty and the industrial revolution is organic. The impulse to create and the impulse to be free are cumulative: each is to the other both cause and effect. Because men wish to work they insist on freedom from arbitrary interference; because they are free, they work by a division of labor which requires the freedom of certain and equal rights.

This is the reason why all the conceptions which constitute the testament of liberty have been evolved in great societies that have lived by extensive and complicated commerce. They come to us from the Græco-Roman society, from the merchant cities of the Renaissance, from western Europe, from England, France, the Netherlands, and Italy, from the peoples who first emerged from self-sufficiency and had to establish a common law in which their transactions could be secure. It is no accident that it was the Athenians, living by commerce, rather than the Spartans living by exploitation and war, who conceived the good life; or that the Romans who traded all over the known world should have understood the necessity for law; or that the nation of shopkeepers was the mother of parliaments; or that Yankee traders in Boston fomented the American Revolution and the abolition of slavery. For among a people living by a primitive undifferentiated economy under routine and in isolation, the necessity for constitutional liberty does not exist and can scarcely be conceived.

### 3. *On Designing a New Society*

This truth our contemporary authoritarians, whether of the left or of the right, have failed to grasp. They look upon the great sprawling complex of transactions by which mankind lives; seeing that these transactions are in large part still unregulated by law, and that therefore there is much confusion and injustice, they have turned their backs upon the task of regulation by law and have beguiled themselves with the notion that they can plan this economy systematically and administer it rationally. The exact contrary is the truth. The modern economy is perhaps the least systematic of any that has ever existed. It is world-wide, formless, vast, complicated, and, owing to technological progress, in constant change. For that reason it is incapable of being conceived as a system, or of being replaced by another system, or of being managed as an administrative unit.

The hankering for schemes and systems and comprehensive organization is the wistfulness of an immature philosophy which has not come to terms with reality, no less when the conservators of vested interests would stabilize the modern economy in statu quo by protective laws and monopolistic schemes than when the revolutionist makes blueprints of a world composed of planned national economies "coördinated" by a world-planning authority. Neither takes any more account of reality than if he were studying landscape architecture with a view to making a formal garden out of the Brazilian jungle.

For the greater the society, the higher and more variable the standards of life, the more diversified the energies of its people for invention, enterprise, and adaptation, the more certain it is that the social order cannot be planned ex cathedra or governed by administrative command. We live in such an immensely diversified civilization that the only intelligible criterion

which political thinkers can entertain in regard to it, the only feasible goal which statesmen can set themselves in governing it, is to reconcile the conflicts which spring from this diversity. They cannot hope to comprehend it as a system. For it is not a system. They cannot hope to plan and direct it. For it is not an organization. They can hope only to dispense lawful justice among individuals and associations where their interests conflict, to mitigate the violence of conflict and competition by seeking to make lawful justice more and more equitable.

It requires much virtue to do that well. There must be a strong desire to be just. There must be a growing capacity to be just. There must be discernment and sympathy in estimating the particular claims of divergent interests. There must be moral standards which discourage the quest of privilege and the exercise of arbitrary power. There must be resolution and valor to resist oppression and tyranny. There must be patience and tolerance and kindness in hearing claims, in argument, in negotiation, and in reconciliation.

But these are human virtues; though they are high, they are within the attainable limits of human nature as we know it. They actually exist. Men do have these virtues, all but the most hopelessly degenerate, in some degree. We know that they can be increased. When we talk about them we are talking about virtues that have affected the course of actual history, about virtues that some men have practised more than other men, and no man sufficiently, but enough men in great enough degree to have given mankind here and there and for varying periods of time the intimations of a Good Society.

But the virtues that are required for the overhead administration of a civilization are superhuman; they are attributes of Providence and not of mortal men. It is true that there have been benevolent despots and that for a little while in a particular place they have made possible a better life than their

subjects were able to achieve without the rule of a firm and authoritative guardian. And no doubt it is still true that a community which does not have the essential discipline of liberty can choose only among alternative disciplines by authority. But if a community must have such a guardian, then it must resign itself to living a simple regimented existence, must entertain no hopes of the high and diversified standard of life which the division of labor and modern technology make possible. For despots cannot be found who could plan, organize, and direct a complex economy.

To do that would require a comprehensive understanding of the life and the labor and the purposes of hundreds of millions of persons, the gift of prophesying their behavior and omnipotence to control it. These faculties no man has ever possessed. When in theorizing we unwittingly postulate such faculties, we are resting our hopes on a conception of human nature which has no warrant whatever in any actual experience. The collectivist planners are not talking about the human race but about some other breed conceived in their dreams. They postulate qualities of intelligence and of virtue so unlike those which men possess that it would be just as intelligible to make plans for a society in which human beings were born equipped to fly like the angels, to feed on the fragrance of the summer breezes, and endowed with all possible knowledge.

Thus while the liberal philosophy is concerned with the reform of the laws in order to adapt them to the changing needs and standards of the dynamic economy, while the agenda of reform are long and varied, no one must look to liberalism for a harmonious scheme of social reconstruction. The Good Society has no architectural design. There are no blueprints. There is no mold in which human life is to be shaped. Indeed, to expect the blueprint of such a mold is a mode of thinking against which the liberal temper is a constant protest.

To design a personal plan for a new society is a pleasant form of madness; it is in imagination to play at being God and Cæsar to the human race. Any such plan must implicitly assume that the visionary or someone else might find the power, or might persuade the masses to give him the power, to shape society to the plan; all such general plans of social reconstruction are merely the rationalization of the will to power. For that reason they are the subjective beginnings of fanaticism and tyranny. In these utopias the best is the enemy of the good, the heart's desire betrays the interests of man. To think in terms of a new scheme for a whole society is to use the idiom of authority, to approach affairs from the underlying premise that they can be shaped and directed by an overhead control, that social relations can be fabricated according to a master plan drawn up by a supreme architect.

The supreme architect, who begins as a visionary, becomes a fanatic, and ends as a despot. For no one can be the supreme architect of society without employing a supreme despot to execute the design. So if men are to seek freedom from the arbitrary dominion of men over men, they must not entertain fantasies of the future in which they play at being the dictators of civilization. It is the bad habit of an undisciplined imagination. The descent from fantasy to fanaticism is easy. Real dictators raised to power by the fanatics who adore them are only too likely to adopt the fantasy to justify their lust for power.

On the other hand, reasonable and civilized people who would like to make the best of the situation before them, but have no ambition for, or expectation of, the power to reshape a whole society, get no help from these architectural designs. The blueprint, be it as grandiose a work of genius as Plato's *Republic*, cannot hope to fit the specific situation. No a priori reasoning can anticipate the precise formulæ which will recon-

cile the infinitely varied interests of men. The reconciliation has to be achieved by the treatment of specific issues and the solution will appear only after the claims and the evidence have been examined and fairly judged. Thus in Plato's great scheme each man was assigned his station and his duties; any architectural plan is necessarily based on the same presumption. But Plato's scheme worked only in Plato's imagination, never in the real world. No such scheme can ever work in the real world. For the scheme implies that men will remain content in the station which the visionary has assigned to them. To formulate such plans is not to design a society for real men. It is to re-create men to fit the design. For in real life men rest content in their station only if their interests have been successfully reconciled: failing that, they do not fit the design until they have been dosed with castor oil, put in concentration camps, or exiled to Siberia.

That is why the testament of liberty does not contain the project of a new social order. It adumbrates a way of life in which men seek to reconcile their interests by perfecting the rules of justice. No scheme which promises to obliterate the differences of interest can be deduced from it, no architectural design of society in which all human problems have been resolved. There is no plan of the future: there is, on the contrary, the conviction that the future must have the shape that human energies, purged in so far as possible of arbitrariness, will give it. Compared with the elegant and harmonious schemes which are propounded by the theoretical advocates of capitalism, communism, fascism, it must seem intellectually unsatisfying, and I can well imagine that many will feel about the liberal society as Emma Darwin felt when she wrote about the *Descent of Man*, "I think it will be very interesting, but that I shall dislike it very much as again putting God further off."<sup>2</sup>

<sup>2</sup> Cited in Donald Culross Peattie's *Green Laurels*, p. 323.



But though it must seem an insufficient ideal both to those who wish to exercise authority and to those who feel the need of leaning upon authority, it is the only practicable ideal of government in the Great Society. When huge masses of men have become dependent upon one another through the division of labor in countless, infinitely complex transactions, their activities cannot be planned and directed by public officials.

Thus it is true that the liberal state is not to be conceived as an earthly providence administering civilization. That is the essence of the matter. To the liberal mind the notion that men can authoritatively plan and impose a good life upon a great society is ignorant, impertinent, and pretentious. It can be entertained only by men who do not realize the infinite variety of human purposes, who do not appreciate the potentialities of human effort, or by men who do not choose to respect them.

The liberal state is to be conceived as the protector of equal rights by dispensing justice among individuals. It seeks to protect men against arbitrariness, not arbitrarily to direct them. Its ideal is a fraternal association among free and equal men. To the initiative of individuals, secure in their rights and accountable to others who have equal rights, liberalism entrusts the shaping of the human destiny. It offers no encouragement to those who dream of what they could make of the world if they possessed supreme power. In the testament of liberty these ambitions have been assessed: the record of all the Cæsars from Alexander to Adolf is visible. The world has known many societies in which each man had his station, his duties, and his ordained destiny, and the record shows that it is beyond the understanding of men to know all human needs, to appreciate all human possibilities, to imagine all human ends, to shape all human relations.

Yet if the ambitions of liberalism are more modest than those of authority, its promise is greater. It relies upon the

development of the latent faculties of all men, shaped by their free transactions with one another. Liberalism commits the destiny of civilization, not to a few finite politicians here and there, but to the whole genius of mankind. This is a grander vision than that of those who would be Cæsar and would set themselves up as little tin gods over men. It is a hope engendered in the human heart during the long ages in which the slowly emerging impulses of civilization, beset by barbarism, have struggled to be free.

## XVII

### ON THIS ROCK

#### 1. *The Lost Generation*

IN the occasional intervals when the world is quiet, men quickly take for granted those first and last things which in the ages of disorder are matters of life and death. The second half of the nineteenth century was such an interlude and in the culture of the western nations elemental security was thought to be so firmly established that its principles were almost completely forgotten. Lord Acton, for example, with all his extensive learning and profound knowledge of European history, wrote as one who had reached a safe plateau from which civilized men could look down upon the dark jungle below them where their forefathers had made their heroic struggles. "An army of fifty thousand English soldiers," he said in 1877,<sup>1</sup> "has never been seen in battle," and he had to remind his audience of many curious but archaic aspects of human behavior, as, for example, that as late as the eighteenth century, "Venetian senators of honourable and even religious lives employed assassins for the public good with no more compunction than Philip II or Charles IX."

To most of those who heard him, the Venetian Senators must have seemed as remote as the priests of Moloch; indeed Lord Acton seemed to be speaking as an antiquarian when he recalled the fact that the Chancellor of Louis XIII, the celebrated Cardinal Richelieu, "held that it would be impossible

<sup>1</sup> Address on "Freedom in Christianity," in *History of Freedom and Other Essays*.

to keep the people down if they were suffered to be well off," and that "France could not be governed without the right of arbitrary arrest and exile; and that in case of danger to the State it may be well that a hundred innocent men should perish." They must have been mildly astonished when he dug up the quaint speculations of great men, of Descartes, for example, who advised kings to crush all who might resist their power; of Hobbes, who taught that authority is always in the right; of Pascal, who thought it absurd to reform laws, or to set up an ideal justice against actual force; of Spinoza, who assigned to the state the absolute control of religion.

To the reader of the current newspapers such deeds and such views are no longer the curiosities of polite learning. For him they are virulently alive once more and his world is turbulent with the violence of men who really do such deeds and really hold such views. He is perforce reminded that the struggle of his forefathers continues, that even the rudiments of the good life have still to be wrested daily from the earth in sweat and trouble and defended against implacable enemies. If he is of middle age and, therefore, a survivor from the age of temporary peace and plenty, he is compelled to realize that he was misled by the sheltered thinkers of that age — by men who did not apprehend deeply, because they did not have to apprehend vividly, the imperatives of human existence.

The certainties they taught him to take for granted are in ruins. The organized routine upon which he so much depended that he regarded it as the natural order of things is disrupted, and his constant attempts to put it together again baffle his intelligence and break his heart. For there is no longer a general understanding among civilized men: they cannot fall back upon a common allegiance to assuage their partisanship; they have no consensus of accepted ideas. Yet these things they must have if they are to restore the civilized order. There

are no end of fashionable opinions. But as against the convictions of those who are ready to kill or be killed to achieve their ends, the civilized arguments are subtle, complicated, and effete. In the epochal crisis of our time the cause of civilization is being defended by men who possess a great tradition that has become softened by easy living, by men who have forgotten the necessities in which their principles were wrought.

It would be mere self-deception to tell ourselves that the disorders into which we have fallen can be overcome by an ingenious programme of laws, policies, measures, and political combinations. However wisely the programme may be conceived, it will not be adopted and supported until it receives an impulse from the deepest energies of the human spirit. But to-day, as in other great periods of disorder, the strongest convictions are held by men who, whether they mean to or not, aggravate the disorder. The cause of civilization does not now rest upon equally strong convictions but rather upon helpless forebodings of disaster, and an impotent longing for peace and dignity. For the masses of men consent reluctantly to the great reaction towards arbitrariness, but nonetheless they consent, having no positive faith which springs from the roots of their being with which they can whole-heartedly challenge it. Though they feel that they are sinking into barbarism, their judgment is confounded, their minds disoriented in the tangle of abstractions, technicalities, claims and counter-claims through which they are supposed to find their way.

It is a dark forest. In place of the polestar which could guide them there are many perplexing lights. To explore minutely, however conscientiously and scientifically, the thicket in which some of the travelers are lost will not show them the highroad once more. They must find again the polestar which men have followed in their ascent from barbarism towards

the Good Society. Where shall they find it but in a profound and universal intuition of the human destiny which, to all who have it, is invincible because it is self-evident?

## 2. *The Ultimate Issue*

That much I had dimly apprehended when I began this inquiry. I knew that the great men who achieved our freedom had drawn their courage from truths that they held to be self-evident, but I had grown up in an age when it was said that there were no self-evident truths. Yet I could not rid myself of the notion that the Englishmen and Americans who had successfully overthrown tyranny and founded flourishing free societies had a more genuine experience and a deeper insight than men of a sheltered age. It was true that they had lived before the age of manufacture with power-driven machinery, that they traveled by horse and buggy rather than by airplane; but they had dealt at first hand with tyrants and revolutions and social disorder. They had known how to orient their spirits, gather together their faculties, and challenge the turbulence and tyranny of their times. Might it not be that they had possessed an insight which we have lost, and that, if we are to be worthy of our inheritance from them, we must recollect and repossess and reanimate their ancient and half-forgotten faith? This led me to question the idea I had been taught to take for granted, that modern men must base their political convictions on altogether different premises from those which civilized men of the past had held to be self-evident. So I began to ask myself whether perhaps in reasoning about the problems of our time we had lost vital contact with self-evident truths which have the capacity to infuse the longing to be civilized with universal and inexhaustible energy.

As I began to study the contending social philosophies of this

age, it became apparent, first vaguely and then clearly, that they were variants on the same theme. I saw that the grandiose promises of the modern partisans depend for their fulfillment on some sort of coercive direction of men's lives and labor. Yet at first in examining the theories and the deeds of the authoritarian collectivists I could not see beyond a profound but undefined distaste for the manner in which they oppressed the human beings who fell within their power. I could find no more solid ground on which to stand than the feeling that there was an intolerable presumption in the way they disposed of men. But that prejudice was not enough, even when it could be demonstrated that the authoritarian philosophies, with all their promises of peace, plenty, and unity, were in fact inexorably dividing, impoverishing, and embroiling mankind. It was not enough because a vague sense of their indignity, and an empirical argument about their consequences, do not in themselves make clear the other path: wanderers lost in the forest do not find their way merely by realizing how miserable they are and in what great danger.

Then I began to work on the second part of this book, fumbling around in my own prejudices and unexamined notions, studying intently certain of the classic instances of human emancipation, and trying to discern the cardinal ideas which had inspired them. I had learned that in the authoritarian regimes the personal dictator or the oligarchy is invested with the right to dispose of human beings according to the sovereign's own ultimately unaccountable opinion of what is fitting. Then I began to perceive that the overhead planning and coercive direction of human activity was radically incompatible with the economy of the division of labor. I saw then that historic liberalism was the necessary philosophy of the industrial revolution. Then I could see why it was that the progress of liberty has accompanied the division of labor, and finally I realized that the specific

achievements of liberals were founded upon the supremacy of a common law replacing the dominion of men over men. I began to realize that this has been the guiding principle of the struggle against the arbitrariness of men and their masters; that the history of constitutionalism is the effort to transform the coercive authority of the state so that it shall be employed to protect and disarm, not to magnify by privileges or repress by discrimination, productive energy and voluntary associations of individuals. After that it was clear that the division of labor, democracy, and the method of the common law are organically related and must stand or fall together, because they are different aspects of the same way of life.

But still the question remained as to where, at what final rampart, a man must stand when he fights for human freedom. I could see that in the polity of a free society the regulation of human affairs was achieved by the definition and adjudication of personal rights and duties, whereas in all unfree societies it was done by administration from above. But for a long time, until I began to recall the actual process by which human beings had been emancipated, the ultimate difference between these two ways of governing human societies was not sufficiently clear. Then it began to dawn upon me that as the general dominion of men over men had been reduced to definite laws fixing their reciprocal rights and duties, a new valuation of man had emerged. In the dominion of men over men, be it the master over his slave, the despot over his subjects, the patriarch over his wives and children, the nexus is personal and those who are underneath are in effect the property of those above them. But as their relationships are progressively defined by law and custom in terms of specific rights and duties this personal and possessive nexus dissolves. By the reduction of general supremacy to particular obligations, something is left over — a residual essence in each man which is not at anyone's disposal.



That essence becomes autonomous. And so out of the slave, who was a living person treated as a thing, there emerges a person who is no longer a thing.

It is just here, I submit, that the ultimate issue is joined, on the question whether men shall be treated as inviolable persons or as things to be disposed of; it is here that the struggle between barbarism and civilization, between despotism and liberty, has always been fought. Here it must still be fought. The self-evident truth which makes men invincible is that inalienably they are inviolable persons.

In so far as we can see the issue clearly, the ground on which we stand is firm beneath our feet, the cause in which we are enlisted is clear. If we are asked why the righteous Venetian Senators of the eighteenth century were wrong when they employed assassins for the public good, we can then reply that they were wrong because they violated the essential manhood of other men. They treated their opponents as things to be disposed of as they would dispose of rubbish. Then we can say that France was governed badly when Richelieu said it could not be governed without the right of arbitrary arrest and exile; we can declare that a society is barbarous or diseased where men are dealt with as inanimate objects; we can reply to Descartes, who invited kings to crush all who might resist, by affirming that the dissenters are no less men than the kings themselves.

This is the touchstone of civilized judgment. And wherever we examine the pretensions of tyrants and the grounds on which men have challenged them, we find, I believe, that the ultimate complaint is that tyrants and exploiters treat others as they would treat brute things. To treat another person as a brute thing is to deal with him arbitrarily. This is the inwardness of the capricious and lawless life. For where men are degraded to the status of chattels, pawns in a game, cannon fodder, robots, they are used as means to the ends of others and the injunction

has been suspended: "Therefore all things whatsoever ye would that men should do to you, do ye even so to them."

### 3. *Man the Inviolable*

The recognition that all men are persons, and are not to be treated as things, has arisen slowly in the consciousness of mankind. It has made its way with difficulty against the recurrent testimony of immediate experience, against sophisticated argument, against the predatory and acquisitive instincts which men bring with them out of the animal struggle for existence. The passage from barbarism into civilization is long, halting, and unsure. It is a hard climb from the practice of devouring one's enemies to the injunction to love them. But in that long ascent there is a great divide which is reached when men discover, declare, and acknowledge, however much they may deny it in practice, that there is a Golden Rule which is the ultimate and universal criterion of human conduct. For then, and then only, is there a standard to which all can repair who seek to transform the incessant and indecisive struggle for domination and survival into the security of the Good Society.

The Golden Rule, sometimes in its positive form but more often in the negative form, has been enunciated among many peoples widely separated in time and space.<sup>2</sup> In the Upanishads of Indian Brahmanism it is said: "Let no man do to another that which would be repugnant to himself. . . . In refusing, in bestowing, in regard to pleasure and to pain, to what is agreeable and disagreeable, a man obtains the proper rule by regarding the case as like his own."<sup>3</sup> "My doctrine," says Gautama Buddha, "makes no distinction between high and low, rich and poor. It is like the sky. It has room for all, and like

<sup>2</sup> Cf. Joyce O. Hertzler's *The Social Thought of the Ancient Civilizations*.

<sup>3</sup> Mahabharata, XIII, 5571 ff., *ibid.*, p. 345.

waves it washes all alike. . . . To him in whom love dwells, the whole world is but one family.”<sup>4</sup> The rule appears again and again in Confucius: “When one cultivates to the utmost the capabilities of his nature and exercises them on the principle of reciprocity, he is not far from the path. What you do not want done to yourself, do not do unto others.”<sup>5</sup>

If we ask ourselves why we should not do unto others what we do not want done to ourselves, the only possible reason must be that we have recognized them as inviolable persons, finally and essentially distinguished from things. Thus the Golden Rule is the moral maxim which establishes itself when men recognize others as autonomous persons, when they acknowledge the inalienable manhood of other men. The rule is meaningless where that recognition is absent. It can be preached from all the pulpits of the world and it will be without effect unless men acknowledge that there is an inalienable essence in all other men. But for this acknowledgment of the ultimate distinction between a person and a thing we should think no more of stepping on a man than of stepping on the carpet. Without it there is nothing in the human organism to which human rights can be ascribed or attached.

But wherever the sentiment of the indefeasible qualities of persons appears, there begins to spread through all institutions that exploit and oppress “the infection of an uneasy spirit.”<sup>6</sup> For six hundred years, says Whitehead, the ideal of the intellectual and moral grandeur of the human soul had haunted the ancient Mediterranean world. It troubled the conscience of Aristotle, and in order to vindicate human slavery he had to argue that slaves are by nature servile. The Stoic philosophers and lawyers, who initiated the abolition of slavery, taught that

<sup>4</sup> Dhammapada, V, *ibid.*, p. 194.

<sup>5</sup> The Doctrine of the Mean, XIII, 3, *ibid.*, p. 227.

<sup>6</sup> Whitehead, *Adventures of Ideas*, p. 21.

all men are "equal persons in the great court of nature,"<sup>1</sup> not in the sense that their faculties were identical or equivalent, but that in each man there was finally an inviolable and inalienable essence. The Stoics spoke quietly and in terms intelligible only to an elite. To the masses of the western world the news that all men are more than things was proclaimed by the Christian gospel and was celebrated in its central mysteries. It proclaimed the news to all men that they were not brute things, to all men without exception, the weak, the outcast, the down-trodden, the enslaved, and the utterly dejected. The influence of that gospel has been inexhaustible. It anchored the rights of men in the structure of the universe. It set these rights apart where they were beyond human interference. Thus the pretensions of despots became heretical. And since that revelation, though many despots have had the blessings of the clergy, no tyranny has possessed a clear title before the tribunal of the human conscience, no slave has had to feel that the hope of freedom was forever foreclosed. For in the recognition that there is in each man a final essence — that is to say, an immortal soul — which only God can judge, a limit was set upon the dominion of men over men. The prerogatives of supremacy were radically undermined. The inviolability of the human person was declared

Towards this conviction men have fought their way in the long ascent out of the morass of barbarism. Upon this rock they have built the rude foundations of the Good Society.

#### 4. *The Degradation of Man*

The great reaction in the latter part of the nineteenth century was ushered in by men who had little use for the traditional

<sup>1</sup> *Omnes homines natura aequales sunt.* The quotation in the text is the paraphrase of Ernest Barker in his introduction to the English translation of Gierke's *Natural Law and the Theory of Society*, p. xxxvii.

ideas in which the inviolable essence of the human personality was affirmed. Their intentions were, of course, excellent, and they imagined that they were attacking only superstition, bigotry, and obscurantism. But in their battle with the theologians and the clerics their zeal outran their insight. They brought down the humanist ideal in the crash of the supernatural order; and from it man, who had fancied himself a little less than the angels, emerged as much less than a man. The iconoclasts were too smart to be wise, too rational to be reasonable, too much enchanted with an immature science to hold fast to tested truths. They could not find the human soul when they dissected their cadavers; they could not measure the inalienable essence. So in the high realms of the intelligence there prevailed a radical disrespect for men, and the human ideals of justice, liberty, equality, and fraternity were relegated to the limbo of old superstitions along with God, the soul, and the moral law. What could a mere physico-chemical system or a bundle of conditioned reflexes have to do with such glamorous nonsense?

In the fury to explain men rationally there was explained away their essence, which is their manhood. There remained only an organism which was born, was nourished, was stimulated, reproduced itself, was destined to fight, was compelled to rationalize its appetites, and then died; there was only this passive being, determined by inheritance and circumstance, and therefore fit only to be manipulated and used. To the heresiarchs of the nineteenth century the destiny of this creature was manifest; it was manifest in many contradictory ways to be sure, but manifest in its own way to the Hegelians, the Marxians, the pseudo-Darwinians, and the Spenglerians. Did they not have their histories to prove that men were less than men, emanations of the Absolute, pawns moved by the dialectic of history, animals struggling for survival, cells in a super-organism, members of the Leviathan? They could prove that justice was the interest of the stronger, liberty the pretext of

self-interest, equality the envy of the disinherited. Adam Smith believed in liberty. British and American manufacturers applauded Adam Smith. Thus it was triumphantly demonstrated that liberalism was not concerned with the liberties of men but with the profits of British entrepreneurs. By this process of historical interpretation a host of learned ignoramuses argued that no ideal had validity if any class in the community prospered by upholding it. Having conceived man as a being without autonomy, they could not believe he had authentic purposes, inalienable rights, or binding obligations: in so far as he seemed to be purposeful, to claim rights, to perform duties, they had to explain his behavior as the rationalization of his appetites and his circumstances.

It would require another Erasmus to depict the confusion engendered by this disorientation of the human mind. With man degraded to a bundle of conditioned reflexes, there was no measure of anything in human affairs: all the landmarks of judgment were gone and there remained only an aimless and turbulent moral relativity. Thus our contemporary culture has vacillated between a doctrine of human predestination and a doctrine of human providence, holding at one moment that man's destiny is inexorably fixed and at another that it can be planned and managed. Such is the moral bewilderment that the historical determinists, who have nothing but scorn for the idea of free will, have become the protagonists of a consciously planned society in Russia, and the mystical collectivists who announced the manifest destiny of nations and tribes as corporate leviathans have become the exponents of arbitrary personal leadership in Italy and Germany. Yet they are unabashed by their contradictions. For the denial of the human soul was the perfect preparation for these revivals of tyranny. By the theory of predestination the masses were taught to obey and to demand that they be taken care of, and in the theory of human

providence their masters found the justification of arbitrary power.

It became the fashion to say again with Hegel that "world history is realized reason. Its plan is knowable. It entrusts to particular nations missions which transcend justice and morality."<sup>8</sup> Against those missions, "subjective morality must not raise its puling litanies" about decency, modesty, humanity, charity, tolerance, justice, liberty, equality. All the diverse prophets who knew the knowable plan of realized reason in world history developed a magnificent contempt for any idea which, because it respected the inviolability of the individual, might justify resistance to these missions. They were blatantly and proudly without morals. For morals call for a reciprocity among autonomous beings. So as the forces of the modern disorder began to be agitated, the liberal philosophy became the object of furious contempt. A chorus was heard, like that in Babel, denouncing it. According to Marx, liberalism was the morality of capitalists. According to Nietzsche, it was the morality of slaves. It was crass materialism. It was also stupid idealism. It was the opiate of the people and it was ineffectual sentimentality. It was the ideology of the middle class: it was a dangerous incitement of the masses. It was Christian, it was Jewish, it was Puritan, it was British, it was American, it was the French Revolution, it was religious superstition, and it was irreligious. The fascists declared that liberalism corrupts the national spirit; the communists that it corrupts class consciousness. Marx and Hegel, Nietzsche and Alfred Rosenberg, Lenin, Stalin, Mussolini, and Hitler, reached

<sup>8</sup> *Philosophie des Rechts*, par. 342-46. Cited in E. F. Carritt's *Morals and Politics*, p. 115. From Hegel is derived the ideology of the Prussian military state and of Marxian socialism. Marx (*Das Kapital*, preface to 2nd edition) said that Hegel's idealism was philosophy standing on its head, and that he proposed to turn it right way up. The difference, if any, is between the totalitarianism of Moscow and of Berlin.

agreement on a common ground. They agreed that the conscience of free men is incompatible with their purposes.

But for their realization that the human essence stands in their way, the actual collectivists would not go to such lengths to eradicate religion among their subjects. They would not, amidst all the immediate difficulties which confront them, find it necessary to strike at the practice of religion. But they do. Collectivist regimes are always profoundly irreligious. For religious experience entails the recognition of an inviolable essence in men; it cultivates a self-respect and a self-reliance, which tend at some point to resist the total subjection of the individual to any earthly power. By the religious experience the humblest communicant is led into the presence of a power so much greater than his master's that the distinctions of this world are of little importance. So it is no accident that the only open challenge to the totalitarian state has come from men of deep religious faith. For in their faith they are vindicated as immortal souls, and from this enhancement of their dignity they find the reason why they must offer a perpetual challenge to the dominion of men over men.

It must always be the ambition of the despot to destroy religion if he cannot exploit it as an instrument of his power. In the great disputes between Ghibelline and Guelph, as in the religious controversies in Russia and Italy and Germany, the immediate issue has often seemed to be whether the clergy should rule the politicians or the politicians should rule the clergy. Though the issue is obscured where ministers of religion are themselves worldlings greedy for power and wealth, the underlying issue has always been whether religious experience should be subservient to or should be allowed to correct secular purposes. In the powerful national collectivist states of our time, the sins of the clergy have been a pretext, seized upon by the collectivists in their determination to stamp out the



ultimate resistance of the human soul. The real reason for the irreligion of fascists and communists is that religion cultivates a respect for men as men. Against that respect the totalitarian state cannot long prevail. That is why, though all the so-called class enemies had been cowed or exterminated in Russia, though the democrats, socialists, pacifists, had been beaten, exiled, or put in Italian and German concentration camps, the dictators, for what looked like no good reason at all, went on to attack the churches and the religious life. They were well-advised. They are not stupid men. They have appraised the religious life correctly when they have seen in it the source of the infection, or, as we should call it, the source of the inspiration, that makes men secure in their manhood, rejects the pretensions of their masters, invests the human personality with infinite dignity and untold promise. They have seen truly that the religious experience must forever raise up new enemies of the totalitarian state. For in that experience the convictions which the dictators must crush are bred and continually renewed.

### *5. The Foundations of Tyranny*

Indeed, it is not until the conception of human inviolability begins to trouble their consciences that men are impelled to invent reasons which justify slavery, aggression, exploitation, and oppression. There are no ideologists in the jungle explaining to the wounded animals how proper it is that "the whole little wood" should be "a world of plunder and of prey." The primitive man plundered or was plundered, preyed or was preyed upon, and that was that.

The oppressors of mankind begin to justify their purposes only when they encounter the challenge of men who hold it to be self-evident that they are men. But once the apologist for arbitrary dealing begins to argue, he has placed himself before

the tribunal where he is bound to be judged by the very standard which he must somehow deny. That is why the inviolability of men is a self-evident truth. For all arbitrariness in human affairs, when it seeks to rationalize its purposes, is appealing to a tribunal which must in the end reject the reasoning. It must prove that it is reasonable to be arbitrary. That can be done only by denying that its victims are human. The apologist must brutalize his victims. In one way or another he must dehumanize them by attempting to argue that they are not really persons, that they are not autonomous souls, but things.

The classic paradigm of any and every apology for the dominion of men over men is Aristotle's defense of slavery. A slave, he said, is "a living instrument . . . the property of another."<sup>9</sup> But already questions had been raised which he could not disregard, whether it was "right or just for any one to be a slave" and "whether all slavery is contrary to nature."<sup>10</sup> So Aristotle proceeded to argue that "whoever are as much inferior to their fellows as the body is to the soul, or the brutes to men — these, I say, are slaves by nature." They are, he said, "fitted to become the chattel of another person" who have "just enough reason to perceive that there is such a faculty as reason without being indued with the use of it." Moreover "it is the intention of nature" — and all the apologists who have followed him have been no less conversant with the intentions of nature and of God — "to make the bodies of slaves and freemen different from each other, that the one should be robust for their necessary purposes but the others erect; useless indeed for such servile purposes but fit for civil life."

But having by definition brutalized the slave to justify his slavery, Aristotle had then to fit the definition to the fact that

<sup>9</sup> *Politics*, I, 4.

<sup>10</sup> *Ibid.*, I, 5.

“men of the noblest families might happen to be slaves and the descendants of slaves, if they chance to be taken prisoners in war and sold.”<sup>11</sup> So in order to justify the slavery of nobles captured in war, Aristotle was compelled to argue that “victory is always owing to some superior advantage: so that it seems that violence does not prevail without ability.” Thus we see how when the greatest mind of the ancient world sought to use his logical power to deny the self-evident truth of human inviolability, he ended in logical gibberish: a slave is a slave because he is enslaved; if the slave were powerful enough to be the master, he would not be by nature a slave.

Yet the argument that “some persons are slaves, other are freemen by appointment of nature,” is the ultimate doctrine upon which every apologist of oppression must rely in order to make the law of the jungle take on the guise of rationality to civilized men. No doubt it seems like a long jump from Aristotle’s apology for chattel slavery to the collectivists in democratic countries who dream of a rationally administered economy. But what conception of men as personalities does Mr. Stuart Chase, for example, have when he tells us that “a working dictatorship over industry is indicated, if the plant is to be efficiently operated” . . . that “the industrial discipline must be accepted — all of it — or it must be renounced” because “technological imperative is impersonal, amoral, and non-ethical”?<sup>12</sup> I know that Mr. Chase is a civilized man. So was Aristotle. Are not Mr. Chase’s regimented citizens mere “living instruments” of his glorified technicians? And as such, because they are less than men, are material to be fabricated by his engineers, have they not been stripped of their defenses against oppression? Have not the technicians who are to be their masters been relieved of all restraint? If the technological

<sup>11</sup> *Ibid.*, I, 6.

<sup>12</sup> *Op. cit.*, pp. 310-11.

imperatives of his technocrats are so impersonal, so amoral, and so non-ethical, then how can they ever be challenged? Against these imperatives there are no human rights, not even the right of revolution.

Of the many rationalizations of tyranny the subtlest is that which teaches the individual that he is a cog in a corporate machine or a cell in a collective organism. Men have learned to defend themselves against personal sovereigns, against the doctrine that as slaves they belong to their lord, as subjects to their king. But in the presence of the anonymous master, the super-organism of the collectivists, they do not so easily discern its inhuman pretensions and brutalizing dominion.

For the demand that men be subordinated and submerged in the mass is easily mistaken for the ideal of a fellowship of free individuals in which the human personality realizes some of its noblest possibilities. It is not always easy to distinguish between the patriotism of the collectivist who sacrifices the individual and the patriotism of free men who sacrifice themselves voluntarily; or to distinguish between social obligation which is the respect of persons for the legal and equitable rights of others and social discipline which means that men's lives are to be planned and administered by their superiors. The counterfeit resembles the real thing just enough to be deeply confusing. Thus many cannot even distinguish between the plebiscites by which dictators ratify their supremacy and the elections by which free men choose their public servants, between the acquiescence which the dictators obtain when individuals are cowed, corrupted, and without recourse, and the consent of self-governing societies.

But the distinctions, though often obscured, are radical. In the social discipline of all collectivists the inviolability of men is somewhere denied. Men are not fully persons. They are things to be used for purposes which others, be they Aristotle

or Mr. Stuart Chase, deem desirable. They are conscripts under commanders; in Mr. Hilaire Belloc's penetrating phrase, they are subjects of the Servile State. On the other hand, in the discipline of a free society, it is the inviolability of all individuals which determines the social obligations of each individual, of the official no less than the citizen. They are citizens who are consulted and consent. And their consent has meaning because they are protected in the right to withhold consent. The lives of such individuals cannot be administered. In their transactions justice can be dispensed, and that justice has its criterion and its sanction in the fact that they are inviolable individuals dealing with other inviolable individuals.

So it is here, on the nature of man, between those who would respect him as an autonomous person and those who would degrade him to a living instrument, that the issue is joined. From these opposing conceptions are bred radically different attitudes towards the whole of human experience, in all the realms of action and of feeling, from the greatest to the smallest.

#### 6. *"Watchman, What of the Night?"*

Measured by the creeds that have the greatest vogue, the reaction against freedom is almost everywhere triumphant. Yet though the reaction is popular, and the masses applaud it, the reactionaries have been winning the battles and losing the war. The people have been promised abundance, security, peace, if they would surrender the heritage of liberty and their dignity as men. But the promises are not being kept. In the ascendancy of collectivism during the past seventy years mankind has gone deeper and deeper into disorder and disunion and the frustration of its hopes. Because it is entirely incompatible with the economy by which men earn their living, collectivism does not work. Because it dismisses the lessons of long ex-

perience in regulating the diversity of human interests by law, it is incapable of regulating the modern social economy. Because it resurrects a primitive form of human polity, it revives the ancient parochial animosities of mankind. Because it affronts the essential manhood of men, it is everywhere challenged and resisted. Though collectivist theory is the fashionable mode in contemporary thought and guides the practice of contemporary politicians, its triumph is in fact a disaster in human affairs.

Though it is momentarily triumphant, it is a failure, and must fail, because it rests upon a radically false conception of the economy, of law, of government, and of human nature. But while it is possible to lead mankind by error into disaster, suffering is a hard school in which men do learn to perceive the truth. If the collectivist doctrine conformed to the data of experience and the needs of men, it would not be necessary to administer collectivism by drilling the people, sterilizing them against subversive ideas, terrorizing, bribing, enchanting, and distracting them. The ants live successfully, it would seem, in a collectivist order: there is no evidence that they require ministers of propaganda, censors, inquisitors, secret police, spies, and informers, to remind them of their collectivist duties. But men do not conform to this scheme of things. Though they have been known to accept servitude submissively and even gratefully, they are in some deep sense different from horses, cows, and domesticated fowl. They persist in troubling the serenity of their masters, having in them some quality which cannot be owned. The lord can count upon his cattle. But he is never so sure of his helots. There is never the same certainty in his sovereignty.

For human beings, however low and abject, are potentially persons. They are made in a different image. And though, as Jan Smuts has said, "personality is still a growing factor in

the universe and is merely in its infancy,"<sup>18</sup> it asserts itself and will command respect. Its essence is an energy, however we choose to describe it, which causes men to assert their humanity, and on occasion to die rather than to renounce it. This is the energy the seers discerned when they discovered the soul of man. It is this energy which has moved men to rise above themselves, to feel a divine discontent with their condition, to invent, to labor, to reason with one another, to imagine the good life and to desire it. This energy must be mighty. For it has overcome the inertia of the primordial savage.

Against this mighty energy the heresies of an epoch will not prevail. For the will to be free is perpetually renewed in every individual who uses his faculties and affirms his manhood.

<sup>18</sup> *Holism and Evolution*, p. 297.





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