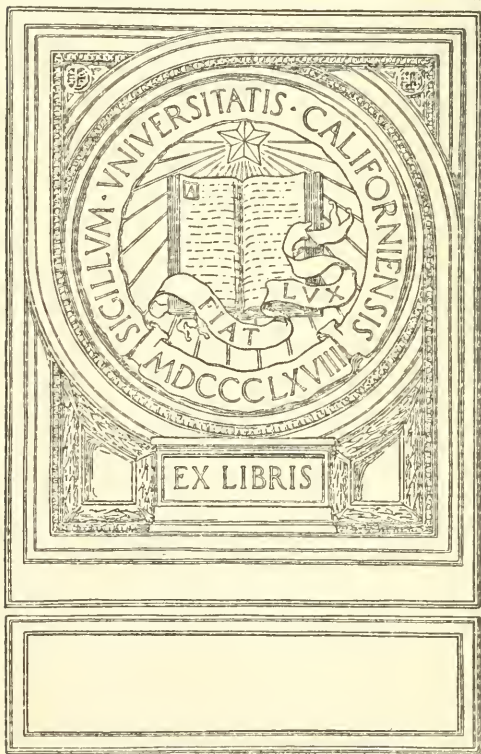


# POLITICS

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FRANK EXLINE

UNIVERSITY OF CALIFORNIA  
AT LOS ANGELES





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POLITICS:  
AN ORIGINAL INVESTIGATION  
AND PROPOSAL



# POLITICS

AN ORIGINAL INVESTIGATION INTO THE  
ESSENTIAL ELEMENTS AND INHERENT  
DEFECTS COMMON TO ALL PRESENT  
FORMS OF GOVERNMENT

TOGETHER WITH

A PROPOSAL FOR A POLITICAL SYSTEM  
WHICH WILL AUTOMATICALLY PRODUCE  
THE BEST GOVERNMENT POSSIBLE  
IN ANY GIVEN COMMUNITY

BY

FRANK EXLINE



NEW YORK

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## PREFACE

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ALL men agree that there is something fundamentally and vitally wrong in the political and economic structure of modern society. This universal conviction has made possible the present world-wide conspiracy and agitation for the overthrow of existing governments, either by the ballot or by violence; a revival of the doctrine of the "International," which has smouldered but never was extinguished since its promulgation more than fifty years ago by Karl Marx.

*Plough*

Internationalism (which includes Bolshevism, Communism, and most forms of Socialism,—all professing to represent the interests of a particular class of people in all countries, rather than all the people of any particular country) is the doctrine that the class of people who live by manual labor, being the majority in numbers, have the right, as well as the power, as such majority, to abolish every form of government which they deem to have become destructive of their rights and liberties, and to institute new governments upon such principles and in such form as to them shall seem most likely



to effect their safety and happiness *as a class*; thus paraphrasing and appropriating portions of the Declaration of Independence.

The doctrines of Internationalism undoubtedly have received additional importance and impetus from their partial recognition by the Peace Conference at Paris, especially in Part XIII of the Treaty; which provides for a permanent "Organization of Labour," to consist of "a General Conference of Representatives of the Members" of the League of Nations, and "an International Labour Office controlled by" a "Governing Body" which is constituted of "Twelve persons representing the Governments," six "representing the employers," and six "representing the workers." These provisions are preceded by a preamble, which solemnly recites that "conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled." Here we have a solemn admission of the existence of world-wide injustice which existing governments have failed to prevent, and which they apparently are unable to abolish. And the advocates of radical revolution are making effective use of that admission.

All established governments, including our own, now are assailed by this same Internationalism, and are put upon the defensive against an increasingly

formidable propaganda for their overthrow. What is their defense?

The defenders of existing governments, and of the social and economic systems which are sustained by these governments, admit the indisputable fact that the poor and laboring masses of mankind are deprived of that full measure of liberty and happiness which is enjoyed by the more fortunate well-to-do and wealthy classes; but plead, in defense (1) that the evils complained of never can be remedied by the destruction of existing forms of government and the substitution of new and untried forms; (2) that the injustice of the present state of society is the unavoidable consequence of the present imperfect state of political science, and the remedy must be sought in the further advancement of knowledge in that science, under the orderly protection of existing governments; and (3) that any form of government that may be devised will surely fail, unless it is based upon and constituted in accordance with a more perfect knowledge of political science than has yet been discovered and revealed to the world.

This is a valid answer; but the enemies of the existing order reply: (1) that the existing political and economic structure of society not only has failed to eliminate the fundamental errors which are responsible for the injustice of the present system,

but fails to propose any definite program of improvement or reconstruction which possibly might alleviate the evils complained of, and thereby obviate the necessity or excuse for radical revolution; and (2) that the proletariat masses, having no alternative other than social revolution or patient endurance of economic slavery, will choose the former, even at the risk of universal chaos and misery.

The problem of civilization now is, to discover another and better alternative; one which will afford a reasonable hope of a more equitable distribution of the benefits of civilization, without destroying the present structure of society. This problem can be solved, if at all, only by a searching investigation and analysis of the ideas and principles which underlie and enter into the social structure, with a view to the elimination of any errors and false principles, and the application of such true and sound ideas and principles as are found essential to a stable and just social state. The present volume embodies the results of an honest, though imperfect and incomplete, attempt at such an investigation.

In spite of the vast literature of politics, there is an astonishing dearth of exact knowledge and precise definition of the dominant ideas which underlie and enter into the structure or organized society as it is today; particularly, the prevailing ideas of *Law*,



of *Democracy*, of *Sovereignty*. of *Public Opinion*, and of *Selection* (or election) of public functionaries. If all or any of these fundamental ideas are absolutely erroneous, such errors, alone, are sufficient to account for the failure of any political system which is based upon them or the structure of which is dependent upon the strength and soundness of such erroneous ideas. Most astonishing is the almost total absence of knowledge, and even of discussion, pertaining to the fundamental Laws of Selection, as applicable to organized society, in accordance with which society, as a living organism, may be able to equip itself with *organs* which are suitable and adapted to the successful performance of their several functions, and without which no organism can survive and accomplish the purposes of its existence. Obviously, if organized society, in its present state of development, is destitute of an efficient and reliable system or process by means of which it can ascertain and select those of its members who are best fitted and adapted to serve as its organs of action, that fact, alone, is sufficient to account for society's failure to accomplish the chief end and purpose of its existence,—the preservation of right and justice among all of its members.

In offering this small work to the public, the author is painfully conscious of the boldness of his undertaking, and not unmindful of the somewhat

alarming fact that a general acceptance of the conclusions which seem to result from these investigations will involve the total rejection of some ideas and ideals which hitherto the author himself, in common with all good Americans, has cherished as self-evident truths or axioms, to question which would be almost sacrilegious. But the universal conviction that *something* is fundamentally wrong with the present structure of society, even in our own country, confirmed by the widespread and growing discontent among the victims of injustice and those who sympathize with them, reveals the absolute necessity of uprooting any falsehoods, however pleasing and long cherished, which are imperilling the whole structure of civilization. In this hour of imminent peril, ancient prejudices and unsound theories must be relinquished, and scientific truth must be accepted as the only safe guide, even though this should necessitate a revision or reconstruction of hitherto unquestioned dogmas of Political Science. The structure of government must be repaired and perfected in conformity to sound scientific principles, or it will fall. Government in conformity to prevailing popular ideals is drifting toward chaos and anarchy.

All men know that the political structure of modern society is wanting in *some* essential element—that there is *some* necessary function which so-

ciety, as now constituted, does not perform and is wanting in the power to perform—the absence of which is the constant cause of the failure of every form of government. And all men now are asking: *What* is that essential element which is wanting in the political organism? *How* may that wanting element be supplied?

—Enough and more than enough books already have been written and published which *discuss* those two fateful questions; but hitherto none has *answered* them truly. If the following treatise answers them truly, then that answer ought to be given to the waiting and anxious world. But if this book does not answer those questions truly, then it never should be published at all; for it has no other purpose.

F. E.

*Denver, Feb. 21, 1921.*



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POLITICS:  
AN ORIGINAL INVESTIGATION  
AND PROPOSAL



# POLITICS

## CHAPTER I

### POLITICAL DOGMAS

§ 1. FAILURE OF GOVERNMENTS. All forms of government, in the past, have proved beneficial to the few but oppressive to the many, and all have perished. The most enduring have been military despotisms, which were sustained by an armed and specially favored minority; but they, too, ultimately have perished. Mankind always has desired government which is beneficial to all and oppressive to none, but that desire never has been realized. Modern experiments in popular government have been inspired by that desire, with the hope that, by leaving all ultimate power in the hands of the many, through the modern device of representation, the many would receive the full benefits of government; but that hope nowhere is realized, and these modern governments now are pursued by the same Nemesis which has overtaken and destroyed their more ancient predecessors. They have failed to bring about that just distribution of the benefits of government

which is the right as well as the desire of all peoples; and the penalty of that failure is either disintegration and revolution, or a reversion to military despotism as the only means of suppressing the rising wrath of a disappointed and oppressed people. Disintegration begins with irrational and unscientific changes which are supposed to be "reforms," but which only hasten the dissolution of government and the advent of disorder and anarchy; military despotism begins with the necessity of employing force in the suppression of widespread public disorder; both are sure signs of a failing government—for no people is disposed to seek reforms, or to revolt, when the benefits of government are justly distributed.

§ 2. NECESSITY FOR INVESTIGATION. If this universal failure of governments were due to an inherent incapacity of mankind for enduring the necessary restraints of a just government, or for devising a government which is capable of justice, then there would be no hope of avoiding, in the future, a perpetual recurrence of the disorders, revolutions and wars which have afflicted mankind in the past. But there is no such incapacity. All peoples have, on the contrary, ever evinced a disposition to endure with patience the restraints and burdens of government, rather than bring upon

themselves the miseries of disorder and anarchy; while the development of jurisprudence, in all enlightened countries, exhibits the inherent capacity as well as the desire of mankind for justice. These evidences of man's capacity for government, and for justice, refute the pessimism that would condemn the world to a hopeless perpetuation of the injustice which is the cause of all public disorders and wars, and justify the more optimistic and hopeful belief that the universal failure of governments, past and present, is merely the result of *discoverable* and *remediable* errors and defects which are common to all existing forms and theories of government.

If this hopeful belief is well founded, then there exists an obvious necessity for a re-examination and searching investigation of the prevailing principles, doctrines and dogmas upon which the existing schemes of government are based, for the purpose of discovering those errors and defects and ascertaining the necessary corrections and remedies. This must be done in the genuine spirit of investigation and search for truth, with pitiless intolerance of false doctrines, assumptions and prejudices, no matter how prevalent and deep-seated in the minds of men. Thinking men, everywhere, are conscious of the fact that the old order of political society is passing, and that a new order, whether better or worse, is inevitable. The processes of disintegra-

tion and reconstruction are manifest throughout the world, and they are irresistible; but they are amenable to guidance,—and all civilization now is calling for right guidance. All men know that the old order is lost in a pathless wilderness of error, and are losing faith in the political science which has been its guide; many profess to know a better guide; but none yet has surveyed and marked out the *route* by which society can make its way to the region of truth and safety.

§ 3. PRESENT STATE OF POLITICAL SCIENCE. Any true science is a systematic and orderly arrangement of knowledge; and knowledge embraces only such facts and principles as are known (not dubitable) by the standards of sound reason. *Politics* is the science of the social and ethical relations of men and communities of men in the state of civil society under organized government. No other science so vitally and immediately concerns the peace and happiness of every human being. Indeed, the advancement and security of all other sciences, and the preservation and development of civilization, are dependent upon the state of perfection or imperfection of political science. It is, therefore, of first importance to observe the present state of the development of that science which so vitally concerns the welfare of all men.

Political science has not reached that stage of development where it properly can be said to be a systematic and orderly arrangement of *knowledge*,—with respect to its principles, as distinguished from its facts. Much that is called “principle” is mere belief, theory, or dogmatic assertion. The science of Politics never has entirely rid itself of the idealism of the ancient Greeks, who were masters of philosophical speculation, but novices in scientific investigation. Our modern politicians follow Aristotle, not only in his classification of the several elementary forms of government (which is scientific), but in the error of attaching undue importance to the mere *forms* of government, and ignoring the more fundamental distinction between the right and the wrong *kinds* of government,—namely: (1) government by autocratic and arbitrary *will*, and (2) government by enlightened and scientific *reason*. Thus, while man always has desired *good* government, science has failed to recognize and define the principles which distinguish *good* from *bad* government, and to apprehend the radical difference between the dictations of will and the conclusions of reason, as the determining factors in the conduct of government.

Chief among the unfounded beliefs that are masquerading as established truths and principles of political science, are the following: That the

powers of government are arbitrary powers, independent of all principles and superior to all law; That the persons who are invested with the powers of government are authorized to *make* laws, and to enforce them, in accordance with their personal will or desire; That all laws of civil society are *commands* of human will, not conclusions of human reason; That human rights are limited to life and liberty,—excluding the right of *merit*, except upon the condition of fighting for and winning, by force, fraud or favor, the rank or reward that belongs to merit; That the chief incentive to human endeavor is the desire for riches, not the desire for approbation; That popularity, not merit, is the true basis of selection for public office; That public opinion, not expert opinion, is the decisive authority upon all *political* questions—though not upon any other questions; That there is a public mind—a conglomerate of a multitude of human minds—and that this imaginary super-mind is superior in wisdom and authority to the minds of individual men, however highly trained and developed, and that all political conduct can and should be ruled by that super-mind; That the body politic is different from all other organic bodies, in that the several atoms of which it is composed are superior, instead of subordinate, to the governing organism of the body; That universal suffrage and popular sovereignty



can satisfy the universal desire for just government.

Upon such unscientific beliefs, theories and dogmas our modern governments are founded; and these governments, misguided and corrupted by false principles, now are facing the perils of revolution and reconstruction. But every scheme of revolution and reconstruction which is offered to the distracted world is based upon the fundamental error that the voice of numbers, or of force, must prevail over the voice of Science. This is the error that ever has retarded the evolution of social order and justice, and it now threatens to wreck all civilization.

§ 4. BASIS OF POLITICAL SOCIETY. Science is ordered knowledge. The science of mechanics is ordered knowledge pertaining to physical forces. The science of politics is ordered knowledge pertaining to the moral forces of political society. The basis of science, in either case, is truth, principle, law,—not will, choice, or preference. Any *scientific* political system must, therefore, be based upon the known truths, principles, and laws relating to the moral forces of society, regardless of any arbitrary will, choice, or preference. But the existing political systems are, in fact, based upon arbitrary will, choice, and preference, regardless of the truths,

principles, and laws relating to the moral forces of society; and therefore they are *not scientific*. They are arbitrary and despotic. With science, fixed principles are law; with despotism, arbitrary will is law. Political society, as it exists today, rejects the law of science and accepts the law of despotism. All existing governments are based upon the proposition that commands, not principles, are law. This is despotic, and contrary to science.

Science recognizes as law those rules of being and of conduct which are inherent in the nature of things, and which are ascertainable only from the inductions and deductions of right reason. This is the *natural law*, recognized as the only basis of the *law of nations*, and its rules are derived from the principles of justice which inhere in human nature and are inseparable from the social state. The obvious inconsistency of accepting the natural law as the basis of the society of nations, and rejecting it as the basis of the several political societies which compose the society of nations, is inexplicable except by the natural aversion of autocracy and despotism to the restraints of any higher law than that of their own arbitrary and uncontrolled will. And political science never has succeeded in freeing itself from the impress of the autocracies and despotisms which have ruled mankind throughout the ages, and which have transmitted their chief char-

acteristics, as a sort of inheritance, to our modern popular governments. Yet in fact, and whether so recognized by science or not, the natural law necessarily is the real basis of all political systems.

§ 5. NATURAL LAWS OF POLITICAL SOCIETY.

*Natural law* has been variously defined: (1) as “a norm or rule for the working of any force”; (2) as “the regular method or sequence by which certain phenomena or effects follow certain conditions or causes”; (3) as “the uniform methods or relations according to which material and mental forces act in producing effects, or are manifested in phenomena”; and (4) as “those fit and just rules of conduct which the Creator has prescribed to man, as a dependent and social being, and which are to be ascertained from the deductions of right reason.” The substance of all these may be embodied in a single comprehensive definition, as follows: Natural law comprises those uniform and immutable rules, methods, and sequences by which material and mental forces act in producing effects, and which are ascertainable by the correct operations of reason.

Natural law governs the action of all forces, mental as well as material,—which includes the action of political forces. Political society is a phenomenon which is produced as the effect of certain causes by the operation of natural law. Those

causes are the nature of man, and the necessities arising from his condition and environment. Political society is powerless to alter or suspend the operation of the law by which it is called into being, or to escape the inevitable penalties that are incurred by every infraction of that law. Natural law is *positive* law, enforced by sanctions more certain and inexorable than those of the so-called "positive laws" of the Austinian school of English writers. Since the natural law is ascertained by the operations of right reason, every infraction of the law thus ascertained is contrary to right reason. It follows that any legislative or other action by a political society which is contrary to natural law is likewise contrary to right reason, and will bring upon that society the inevitable penalties which follow every infraction of that law.

Natural law, being ascertained by reason, always is in perfect harmony with the reason and enlightened conscience of men. But human nature, as exhibited in all men, reveals a constant conflict between reason and conscience, on the one hand, and will, desire, and self-interest, on the other hand; and the governing organisms of society, being composed of *men*, are subject to the same conflicting forces. The necessity for *government* arises from the disposition of men to act according to will instead of reason, and the purpose of government is to re-

strain men from such action; but governments, as now conducted, themselves are guilty of the same kind of action which they are instituted for the purpose of restraining, and in this they violate both natural law and right reason. They have set the law of the will, desire and self-interest of those who are invested with political power above the law of reason and enlightened conscience, as the rule of political conduct; and the penalties of their infractions of natural law are visited upon them in the form of social unrest, political disturbance, and war.

But in spite of the assertion of the supremacy of will over reason—of despotic law over natural law—the natural law nevertheless prevails as the vital principle and cohesive force of all political society; otherwise no government could exist, and civilization would have been impossible. The *corpus juris* of every enlightened state is the growth and embodiment of natural law as ascertained by reason; and the conduct of states, in both internal and foreign affairs, is, in general, governed by natural law so ascertained, in all action in which that law does not come into conflict with the despotic law of will, desire and self-interest. It is only in cases of such conflict that infractions of natural law occur; but those infractions still are sufficient to incur the penalties that now are afflicting all mankind. And such conflict arises only in the exer-

cise of the *legislative* power of government, where legislative commands infringe those principles of absolute rectitude which constitute the natural law. Departures from the sound principles of justice and rectitude occur in the exercise of the judicial and executive powers, but those departures are the accidental results of the moral or intellectual unfitness or incapacity of the persons to whom the exercise of those powers is entrusted, rather than the necessary result of the principle of despotic government. The exercise of the governmental function of judicature, in so far as it is not controlled by arbitrary legislation, is governed entirely by natural law and justice—or, rather, by the authority of natural law—according to the enlightened reason of capable and fit judges; for, aside from legislation, there is no other *authority*. Every judicial departure from the precepts of natural law, when not compelled by despotic legislation, is the result of the personal unfitness of judges,—which can be avoided only by a scientific method of selecting judges.

#### § 6. RELATION OF GOVERNMENT TO LAW.

Since political society is called into being by the operation of natural law, and is governed in all things by that law, excepting only those cases in which arbitrary legislation conflicts with natural law; and since those cases of conflict, though im-

portant, affect but a relatively small fraction of the whole body of the law; and, furthermore, since such acts of arbitrary legislation are mere *commands*, not *laws* in any true sense, and are properly called *statutes*, to distinguish them from true laws;—the unavoidable conclusions must follow: (1) That governments, as the organisms of society, are the creatures, not the creators, of law; and (2) That governments are subordinate and amenable to law. But it is argued that governments cannot be held amenable to any laws, for want of sanctions by which those laws may be enforced, i.e., want of a power which can punish governments for disobedience to law. The answer is, that the sanction of any law is a threatened infliction of evil consequences as a penalty or punishment for disobedience. The more inevitable the penalty is, the more positive is the law. The form of the penalty, and the nature of the power that inflicts it, are immaterial as affecting the status of a law *as law*. The penalties and punishments, or evil consequences, which governments must suffer for their infractions of the natural law of society, are more inevitable and inexorable than any penalties or punishments which governments can inflict upon their subjects. Governments have suffered the pains of insurrection, rebellion, revolution, and dissolution, for their infractions of the natural laws of society.



But governments are not only the creatures of and amenable to the law; they are the instrumentalities of society for the administration and enforcement of law. It is upon this conception of the relation of government to law, and upon no other, that law, government and jurisprudence can be regarded as constituting a *science*. Lawless and despotic will, choice, desire,—these cannot be the subject of any *science*.

§ 7. LAW PRECEDES AND SURVIVES GOVERNMENT. If the phenomena of political society and government are *effects* which are produced by the operation of the natural laws of social being (an undeniable proposition), then those laws must exist antecedent to, and must survive, all society and all government. But, according to the Austinian school of political science, the natural laws of society are entirely superseded and overruled, or are made effective as “positive” law, by the despotic “command” of the “sovereign person or persons” in a political society, the moment that a sovereign government is instituted. If Austin’s theory is correct, then the laws of any state are the mere creatures of the government of that state, without existence antecedent to their creator, and ceasing to exist when the government by which they are created ceases to exist. We know, however, that the laws



of a state do not, in fact, cease to exist whenever the reigning sovereign is deposed or the existing form of government abolished. This fact is made vividly apparent by the recent experience of several distinct and independent nations of Europe, whose monarchs have abdicated their ancient sovereignty and whose governments have been completely overthrown; the laws of those nations never for one moment have ceased to exist, nor, in most instances, have the *de facto* tribunals of justice ceased or even paused in the performance of their functions. The sovereignty of kings and governments has ceased, but the sovereignty of the *law* survives and is acknowledged by the peoples concerned, after the "sovereign persons" or "supreme power" by whose command it was supposed to exist have lost their sovereignty and supremacy, and while the peoples concerned are proceeding with the construction of new governments, in obedience to the natural law which compels them to do so. But those peoples, while obeying natural law in undertaking to construct new governments, are erroneously constructing them upon the rotten foundation of despotic human will, instead of the firm and rational foundation of the law which they are trying to obey. The arbitrary and selfish will, whether of a single autocrat, or of a privileged aristocracy or of a bourgeoisie, or of

a proletariat class, or of a majority of the whole people, is nothing but lawless despotism.

§ 8. DERIVATION OF POLITICAL POWER. Political Science, in its present state of development, utterly fails to recognize natural law as the source from which political power or authority is derived. The prevailing doctrine—that the expressed will, or command, of the person or persons who are “sovereign” is above and independent of all other law—would seem to imply that all political power is a necessary attribute of sovereignty, and is, therefore, inherent in the *persons* who are sovereign. Any power which is inherent in any person or body of persons is, of course, self-derived, or autocratic, power; and a government which exercises such power is a true *autocracy*.

In the United States, the ideas of the source of political power are somewhat confused. According to the Declaration of Independence, the “just powers” of government are derived from “the consent of the governed”; but in some of the state constitutions it is declared that “all political power is vested in and derived from the people,” and that government “is founded upon their will only”; while throughout the entire country the doctrine prevails that all “sovereignty” resides in the people,—a doc-

trine which denies the sovereignty of either the Law, the State, or the Government.

If the powers of a government are derived from the consent of the people who are governed, those powers can hardly be self-derived, as to the government; but the power of "consent," or "all political power," or "sovereignty," if inherent in the people, is self-derived as to them. If sovereignty—which means supreme political power—is inherent in the people as apart from the government, then such sovereign political power is purely self-derived,—which is *autocracy*; because the people, considered apart from the social organism or government, are not organic society, and, therefore, could not derive such power from the natural law which governs man in the *social* state.

The simple truth is, that *all* existing governments are *autocracies*. Self-derived power is the essence of autocracy, and the essential nature of such power is not altered or affected by the *number* of persons invested with such power. A self-derived power and sovereignty which is claimed and exercised by a majority of the whole body of people is no less an autocracy than the same sort of power and sovereignty when claimed and exercised by a single individual. In this connection, it should be observed that the word "power" is employed in the sense of a claimed rightful authority, rather than that of

mere physical force; for, while a majority might pretend to rule by right of such self-derived force, such pretention could hardly be maintained by a single autocrat.

So universal has been the acceptance of Autocracy as the source of all political power and authority, that our language does not afford a word which signifies the opposite,—although the Greek roots denoting “law” and “power” would supply the word “NOMOCRACY,” which signifies “law-derived power” as clearly as the word “autocracy,” from the same language, signifies “self-derived power.” But the idea of *law-derived power* seems never to have entered into any political system. Yet, if political society is a natural and involuntary development in obedience to and compelled by the natural law governing the life and conduct of man as a social being, it must be that all powers and all authority of political society are derived from that law,—and not from any arbitrary volition, either human or divine. Reason, not volition, is the faculty by which man may ascertain and know the laws of human action, as well as the laws of material forces. All powers and all forces, both moral and physical, are subject to the natural Law by which they exist and act, and, therefore, must be derived from that Law, — and cannot be self-derived or voluntary.

§ 9. OBEDIENCE TO LAW. With but a single exception, all forces in nature, both animate and inanimate, are absolutely and invariably obedient to law. The single exception is the moral force or power of *volition*. Obedience to law by society, as well as by individual men, is dependent upon volition; society, like the individual, may will to obey, or to disobey, the law. But neither society nor the individual can evade or escape the penalties of disobedience which are the sanction of natural law. Psychology, however, teaches that *volition* is the last of the three elementary facts of mind, viz., *feeling, knowing, willing*. Volition is prompted either by feeling or by knowledge. *Feeling* is the consciousness of pleasure or pain, like or dislike, desire or repugnance, etc. *Knowledge* is "a clear perception of truth and duty." Law is a subject of knowledge, never a subject of feeling. Obedience to law, therefore, is *voluntary action in accordance with knowledge*; and this is the vital principle of all justifiable political power and action, the key to the solution of the problem of civilization.

But political science has failed to recognize this vital principle, and still clings to the old despotic principle of disobedience to law, by making all political action accord with the feeling, sentiment, preference, or desire of sovereign persons. Modern governments yield obedience, not to the law, but

to lawless public sentiment; not to a public will which is prompted by knowledge of truth and duty, but to a public will prompted by feeling, and vacillating between the selfish interests of contending classes of people.

Thus the issue is clearly and sharply defined, between a *lawful* and a *lawless* volition, or exercise of will, as the moving principle of political society and government. It is the fundamental question of the source from which all justifiable political power and authority are derived; whether from natural law, or from human self-will acting independently of law. The issue is between law-derived and self-derived power; between Nomocracy and Autocracy.

§ 10. PENALTIES OF DISOBEDIENCE. Popular discontent, unrest, disturbance, insurrection, revolution, war,—these are the penalties which are inflicted upon society for its disobedience and infractions of the natural law; and no political society ever has escaped those penalties, for none ever has been, or is today, obedient to that law. The development of civilization, and the advancement and dissemination of knowledge, have not sufficed to remove, or even to diminish, ancient causes of popular discontent, but rather have served to intensify those causes by revealing them more vividly to the struggling masses of mankind, and awakening them

to a keener realization of the glaring fact that many of the benefits and blessings of civilization are denied to a very large proportion of the really deserving, while being lavishly bestowed upon an undeserving minority. Throughout the ages, the voice of the multitude has cried out for justice,—and the only answer has been a perpetual succession of *forms* of government, ranging from autocratic Monarchy to equally autocratic Democracy, each of which, invariably, has enforced selfish and lawless human will, and each of which has failed utterly to realize that common justice which is the right of all. In all ages, and under all forms of government, the many have toiled for rewards which they never received, while the few have received rewards for which they never toiled. *That* is the injustice against which the multitude has cried out and rebelled, and for which the wise of all times have sought a remedy; but the remedy never has been found, and social justice, though attainable, never has been attained. This is the one stupendous failure of political science. The continuing cause of that failure is Autocracy, for which the only remedy is Nomocracy. The beneficiaries of an unjust system are not responsible for the injustice of a system which they never devised and themselves do not understand; but the complaining multitude is prone



to hold them responsible, and to seek redress by the violent enforcement of its own lawless will.

§ 11. ATTAINABILITY OF JUSTICE. *Justice* is exact conformity to the laws of rectitude; strict conformity to right; obedience to natural law. An independent government can be held subject to the sanctions and penalties of no law other than natural law; and the attainment of justice by a government is possible only by the obedience and conformity of that government to the precepts of natural law. If such conformity and obedience are possible, then the attainment of justice by *any* form of government which so conforms and obeys, is possible. But, since the exercise of all powers and functions of government must, of necessity, be entrusted to human agencies, it is evident that the capacity of government for conformity and obedience to natural law must depend upon whether those human agencies are fit, and capable of ascertaining and conforming to the precepts of that law. The attainability of justice, therefore, depends upon the selection of fit and capable persons to exercise the powers and functions of government. Such selection is possible, or can be made possible, only by the inauguration of a comprehensive and systematic survey and classification of the human resources of the state, by which the relative merits and capabilities of per-



sons may be scientifically ascertained and made known, and only the fittest and most capable selected and entrusted with the exercise of the several powers and functions of government. This is the ultimate problem of political science; and the fate of civilization hinges upon the possibility of developing and inaugurating a practicable and scientific method of *selection*—which is the subject of another chapter.

§ 12. THE PRESENT CRISIS. Now, when the issue of the world-war is hailed as the triumph of “Democracy” over “Autocracy”; now, when new and strange experiments in democracy are emerging from the ruins of fallen empires, and even the Constitution of the greatest of all so-called “democracies” is crumbling under the disintegrating forces of unscientific reform; now, when the authority of orderly government everywhere is yielding to the influence of Anarchy in the guise of Public Opinion; now, when the priceless heritage of scientific jurisprudence (priceless, despite its imperfections) is exposed to mutilation and destruction by the misguided zeal of irresponsible reformers who happen for the time being to lead a supposedly omnipotent majority;—even now, the voice of the multitude is imperious and insistent in its demand for *justice*,—for that justice which protects the stupid from the

astute, as well as the weak from the strong,—to the end that those who toil shall not suffer want in the midst of abundance, and those who cannot toil shall not be dependent upon uncertain private charity, or perish. This imperious demand cannot be denied; it must not be ignored; neither can the voice of the complaining multitude be silenced by any arbitrary power,—for the authority of governments everywhere is undermined and paralysed by the spread of false conceptions of “democracy,”—and there no longer remains in the world any power adequate to its suppression by force alone. The demand for justice must be *satisfied*; and it can be satisfied only by the actual attainment of that universal justice by which the benefits of government and civilization may be shared by all and denied to none.

## CHAPTER II

### NATURE OF LAWS

§ 13. THE WORD "LAW." Much of the controversy that has taken place concerning the nature of the laws of civil society and the precise definition of the word "law," has, without doubt, arisen from the fact that this one word is burdened with the double duty of expressing two radically different ideas. Another source of trouble has been the persistent tendency, among even those who know better, to regard the word "law" as being derived from and limited in its meaning by the Latin "lex"; though our English word is of purely Anglo-Saxon origin, and has no etymological relation to the Latin word. Yet, for the want of an additional word to express one of the two different ideas, our word "law" commonly is employed indiscriminately to designate either an act of a legislature or a rule of jurisprudence. The Latin language, however, has supplied us with adjectives which definitely express the two different ideas: the word "legislative," from *lex* (a rule prescribed by arbitrary authority) to denote legislative law; and the synonymous words

“juristic” and “jurisprudential,” from *jus* (right, Justice) to denote judicially ascertained law,—the rules, maxims and established principles of jurisprudence. Therefore, when we use the word “law” without a qualifying adjective, we may mean either one of two radically different things. This has resulted in endless controversy, at least in the English-speaking world, as to what a law of civil society really is.

§ 14. LEGISLATIVE LAWS. All edicts and decrees of the ruler, in the case of a despotic monarchy; all statutes enacted by the representative legislative body, in the case of a republic; and all statutes and constitutions enacted or adopted by the direct votes of the people, in the case of a democracy; all these are *legislative* laws. They, only, are properly defined as “rules of conduct prescribed by the supreme power in a state,” and they necessarily are temporary and unstable in character, being subject to alteration or repeal at any time, at the will and caprice of the “sovereign power” that makes them. Such legislative laws are not *laws* at all, in the sense that juristic laws are *laws*; the former being specific rules and regulations which are more or less arbitrarily prescribed and enforced by the governing power, and subject to change or repeal by that power, regardless of whether they

are right or wrong; while the latter are general and universal rules deduced from knowledge of principles and phenomena, dependent solely upon their rectitude and justice for their force and validity, and cannot be changed, altered or repealed arbitrarily,—though erroneous conceptions of such laws may occur and be corrected in the due course of the development of the science of jurisprudence. This radical difference between legislative and juristic laws always and of necessity has been recognized in the actual practice of judicial tribunals; and, in those countries where the English language prevails, the very necessity for the use of a word other than the word “law” to designate legislative enactments has led to the adoption and constant use of the word “statute” to distinguish the so-called “laws” which express the will of legislators, from that great body of the common law which no legislative power ever prescribed, and which constitutes all there is of *scientific* jurisprudence,—the real and permanent “law of the land” in every civilized country.

§ 15. STATUTES. Since despotic monarchies, with their edicts and decrees, now may be regarded as obsolete throughout the world, we have to deal only with those legislative acts which are either *constitutions* or *statutes*, enacted by representative deliberative bodies, in a republic, or by the direct

votes of the people, in a democracy. The subject of constitutions will be considered in a future chapter on the Nature of Government. A *statute*, as defined by Webster, and also by Bouvier, is "An act of the legislature of a state or country, declaring, commanding, or prohibiting something; a positive law; the written will of the legislature expressed with all the requisite forms of legislation;—used in distinction from *common law*." But this definition now is incomplete, in consequence of certain constitutional changes in several states, which have authorized the initiation and enactment of statutes by the direct action of the irresponsible voting population without the intervention of responsible legislative bodies. The following would seem to be a more complete and concise definition: A statute is a positive act of legislation expressing the will of a sovereign, a legislature, or a people. The essential distinction between a *statute* and *common law* is, that the former is an expression of *will*, while the latter is an expression of *right*; which is the etymological distinction between *legislation* and *jurisprudence*.

§ 16. PROPER DOMAIN OF STATUTES. In accordance with the distinctions pointed out in the preceding section, statutes are confined, as a rule, to the domain of public policy, convenience, and

expediency, where no question of right and justice is involved further than is required by a decent respect for the common sense of right and justice. Statutes which invade the domain of *jurisprudence* and attempt to enforce the legislator's will in matters of right and justice, though exceptions to the rule, are sufficient in number and importance to be responsible for practically all the injustice which disturbs the peace of society.

The logical and appropriate domain of legislation is, to prescribe the instrumentalities and methods of procedure for the proper exercise of political powers and the performance of public duties; to provide for the public defense and safety, and the prevention and suppression of crime; and, in general, to prescribe and regulate matters of policy, convenience, expediency, and procedure in the conduct of public affairs, in accordance with the principles of jurisprudence and in the interests of the liberty and happiness of the people as individuals. All these things, being matters of policy and expediency, rather than of right and justice, are within the proper domain of legislative powers; while matters of right and justice are matters of jurisprudence, and, as such, are within the domain of judicial powers, upon which neither the legislative nor executive powers of government may rightfully encroach. *Policy* is the domain of legislation, but



*justice* is the domain of judicature; and it is essential to a just government, that policy must be subordinate to justice. The fundamental error of modern politics, and the fatal weakness of modern governments, is their subjection and subordination of justice to the dictates of policy.

§ 17. JURISTIC LAW. The term "jurisprudence" is commonly regarded as embracing statutes as well as common law; but this is an error, which arises from the fact that many statutes are merely declaratory of rules of common law which always were the *law*, independently of any statute. It is true that rules of common law which thus are incorporated into statutes, are not by that circumstance deprived of their character as a legitimate part of jurisprudence; and it is equally true, that statutes which prescribe mere matters of policy and convenience (as, for example, a statute prescribing a uniform manner of conducting elections in the several counties and districts of a state), though they thereby become part of the legislation of the state, do not become and cannot properly be regarded as in any true sense a part of the jurisprudence of the state. Such statutes do not constitute any settled rule of right, nor are they founded upon any scientific principles of jurisprudence. *Juristic* laws, on the other hand, never prescribe



mere matters of temporary policy, or of convenience, but always and necessarily are rules which are established as conclusions arrived at by the processes of reasoning; rules which, if the conclusions are correct, could not be different from what they are, and cannot be changed or disregarded without violence to the laws of reason and the science of which they are a part. Such are the familiar rules and maxims of *equity*, in the English and American systems of jurisprudence, and such, also, are all of the rules of the common law of every country in so far as those rules are sound and unquestionable in principle.

§ 18. ORIGIN OF JURISTIC LAW. All juristic laws originate, as the term itself implies, in the principles of *right* and *justice*, principles which constitute the true *science* of jurisprudence. By the phrase "right and justice" we mean that which is right in the sense of being just and true; and, to avoid the seeming tautology, we may in this discussion employ the single word "right"—but always in that sense. The principles of *right* are the basis, the life, and the soul of *jurisprudence*. Those principles are apparent to and comprehensible by reasoning beings only; and by reason, alone, can those principles be made to guide and control the affairs and conduct of men. By the sublime faculty of

reason, alone, man is enabled to regulate his conduct in accordance with the principles of right. By the processes of correct reasoning men discover, become conscious of, rules of right, and they learn by experience and observation that their peace and happiness as social beings depend upon their conforming to those rules in social relations and conduct. These rules of right are the juristic laws of society; originating in rational inferences drawn from experience in the light of the principles of right.

§ 19. VALIDITY OF JURISTIC LAW. Since juristic laws are ascertained by reason, it must follow that a rule thus ascertained cannot be a valid rule, or a true law, unless the inferences and conclusions of reason, by which they are ascertained, are correct, and without error. We know that the minds and reasoning powers of men differ widely, and that even highly trained and efficient minds often draw widely different inferences and conclusions from the same circumstances and principles. But we know, also, that in the final comparison and analysis of those differing inferences and conclusions, all competent minds finally reach and agree in the same inferences and conclusions, upon any subject of investigation which lies within the domain of knowledge and science; and it is this final agreement of all competent minds which gives *validity*

to a juristic law. Any supposed "law" which has not been confirmed by that agreement of competent minds, or which is affirmed by some and rejected by other equally competent minds, may be given effect *as* law in any independent jurisdiction where it is affirmed, but it cannot be regarded as a legitimate part of any scientific system of jurisprudence until it has received the common assent of all competent jurists.

§ 20. JUDGES AND JURISTS. Science is ordered and systematized *knowledge*. Obviously, the only minds that are competent to form correct and authoritative conclusions upon the problems of any particular science are those which are equipped with adequate knowledge of that science; which is as true in respect to Jurisprudence as in respect to any other science. *Jurists* are those men who have acquired a comprehensive knowledge and understanding of the science of Jurisprudence; while *judges* are those jurists who are invested with authority to ascertain and apply the law in the investigation and decision of specific litigated controversies. Upon judges, therefore, rests the duty of definitely ascertaining and applying the juristic laws of society (as well as that of determining the validity of statutes, and enforcing them) by authoritative decisions. But juristic laws sometimes are, in fact, ascertained

and established by the reasoning of jurists who are not judges; and the reasoning of such jurists, when conclusive, is recognized and followed as authoritative by the judges, in their decisions. Thus it is evident that the *rationale* of law is the real authority upon which it rests. The decisions of judges, in courts of last resort, are final only as to the litigants in the case decided, and the rules of law announced in such decisions are binding upon the inferior courts in the same jurisdiction; but they are not binding or conclusive upon succeeding judges of the same high court, nor upon judges in other independent jurisdictions, any farther than they are supported by the final authority of *rationale*.

§ 21. JUDICIAL PRECEDENTS. The statement just made does not harmonize perfectly with the well-known rule of *stare decisis*, which is recognized and rather firmly established in English and American jurisprudence; but which, as usually applied, itself is in irreconcilable conflict with the principles of right upon which scientific jurisprudence is founded. The principle of right, and the very nature of justice, inexorably require that no rule ever is *settled*, and entitled to be accepted as a valid rule of law, until it is *rightly* settled. The rule of *stare decisis* is based upon the principle that

a rule of law which once has been judicially established, and in reliance upon which private rights and duties have been acquired and assumed, should not be disturbed or overruled in future decisions, even though the rule is unsound in principle, if greater injustice might result from so doing than probably will ensue from adhering to such rule. Whatever merit there might be in a strict and cautious application of the rule, many courts of last resort have extended its application until the rule of *stare decisis* has become a serious impediment to the growth and development of jurisprudence as a pure science. It is a reproach to the judiciary, that courts of last resort are in the habit of departing so far beyond the reason of the rule of *stare decisis* as to avail themselves of that rule as an avenue of escape from the labor of judicial investigation and analysis, by supinely following their own former decisions, or those of other jurisdictions, merely *as precedents*, without taking the trouble to inquire whether those precedents were well considered and sound in principle. The effect of this unreasoning adherence to precedent is to paralyse and stay the natural process of the evolution and gradual perfection of Jurisprudence as a *living science*.

§ 22. COMPETENCY OF JUDGES. We have said that the only minds that are competent to form

correct and authoritative conclusions upon the problems of any particular science are those minds which are equipped with adequate knowledge of that particular science. It is a truism, to say that the highest development and perfection of the science of Jurisprudence can be attained only by vesting judicial powers in those jurists only who are the most competent and the best fitted for the exercise of judicial functions. But it seldom, if ever, happens that the ablest jurists are the ones actually selected for the highest judicial offices; and the fault complained of in the preceding section, as well as others not yet mentioned, and the general inefficiency that exists in all offices of government, are attributable to prevailing unscientific methods of selection and election of the persons to whom the exercise of judicial, legislative, and administrative functions is entrusted; a subject of vital and far-reaching importance, which will be discussed at length in another chapter.

§ 23. ACCIDENTAL SELECTION OF JUDGES. The degree of scientific perfection to which Jurisprudence has been developed is truly surprising, when we reflect upon the absence of conditions which might be expected to insure the survival of the fittest among aspirants to the judicial office. In

all times, and in every country, the judicial office invariably has been obtained only by accident,—the accident of birth, or the accident of arbitrary selection,—never as the logical consequence of superior merit scientifically ascertained. But the unavoidable necessity of resorting to the principles of natural justice and right, for the solution of judicial problems, constantly has led to the discovery and formulation of those rules of conduct and rules of decision which are indispensable to the administration of justice, and which, being capable of universal application, naturally and gradually have become coordinated into a scientific system. How much more perfect and complete that science now would be, if its development and administration always had been committed to those only who were the best qualified and fitted for that great work, only can be imagined. For its present state of development, we are indebted to those really great jurists who, by good fortune and chance, were given the opportunity to impress the work of their genius upon the jurisprudence of their respective countries. But how great has been the loss to civilization from the fact (which cannot be doubted) that judicial power often has been and now frequently is vested in incompetent hands, and withheld from those who were, or are, the most competent?



§ 24. RATIONALE AND SOVEREIGNTY. The one inherent and fundamental difference that distinguishes juristic from legislative law is, that the validity of the former depends upon its rationale, while the validity of the latter depends upon despotic authority. The judicial function is to inquire into and decide (1) what are the facts—the truth—of the matter in question, and (2) what is the law of the matter. The legislative function is to declare the sovereign will of the legislator and prescribe the ways and means of carrying out that will. The judicial inquiry terminates in a judgment, for which stated reasons are given. The legislative deliberation terminates in a statute, a command, for which no reason is required or given. Courts of justice recognize as authority, not only their own prior decisions, but also the rationale of the decisions of foreign courts; but legislatures are bound neither by their own prior acts nor those of any foreign legislature. Juristic law is based upon reason only; legislation is based upon sovereignty only.

§ 25. LEGISLATION AND JURISPRUDENCE. It has now become evident that Legislation and Jurisprudence have separate and distinct places and functions in the organism of society; each occupying an exclusive domain upon which the other ought not to encroach. Legislation occupies the domain of pol-



icy and expediency; while Jurisprudence occupies the domain of right and justice. Policy and expediency are uncertain, and necessarily are subject to alteration according to the requirements of changing conditions and circumstances; while right and justice are certain, fixed and unalterable principles which always are applicable to all conditions and all circumstances. The statutes of legislation express the temporary will, choice, preference or discretion of the legislator; the rules of jurisprudence express the permanent conclusions of the jurist, unaffected by any personal will or preference.

§ 26. SUPREMACY OF JURISPRUDENCE. Since legislation is a matter of temporary and alterable policy, whereas jurisprudence is a matter of fixed and unalterable principle; and since policy can and should be made to conform to principle, whereas principle cannot and should not be made to conform to policy; it necessarily follows, that legislation, which deals only with policy, can and should be made to conform to jurisprudence, which deals only with principle; and that jurisprudence cannot and should not be made to conform to legislation. This conclusion is unassailable and undeniable; yet it is contrary to the theory and practice of every civilized state, and appears never to have been even thought of by politicians and statesmen. But modern civ-

ilization now is on trial, upon the serious indictment that it has failed utterly in political and social justice.

Since that universal failure of justice must be attributable to some fundamental error or errors, it is reasonable to inquire whether that error, or one of those errors, be not the universal failure to recognize and observe the fundamental principle that legislation may not prevail over, but must conform to, the unalterable principles of Jurisprudence.

§ 27. LEGISLATIVE ENCROACHMENTS. It is a significant fact that, while legislatures uniformly assume a sovereign right to modify or abolish, at their will, any of the rules of jurisprudence, they in fact seldom exercise that sovereign prerogative. It is a fact that the instances of legislative encroachment upon the domain of jurisprudence are rare, as compared with the multitude of acts which are within the proper domain of legislation. But this seeming forbearance has been unconscious and unpremeditated; an instinctive recognition of some imperceptible, yet real, boundary line between the spheres of legislation and jurisprudence. Nevertheless, these encroachments have been sufficiently frequent and serious to justify an inquiry as to whether they are not responsible for much of the

injustice and inequality of opportunity which now imperils the peace and order of society.

§ 28. KINDS OF ENCROACHMENT. Instances are not wanting, in the published reports of judicial decisions, where judges have been constrained to apologize for an unjust judgment which some act of legislation has compelled them to render, and to complain, sometimes with bitterness, at the compulsion which makes them the unwilling instruments of injustice. But such legislative acts, though the cause of injustice in specific cases, usually are corrected by subsequent legislation, in response to judicial criticism or popular condemnation, and therefore such acts are of minor importance as compared with another and more serious class of legislative encroachments upon the domain of jurisprudence. Those legislative acts which are the most unjust and injurious to that all too numerous class of people who toil and suffer in hopeless poverty, by indirectly taxing persons instead of property, and otherwise facilitating the accumulation of wealth in the hands of a fortunate or more greedy class, escape popular condemnation because their operation and ultimate effects are not understood by the people in general, nor even by many of the most intelligent. But a discussion of specific legislation of this class is not within the limits and purpose of this treatise. We

are concerned now with the fundamental principles, or errors, which are responsible for arbitrary and despotic legislation.

Deeply imbedded in modern jurisprudence, and polluting the streams of justice, are elements which are totally foreign to that science, and which have descended to us from more barbarous times, when force was the highest law, and conquerors and despots were legislators. Some of the foreign elements now are commonly regarded as part of the common law, and some even are perpetuated in the written constitutions of American states.

§ 29. PERSONAL SOVEREIGNTY. All existing systems of jurisprudence are permeated and distorted by the fundamental error of personal sovereignty. The idea of a personal sovereignty and of royal prerogatives, superior to and independent of any higher law or principle, often expressed by the familiar maxim: "The king can do no wrong," has not been rejected in the constitutions of modern republics; on the contrary, in so-called "democratic" countries, the strangely persistent effort is made to preserve the idea of personal sovereignty, by the expedient of substituting the "state" or the "people" as a sort of successor, or viceroy, to an imaginary king.

It was this unwarranted assumption, that a per-

sonal sovereign is essential to and inseparable from any organic political society (in other words, that there necessarily must be some "sovereign person or persons" as an indispensable element of a state), that impelled John Austin to produce his labored argument to establish and maintain the untenable proposition that all real laws of civil society necessarily are "commands." In no other way was it possible to reconcile the idea of civil *law* with the idea that the legislative power in a state is independent of and superior to natural law and the principles of justice.

The truth is, that personal sovereignty is *not* essential to or inseparable from political society. The truth is, that personal sovereignty is utterly irreconcilable with scientific jurisprudence; and that a state of social justice, for which the whole world now is clamoring, will be impossible and unattainable, so long as the sovereignty of *men* (whether kings, parliaments, or majorities) is superior to the sovereignty of *law*.

§ 30. JURAL SOVEREIGNTY. The legislative power is not, strictly speaking, a *sovereign* power, if it is subordinate to jural principles and may not alter or annul jurisprudential laws at the legislator's will. A government which holds itself subject and subordinate to the principles of Jurisprudence,

thereby acknowledges the sovereignty of those principles, and becomes the embodiment of political *science* and justice, instead of an instrument to enforce the will and serve the selfish interests of a tyrannical king or an equally tyrannical majority.

It is a significant fact that, in all forms of government, while the persons who are invested with the legislative power uniformly claim and exercise the right and power of unlimited personal sovereignty, those who are invested with the judicial power constantly recognize the absolute sovereignty of the jural or juristic law, in so far as it is not overriden by legislation; the judgments of judges being, with remarkable uniformity, and with scarcely any noteworthy exceptions, entirely impersonal. Judges uniformly hold themselves subordinate to law. This fact is a complete and final answer to the objection that, if all branches of government are made subject and subordinate to jural and juristic law, the judiciary inevitably will become the supreme and controlling branch of government—a supremacy which hitherto has been conceded to the legislative branch only. Such, without doubt, will be the result; but the records of the judiciary of all countries (especially in the United States, where the Supreme Court for more than a century has held and exercised the power of annulling unconstitutional legislation) demonstrate the wisdom and the safety

of entrusting such supremacy to the judiciary, rather than to the legislature.

§ 31. RIGHTS AND SOVEREIGNTY. The idea or principle of unlimited personal sovereignty (the sovereignty of *men*), which is adopted to its fullest extent by modern popular governments, excludes the possibility of "inalienable" rights. All human rights, including those of "life, liberty, and the pursuit of happiness," are held subject to the legislative will of that indefinite and indeterminate body of persons called the people; and that legislative will may be expressed not only in written constitutions and statutes, but in any other manner which the people may choose to adopt. This monstrous principle, which is accepted almost universally as the essential basis of popular government, and which seems to be involved in the idea that governments derive their just powers "from the consent of the governed," is the foundation upon which *Internationalism* (in the forms of Bolshevism, Communism, and Radical Socialism) builds its systems of *class* conflict and proletariat rule; arguing, with perfect logic, that: (1) The people are sovereign; (2) The majority of the people may rightfully exercise the sovereignty of the people; (3) The proletariat is a majority of the people; (4) Therefore, the proletariat is sovereign.



This means that the proletariat has the sovereign right to exercise absolute and irresponsible dominion over the lives, liberties and conduct of all persons and all societies.

The sufficient and only answer to the syllogism of proletariat sovereignty, is the absolute denial of the false premises, and the assertion of these vital truths:

(1) That the law of truth and right is sovereign;

(2) That the exercise of the sovereignty of law belongs to the governing organism of Society,—not to the people as constituent elements of society, nor to any class of people, nor to any person or persons whomsoever;

(3) That any infringement of human rights by legislative will, under any pretext of sovereignty, either by a king, a legislature, or by the people themselves, is lawless despotism and unjustifiable tyranny.

§ 32. INALIENABLE RIGHTS. Since Jurisprudence is the science of jural law—which means the law of right—and necessarily is the sole and supreme authority in all matters of civil or political right, the inference would seem to follow that all legislative encroachments upon Jurisprudence are encroachments upon matters of *right*. These matters of right include all the rights of man. If none



of these rights may be infringed or encroached upon, it must be because all human rights are *inalienable*,—employing the word as signifying rights which no government may justly take away or invade.

§ 33. AUTOCRACY. Thus far our inquiry seems to lead to and justify the following conclusions: That the chief end of any just government is the preservation and protection of human rights; that human rights can be preserved and protected only by a government which is constituted and conducted in conformity to the principles of scientific Jurisprudence; that Jurisprudence is a *science*, the laws of which cannot be ascertained by any autocratic sovereign will, but are ascertainable only by the same scientific processes of reason that are employed in any other science; that the injustice which defeats the preservation and protection of human rights is, and ever has been, caused by autocratic personal sovereignty, the principle of Autocracy, which forever interferes with the proper functions of Jurisprudence by the enforcement of a selfish and uncontrolled human will, and which assumes a sovereign right to make “laws” which conflict with the unalterable laws of Jurisprudence; and that the cause of the failure of every form of government:

to attain the ends of justice is, and ever has been, the fatal principle of despotic and autocratic sovereignty, which is inimical to and irreconcilable with the principles of Jurisprudence.

## CHAPTER III

### NATURE OF GOVERNMENT

§ 34. ORIGIN OF GOVERNMENT. Speculation concerning the incipient stages of society and government in primitive times is of little or no value in an investigation of the problems of modern politics. It is sufficient for the purposes of this chapter, to observe that man is by nature a social being; that human society cannot exist without organization; that a governing organism is necessary to the existence of organized society; and that such governing organism of society is *government*. The origin of government, therefore, is in necessity. The laws of self-preservation, competition for existence and survival, the laws of natural selection,—these natural laws, and the intolerable condition of human life under these laws without the mutual protection and restraint of organized society and government, all combine to compel men to associate and organize in society. If all men were by nature unselfish, altruistic, and just, there would be, apparently, no actual necessity for a restraining government; but, on the contrary, man is by nature selfish, unjust and

merciless in seeking his own individual preservation and happiness, in spite of all the artificial restraints of society. Every person desires liberty for himself and restraint for all others. This universal desire for liberty and for protection from the liberty of others, is the motive which impels men to assume the burdens and submit to the restraints of government.

§ 35. STATE, DEFINED. A *state* is a political society which is, either wholly or partially, absolutely independent of and free from control by any other political society. Within this definition, the United States of America is a state which is wholly and absolutely independent of and free from control by any other state; while each of the several states of the Union is a state which is partially, and to a limited extent only, absolutely independent of and free from control by the United States or any other state. Other examples of dependent and independent states might be mentioned, but the distinction between them is of little or no importance in an inquiry into the nature of government.

§ 36. FORMS OF GOVERNMENT. All political writers, with remarkable unanimity, accept and follow Aristotle's classification of the good and bad forms of government; the good being Monarchy,

Aristocracy, and Commonwealth,—the corresponding bad or depraved form of each being Tyranny, Oligarchy, and Democracy. All writers, however, seem to have ignored the vital and fundamental distinction between substance and form, by failing to note the substantial distinction between *scientific* and *arbitrary* government. But this failure may be accounted for by the fact that a scientific government never existed, while all known forms of government that ever existed and that now exist were and are Autocracies, enforcing the lawless will of the persons who exercise its powers.

Aristotle, however, did not fail to recognize the desirability of conforming government to law; observing that the best governments are those which leave as much as possible to the laws, and as little as possible to the will of the governing persons; and pointing out, also, that the best type of Democracy is one whose citizens have little time for politics, and consequently interfere little with the operation of the laws.

§ 37. SEQUENCE OF FORMS. Despite the tendency of the present time toward the obliteration of monarchy from the civilized world, the fact remains that monarchy has been the usual and apparently the normal form of government, to which all other forms have exhibited a constant tendency to

revert. History abounds in the repetition of military domination arising from public disorder and anarchy; of monarchy enthroning itself upon military domination; of the degeneration of monarchy into tyranny; of either a popular or an aristocratic revolt against tyranny, overthrowing monarchy and setting up a democracy or an aristocracy; of the degeneration of democracy or aristocracy into anarchy or oligarchy; of public disorder and the struggle of armed forces for supremacy,—resulting in the military domination of the stronger force, thus beginning again the same circle of events.

While recognizing the substance of government as of more importance than its form, it nevertheless seems necessary to examine more closely the several elementary forms, in a search for the causes of the failure of each form of government, in the past, and the comparative adaptability of each to the scientific requirements of social justice, and the peace and order of society.

§ 38. MONARCHY. The simplest as well as the most primitive form of government is that of one dominant person in a community, whose leadership is acknowledged by all his fellows because none dares to defy him. It has its analogies among all gregarious species of the lower animals. The most powerful and courageous individual leads the herd,

the flock, or the band. Among mankind, the primitive tendency toward monarchy commonly is exhibited by children. Wherever a gang of boys is found habitually together, the most enterprising, imperious and daring among them is sure to be their acknowledged leader. Among adults, even, especially in small and remote rural communities, a local bully is very likely to become the virtual ruler, because the other members of the community deem it wiser to submit to his will than to provoke his wrath. In earlier times, when comparatively small communities were independent states, and were free to make war upon each other, the ruler of a strong community was able to subjugate his weaker neighbors and add them to his dominions, making himself monarch over all. This is the principle and the common genesis of monarchical government: it is the will of one man imposed upon others by force.

§ 39. ABSOLUTE MONARCHY. It may be theoretically possible (and it may have actually happened at times) that an absolute monarchy can originate in the free and voluntary choice of the people who are to be governed by it; but the historical fact is that such monarchies are born of war and are maintained by military force alone. History does record instances, however, of absolute monarchs

whose rule was so benevolent and just as to merit and receive the voluntary obedience of a contented and happy people without the necessity of military force. Such, according to Gibbon, was the happy condition of the Roman world during the reigns of the Antonines; who, though invested with the imperial power by the suffrage of the army alone, were really sustained by the free consent of a loyal and grateful people; an illustration of the important facts, that the principle rather than the form of a government is important, and that the people of a country are disposed to peace, order and loyalty, even when governed by absolute monarchy, so long as they are wisely and justly governed.

§ 40. DESPOTIC MONARCHY. An absolute monarchy is not necessarily despotic, in the sense of ruling without regard to the laws of the people over whom the monarch rules. While a despotic monarchy always is absolute, it does not follow that an absolute monarchy always is despotic. A monarchy is *absolute* when there is no constitutional limitation upon the power of the monarch, and he is invested with authority and power to disregard or to conform to the laws of society, at his own will and discretion, in the conduct of his government. If an absolute monarch rules without regard to law and justice, he is a *despot*; but if he chooses to sub-



ordinate his own will to the principles of law and justice, in the exercise of his power, he is none the less an absolute monarch, but he is *not* a despot. He may unite in his own person, if he will, all the governmental functions of legislation, judicature, and administration, and yet not exercise any of those functions despotically.

*Despotism* is an absolute and tyrannical control over others, whether that control is exercised by a monarchy or by any other form of government. It follows, therefore, that despotism is not necessarily confined to despotic *monarchy*, but a despotic *aristocracy*, and a despotic *democracy*, are equally possible.

§ 41. HEREDITARY, ELECTIVE, MONARCHY. Where the supreme power of the state is vested in *one* man, the government is a *monarchy*; and the monarchical character of such government is not altered or affected by either the term of office of the monarch or the established mode of determining who shall be his successor. The sole criterion of monarchy is the *fact* that the supreme power is vested in a single ruler. The common, though by no means universal, custom of hereditary succession is responsible for the popular but erroneous notion that heredity is an essential characteristic of monarchy. True monarchies, on the contrary, often

have been *elective*; as in the case of the Roman emperors during the early history of the Empire.

In the case of *elective* monarchies, we recall no instance in history where the term of duration of the ruler's power was limited to any period short of the duration of his life; but if the supreme power were vested in one ruler for any determined period less than the duration of his life, he would be none the less a *monarch* during that period, and such a government would be a continuous monarchy during the successive reigns of such elected monarchs, however brief the terms to which the power of each might be limited. This principle is illustrated and proved by many known instances of *regency* during the minority of an infant heir to the throne; in which case the regent is the monarch for a definite and limited period, namely, during the period of the royal heir's minority; during which the regent is the monarch, though not the king.

§ 42. MODERN MONARCHIES. Since the fall of monarchy in Russia, it is doubtful whether true monarchy, as to *all* functions of government, exists in any of the more enlightened countries anywhere in the world. It must be kept in mind that *supremacy* is the sole and final test of monarchy; that a king or an emperor is not necessarily a *monarch* unless his constitutional power is *supreme*, in some

or all of the governmental functions of legislation, judicature, or administration. If the titular king or emperor is without constitutional power to control, compel, or annul legislation; or to control and reverse judicial determinations; or to declare war; or to make treaties; then he is not a *monarch* in any sense of the word, and the government of which he is the titular head is not a monarchy. Applying this criterion to governments of the present day, we shall discover the fact that some of the so called monarchical constitutions vest no *supreme* power whatever in *one* man, and must, therefore, be classed among the more or less democratic or aristocratic governments; while the constitutions of some modern republics may contain the element of monarchy as to certain supreme powers.

§ 43. ENGLISH MONARCHY. Under the British constitution, which rests upon inviolable custom and usage, the king no longer has any share in the exercise of the legislative power, that supreme power being vested entirely in the parliament. The royal power to veto an act of the parliament never has been exercised since the reign of Queen Anne—and therefore no longer exists. The king has no power whatever over judicial determinations. In the exercise of the executive and administrative functions of government, the king has no supreme power

whatever. He neither can declare war nor conclude treaties with foreign powers. The English *cabinet* is called the "government," and is responsible, not to the king, but to the House of Commons—the latter being the sole depository of all supreme power. No supreme power is vested in the king, and, therefore, although he is the titular head of the empire, as "king of Great Britain and Ireland and emperor of India," he is not in any true sense a *monarch*, nor is the government of the United Kingdom in any sense a *monarchy*.

§ 44. OTHER EUROPEAN MONARCHIES. The governments of Italy, Spain, Holland, Denmark, and Sweden, all are hereditary but limited monarchies, in which the king is supreme in the exercise of the executive powers, including the supreme command of the army, the treaty-making power, and the power to declare war. In all these countries the king participates in the exercise of the legislative power, but his supremacy is shared with bicameral legislatures in which the aristocratic element is said to predominate. All these governments properly may be classed as limited monarchies, in which some of the supreme governmental powers are vested in a single ruler.

§ 45. JAPANESE MONARCHY. Japan (until comparatively recent times an absolute monarchy,

with the characteristics of Oriental despotism), now is a limited monarchy of the European type, uniting some of the elements of aristocracy and democracy with those of monarchy—under the national constitution which was promulgated in 1889. The supreme executive power remains vested in the emperor as sole ruler and commander-in-chief of the army and navy; but, under the constitution, the legislative power now is shared between the emperor and the Imperial Diet, the latter consisting of a House of Peers and a House of Representatives, corresponding to the two houses of the British parliament. The judiciary now seems to be independent of both the executive and legislative powers.

#### § 46. MONARCHIC ELEMENT IN REPUBLICS.

In any form of government, by whatever name it may be known, any supreme and undivided power which is vested in a single ruler is, to the extent of such power, monarchical. With the exception of Great Britain, and the possible exception of France (in which countries the element of monarchy seems to be absent from their respective constitutions), it may be said that the constitution of every modern state,—whether it be called a monarchy, a republic, a commonwealth, or a democracy,—in reality is a composite of monarchy, aristocracy, and democracy. It is a singular fact, but nevertheless a fact,

that in many of the so-called popular governments of the present day the chief executive possesses more true monarchical power than is vested in some of the hereditary kings of the Old World; while in some of the so-called monarchical governments there is a larger element of democracy than can be found in those governments which call themselves "democracies."

§ 47. MONARCHIC ELEMENT IN AMERICA. The United States, and the several states of the Union, may be taken as fairly typical of modern popular governments everywhere, excepting those of France and Switzerland. The Constitution of the United States vests the supreme executive power in one man—the president. That is supreme and undivided power reposed in a single chief ruler, which is monarchy; but it is *elective* monarchy, for a fixed period of four years, and it is *limited* monarchy, being limited to executive power only. This, however, is not the only element of monarchy in the American constitution. The president has a limited, but supreme, control over the legislative branch of the government, through his power to veto any legislation passed by a majority of each house of the congress, his veto being effective to defeat any legislation for which a vote of two-thirds of both houses cannot be obtained. Furthermore, the threat

to veto certain bills may be used effectively to secure or defeat the passage of other bills for or against which a majority of both houses might not otherwise be induced to vote. That, also, is monarchical power. Another, is that of the supreme command of the army and navy; another, the pardoning power, which is vested in the president alone; and still another supreme and undivided power is the sole power to *negotiate* treaties with foreign powers,—though here the Senate is invested with a veto power against the executive, by the requirement that the concurrence of “two-thirds of the senators present” shall be necessary to render a treaty effective.

Thus it is clear that, so far as concerns the executive power, the government of the United States must be classed as an *elective limited monarchy*. Likewise, the governments of the several states of the Union must be so classified, because of the one-man power vested in the governor by the respective state constitutions.

§ 48. ARISTOCRACY. The second of the three elementary forms of government is *aristocracy*. In the original and true sense of the word, it means government by the *best*; a government, the powers of which are vested in and exercised by the *best men in the state*,—those who are the ablest, the most worthy, and the best qualified for the performance



of the functions of government. This is the ideal aristocracy of merit. In point of fact, however, an aristocracy of merit is an ideal which never yet has been realized in practice, as a form of government; though the principle of selection and advancement according to merit has been applied, with gratifying results, to certain classes of subordinate governmental offices and employments, and to such an extent as to indicate that aristocracy of merit is an ideal form of government which is capable of realization.

But the term "aristocracy," as an element of government, has come to signify, by common usage, a form of government in which the supreme power of the state is vested in a privileged order or class of persons who, by birth, fortune, favor, or their own enterprise, have acquired superior distinction and influence. By this common usage, the word "aristocracy" has acquired a meaning which scarcely can be distinguished from *oligarchy* (government by the *few*) and *plutocracy* (government by the *rich*); a meaning quite different from the original and proper signification of the word. Oligarchy and plutocracy, indeed, are Aristotle's depraved forms, or perversions, of aristocracy.

§ 49. MODERN ARISTOCRACIES. Aristocracy, in the sense of government by the best, and also in



the bad sense of oligarchy or plutocracy, is discernible in the constitutions of nearly all modern governments; but only to a limited extent, and in respect to certain functions. Only in the *judicial* function of government do we find the element of true aristocracy (government by the best) really dominant in all of the more enlightened modern states; though the subordinate agencies for the exercise of executive functions are selected largely upon the principle of excellence and merit. As to the judiciary, the impossibility of an intelligent exercise of the judicial function by untrained agencies necessitates the selection of persons who possess some special qualifications and technical knowledge, in some degree entitling them to be regarded as the "best." The same consideration operates, but in less degree, to induce the selection of the "best" agencies for the performance of the executive and administrative functions. But in the constitution of *legislative* bodies, which ought to be characterized by a very high degree of wisdom and virtue, there is a total absence of true aristocracy, as an element of the legislative power of any government now in existence. Modern legislatures are constituted upon the principles of the depraved and perverted forms of aristocracy, i.e., oligarchy and plutocracy, mingled with the equally depraved element of democracy.

§ 50. BRITISH ARISTOCRACY. We have observed that, of the three primary and elemental forms of government, the element of monarchy is entirely absent from the present English constitution. It must, therefore, be composed of one or both of the remaining elements,—aristocracy and democracy.

Because of the unique and original character of British political institutions, and the fact that the constitutions of all modern governments embody some features which were developed first in England, it seems necessary to examine and analyze with some care the essential features of the English system, in order to obtain a clearer understanding of the real nature of modern governments in general, especially with reference to the element of aristocracy.

§ 51. THE ENGLISH CABINET. The supreme *executive* power of the British government is lodged in a cabinet,—not in the king or any other single individual. This cabinet is a body of ministers of state, consisting of the prime minister, or premier, and such other statesmen as he chooses to call to his assistance. The premier, though ostensibly appointed by the king, can be none other than the recognized leader of the dominant party in the House of Commons,—the king having no choice or

discretion in the matter of who shall be appointed. This has become the settled constitutional practice. The cabinet, thus formed, is responsible to and dependent upon the will of the House of Commons; which, in turn, is dependent upon the will of its constituencies as expressed at the general elections.

A governing body so constituted is in every essential an *aristocracy*; and, furthermore (the membership of that body being restricted to those statesmen who are the recognized leaders of the dominant political party), it may be said to be an aristocracy in the original and true sense of the word,—the best, or fittest; and the character and ability usually displayed by English cabinets would seem to justly entitle them to be so classed. It appears, therefore, that the supreme *executive* power of the British government is an *aristocracy of merit*, as distinguished from oligarchic and plutocratic aristocracy.

§ 52. ENGLISH LEGISLATURE. The supreme *legislative* power of the British government is lodged in a parliament, which consists of two separate legislative bodies, called, respectively, the House of Lords and the House of Commons; the original on which bicameral legislatures throughout the world have been modeled.

The House of Lords is a pure oligarchy, in the full sense of Aristotle's definition of that "depraved"

form of aristocracy, and in the full modern sense of the word; being composed largely of a specially privileged class, or order, of hereditary nobility.

Of the House of Commons, more is to be said. It embodies all that is discoverable of the so-called "democracy" of the British political system. Democracy, which implies ultimate supreme power in the whole people, is not found among the constituent elements of the House of Commons,—unless, indeed, the elective franchise has been so extended by very recent legislation as to grant universal suffrage irrespective of rank, property, or income, and equality in the number of votes an elector may cast.

§ 53. ENGLISH JUDICIARY. The English judiciary, as now constituted, is a true aristocracy of merit, in fact as well as in theory. Not only the *supreme* judicial power, but practically all judicial power, is vested in jurists who are selected and appointed by the responsible executive (the cabinet) from among those whose character and attainments best qualify them for the judicial office. Being secure in their tenure of office, and removable by impeachment only, the judges are independent of partisan power and influence, and unaffected by popular passions and prejudices.

Thus it is apparent that the British form of gov-

ernment is an aristocracy: in its executive and judicial powers it is aristocracy in the original sense of government by the best; in its legislative power, it is oligarchy, as to the Lords, and (until recently) plutocracy as to the Commons;—and in all powers it is *autocracy*. The element of monarchy is absent; and if democracy now is become a dominant element—then a revolutionary change in the constitution has occurred.

§ 54. DEMOCRACY. According to Aristotle, Democracy is the depraved form, or the perversion, of Commonwealth (more correctly, *Commonweal*); a *Commonwealth* being any government, whatever its form, the sole object of which is the common good or happiness of all of its people. The *Democracy* of Aristotle was a government the powers of which not only were vested in the people but were actually *exercised* by the people themselves. But in modern usage the word “democracy” may mean anything that is good, or anything that is bad, in the relations between people and government, according to the views of the person who employs the word.

It should be observed, however, that Aristotle’s *Commonweal* is not a form of government; it is, rather, an ideal the attainment of which ought to be the purpose of every form of government,—the

common good and happiness of all. His conception of Democracy as a depraved and futile mode of attempting the accomplishment of that purpose is the true conception.

Throughout the world today the hopes and the fears of mankind are centered upon *Democracy*; but every people, and every class, indeed almost every individual, has a different conception of the meaning of that portentous word. To some, it means a form of government; to others, it means formal anarchy. To some, it means organized society; to others, it means the dissolution of organized society. To some, it means the whole people; to others, it means the most numerous among the several classes of people. To some, it means a lawful body politic; to others, it means a lawless mob or rabble. To some, it means civil power; to others, it means savage force. To some, it means rational expression of a conscious public will or purpose; to others, it means irrational expression of aggregate private ignorance and indifference, without any conscious will or purpose. To some, Democracy means law and order; to others, it means license and disorder. To some, it means equality and justice; to others, it means the inequality of brute force and the injustice of autocratic will. To some, it means responsible sovereignty; to others, it means irresponsible anarchy. To some, Democracy

means the aggregate wisdom of the whole body of the people; to others, it means a conglomeration of the individual folly and incapacity of the most unintelligent, yet most numerous, of the individuals who compose the whole body of the people. But, in all these conflicting and irreconcilable conceptions of Democracy, and common to all of them, is the idea of *political* power possessed in common by all of the *individual* members of a political society; and that power always is conceived of as self-derived or *autocratic* power.

§ 55. ANCIENT DEMOCRACIES. Among the ancient Greeks, government was, in reality, little more than city government. The Greek "states" were cities, with limited territorial possessions ruled by the cities. It was possible for practically all citizens to participate in person in the public deliberations and the conduct of state affairs, much after the fashion of a New England town meeting. There was no great extent of territorial dominion, like those of modern states, containing widely scattered citizen populations to whom participation in governmental affairs would be possible only by means of representatives; and the device of representation never was thought of in Greek democracies. Democracy, therefore, in the original Greek meaning of the word, was the direct exercise of the



supreme power of the state by the whole body of its citizens. Nor did the class known as "citizens" include the entire adult male population, as in most of our modern so-called democracies; for a very considerable portion of the population were *slaves*, and were not numbered among the "people" in the Greek democracies.

§ 56. MODERN DEMOCRACY. In the modern use of the word "democracy" its meaning has been extended to embrace any form of government, or that power or function of any form of government, which is subject to the supreme control of the whole body of the people by means of a general election, or plebiscite. In this sense, any exercise of supreme power by the whole body of the people, when the right of suffrage is extended to all or a major portion of the people, is properly called Democracy; but when the suffrage is limited to a special or favored class who compose less than a majority of the population, the power of such class may be Oligarchy, or Plutocracy, but it is not Democracy. Nor is the word "democracy," in the sense of a form of government, applicable to local or subordinate governments, such as those of cities, towns, counties, or other municipalities less than an independent state. It applies only to the exercise of *supreme* power—the power to exercise, or to control the ex-



ercise of, some or all of the supreme powers of government. The power to select and elect either the executive, the legislative, or the judicial officers of the state, unquestionably involves a measure of control over the exercise of the powers and functions of those offices; that measure of control being dependent upon the frequency of such elections.

§ 57. MODERN DEMOCRACIES. During and since the world-war it became a widespread habit to loosely characterize as "the *democracies* of the world" not only Great Britain, France and the United States, but also such countries as Italy, Belgium, and other states of Europe, and to characterize as "*autocracies*" those governments only which exhibited the characteristics of despotic monarchy.

It should be remembered, however, that Autocracy is not a form of government, but is a *vice* which afflicts all existing forms of government, not excepting the so-called "democracies." Of the governments which have survived the war, those only can be classed properly as *democracies*, in the modern usage of that term, whose supreme powers are controlled in some degree by a practically universal right of suffrage vested in the people. Great Britain, as we have seen, is not entitled to be classed as one of the "democracies" of the modern world; although some of the British colonial dependencies,

if they were independent states, would be the purest democracies in the world. *Pure Democracy*—i.e., direct exercise of governmental powers by the people—is not found in any wholly independent modern state; but in several of the partially independent states of the United States pure Democracy has been introduced of late, in the form of direct exercise of the *legislative* power by the people. In all other cases, modern democracies are *representative*, not *pure Democracy*.

§ 58. DEMOCRATIC REPUBLICS. States in which the supreme power is exercised by representatives who are elected, either by the whole body of the people or a class or classes of the people to whom the elective franchise is restricted, are properly called *republics*. If the whole or a major portion of the people enjoy the franchise, and therefore are represented, the state is a *democratic* republic, and may be classed among modern democracies. But if only a select and privileged minority of the people is enfranchised and represented, then the state is an *aristocratic* republic, and must be classed either as a true Aristocracy, or an Oligarchy, or a Plutocracy.

§ 59. AMERICAN DEMOCRACY. The form of government which was established by the Constitu-

tion of the United States was clearly intended to be a Federal Republic, formed by the "union" of several theretofore independent republics. The preamble of the Constitution declares that it is established "to form a more perfect union," and elsewhere in that great document the United States is designated repeatedly as "this Union"; while the fourth section of Article IV declares that "The United States shall guarantee to every state in this Union a republican form of government." A *republican* form of government is one in which the supreme or sovereign power is vested entirely in *representatives* who are elected by the people. Election by the people is Democracy, and the investment of all supreme power in representatives so elected is Representative Democracy. Most commonly, however, the Federal government is described as being a Democratic Republic—which is the same as representative Democracy.

Since the elective franchise is practically universal, not being restricted to any favored class of persons upon a basis of either merit or privilege, the United States is correctly described as a democratic, as distinguished from an aristocratic, republic. This, however, though it is common boast of Americans, is very far from being the chief merit of the Constitution; for important elements other than Democracy are embraced in and impart the

vital and enduring qualities to the American Constitution.

§ 60. LIMITATIONS OF DEMOCRACY. The representative democracy established by the Constitution of the United States is also a *limited* democracy. The Constitution, as originally framed and adopted, limited the political power of the people to the single function of electing the members of the House of Representatives. The members of the Senate were chosen by the legislatures of the several states, not by the people. The president and the vice-president were chosen by a select body of persons called "electors," who were to be appointed by the several states "in such manner as the legislature" of each state might direct; and in case the electors should fail to make a choice of a president or of a vice-president, then the House of Representatives would elect the president, or the Senate would elect the vice-president, as the case might be. In no event were the people to have any direct voice in the selection and election of either a president, a vice-president, or members of the Senate. Nor were the people given any power or control whatever over the judicial power; the power to select and appoint all judges being vested in the president, to be exercised "by and with the advice and consent of the senate." Thus the only trace of Democracy in the

Constitution of the United States, as originally adopted and ratified, and as it remained for more than one hundred and twenty years, was the power in the people to elect the members of one House, only, of the national legislature. Moreover, the Constitution itself, although promulgated in the name of "the people of the United States," was framed, adopted, and ratified by representative bodies, not by the people.

§ 61. CHANGES TOWARD DEMOCRACY. There has been no *written* change of the Constitution of the United States in the direction of Democracy, as affecting the mode of electing a president or a vice-president. The president still is elected by the *states*. The several *states* are authorized to "appoint" the number of electors to which each is entitled, "in such manner as the legislature thereof may direct." By the twelfth amendment, which was adopted in 1803, the Constitution still requires that the "electors"—not the people—"shall vote by ballot for president and vice-president," and that if no person shall have "a majority of the whole number of electors appointed," then the House of Representatives, voting by states, shall "choose" the president, or the Senate shall "choose" the vice-president, as the case may be. The fourteenth amendment (adopted in 1868) does, however, provide that

“when the right to vote at any election for the choice of electors for president and vice-president . . . is denied” to male citizens twenty-one years of age, or in any way abridged except for crime, by any state, then “the basis of representation therein shall be reduced” proportionately; but this amendment, far from recognizing a right in the people to have a direct voice in the election of a president, does not recognize even their supposed *right* to vote for electors. That right is left to the discretion of the legislatures of the several states—all of whom, however, have provided for the election of presidential electors by popular vote. By long established custom, the electoral college now has become a mere form or vehicle through which the choice of a majority of the people who actually vote is given effect in the election of a president; the “electors” being totally deprived of the power and discretion which the framers of the original Constitution intended that they should have. This custom and usage, established by the several states, affords the only basis for the assertion that the *executive* power of the Federal government is exercised by a representative elected by the people, and therefore is a Democratic power. It may be remarked that, in the exercise of his power, the president, during his tenure of office, is a *monarch*; he need not, often does not, represent and express

the wishes or opinions of a majority of the people. The president, not the people, is the sole and supreme *executive* power of the government.

The advance of Democracy in the *legislative* power is more remarkable. As a result of persistent agitation during recent years, a radical and fundamental change in the Constitution was effected by the amendment which provides for the election of senators by the people, instead of by the legislatures, of the several states. Thus the political power of the people, which originally was limited to the election of members of the House of Representatives, has been extended until the supreme executive and legislative powers of government are subjected to the direct control of the people through the ballot. The judicial power, alone, retains its original character; but powerful influences now are seeking to destroy the independence of the judiciary, by further constitutional changes looking to the election of both the supreme and the inferior judges by popular ballot.

§ 62. DEMOCRACY IN THE STATES. The several states of the Union always have been more democratic than the Federal government. The fact that state constitutions are adopted and amended by popular vote; the frequency of elections, resulting from short terms of office; the tendency among



candidates for office to seek popular favor by advocating the absolute subjection of the government to the direct control of the people; the common and almost universal disposition to construe the doctrine of the consent of the governed to the paradoxical meaning of the *sovereignty* of the *governed*;—all of these factors have co-operated to undermine the authority of constitutions and of governments, and to impair popular respect for law, by making all government and all law the mere creatures of public fancy, to be accepted or discarded according to changing fashions, regardless of fundamental and scientific principles. This fundamental weakness of democracy—its contempt for all authority and all law which it may create or destroy at pleasure—always has been manifested in the political development of the several states, and its growth during recent years has become truly alarming, in its effect upon both the Federal and state governments.

§ 63. STATE CONSTITUTIONS. The written constitutions of some of the states contain extraordinary and extravagant statements of the principle of democracy; one of them, at least, not content with the declaration that governments “derive their just powers from the *consent* of the governed,” declares: “That all political power is *vested in* and derived from the people; that all govern-



ment, of right, originates from the people, is founded upon their *will* only, and is instituted solely for the good of the whole." This remarkable declaration makes a sharp distinction between "government" and "the people" as two separate institutions; but, if *all* political power is vested in the people, it must follow that *no* political power is vested in the government; and, since government is a purely political institution, incapable of having any power other than political, it would follow that all government is powerless,—which is pure anarchy. The further statement that all government originates from the people and is "founded upon their will only," implies that *no* government is or can be founded upon fundamental principles of justice and human rights. This is the depraved and lawless democracy of Bolshevism, which teaches public insubordination to all government, all law, and all principle, other than the arbitrary will of the Soviet, making scientific and orderly government impossible.

§ 64. CONSTITUTIONAL ANARCHY. While undoubtedly it is true that a great majority of the people who vote for the adoption of such constitutions are innocent of any revolutionary or anarchistic intentions; and while it is probable that even a

majority of the members of conventions that frame and submit such constitutions, and perhaps, even the authors of clauses such as the one quoted in the preceding section, are actuated by loyal and humane motives without comprehending the deep significance of such seemingly harmless and high-sounding phrases; yet such declarations, incorporated in solemn written constitutions of states, are far from harmless. They are seized upon alike by innocent but fanatical reformers, and by the more sinister and criminal enemies of law and social order, as authoritative declarations of the fundamental principles of Democracy; and are cited as authority for doctrines and measures which make for the disintegration of society and the destruction of civilization. The indisputable wrongs and injustice of modern society, and the failure of all governments to right those wrongs, are pointed out to the improvised classes who constitute a large majority of the people, and they are invited to exercise the constitutional power vested in them to take into their own hands the direct exercise of all governmental power for their own benefit. *Law* is derided as another name for *injustice*, and the *will* of the most numerous *class* is appealed to as the sovereign and constitutional authority, to which all other government, law, and justice, are subordinate.

§ 65. DEMOCRATIZATION OF JUDICIARY. The earliest extensions of Democracy in state constitutions were directed against the independence of the judiciary. At the time of the adoption of the Federal constitution, the English doctrine of the independence of judges was held sacred in this country; state as well as federal judges being *appointed* by the executive, or by the legislature, either for long or unlimited terms of office. By 1890 the constitutions of twenty-three states provided for the *election* of supreme judges by the people, for terms varying from two years, (in Vermont), to twenty-one years, (in Pennsylvania); while in fifteen states the judges still were appointed by executive or legislative authority, — the tenure of office being unlimited in five of the latter states. At the present time (1919) the judges of the courts of last resort are elected by the people in nearly all of the states of the Union.

§ 66. LEGISLATION BY PEOPLE. By far the most radical of all constitutional changes in the direction of Democracy, (one which amounts to an absolute departure by several of the states from the “republican form of government” which the Federal constitution requires every state to maintain), is the constitutional amendment, now in effect in several of the states, which authorizes the *original*

enactment of legislation by the voluntary action of private individuals, acting in their several individual capacities, without being authorized to represent other individuals, and without responsibility to any other persons or body of persons. This is different from the pure Democracy of the ancient Greeks, in which the entire citizenship acted *collectively*, as a deliberative body in which every citizen had the privilege of participating and therefore was bound by the acts of the whole body. Democracy, as a form of government, in both the ancient and the modern sense, is an *organic* body, which can only act *collectively*, either by the direct participation of the *entire membership* or by a smaller body of representatives of the entire membership. By the so-called "Initiative," recently adopted and practiced in several of the American states, any private individual may write a proposed "law" and, if he can induce a specified number of qualified voters to sign a petition for the purpose, he can compel the submission of it for ratification or rejection by the voters of the state at a general election. Experience already has proven that few voters, of even the most intelligent classes, ever take the trouble even to read the full text of proposed acts thus submitted, but the average citizen votes "for" or "against" such acts without exercising any deliberation or judgment. The average voter, not being responsi-

ble or liable to be called to account for his action, feels no responsibility, and acts with careless indifference. The result of such irresponsible voting depends upon mere chance; it does not express the will of the people, nor any conscious desire or purpose on their part. It does, however, afford a coveted opportunity to the sinister elements of society to undermine the authority of law and government, by means of specious reforms and other measures designed to benefit certain classes of persons to the detriment of all other classes. The "Initiative" is not confined to ordinary legislation, but in some states, is applied to amendments of and additions to the state constitution.

§ 67. THE REFERENDUM. The "Initiative and Referendum" commonly are regarded as cognate or similar things; but they are radically different. The "Initiative" is an anomaly, and is utterly irreconcilable with the fundamental principle of *organic* political society. The Referendum, on the contrary, long has been adopted in principle and applied in practice in modern representative democracies, especially in Switzerland, where acts of legislative bodies may be referred to the people for ratification or rejection at a general election. In the United States it always has been applied to the adoption and amendment of state constitutions. But

the referendum never is, and necessarily cannot be, *original* legislation by the people, whether applied to constitutions or to ordinary statutes. In the case of a state constitution, and also in the case of an ordinary statute, a representative deliberative body, elected by and responsible to the people, first frames the proposed constitution, amendment, or act, subjecting every part of it to the scrutiny of select committees, and adopts or passes it only after successive readings and after full and free debate, discussion and mature consideration and submits it for ratification or rejection at a general election. This procedure is essentially different from the origination of such measures by unauthorized and irresponsible private individuals and submitting them to be voted upon by the people without the advice or recommendation of any authorized body capable of orderly deliberation. Not even a representative legislature ventures to vote upon the passage of a bill until after it has received the advice and recommendation of a committee which has had it under special consideration; much less should the people venture to vote on such measures without the advice and recommendation of any deliberative body authorized to represent them.

§ 68. OBJECTIONS TO THE REFERENDUM. In the United States, the Referendum, as well as the

Initiative, is open to the objection that, being a direct exercise of a legislative power by the people themselves, it is a departure from a *republican* form of government, and therefore a violation of the Federal Constitution. This constitutional objection has been submitted to the supreme court of the United States for its decision; but that august tribunal has held that the question presented was a *political* question which the congress, alone, was competent to determine, and not a *judicial* question within the jurisdiction of the supreme court,—and therefore declined to decide the question presented. The congress has, thus far, manifested no disposition to decide the question. It would seem that the official oath to support and defend the Constitution of the United States is not binding, when a violation of that constitution is *political*.

The Referendum is also open to the general objection to pure Democracy; that it rarely, if ever, expresses the will or judgment of a majority of the people. The “people” are merely so many individuals, a great majority of whom are occupied with their own private concerns and pursuits, and are disposed to shirk the performance of public duties, as irksome and of minor personal interest to themselves. If they vote at all, it is a perfunctory performance of a duty, with little or no sense of personal interest or responsibility. They simply will



not, or cannot, read and consider the merits of long and technically worded legislative acts for or against which they are expected to vote, and not one in twenty of those who vote has formed any rational opinion or expresses by his vote any will or judgment whatever. If, for example, all of those who vote *intelligently* should vote against a particular referred measure; a large majority, nevertheless, of the total vote is as likely to be for that measure as against it. The public will, in legislation, is a myth.

§ 69. CAUSES OF CONSTITUTIONAL CHANGES.

The underlying causes of these radical constitutional changes in American governments are economic, not political. The one great, overshadowing fact that all classes of people know, and think about, and talk about, is the continued poverty of the industrious and deserving majority of the people of the richest nation in the world, while the steadily increasing national wealth accumulates in the hands of a minority whose labor never created it. As if by an inexorable economic law of gravitation, the material wealth of a nation, which is created almost entirely by the laboring poor, is most strongly attracted by and added to the largest accumulations of that wealth. The possessors of great wealth often continue to grow richer without effort on their part,



and, sometimes, in spite of their efforts to diminish their wealth.

This economic tendency is constantly attributed to political causes; and statesmen and economists, alike, have sought to correct it by political reforms, all of which have failed. The confessed failure of the chosen representatives of the people to discover and apply a remedy left, as the only *political* alternative, the apparent necessity of empowering the people themselves, the complaining majority, to seek and apply any remedy they saw fit, through the Initiative and Referendum. Thus the extension of Democracy in the United States, and indeed, everywhere, is nothing more than an attempt to silence popular complaint of economic injustice by extending political power and responsibility to the whole of the people who complain. The utter futility and hopelessness of this expedient is demonstrated by the fact that the evils complained of have increased, rather than diminished, with the exercise of increased political power by the people. The extension of such power to the whole body of the people is a confession of incapacity and failure on the part of representatives who have been entrusted with the proper exercise of the powers of government, and results only in demonstrating the total incapacity of the general public to deal with the problems of government. Those problems are scientific prob-

lems; scientific agencies and methods, and no other, are competent to deal with them.

§ 70. INHERENT WEAKNESS OF DEMOCRACY. Democracy, as if conscious of its own incapacity, always has exhibited its contempt for governments and laws of its own making. The pure democracies of ancient times, without exception, were turbulent and short-lived. No form of government can long endure without popular respect for its authority and obedience to its laws. The government of the United States has endured more than one hundred and thirty years because it was *not a democracy*; it was and is a *republic*. Its authority is respected, while that of the more democratic states often is despised. This disrespect for law and authority is the logical consequence of the idea that the people are not only the source of all political power and authority but actually possess it, the government being their obedient servant; the idea that the government must obey the people, instead of having authority over them. And this idea, by distinguishing between *people* and the *government*, as two separate and distinct bodies, means that the people in severalty and as individuals are not subject to the authority of government—which is anarchy; for, if the people collectively and as an organic society is meant, the proposition becomes an absurdity: a

people does not and cannot exist as a collective organic body, or unit, otherwise than in the form of a government. Therefore, if the people *collectively* is meant by the proposition that all political power is vested in the people and not in the government, it is equivalent to the absurd proposition that all political power is vested in the government, *and not* in the government. But either anarchy, or this same self-contradicting proposition, is the fundamental basis of all Democracy. It explains why Democracy always is the disorganizing and disintegrating force of society, and why every increase of the democratic element in a government involves a corresponding decrease of the power and authority of that government. The growth of Democracy is the approaching dissolution of the State. This statement may shock the sensibilities of some Americans, but it is the truth. Science, not Democracy, is the hope of society and civilization.

§ 71. ESSENTIAL NATURE OF GOVERNMENT. From the foregoing review of the several primary forms of government, both in theory and in practical application, the essential nature of civil government, in any form, should become apparent. As manifested in the existing governments of our own time, the several primary *forms* of government now exist only as three *elements* some or all of which

enter into the complex structure of all modern governments. These elements now are discoverable only in the investment and distribution of the several governmental powers—legislative, judicial, and executive—and they may be described and defined as follows:

(1) Monarchy: Power vested in a single individual.

(2) Aristocracy: Power vested in a select body of individuals, however selected.

(3) Democracy: Power vested in any number of individuals who constitute a majority of the total number of citizens whose votes are cast and counted upon any given question or measure submitted to them at a general election.

It is evident that all of the primary elements of any form of government are elements of *power*. The unavoidable inference is, that any government is, in its essential nature, the repository of the *powers* of a political society, or state.

§ 72. GOVERNMENTAL POWERS. Government is the repository of the powers of a political society. A *society* is a collective body of persons; and a political society is a collective body of persons united (whether voluntarily or involuntarily) as an organic whole, and wielding the power of the whole through the instrumentality of governing organs,—govern-

ment. Government is, therefore, not only the repository of political powers; it is the governing *organism* of political society. An organic society without such organism—political society without a government—is inconceivable. All political powers, then, are *governmental* powers,—powers which pertain to government only, and not to the body of citizens considered severally and apart from the government.

Now, turning again to the three primary *elements* of power which are found in the constitutions of modern governments, we find that the elements of Monarchy (power in one person) and Aristocracy (power in a select body of persons) both are the investment of power in the governing organism itself; while the element of Democracy is the investment of power in the body of citizens considered severally and apart from the governing organism. Democracy, therefore, is not a *governmental* power, but is a *withholding* or *withdrawal of power from the government*; and, to the extent that it exists, democracy is the dissolution of political society and government.

§ 73. SCIENTIFIC GOVERNMENT. The conclusions already reached would seem to require the elimination of Democracy from civilized governments, but they do not require a return to the old

forms of Monarchy or Aristocracy; though both those old forms are found as dominant elements in nearly all modern governments, and Aristocracy, in its true and original sense of "government by the best" is the vital and indispensable element in every civilized and enlightened government. No form of government could long endure, in which *none* of its powers were reposed in good men who are well qualified to exercise them; but any form of government would endure forever, if the exercise of *all* of its powers was always entrusted to the best and fittest men in the state. Such a government, if it existed, would have to be classified, technically, as an Aristocracy of Merit; but it would be the only truly scientific government that is conceivable.

Scientific Government is possible, and it is necessary. It is possible only upon the condition that all political and governmental powers shall be entrusted to those persons, only, who are best fitted and qualified to exercise them. This condition can be fulfilled only by inaugurating a governmental system of human surveys which will operate continuously and automatically to search out the best and ablest among men and call them to the service of the state. The problems of such a system will be the subject of a future chapter.

## CHAPTER IV.

### SOVEREIGNTY

§ 74. DEFINITIONS. The quality or attribute of *Sovereignty* generally is supposed to be inherent in and inseparable from every independent political society; but there is much uncertainty as to what is Sovereignty, and also as to where, in what part or agency of society the Sovereignty is seated. Originally, in monarchies, sovereignty was attributed to kings; but in modern constitutional governments it is attributed, sometimes to the entire mechanism of government, sometimes to the supreme legislative body alone, and sometimes to the whole body of the people. In the United States, the highest authorities often have declared that "the real sovereignty is in the people;" It is of the utmost importance, therefore, that we should have a definite and precise idea of what we mean by "sovereignty," and of its proper place in the general scheme of civilized society. Webster defines the *noun* "sovereign" as meaning "one who exercises supreme control;" and the adjective "sovereign" as "supreme in power; superior to all others; highest in power; chief; in-

dependent of, and unlimited by, any other; possessing, or entitled to, original authority or jurisdiction." The same authority defines "Sovereignty" as "the exercise of, or right to exercise, supreme power; dominion; sway." From these definitions it is clear that *sovereignty* is supreme, independent, and uncontrolled *power*. The sovereignty of a political society is that ultimate power and authority to which all constituent parts of that society are subject, and which itself is subject to no other power. Two elements, therefore, are essential to the existence of sovereignty: (1) supreme, independent and uncontrolled power, and (2) subjects who are controlled by that power.

§ 75. SOVEREIGNTY, A RELATION. Sovereignty is a relative term, implying a relation between things, not a thing itself. Thus, a state may be said to be sovereign, when it is independent and not subject to the power of any other state. Likewise, an established government, or any particular branch or power of a government, or any person or body of persons within and part of a state, may be said to be *sovereign*, when such government, or branch or power of government, or person or body of persons, is independent and not subject to any other power or authority within that state.

We are not now concerned with the relations



among sovereign states, but have here to deal with the problems of sovereignty within the state. What is the nature of this *sovereignty*? Is it necessarily in the nature of autocratic power, directed by some arbitrary human will? Or may it be in the nature of the authority of scientific principles? If sovereignty is autocratic power, is it necessary or indispensable as an element of political society? Is such autocratic power inseparable from the instrumentalities of government?—or may it reside in the people, and not in the government? If the scientific principles of law can be sovereign—if *sovereignty of law* is possible—are these principles to be ascertained and declared by the people (the majority), or by the proper instrumentalities of government? If sovereignty, or any less power, is possessed by the people instead of by the government of a state, is such power then *political*?—or is it then anti-political; a barbaric, savage, non-social and non-political power? These and other questions require careful consideration.

§ 76. AUTOCRATIC SOVEREIGNTY. The idea of *sovereignty* always has been associated with the autocratic power of kings, and entirely disassociated from the principles of ethics and jurisprudence. It seems to be a cardinal doctrine of political science, in all countries and under all forms of government,

that somewhere in every political society there must be a *sovereign person* or *sovereign body of persons* whose uncontrolled and uncontrollable will is the supreme law of that society, which must prevail over any other law. This is the principle of Autocracy; which seems to cling to political science, while it is rejected by all other sciences, and which represents at once the power and the weakness of all existing governments. The only sovereignty that seems ever to have been conceived of is a *personal* sovereignty, which demands allegiance and loyalty to persons and obedience to human will, instead of fealty to principle and obedience to law.

§ 77. SOVEREIGNTY OF LAW. While sovereignty is, in theory, entirely autocratic, it is not entirely so in practice; especially in states which, like England, do not accept the doctrine of complete popular sovereignty. The present diffusion of knowledge, and the world-wide publicity given to governmental conduct, tend to breed a wholesome respect for the opinions and criticism of thoughtful and discriminating minds everywhere, in consequence of which a "sovereign body of persons" such as the English parliament, steadily is becoming less autocratic and more subservient to the higher sovereignty of ethics and scientific jurisprudence. Responsible governments which are invested with unquestioned

sovereignty are constrained to abandon all claim to a personal sovereignty which may impose their own arbitrary and autocratic will upon their subjects, and to exercise only the sovereignty of the law, conforming their conduct to the requirements of principle and science. This is a wholesome and hopeful tendency toward scientific, and away from autocratic, government. It is a growing recognition of the sovereignty of law.

But this hopeful tendency is reversed in those states in which a depraved Democracy and Popular Sovereignty prevail; where so-called majorities impose their autocratic will upon the whole people, regardless of science or law, for the benefit of some classes of the people and to the detriment of other classes; unrestrained by any respect for the opinions and criticism of thoughtful and discriminating minds anywhere.

§ 78. POPULAR SOVEREIGNTY. The original and simple sovereignty of despotic kings belongs to other ages and earlier states of civilization. If true sovereignty survives or ought to exist at all in the complex constitutional governments which are required by modern civilization, it must be as an attribute of either the *government* or the *people*. Assuming, for the present, that sovereignty is essential to every political society, it admits of the same

classification as that given to the elementary forms of government, namely, sovereignty in *one* person; sovereignty in the *few* (minority); and sovereignty in the *many* (the majority). By popular sovereignty, we mean that the *many* which, in practice, means any *majority* of the whole body of the people of a state, are endowed with sovereignty, to which even the government of that state is subject and subordinate. The doctrine of popular sovereignty often has been asserted as a fundamental principle of government in the United States, and is dogmatically asserted, and accepted as of course, in many other countries; and this same doctrine, or dogma, also is the basis of all socialistic theories, and even of Anarchy. The Bolsheviki, in Russia, and elsewhere, are formidable because they are logically asserting and applying the doctrine that, in every country, the real sovereignty is in the *people*, *not in the government*.

§ 79. IN THE UNITED STATES. The late Mr. Justice Bradley, of the supreme court of the United States, in a short, but formal, treatise on "Government," stated the doctrine of popular sovereignty in the following language: "Government, it is proper to add, is not the same thing as sovereignty. By sovereignty is meant the ultimate power of the state, to which all final appeals are made. By govern-

ment is meant the ordinary depositaries of the civil power. In the United States it is a received axiom that *the sovereignty resides in the people at large. But the people are not the government.*" (Am. Supp. to Enc. Brit., 9th ed., vol. 3, p. 245). This is a clear and explicit declaration of the prevailing American idea that sovereignty belongs to the people at large, and does not belong to the government. It assumes that the people at large can be, and are, a concrete body, capable of united action as a civilized society, and exercising sovereignty over the governing organism through which alone any society can be and act as such. It denies the right and the power of a political society, (which is the "people at large" living in a state of society), to control the individual members of that society. In other words, *popular sovereignty* means that the people as separate individuals are sovereign over the people as a concrete society; that the body politic is not sovereign over its parts; that the whole is not greater than any of its parts, but *the sum of the several parts is greater than the whole*. It is an amazing absurdity.

#### § 80. CONSEQUENCES OF THE DOCTRINE.

The dogma of popular sovereignty might be ignored as a harmless absurdity, useful only to demagogues as a bauble with which to flatter and cajole the

voting population, if it were, indeed, *harmless*. It heretofore has passed unchallenged because it has been a rather pleasing delusion, without sufficient practical importance to require serious attention. But now, from this seemingly harmless and pleasing idea that the *people* all are sovereigns, has sprung a world-wide movement to actually assert and exercise that supposed sovereignty,—a movement which is defying all government and all authority, and which threatens to overwhelm civilization. This portentous movement assumes, as a truth and a reality, the doctrine that sovereignty belongs to the people, and not to the governments of the world; and then reasons, quite logically, as follows: If sovereignty belongs to the people, then it belongs to the *proletariat*, who, being the most numerous class, in reality are the *people*; the proletariat, being *sovereign*, have the right to dispense with and abolish governments, and administer their own sovereign will, either directly, or through committees or “commissaries” of their own choosing; that, being sovereign, the proletariat can do no wrong, are bound by no law other than their own will, and there can be no law but by their sovereign will; and that wherever the proletariat are superior in numbers, there, also, they are sovereign, and, being sovereign, are subject to no government and bound by no laws but their own sovereign will. There is

no valid answer to this reasoning, other than a denial and repudiation of the false premise upon which it is based,—popular sovereignty. But a doctrine which has received wide acceptance among persons high in authority may not, however baseless it may seem, be flatly denied and rejected without subjecting it to a searching analysis and conclusive reasoning.

§ 81. BASIS OF SOVEREIGNTY. Sovereignty is a *social* relation; it is a relation which can exist only in a political society. That relation is one of *authority* and *subjection to authority*. There can be no sovereign without subjects. Where there is no political society there can be no political authority. If we could imagine a purely non-political state of society, every person in that society would be absolutely free from any restraint or control by others, and would exercise no restraint or control over others. The instant that any person, by any means whatever, established any authority, restraint or control over other persons, that instant, as to all of the persons concerned, their state of society would cease to be non-political—and would become political. If the person exercising such authority were himself subject to no other authority, he would be a sovereign person, and the relation of sovereign and subjects would then exist between himself and



those who were subject to his authority. Sovereignty, then, is a purely *political* relation, having no other basis than that of authority, exercised by some and obeyed by others, a relation which cannot exist where political society does not exist. How, then, can it be possible for all of the members of a political society to be endowed with sovereignty; in which case none of those "sovereigns" possibly could be *subjects* of such sovereignty? Such a state of society necessarily would be wholly non-political and inorganic,—like an army of generals, with none to receive and obey commands.

The conclusions seem unavoidable, that, if popular sovereignty—sovereignty of the people at large—were an actual fact, and not a mere myth, in any country, there could be no government or authority of any kind in that country; for the obvious reason that sovereigns are not subjects, and, therefore, there could be no subjects to be governed and to obey authority. Popular sovereignty, being the denial of popular subjection to authority, involves the dissolution of the social state, and is *impossible*.

§ 82. PEOPLE ARE NOT SOCIETY. Approaching the subject of sovereignty from another angle; let us ascertain clearly the difference between a *society* and the *people* who compose it, and the dif-



ference between a government and the *people* who are governed by it. The idea of popular sovereignty necessarily admits that the people of a state are not the government of that state; for if the people and government were *identical*, such a *distinction* between them would be impossible. It would be saying that the *same thing*, when designated by one name, *is* sovereign, and *is not* sovereign when designated by another name,—a self-contradicting proposition. It is absolutely true that the people of a state are not the government of that state; and it is true, likewise, that the people of whom a society is composed are not that society. The difference between people and government, and between people and society, is precisely the difference that always exists between any *form* or *structure* and the substance or material out of which a form or structure is made. A block of marble is not a statue; nor is a quantity of lumber a house. When a statue is carved from a block of marble, the marble in that statue still is nothing but marble, it is not the statue; the *form* given to the marble is the *statue*. Likewise, when a house is built of wood, the wood in that house is not the house, it still is nothing but wood; the form, the structure which is built of that wood, is the *house*. So, when a number of men are combined or associated in one society, the men who

compose that society still are *men*, and nothing more; *they* are not the *society*.

§ 83. NATURE OF SOCIETY. Society is a form, a structure, a fabric, a state of being. Society is not the human material of which it is composed, nor is that material a society. Society is the form and state of being in which the human material composing it is arranged and combined. In any society, its component parts have assumed certain relations to each other and to the society, and it is the form and nature of those relations, not the component parts themselves, that constitutes the society. The various kinds of society are determined by the form of each,—the relations assumed and the objects sought to be attained. There are many kinds, such as fraternal, religious, scientific, industrial, and political societies. In every kind, the society is a separate entity, distinct and apart from its component parts, or members; the personal identity and individuality of the several members are not merged and lost in the single entity of the society,—for one man may be a member of many different societies,—in each of which he assumes a distinct set of relations.

§ 84. POLITICAL SOCIETY. *Political* societies are different from other societies in the form and

extent of the relations assumed by or imposed upon their members. The several members also may be members of other societies, both political and non-political,—with the single exception that no person can be a member (or subject) of more than one exclusively independent and sovereign state at one time. Political societies also differ from other societies in having geographical position and control, embracing in their membership or under their control all people who reside within certain defined territorial limits. But the people within those territorial limits are not the society; they may be and usually are, members of several political societies, each of which is a distinct entity as a body politic, though composed of the same people. Thus the people who compose the single body politic called the United States of America are the same people who compose the several distinct bodies politic called States, into which the United States is divided. The United States, and also each of the several states, is a political society. The several counties, cities, and other municipalities throughout the United States, all are separate and distinct *political societies*, each of which is a corporate entity, separate and apart from the human material of which all of these societies are formed. Each of these societies is a *form* and a *structure*,—not the mere mass of the

materials out of which the form and structure is fashioned.

§ 85. SOCIETY AND SOVEREIGNTY. A political society is called sovereign when, or in so far as, it is independent of any other political society. If it be really *sovereign*, its sovereignty must, necessarily, belong to that entire society,—not to some particular part of it, and certainly not to the mass of the materials out of which it is formed. If, as we have seen, the people of a society are not the society, then the sovereignty which belongs to a sovereign political society, or state, does not belong to the people. The people are merely so many individual men and women, and nothing else. But sovereignty is the supreme authority and power of a political society; and such society, being an *organic* body, cannot have or exercise authority and power otherwise than through and by its own *organs* or *organism*. Without such organism it would be without function, and could not exist. The organism through which the authority and power of society find expression, is called *government*; which is, in fact, society itself in the performance of its functions. If, therefore, any political society is *sovereign*, its sovereignty can be exercised only by and through its governing organism,—the government. No other agency, not even the entire body

of the people, is endowed with any of the functions or powers of society. When the people exercise any such powers and functions, their acts are not the acts of society, but the acts of individuals in a non-social and non-political state. Such individual action by the people, if carried to its logical conclusion, would mean the dissolution of society and the end of civilization.

§ 86. MAJORITY RULE. Approaching the subject of popular sovereignty from still another angle, let us now inquire into the manner in which the people at large necessarily must exercise the power of sovereignty, assuming that they possess it; and whether their exercise of such power would represent the whole people, or only a portion of them. The theory of popular sovereignty is that the real sovereignty of a sovereign state is vested in the people at large, the whole people, all of the people of that state, and not in any determined or determinable portion of the people. If the popular sovereignty can be construed to mean sovereignty in some, but not all, of the people, who are the *sovereign persons* in the state, then it is applicable to the established organism of government, in which case popular sovereignty simply means sovereignty of the government, which is the people in the form and capacity of organic society,—the only sense in

which popular sovereignty ever did or ever can actually exist. But the term is not employed in that sense, else there would be no question to discuss. As commonly used and understood, the terms "popular sovereignty" and "sovereignty of the people" mean the exercise of sovereign power by any majority in number of the voting population. It is majority rule extended to absolute sovereignty; the dogma of popular sovereignty is nothing more nor less than sovereignty of majorities, if exercised in an orderly manner, or sovereignty of mobs, if exercised without the formalities of plebiscite or election.

§ 87. MINORITY RULE. If the actual exercise of sovereignty by the entire body of the people at large can be regarded as possible, it certainly never has been accomplished as a fact. It is doubtful if all of the citizens or qualified voters of any state ever participated in any specific political act, either at a general election or in any other manner. Certainly no sovereign act, such as the adoption of a constitution, or the enactment of ordinary legislation, ever was performed by the unanimous action of the people at large, but only by a majority of the number who participate,—which sometimes is far short of a majority of all citizens. Thus the supposed sovereignty of the people actually is exercised generally by a *minority*. In such instances popular

sovereignty becomes *minority sovereignty*. So, it appears that, in actual practice, the phrase "the people" is vague and indefinite, meaning sometimes a majority, sometimes less than a majority, and always less than all the people.

§ 88. MOB RULE. Every mob which casts aside the restraints of law, and defies the authority of government, believes itself and proclaims itself to be "the people." The most violent and criminal mobs are the most vociferous in claiming to be "the people." The most depraved elements of society always are firmly convinced that *they* are "the people," and that the constituted authorities of government and law are enemies and oppressors of the people. These depraved elements always are keenly aware of the manifest imperfection and injustice that pervade all existing forms of society, and are first to rally to the support of leaders who seek to reform society by forcibly overthrowing existing forms of government. All advocates of forcible revolution by the mob base their argument (1) upon the assumption that the mob is the people, and (2) upon the proposition that the people are sovereign, and, as sovereigns, have the right to make and unmake governments and laws at their will. The argument is a strong one, and the only answer to it, under existing conditions of society, is



(1) that mobs are not the people; (2) that governments, not the people, are sovereign; and (3) that the people as a mob have not the right to make and unmake governments and laws at their will. But the final and only satisfying answer must be an answer that never yet has been given, namely: The injustice that pervades all existing forms of society must and shall be removed by the peaceful and orderly processes of *scientific* government.

§ 89. PEOPLE'S CAPACITY FOR SOVEREIGNTY. Government is a *science*. All functions of government, whether legislative, judicial, or administrative, are scientific functions, and should be performed scientifically; precisely as any other business or industry must be conducted scientifically, if it is to be successful. If there must be any *sovereign* control over the exercise of the functions of government, that control ought to be scientific,—not arbitrary, whimsical, or despotic. The conduct of civil government is a human enterprise, not essentially different from all other human enterprises which require knowledge, discretion, integrity, and technical skill for their successful prosecution and the attainment of the ends for which they are undertaken. In all human enterprises—with the sole exception of civil government—popular beliefs, opinions, and prejudices count for nothing in deter-



mining any facts, methods, principles, or policies affecting any enterprise. In all sciences, arts, and industries, save that of government, the most efficient and trustworthy persons are sought for each special service, and to them are committed the problems which require their expert skill and knowledge in their several specialties. If the opinion, knowledge or judgment of the people at large were of any value in determining vital problems and policies in the conduct of educational, scientific, financial, industrial, or commercial enterprises, those concerned in the respective enterprise would be certain to avail themselves of that public wisdom in the solution of problems that baffle specially trained scientific experts. But the obvious incapacity of the people at large for dealing with technical and scientific matters is fully recognized as to all sciences and arts, save that of government. If, however, the people in general lack capacity for all else, how can they be supposed to have sufficient capacity for the intelligent exercise of *sovereign* control over the functions of government? The vital and intricate problems of jurisprudence, legislation, and administration of government, are of far greater importance than those of any other field of human action; affecting the life, the liberty, and the happiness of every human being; yet those vital problems, and the very existence of human government and of

civilization, are being subjected to the supreme and sovereign control of a force which is utterly incapacitated for any of the lesser enterprises that engage the attention of men.

§ 90. POPULAR DESIRE FOR SOVEREIGNTY. All men desire liberty, and the secure possession and enjoyment of the fruits of their legitimate endeavor; many men desire more than this; but few men desire the possession and responsibility of political power. In other words, all men desire all that is rightfully theirs; many desire more than is rightfully theirs; but few desire to participate in matters of purely public concern. The public concern, the concern of society and government, is, or ought to be, to see to it that all men have all rights and possessions that are justly theirs, and that none have more. But, while nearly all men are wholly devoted to their individual and personal concerns and interests, only a comparatively few are disposed to rise above their private interests and devote their energies to the concerns and interests of the public welfare. Political affairs and disturbances, when forced upon the attention of the average man, are regarded by him as an unwelcome interference with his ordinary pursuits. The people at large would concern themselves but little with the affairs of government, if they could feel assured that those

affairs were in competent and trustworthy hands and that all persons were secure in their rights and possessions. All the distrust and disturbance in society is caused by the well-known fact that society has failed in its duty to see to it that all men have all that is justly theirs, and none more. The people know that most of them have less than is rightfully theirs, while many others have more; they know that the bounties of nature and the blessings of civilization are not fairly distributed according to principles of justice, but are largely monopolized by unrestrained greed and cunning. When the people complain of this, they are given *Democracy*, and when they continue to complain, they are given *Sovereignty*. What the people really desire is *social and economic justice*; they desire neither democracy nor sovereignty. They desire just government. This desire never can be fulfilled until the exercise of the functions of government is entrusted to those only who are competent and trustworthy,—not to mouthing demagogues who obtain votes by prating about Democracy and Popular Sovereignty. Both of those panaceas having failed to bring about that social and economic justice which is the real desire of the people, a new panacea is now offered to the people of all nations in the form of Bolshevism.

§ 91. PROLETARIAN SOVEREIGNTY. In sharp

distinction from the *theory* of popular sovereignty, which regards sovereignty as pertaining to the whole people, including the high as well as the lowly, we now behold a new brand of sovereignty commanding the attention of the political world,—that of the *proletariat*. *Proletarian Sovereignty*, represented by the Bolsheviki of Russia, and their so-called soviet governments there and elsewhere, makes no hypocritical pretense of an impossible sovereignty of the whole people, but boldly and openly proclaims an absolute and autocratic right of sovereignty in that *class* of the people which it styles the *proletariat*. The word “proletariat” means, according to lexicographers, “the class of common people; the lowest class; the community”; —but the apostles of Bolshevism, by insisting upon a distinction between the “proletariat” and all property-holding classes, such as the “bourgeoisie” and the “capitalistic” classes, clearly mean, by “the proletariat,” the impoverished and hitherto down-trodden multitude. This one class, always the most numerous, is suddenly elevated from servility to sovereignty. It is a grim caricature of justice; meaning retribution and destruction, rather than justice and restoration.

§ 92. JUSTICE AND SOVEREIGNTY. Justice is the subordination of human will to juristic prin-

principles; sovereignty is the subordination of juristic principles to human will. Justice is the domination of reason over force; sovereignty is the domination of force over reason. Justice is the supremacy of human reason; sovereignty is the supremacy of human will. Justice is the equal right of all, to the exclusion of none; sovereignty is the superior right of some, to the exclusion of others. Justice is the rule of right; sovereignty is the rule of might. Justice is unalterable principle; sovereignty is fickle despotism. The idea of human sovereignty is, therefore, irreconcilable with the idea of disinterested justice.

§ 93. SOVEREIGNTY THE FOE OF LIBERTY. Justice and liberty are inseparable. Neither can exist without the other. As sovereignty is irreconcilable with justice, it also is inimical to liberty. Though the mere claim of a *right* of sovereignty, without actual exercise of sovereignty, may not interfere with justice or liberty, the imposition of a sovereign *will* upon a subject people always is an infringement of the principles of both justice and liberty. The sovereignty of *men*, whether that of kings, people, or classes, is essentially despotic. Our modern popular sovereignty exhibits the same disregard of human liberty that characterized the ancient sovereignty of despotic kings. It is even

more irresponsible, less rational, and therefore more perilous, not only to liberty, but also to the peace and order of civilized society, than the sovereignty of any despotic king; because the king could be called to account and deposed for his abuse of sovereign power, while the people cannot be.

§ 94. SOVEREIGNTY OF SOCIETY. The only sovereignty which is consistent with the sound principles of just and scientific government, is that of society itself, personified by the governing organism, or government, in and by which alone society is in being as a living and potent body politic. Government is *society* in action; it is the whole people as members of society. There is not, never was, nor ever can be any sovereignty save that of government. While government is both society and people as one organic whole, the entire people *severally* are neither society nor government. They are, severally, *subjects* of a sovereign society or government,—not the sovereigns of a subject society or government. The time has come when people must be made to understand this truth. They must be taught, also, that if society needs reforming, the reform can be effected only *through* the existing organism of society,— never by disrupting or destroying that organism. A king may be deposed, or a president impeached and removed

from office, and a legislature or judiciary may be reformed,—all through the organism of the body politic, and without disrupting or destroying it. The faults of society and government are the results of ignorance and incapacity rather than design, on the part of those to whom the offices of government are intrusted; and the obvious reform needed is a *rational* mode of selecting wise and capable men for those offices, by whom the sovereignty and power of government may be *rightly* maintained and exercised.

## CHAPTER V

### PUBLIC OPINION

§ 95. NON-POLITICAL POWER. In the United States, and, apparently, in other countries, the political power steadily is becoming less potent, because of its submissiveness to another power which is not political,—a power called “public opinion.” *Political* powers are the organic powers of political society; powers which are inherent in the governing organism—the government—of political society. In other words, political powers are powers of Government, powers of organic society. All other human powers are powers of inorganic society. The powers of inorganic society are the natural powers of individual men to do both good and evil; powers of liberty, and powers of crime.

The office of the powers of organic society is to restrain and control the powers of inorganic society. The power of *public opinion* is a power of inorganic society, it being without and apart from the constituted social organism. Therefore, the submission of government to the power of public opinion



is the surrender by organic society of its power to restrain and control the powers of inorganic society. It is the surrender of society to its individual members; the subjection of civil to anarchic power.

§ 96. POWER OF PUBLIC OPINION. It is the favorite boast of politicians in general, and of the entire press, in the United States, that all departments of government, both state and federal, are mere instruments and vehicles for the expression and carrying out of the mandates of public opinion. And it is an undeniable fact that all functions of government in the several states, and all functions of the federal government excepting only the judiciary, now are completely dominated by whatever is conceived to be the prevailing public opinion. The reason for this state of affairs is obvious. Practically all powers of government are exercised by officers who are elected for short terms by the direct votes of the people. All elective offices are filled, quite naturally, by that class of men, only, who are willing to seek office by courting popularity among their constituencies, and whose only hope of continuance in office or advancement to higher office is by continuing in favor with their constituencies. With such men the demand of passing popular sentiment are more binding than the dictates of conscience and patriotic duty.

§ 97. SUFFRAGE AND PUBLIC OPINION. The power of public opinion always is proportionate to the extension or restriction of the right of suffrage among the people. In governments where popular suffrage does not exist, public opinion has little influence on and no power whatever over the conduct of government. But in governments where a practically universal suffrage prevails, and the supreme offices of government all are elective, public opinion is omnipotent and government its slave; and such governments, being impotent, are contemptible, and their authority is held in contempt by the same people whose caprice can control them. It is organized anarchy.

§ 98. CONSTITUTIONAL SAFEGUARDS, IN U. S. The present omnipotence of public opinion in the United States is a departure—a complete revolution, in fact—from the kind of government that the framers of the Constitution intended to establish and did establish. While it was intended to establish a Republic, every possible precaution and safeguard, consistent with that intention, was taken to minimize the influence of public opinion and sentiment upon the several functionaries of government. Only one of the two houses of Congress, the House of Representatives, was made elective by the people; all other branches of the govern-

ment,—the executive, the judiciary, and the most powerful chamber of the legislative, the Senate, were intended to be independent of popular influences, and to that end the people were to have no direct voice in the selection of a president, or of judges, or of senators. The avowed and often repeated reasons for these precautions were, that public sentiment and opinion always are unstable and unsafe, always irresponsible, often irrational, and usually are incited and created by irresponsible agitators, sometimes with sinister motives, who easily can mislead the public by specious and plausible arguments; and that the true interest of society demands the exercise of the highest wisdom and unbiased judgment of the responsible functionaries of government, uninfluenced by considerations of popularity. The framers of the Constitution clearly foresaw, what we now know by actual experience, that the fear of defeat at the next election often will cause elective officers to commit themselves to a course of official conduct, or actually to pursue a course of conduct, which is contrary to their own conscientious judgment, and which they believe to be detrimental to the true interests even of their own constituents.

§ 99. REVOLUTIONARY CHANGES. Ever since the adoption of the original Constitution of the

United States, in 1787, certain extra-political forces have been operating to undermine the independence of all governmental functionaries and to render them more subservient to popular control. The first constitutional change in that direction, effected in 1804, related to the election of the president, and required the electoral votes of each of the states to be cast and counted as a unit, one vote for each state, instead of counting the independent votes of the several electors, as originally provided. Following this change in the Constitution, it soon was extended by universal *custom* so as to deprive the members of the electoral college of whatever discretion they originally were intended to have in electing a president; with the result that, in practical effect, presidents thereafter were and now are elected directly by the people of the several states, making them no less subservient to public opinion than are any other officers who are elected by direct popular suffrage and are answerable to the people only. A more recent change in the Constitution has destroyed the independence of the Senate, making the members of that body, also, dependent upon the popular suffrage for election, and consequently subservient to public opinion in the performance of their duties. These revolutionary changes have been made in obedience to a supposed mandate of public opinion; and the same forces and influences

that created that supposed public opinion now are clamoring for a still more vital change which will completely destroy the independence of the Federal judiciary by making all judicial offices elective by popular vote. When this last change is accomplished, (as surely it will be, if there is not a general restoration of sanity), the revolution will be complete, and the Federal government will be reduced to the same low level of impotency, incompetency, and corruption, as that occupied by many of the state governments.

§ 100. SOURCES OF PUBLIC OPINION. This omnipotent Public Opinion is not a spontaneous emanation from the minds of the people generally; it originates in and emanates from the minds of a comparatively small number of persons who are able to engage the attention of the general public and instill their peculiar ideas into the minds of people generally. In earlier times, when illiteracy was more general and newspapers rare, a few popular *orators* were the favored few who enjoyed a complete monopoly of the business of manufacturing public opinion. But, at this day that monopoly has fallen into the hands of a comparatively few proprietors and editors of *newspapers*, and other printed periodicals which are widely circulated and generally read.

§ 101. POWER OF THE PRESS. Public opinion, so far as it has any effect upon the conduct of those who are charged with the exercise of governmental functions, is the supposed opinion of that portion of the public who, through the elective franchise, have the power to select those persons who are to exercise governmental functions. The final expression of this supposed opinion is made by such portion of the whole body of electors as happens to constitute a majority (or, in some cases, a mere plurality,) of the whole number of electors who participate and cast their votes in an election. This majority, or plurality, may be, and usually is, a minority of the total number of qualified electors, and a very small minority of the entire adult population; but whatever small proportion of the "public" they may be, their decision or choice is deemed to express the "public opinion" upon the questions voted upon at the election. But, as a matter of fact, (supposing every voter to be capable of reading, thinking and forming independent opinions of his own) every voter is dependent upon newspapers and other printed matter for the information that is necessary in order to enable him to form rational opinions of public men and upon state affairs, and the opinions of nearly every one naturally conform to those expressed in the newspapers and other periodicals that are read by him.

The press has become, to every man who reads, his only accepted source of information as to men and affairs beyond the limits of his own personal acquaintance and observation. Whoever controls that source of information has the tremendous power of giving and withholding such information as he pleases to give or withhold, or of imparting it in such a manner as to create the impressions and opinions that he desires to create among his readers. The average man receives the impressions and reflects the opinions that he finds in the particular periodical that he habitually reads; and those impressions and opinions are the ones that the owner or manager of that particular periodical desires to create. In every civilized country today, a comparatively few great daily newspapers reach and are read by the great mass of the reading public. Whatever is the predominant opinion among these newspapers is accepted as *public* opinion by all public officials who hold their offices by the grace of popular votes; and public officials yield obedience to this newspaper public opinion *because* their reputations and their hope of continuing in public life depend upon the favor of those newspapers whose opinions are "public" opinions.

In the United States, and perhaps in some other so-called "democracies" of the present day, the press,—not public opinion,—is truly omnipotent.



The press is the supreme power, to which the constituted governments are subordinate and subservient. It would be no exaggeration of facts to paraphrase certain popular maxims of American politics by saying: "In this country the real sovereignty is in the newspapers," and "This is a government of the people by the newspapers for the newspapers."

§ 102. IRRESPONSIBILITY OF THE PRESS. By what right and by what authority do the individuals who control the press assume and exercise supreme power by dominating the established government? Who invested them with this super-governmental power? They profess to be the "interpreters of public opinion." It is to the publisher's interest to affect the modest rôle of a mere interpreter of the opinions and wishes of the people, and to persist in the shallow affectations of being the "organ," the "mouthpiece," or the "spokesman" of the people. Augustus Caesar wielded absolute and autocratic power by modestly affecting to be the humble instrument of a senate which was in reality his slave; and in modern politics he has had more than one imitator who has usurped and exercised absolute power while making loud professions of being merely the humble servant and spokesman of the people. But Augustus was invested with



power by an army that was obedient to his will, and his modern imitators have been invested with constitutional authority which their usurpations of power have merely exceeded. The power of the first Roman emperor, and also that of his several modern imitators, was *political*,—it was *within* the governing organism of the state. But the supreme and super-governmental power now exercised by those persons who own or control the newspaper press never was conferred upon them by any political body or power, either military or civil, nor through any constitutional processes of political society. It is an extra-political power, utterly lawless and entirely irresponsible, exercised arbitrarily as the purely private enterprise of any individual who manages to acquire possession and control of a newspaper publishing plant.

§ 103. QUALIFICATIONS OF THE PRESS. The modern newspaper has become the universal and almost exclusive medium through which current information and ideas reach the public from day to day. Modern newspapers are the common avenues of public intelligence. The power to control these great avenues of intelligence, and to say what shall pass and what shall not pass through them, is the power to create and control the sentiments, prejudices and opinions of the public. If such a power

is necessary and must exist somewhere, it ought to be a responsible political power, not an irresponsible private and non-political or anarchic power; and the exercise of such vast power should be committed to those only who are in the highest degree qualified for its proper and legitimate exercise. But that power, as it now exists, is a non-political and anarchic power, assumed and usurped without political sanction or authority, by self-appointed private individuals without any legal restrictions or requirements as to the qualifications and fitness of those individuals for the exercise of such power. Those who control and direct these great avenues of public intelligence are called journalists, and Journalism has become a recognized *profession*. But, while other professions, such as those of Law and of Medicine, everywhere are subjected to political control and regulation, being restricted to licensed persons of whom certain mental and moral qualifications are required before they are permitted to practice those professions, and whose licenses are revoked if they abuse their right to practice,—yet the profession of Journalism (with its unlimited power to make and destroy reputations, both private and public, and to undermine and destroy public respect for laws and for government) is not only free from political control and regulation as to the qualifications and fitness of those practicing that

profession, but assumes and exercises the power to control and regulate all political powers of the state itself. Are these self-appointed journalists *qualified* to control the destinies of the state by prescribing and ordering the conduct of statesmen and jurists, making those responsible functionaries of the state responsible to an irresponsible power that controls the avenues of public intelligence?

§ 104. INCOMPETENCY OF THE PRESS. The just principle of the freedom of speech and of the press is very generally misunderstood and misconstrued as licensing seditious and inflammatory utterances. Such utterances commonly are made and published by persons who are unconscious of their seditious character, and who, unschooled and unskilled in the sciences of government and jurisprudence, imagine that they are voicing intelligent criticism or advocating some genuine reform, when in fact they are ignorantly attacking and undermining the very foundation of social order and civilization. The peace and good order of society depend upon popular respect for and submission to the authority of government; yet the press, especially the American press, constantly undermines that authority by spreading broadcast the idea that whatever is the prevailing *public opinion* (which is the prevailing *opinion of the press*) is the supreme authority, to

which the constituted authorities of government must bow in submission. Likewise, the independence of the judiciary is essential and indispensable to the administration of justice and the development and preservation of the sound principles of jurisprudence; yet a large and influential part of the American press constantly is instilling into the minds of the people the pernicious idea that the judiciary cannot be trusted unless the judges are elected by popular vote and compelled to conform their decisions to the demands of that public opinion or popular sentiment which the press itself creates. Thus the press, in ignorance more than by design, yet impelled by its conscious love of power, steadily spreads an insidious form of sedition which breeds popular contempt for the constitutional authority of government, corrupts the administration of Justice, and encourages the spirit of anarchy which now is a menace to civilization. Such is the power and such the effects wrought by a class of self-appointed and self-constituted censors and critics of governments, and of sciences which they do not understand, and of which they are not competent censors or critics.

§ 105. RESTRAINT OF THE PRESS. Only qualified and licensed instructors are permitted to teach children in the public schools of the United

States; and in all higher institutions of learning, throughout the world, the several arts and sciences are taught by those persons only who are distinguished for their thorough knowledge of or skill in the particular art or science which each is to teach. The obvious reason for all this is, that knowledge can be imparted by those only who possess it themselves and are able to impart it correctly. The press has become the teacher of the entire public, imparting knowledge of all current matters and events which affect the public interest, and assuming the important function of leading and directing the minds and thoughts of the public. If the minds of the public are to be thus taught and led and directed, it is the very highest concern of society to see to it that the minds of the public are taught and led and directed *correctly*. There can be no greater peril to society than that of permitting the minds of the general public to be misinformed and misled in matters of *political* sciences by persons who are themselves without special knowledge and ability fitting them to teach those sciences correctly. Experience shows that the teachings of the press are largely *political*; relating to legislation, jurisprudence, and the multitudinous administrative functions of government, all of which are matters of profound scientific knowledge and trained skill. The modern newspaper is far from

confining itself to its normal function of impartially relating current facts called "news," but is filled largely with argumentative propaganda and discussions, supposed to be *instructive*, upon subjects upon which the writers more often than not are incapable of giving instruction. This false "instruction" and "teaching" has smothered the voice of scientific knowledge, and is rapidly turning political order into anarchical chaos. It has become obvious that there must be governmental restraint of the press; not an arbitrary restraint, but a reasonable and necessary restraint which will prevent the publication of the false teachings of those who are not qualified and licensed to teach any particular branch of knowledge which they may attempt to teach,—precisely as other educational and scientific professions now are protected, restrained and controlled. False teaching through the press is a fraud upon the public. The constitutional guarantee of the "freedom of the press" does not license fraud, libel, or sedition.

§ 106. LICENSING WRITERS AND AUTHORS. One of the recognized duties of government is that of protecting the public against fraud and imposition. A newspaper editorial comment, an article contributed to a newspaper or other periodical publication, or a book, which purports to give informa-

tion or instruction upon any subject of knowledge, if written by one who is without sufficient special knowledge of the subject to entitle him to impart information or instruction to others, is a fraud and an imposition against which the public is entitled to protection. The protection to which the public is entitled, in such case, is the same which is afforded to the public in the case of one who seeks to teach in the public schools. One wishing to teach in the public schools is required to submit to an examination as to his qualifications for teaching, and he is given a certificate which is his license and authority to teach those branches of knowledge, only, which he is found qualified to teach. Likewise, one who aspires to teach the general public, by writing for publication upon any subject of science or philosophy, should be required to prove to an authorized and competent examining body that he possesses the requisite knowledge and other qualifications to entitle him to a license authorizing the publication of his writings upon that subject; and the printing and publishing of the works of unlicensed writers should be forbidden by law. Not only is the public entitled to such protection from being imposed upon and misled by incompetent writers upon all subjects, but, as to *political* writings, this protection and safeguard against the publication of false and unscientific teachings is absolutely essential to the



existence of any just and orderly system of government.

§ 107. COMMERCIALISM OF THE PRESS. Publishing is a commercial business, carried on for the profit or advantage of the publisher. His interest is to publish that for which there is a demand or for which a demand can be created by judicious advertising. The publisher, whether of books or of a periodical, endeavors to produce whatever is popular or is likely to become popular. He is not concerned about the capabilities of the writer or the quality of his writings, if those writings are likely to interest and gratify the larger number of readers. He cannot be expected to bankrupt his business by publishing matter which is opposed to prevailing popular notions and tendencies, however unsound and dangerous to society those notions and tendencies may be. Even if he be at heart a patriot, the average publisher is a better judge of his own pecuniary interests than of the soundness or fallacy of political theories or of the interests of society at large. It is, after all, the business of society to protect itself, through its governing organism,—the visible instrumentalities of government. Government is, as we have seen, society itself in its organic state. The business of government is *to govern*, not to *be governed*. The law of self-pres-



ervation applies to society and its governing organism as forcibly as it does to all other living organisms. When a commercialized press insists upon *governing the government* by wielding the unrestrained power of what it calls "public opinion," the inexorable law of self-preservation decrees that the existing governments of society must either perish or preserve themselves by restraining and controlling the press and its so-called "public opinion." The commercialism of the press, entrenching itself behind the doctrine of the "freedom of the press," cannot be trusted to create a "public opinion" which will preserve governments, society, and civilization from threatened destruction. Governments must take the necessary measures to preserve themselves and the civilization of which they are the only visible and active organic force. That done, it is the business and imperative duty of governments to inaugurate a system by which only the best and ablest among men may be sought out and entrusted with the exercise of the powers of government; for through such men, only, can the radical defects of modern civilization be corrected, and the glaring injustices of existing social and economic systems, which are the perpetual cause of all social unrest and violence, be forever removed. Orderly government—not a lawless and ungoverned press; not the blind anarchy of misguided public opinion—

must undertake the task of preserving and perfecting the civilization that we have, and of establishing a reign of justice among men and nations.

§ 108. PUBLIC MIND. The assumption that there can be and actually is such a thing as a *public opinion* presupposes the existence, as a dynamic entity, of a *public mind* which is capable of thinking and forming opinions. And no assumption is more universally acquiesced in than that there is such a public mind. Great statesmen and philosophers, as well as poets, constantly are appealing to the "public mind" as to an oracle; and likewise we commonly hear such phrases as "the public *conscience*"; "public *sentiment*"; "the public *will*"; "the *soul* of humanity"; "the *heart* of humanity." If there be such a *super-mind*, it is of the highest importance that we should understand its nature and learn how to receive and interpret its wisdom. But if, on the contrary, this supposed "public mind" is a mere myth, it is equally important that we should ascertain and recognize that fact, and clarify our minds by casting out forever a falsehood which is so pregnant with vital and fundamental error.

§ 109. CONCRETION OF MINDS. The theory (if there be any theory at all) of a *public mind*, necessarily is that the several minds of all people

may be considered as combined and united so as to constitute one concrete public mind which is more powerful and comprehensive than any of the several constituent minds. Can this be true?

Each human mind, as well as each human being, is an entire separate and distinct *entity*; not a determinate part of a common element, like a gallon of water; not a mere unit of a common force or energy, which may be combined with other like units to produce a proportionally greater force, as we would combine the strength of two horses to draw a load that is too heavy for one. While it is obvious that ten men of equal physical strength represent ten times the strength of any one of them, it is equally obvious that ten men of equal stature cannot be so combined as to constitute one super-man ten times larger than any one of them. The difference is, that, in the first instance, each of the ten men represents a unit of a *common* force, and these units are capable of being combined so as to produce a greater force; while, in the second instance, each of the ten men is a separate entity, and these ten entities are incapable of being combined in a single concrete entity, or super-man. Likewise, the *minds* of those ten men are incapable of concretion as one super-mind, superior to any one of them. This is the truth which is demonstrated, invariably, whenever any number of men

meet in council and *try* to combine the wisdom of all. They may compare ideas, and enlighten each other's minds, but, far from realizing the *aggregate* wisdom of all, the wisdom of any deliberate body never exceeds, but often falls short of, the *average* wisdom and intelligence of the several individual members. If deliberative bodies cannot combine the minds of their members so as to constitute a concrete mind which is superior to any of the individual minds composing it, how can the general public, who cannot meet and confer together as a body, be supposed to constitute a *public* mind?

§ 110. MINDS OF THE PUBLIC. In so seriously controverting the existence of a single, concrete public mind, we may be accused of attacking an absurd proposition which nobody seriously asserts. It may be said that the phrase "the public mind" commonly and properly is understood to mean, not the super-mind that we have described, but merely the several minds of the people who constitute the public. And this is precisely our contention. The term "public mind" is an absurdity unless given the plural significance of the *minds* of the public. But what becomes of the supposed oracular *authority* of the public mind, when it means only the *several* minds of the individuals who constitute the public? Each of those several minds

is merely the mind of one person, subject to the limitations and imperfections of every human mind according to its individual capacity and sanity. There is great variety among minds in respect to their quality; those of superior quality being less numerous than ordinary and inferior minds. The judgments of superior minds are more apt to be right than those of ordinary and inferior minds, opportunities of observation and experience being equal. But the question whether the judgment of any mind is or is not right, is determined solely by the sufficiency of the reason upon which it is based; not by the quality of the mind announcing the judgment, nor by the number of other minds that concur in it. And the same is true of any *opinion*, whether it is called public opinion or private opinion.

§ 111. OPINIONS OF THE PUBLIC. The same reasons which lead to the conclusion that the phrase "public mind" means only the minds of the public, and possibly can have no other rational meaning, point to the conclusion that the phrase "public opinion" means only the opinions of the public, and can have no other rational meaning. But the far-reaching importance of the latter conclusion requires that there should be no doubt about its correctness, and justifies a little further reflection. As a matter of common observation and knowledge, it

is well known that a great majority of any people entertain and tenaciously adhere to many opinions which are mere suppositions or prejudices, not founded upon any evidence or knowledge whatever; and that even highly intelligent persons often are found to hold opinions which are founded upon little or no evidence. Such unfounded opinions acquire no added weight or force from the fact, which often is the case, that a very great number of persons, perhaps a majority of mankind, entertain the same opinion. Such may be called "public" opinions, but they are the several, not the joint, opinions of those who entertain them, and they are no more authoritative than if they were entertained by only one person. If this were not true the advancement of knowledge and the development of civilization would have been impossible. Every step in the advancement of knowledge has been directed by some single individual, often against the opposition of a contrary and hostile public opinion; and in each instance the single individual has triumphed because the reason which supported his opinion outweighed the numbers of those who held the contrary public opinion. Another matter of common knowledge and experience is, that the great majority of mankind is disposed to accept as authoritative the opinions of the more intellectual minority, and to adopt them as its own,

upon the authority of those from whom they received them, rather than upon the original reason or evidence upon which those opinions are founded. And, particularly in the realm of politics and government, such is the real character and source of all "public" opinion. Any opinion which receives the assent of all leading minds inevitably becomes public opinion. Only when there is conflict of opinion among those who are regarded as leaders do we witness a division and conflict of public opinion.

§ 112. COMPETENCY OF MINDS. The proneness of the public to recognize and follow leaders in matters of opinion does not, by any means, imply a capacity on the part of the public to judge the relative merits of conflicting opinions among those leaders. Only those realms of thought, such as *politics* and *religion*, in which the public is appealed to as the final arbiters of conflicting opinion, are found lagging, in hopeless confusion, far behind the general advancement of knowledge and civilization. All the enlightening and beneficent progress in modern times has been made in those departments of human thought and action, only, in which public opinion has been utterly ignored, and in which all conflicting opinions among leading minds finally are decided by the survival of the stronger reason, based upon investigation and analysis by the most



competent minds, which ultimately convinces and satisfies all competent minds; and such final decisions receive the universal acquiescence of mankind. In the nature of things, there can be no other rational way of determining any question of opinion or knowledge. Matters of knowledge and opinion always and of necessity are matters of reason. *Reason* is the faculty by which the mind is able to draw inferences and form opinions from facts and principles which are apprehended by the cognitive faculty. No mind can infer from facts or principles of which it is not cognizant. The only minds, therefore, that are able to form rational opinions upon any given subject, are those which are cognizant of the facts and principles relating to that subject. It follows, that the minds which are the most thoroughly cognizant of the facts and principles relating to a given subject are the most competent to form correct and authoritative opinions upon that subject. This principle applies to opinions upon political subjects, as well as to all other subjects of human thought and action. Those minds which are the most thoroughly cognizant of all the facts and principles of political science are the most competent to form opinions upon and to decide political questions. The public in general, not being cognizant of the facts and principles of political science, is not competent to form correct



opinions upon or to decide political questions. Nor is any other arbitrary and despotic power competent. The determination of political questions by incompetent authority is responsible for all the injustice, confusion and disorder that is disturbing the peace of the world.

§ 113. EXPRESSION OF PUBLIC OPINION. The formal and legal mode of expression of public opinion, in the so-called "democracies" of the present day, is by the ballot. But it is a prevailing habit among statesmen to give studious attention to every informal manifestation of popular sentiment and opinion, not only such as is indicated by the press, but to public agitation and demonstrations of every kind, including resolutions, memorials, petitions and protests from public and private organizations, and communications from individuals. It behooves all public officials whose tenure of office is dependent upon popular suffrage to give heed to the varying moods of so-called public sentiment. Political parties, likewise, are disposed to seek popular favor by adjusting their "principles" to the exigencies of popular sentiment. Thus every informal manifestation of the shifting and baseless opinions of the public becomes immediately effective in influencing the conduct of all branches and departments of government. Public officials, even those

who are faithful and efficient, often are compelled to devote more time and energy to the cultivation of popular favor than to the proper performance of their official duties. They are forced to engage in constant struggle with incompetent enthusiasts and unprincipled demagogues in order to retain the confidence and continued support of their constituencies. Men of the highest character and ability are apt to shrink with disgust from such sordid struggles, while men of less scruple and of inferior ability frequently are elevated to the highest offices of trust and honor in the state.

§ 114. THE BALLOT. As already stated, the formal and legal mode of expression of public opinion, in modern popular governments, is by the ballot. Normally, the ballot is merely a fair and convenient means by which the qualified electors of a state or municipality may select the persons who are to exercise the various offices of state and local government, or determine specific local questions which may be submitted to the voters in the locality concerned. In some states, however, the ballot is employed also as a means of direct exercise of legislative power by the people; a topic which is discussed in a previous chapter. It is sufficient, in this connection, to point out and keep clearly in mind the obvious truth that the ballot, for whatever pur-

pose it may be employed, is solely and purely a means of giving effect to the opinions or will of the majority of those voting. Under universal suffrage, the ballot is a means of giving effectual expression to so-called public opinion.

§ 115. QUALIFIED VOTERS. Since the formation and expression of an opinion is an act of reason; and since cognition is a condition precedent without which reason cannot act; it is clear that the ballot can be the means of expressing a *rational* opinion only when cast by persons who are cognizant of all facts and principles pertaining to the subject upon which the opinion is to be expressed. Upon this indubitable principle, universal suffrage stands condemned; for it never happens that all citizens are cognizant of all that pertains to any given subject. Likewise, a limited suffrage is ineffectual as a true expression of the opinions of a majority of those voting, unless the ballot is limited strictly to those persons who are cognizant of all that pertains to the subject upon which their opinion is to be expressed; for, otherwise, it never can be known whether the apparent majority really is a majority of those who are cognizant of the subject voted upon. But it would be clearly impracticable to determine, by this test, those who are qualified to vote upon each particular subject. As a matter of

fact, in the selection of one from several candidates to fill a public office, practically none of those who vote are at all cognizant of the relative mental and moral fitness of the several candidates; and logically, therefore, all voters are incapable of making any intelligent and rational selection. The simple truth is, that the public ballot is an unscientific, unintelligent, and utterly irrational way of making any selection or decision whatever. And this brings us to the important subject of scientific political selection.

## CHAPTER VI

### POLITICAL SELECTION

§ 116. SELECTION. *Selection*, in the fullest meaning of the term, embraces every act, process, operation, or proceeding,—whether natural or artificial, conscious or unconscious—by which any things or persons are taken, chosen, or preferred from among others. *Natural selection* is the process, or law, by which variations originate in individuals and species, and the fittest survive in the universal struggle for existence,—including man's struggle for existence and survival in his natural state. In the operation of Natural Selection, the *fittest* is that individual, or species of individuals, whose organic development affords some decisive advantage, such as superior adaptation to environment, or superior means of offense or defense, in the struggle for existence and survival. Thus the process of Natural Selection is, in fact, a state of perpetual and merciless warfare among individuals and species of every kind; a warfare from which man never has entirely delivered himself, even in his most highly

developed state of civilization. Considered as individuals, men still are savages; *society*, only, is *civilized*,—holding the individual man in restraint, and thus substituting *artificial* for *natural* selection. But artificial selection through social organization itself is a product of evolution by variation and selection, extended to the higher, but still natural, order of reasoning and social beings. The institution of political society, with its artificial restraints upon individual action, is, after all, but a higher manifestation of the natural laws of selection.

§ 117. SURVIVAL OF THE FITTEST. The evolution of man as an intellectual and moral being must have been arrested and stayed at a stage little beyond that of the brute, but for the invention of social restraints upon individual action. Every human being, in common with all animate creatures, by nature is selfish. In the universal struggle for existence and survival, his chief concern is, of necessity, for his own individual survival and prosperity. Normally he is egoistic, not altruistic. But each individual has a selfish interest in restraining all others from interfering with his purposes and pleasures, however impatient he may be of restraints imposed upon himself. The only possible avenue of escape from the perpetual private warfare of natural selection by the competition of individual

force and cunning always was, and always will be, the association of men for mutual restraint and common advantage in the struggle for existence;—which is the origin and the beginning of political society. Thus it is evident that political society is the substitution of inter-dependent social action in lieu of independent individual action—the substitution of artificial for natural selection—in the eternal and universal struggle for existence and survival.

As natural selection results in the survival of the fittest, the fittest being those individuals who excel in the qualities and virtues which are appropriate and advantageous in a savage state of nature; so, also, political selection ought to result in the survival of the fittest, the fittest in that case being those individuals who excel in the qualities and virtues which are appropriate and advantageous in a civilized state of society. But natural selection ascertains the fittest by the independent action of the individual in combat with savage forces; whereas political selection can ascertain the fittest only by the action of society, through the rational processes of examination, comparison, and classification. Society, however, always has failed to act, by any process whatever, for the ascertainment of the fittest among its members; though some modern governments have begun to develop scientific systems of examination, comparison and classification for the

selection of persons to fill certain classes of subordinate civil and military offices and employments.

§ 118. SCOPE OF SCIENTIFIC SELECTION. We have seen that natural selection is the effective though savage process of nature for the evolution of all creatures, including man; that the process of natural selection operates through individual action and adaptation, to secure the survival of the fittest; that individual action, unrestrained, is ineffectual for, and precludes, the higher moral and intellectual evolution of man; that the institution of society is the only effective means of restraining individual action; that the restraints of society necessarily interrupt the process of natural selection, by imposing restraints upon the freedom of individual action, thereby necessitating some artificial process of selection by social and political action;—and from these observations it would seem to follow, that society must utterly fail as a means for the higher evolution of man, unless society undertakes to secure the survival of the fittest by some rational process of selection by social action, thus attaining the end which otherwise natural selection would attain through unrestrained individual action.

Furthermore, since natural selection operates for the benefit of individuals and species, as well as for the benefit of nature in general, so, also, any process



which society substitutes for natural selection ought to operate for the benefit of the individual members of society as well as for the benefit of society in general. This principle would require that any process of selection by social action ought to ascertain the relative adaptations, aptitudes and fitness of all individuals, and facilitate their development, thus doing for each individual the service which the restraints of society prevent him from doing, or attempting to do, for himself; and securing to each the position in society for which he is adapted and fitted, instead of leaving him to contend for his proper position while handicapped by social restraints. Such is the scope of any rational and scientific process of selection,—a process which is indispensable to the ascertainment and selection of the *fittest* persons for the exercise of political offices and employments.

§ 119. PROCESSES OF SELECTION. As nature secures the survival and higher development of species by the operation of the law of variation and selection upon the individuals of each species; likewise society can secure the survival and higher development of the social organism only by some process of selection which takes account of and operates upon the variations among the individuals who compose society. And as the process of natu-

ral selection secures the survival of the fittest among the individuals of a species, and the consequent improvement of the species, by ascertaining the relative fitness of all individuals of the species; so, also, any process of artificial selection must secure the survival and dominance of the fittest members of society, by ascertaining the relative fitness of all individual members of society. In no other way can a higher evolution and development of society be accomplished. Any process of selection, whether natural or artificial, of necessity must recognize and operate upon the constant variation that exists among individuals of every species, including man; for there can be no selection where there is absolute uniformity—an entire absence of variation—among the subjects of selection.

Hence it must follow, (1) that there can be no evolution and further development and improvement of civilized society without some process of selection which is applied to all the individual members of society; and (2) that no process of selection is possible which does not take account of and operate upon the variations that exist among individuals in character, adaptation, aptitude, and genius. It therefore becomes important to inquire by what process society has advanced to its present state of civilization, and by what better process further advancement may be made possible.

We have observed that the origin of political society is in the necessity of association for mutual restraint, in the struggle for existence and survival. The inevitable effect of political power and action is to restrain and control the freedom of individual action. But the competitive struggle for existence and advantage between individuals, though limited by restraints, will continue, unless society removes the occasion for struggle by securing to every individual his proper place and sphere of action in the social economy. This, however, no political system ever has done or attempted to do; the present state of civilization has been attained by the negative process of *restraints* upon individual action, allowing the primeval struggle of natural selection to proceed, within the limits of specific restraints. Thus the existing process of political selection is merely a sort of *modified* natural selection; the restraints being, in principle, identical with the rules of a modern prize fight.

Opposed to this process of selection, and, indeed, to any process of selection applicable to all individuals, are the various so-called *socialistic* theories and doctrines, which seem to ignore the universal fact of variation among individuals, and would establish a uniformity and equality of individuals; theories which, if possible of realization, would arrest the further evolution and development of

man, and render superfluous any process of selection, whether natural or artificial.

It now is becoming apparent that the chief difficulties and conflicting opinions that are disturbing society and threatening the stability of governments everywhere, all relate to the fundamental problem of *variation* and *selection*; and the contending theories may be classified and grouped as follows:

A—Those which recognize and are based upon the fact of *variation* among individuals of the human species, and the consequent necessity for some process of selection; but embracing two fundamentally different theories of selection, viz.,

(1) Selection by *individual* action; which is the prevailing system of *modified natural selection*, or private warfare under political restraints and regulations; and

(2) Selection by *social* or *state action*; which is the rational and scientific process of selection by examination, comparison, and classification.

B—Those which deny or ignore both the fact of variation and the necessity for selection, but are based upon a supposed *uniformity* and *equality* of individuals; embracing many theories, which can be grouped only according to their general tendencies, as follows:

(1) Elimination of class distinction, by the absolute domination of the most numerous class;

- (2) Community of goods and property;
- (3) Equality,—political, economic, and social.

§ 120. MODIFIED NATURAL SELECTION. Natural selection, like all other processes of nature, is lavishly prodigal in its wastefulness. It secures the survival of the fittest, not by seeking out and fostering the development of the peculiar fitness of each individual of a species, but by exposing all individuals to a merciless struggle for existence under conditions which none but the most fortunate of the fittest can survive, leaving the unfortunate, as well as the unfit, to perish; but nature, unassisted, rarely permits the unfit to survive.

The modified natural selection which prevails in civilized society, by imposing restraints upon individual action, prevents much of the wastefulness of nature's process, but in doing so permits the unfit as well as the fit to survive, while leaving the unfortunate fit, as well as the unfit, to exist in misery or to perish. In the selfish and merciless struggle for existence, fortuitous circumstances, as well as individual fitness and enterprise, often determine the question of survival in favor of the unfit, leaving the fittest individuals to perish miserably. This is true, both in the competition of private enterprise and in rivalries for political preferment.

In the realm of private enterprise, individuals

are left to discover for themselves, as best they can, their several adaptations, aptitudes and peculiar genius, and to strive independently, with such means as they find available, for the attainment of their proper places in the social economy; but the gross inequalities of environment and opportunity deny to many the means of discovering their own individual fitness and the possibility of entering into their proper spheres of action; while many others, whose environment and fortunes are more favorable, are elevated to social positions and spheres of action for which they are unfit. The operation of natural selection upon individual enterprise is aptly illustrated by the parable of the sower, who scattered seeds without regard to the ground upon which they might fall, some of which lodged in fertile soil where they grew and prospered irrespective of the nature of the seeds, while others fell upon barren places in which the most perfect were certain to perish; imitating nature's process, by which millions of various seeds are scattered, few of which are destined to survive and develop all their possibilities, their selection being purely fortuitous. But modern agriculture, discarding the wasteful process of natural selection, adopts the rational process of examination, comparison and classification, for selecting the fittest and best seeds, and secures the survival of the fittest by planting

them in the soils and environments to which the several kinds of seeds are best adapted, encouraging their growth with fostering care. Applying these analogies to the higher order of social being,—the multitude of individuals are the seeds, and society is the careless sower, who has not yet learned the art of rational selection.

In the domain of political as distinguished from individual action, we encounter the primary necessity for the selection of *organs* by means of which, alone, organized society can be capable of any action at all. The *organism* of political society is called *government*, and the *organs* are the human instrumentalities, the individual *men*, who perform the several functions of government. The *selection* of these instruments of government is, necessarily, the beginning of political action, and the condition of its continuance. Obviously, the *fittest* individuals, those best adapted, ought to be selected as organs for the several kinds of political action. Here, again, natural selection is wholly inadequate and intolerably wasteful, operating by the slow and destructive process of eliminating every government whose human organs of action are, or become, so unfit as to be incapable of performing their functions successfully, and permitting the temporary survival of those governments, only, whose organs are capable of successful performance. Here again



society is the careless sower, who has not yet learned the art of rational selection, but sows broadcast both the fit and the unfit who are candidates for public office, trusting their selection to the fortuitous circumstances of force, fraud, cunning, or popularity, by which the fittest rarely are selected. Thus society arrests or retards its own development, and sometimes destroys its own organism, by its failure to recognize and avail itself of the services of those who otherwise might have become its efficient organs of action. Such is the effect of the prevailing systems of modified natural selection, as revealed by the tragic history of man's constant endeavor to develop a higher and better civilization.

§ 121. PRINCIPLES OF NATURAL SELECTION.

Thus far in the present chapter our inquiry has been directed to the general subject of *variation* and *selection*, in its bearing upon the problems of civilized society, in the course of which we have observed: that *natural selection* secures the survival of the fittest in a purely savage and totally uncivilized state of nature only; that in the savage state, only, is absolute freedom of individual action possible; that this savage freedom includes freedom of attack as well as defense; that such individual freedom of attack involves the necessity of individual defense; that this necessity of defense requires individual



preparation to repel attacks,—which is a state of perpetual and universal private warfare; that this state of universal warfare leads to the association of individuals for common purposes of attack or defense; that such association necessitates authoritative leadership, which involves the submission of the associated individuals to the authority of their leader; that this submission to authority involves corresponding restraints upon the freedom of individual action; that such restraints necessarily interrupt and interfere with the operation of *natural* selection; that such interference with natural selection tends both to prevent the survival of the fittest and to permit the survival of the unfit; that this tendency has persisted since the beginning of civilization until the present day, and is responsible for the decadence and ultimate failure of every form of political society; and, finally, that the development of a rational system of selection, which will perform the interrupted function of natural selection in securing the survival of the fittest, is necessary to the attainment of a sound, just and enduring civilization. It now remains to ascertain and state the principles upon which any rational and scientific process of selection must be based, before proceeding to a consideration of the possibility and the feasibility of such a process.

§ 122. ADAPTATION OF ORGANS. — Political society, like any other living organism, is capable of action only when equipped with organs which are adapted to action; and the quality of any action is wholly dependent upon the adaptation and fitness of the organ whose function it is to perform that action. Those organs are developed from and of the constituent elements of the organic body of which they are part. As the constituent elements of the body politic are individual human beings, its organs must be human beings, and they must be evolved from the body politic by some mode or process of selection. The individuals selected constitute the organism, or *government* of the body politic; and the mode or process of selection determines the *form* of such government. The efficient and proper performance of the several functions of the body politic necessarily depend entirely upon the adaptation and fitness of the persons who are selected to serve as organs for the performance of those functions. The selection of governing persons who are in the highest degree qualified and fitted for the performance of the several functions of government, is as essential to the existence and survival of organized society as is the development of suitable organs to the existence and survival of any other living organism. Our solemn and earnest insistence upon such an obvious principle would be

absurd and inexcusable, but for the amazing fact that the most highly civilized governments at this day deny in practice the principle which we are insisting upon, and recognize both fit and unfit persons as alike eligible for selection to the highest offices of government. It seems necessary, therefore, to reiterate the statement that the first and most vital problem of civilized society is the selection of *fit* persons (or, rather, to *prevent* the selection of *unfit* persons) to perform governmental functions; and to warn mankind that governments, in the past, have perished, and those of today are in deadly peril, all for want of a rational and scientific mode of ascertaining and selecting governing persons who are fit to govern.

### § 123. SOVEREIGNTY AND SUBORDINATION.

No organic body can exist and survive unless its governing organism can maintain sovereign control over its constituent atoms, holding them in subordination, in accordance with the laws of nature. Neither can the body politic of organized society exist and survive unless its governing organism, or government, can maintain sovereign control over the individuals who are the constituent atoms of the body politic, in accordance with the natural laws of social being. But, in either case, the governing organism cannot maintain such sovereign control

unless the several organs by means of which such control must be exercised are adapted to and capable of the proper performance of their several functions. If those functions are imperfectly performed the whole organism becomes decadent and weak, and its constituent atoms develop insubordination and disintegration. The individual members of society become impatient and insubordinate under the arbitrary restraints and exactions of incapable rulers, but submit contentedly to the reasonable regulations of a just and efficient government. Even a docile horse grows restive and unmanageable under the uncertain guidance of an unskilled hand, but it is quickly responsive and quiet when the reins are taken by a skilled driver. Thus the peace and order of society, and the contentment and prosperity of the individual, are dependent upon the character and efficiency of the persons who are entrusted with the several offices and employments of government. It is obvious, therefore, that the voluntary subordination of a people to the sovereignty of government can best be secured by the operation of some rational method of definitely ascertaining the relative character, efficiency, and fitness of all persons who otherwise are eligible candidates for political office, to the end that the fittest may be selected. If this is impossible, then a better state

of society and government than that which now exists is impossible.

§ 124. POSSIBILITY OF SCIENTIFIC SELECTION. While the possibility of selecting governing persons, or rulers, by the criterion of superior merit scientifically ascertained, never has been demonstrated by actual experiment; yet the possibility of such selection of persons for many of the less conspicuous offices and employments in the service of the state is abundantly attested by past and present experience. Not only have various more or less scientific methods of selecting men for military and naval service been practiced extensively in many countries, but such methods have been, and are, employed and developed scientifically in the civil service of the state, and in numerous industrial and commercial enterprises, as well as in the conduct of schools and all higher institutions of learning. In the latter, especially, thoroughly scientific systems and processes of examination, comparison, classification, and selection have been developed to a very high state of perfection, and are in successful operation, justly and accurately grading and classifying at regular intervals, according to their respective adaptations, aptitudes, and attainments, a large proportion of the youthful population of enlightened countries. In view of all this practical experience,

it can hardly be affirmed that the application of like scientific methods to the selection of rulers, as well as minor functionaries, is *impossible*. If it is possible, then reason and justice command that it shall be done. Conceding the possibility of such rational and scientific selection, and assuming that the adoption of some feasible method of ascertaining and selecting the fittest persons to perform the several offices and functions of government is absolutely necessary and indispensable to any higher development of civilization, it seems necessary to inquire still more closely into the underlying principles that must limit and govern the operation of any such method.

§ 125. SUBJECTS FOR SELECTION. The first step in any rational process of selection, whether applied to persons or to things, is to determine the eligible subjects from among which the selection is to be made. In the selection of fit persons for any particular grade or employment, the subjects usually are limited to the number of persons who seek or offer themselves for that grade or employment. But the state, being sovereign, has the undoubted power of conscription, by which it may require the services of any person who is subject to its sovereignty. An instructive example of the exercise of that power, accompanied by an elabo-

rate and a scientific process of selection applied to many millions of persons, is afforded by the recent "selective draft" in the United States. The subjects of selection included all males between the ages of eighteen and forty-five, perhaps twenty millions of persons. While only about one-fifth of that vast number were actually selected, all were subjected to examination by means of exhaustive "questionnaires," and their enrollment and submission to examination were compulsory. This was the most comprehensive survey of a nation's *human* resources of which we have definite knowledge and it seems to demonstrate both the possibility and the practicability of extending a similar and still more comprehensive survey to the entire population.

§ 126. CONSCRIPTION. As there are but two known methods of obtaining men for the military service of the state, namely, (1) voluntary enlistment, and (2) compulsory enlistment, called *conscription*, it is evident that the enlistment of men for any other service must be either voluntary or compulsory. But conscription, even for military service, is regarded universally as an invasion of individual liberty which is justifiable only by the stress of public peril and necessity. But such public peril and necessity may arise from causes other than war. In times of public calamity, such as conflagration, pestilence,



or famine, there is no doubt of the power and right of the state to compel the performance of labor or other service when it is deemed necessary in order to avert or mitigate the public disaster. Yet it might be that still greater perils, fraught with more vital and lasting consequence, might arise from the reluctance of capable and fit persons to undertake the exercise and administration of the powers and functions of government, leaving the state to decay and perish for want of suitable governing persons to serve as the organs by which alone the organism of government can properly perform its functions and survive. And this is, in fact, the supreme peril that now threatens modern civilization; because the allurements and rewards of private enterprise are depriving the state of the services of many of the most capable and efficient minds, and many such, who would sacrifice self-interest to serve the state, are ignored by the prevailing arbitrary and irrational methods of political selection. This is a condition of peril and necessity as great as war, which justifies a resort to conscription,—*if* conscription is *necessary* in order to obtain the best men for the service of the state. If conscription *is* necessary, it may properly take the form of another “selective draft” which shall comprehend a complete survey of *all* human resources of the state, as the basis for the selection of the best men in the state for every



public service, including the highest legislative, executive, and judicial functionaries, as well as minor offices and employments.

§ 127. NECESSITY FOR CONSCRIPTION. A necessity for resorting to conscription can exist only when there is no other practicable way of obtaining capable persons for the required service. In view of the fact that all fields of human endeavor, save only the service of the state, are able to enlist the services of the ablest minds without conscription or compulsion, it is important to inquire *why* it is that the state, alone, is unable to do so. What are the essential differences between the allurements and rewards of private enterprise and those of public or political enterprise? The answer is obvious: The rewards of private endeavor and enterprise are distributed by the grim and savage *justice* of natural selection by conflict among individuals and the survival of the fittest or most capable; while political honors and rewards are distributed arbitrarily or by accident, usually to the most eager, selfish and unscrupulous, without any justice at all. The laws of natural selection and survival of the fittest operate with some approximation to natural justice in sifting and separating the efficient from the inefficient and advancing the most efficient to the highest places; while the highest places of power

and honor in the state are distributed either by military usurpation, or by the accident of birth, or by arbitrary popular favor,—without any approximation to the *justice* of either natural or scientific selection.

The allurements and rewards of private endeavor that attract great men never are merely pecuniary; often the ablest minds are devoted to arduous scientific endeavor without hope or expectation of pecuniary reward, and even at a voluntary pecuniary sacrifice. Desire for riches for the sake of riches never is the incentive to endeavor of great minds; though some may seek wealth as a necessary means to the attainment of a higher end. Those who have added to the accumulating treasure of human knowledge have been the world's greatest benefactors; but the satisfaction of worthy achievement usually has been their sole reward. The state needs such men; but *such* men are not self-seeking, and the state must seek them if it would enlist their services. Experience in popular governments constantly reveals the fact that those who seek and struggle to obtain the powers and emoluments of political office seldom, if ever, are the persons who are the best qualified and fitted for the offices sought. The fittest are both unwilling and unable to compete with the unscrupulous demagogues in flattering, cajoling and corrupting electoral constituencies who have no

adequate means of measuring and judging the relative merits and qualifications of opposing candidates, and who easily are imposed upon by flattering falsehoods, dignified fraud, and eloquent or hypocritical fanaticism. The result is (and it is a notorious fact) that men of the highest character and ability rarely can be induced to enter into a contest which is so repulsive to the nature of such men, and naturally they turn to pursuits in which the law of *natural* selection, as it operates in commerce and in the arts and sciences, at least offers them some opportunity for achievement without moral and intellectual degradation; and thus the state is deprived of the services of its best men. But, since the prevailing irrational and unjust methods of political selection are the cause of the reluctance of good men to seek political office, there can be no necessity for conscription of the best men when that cause is removed by the adoption of a method of selection which insures the selection of the fittest persons, *and makes impossible the successful competition of the unfit.*

§ 128. MERIT AND FAVOR. The state needs the services of its greatest men, but really great men will not court popular favor in order to obtain high offices in the state. When those offices can be gained only by obtaining the votes of a popular majority,

they seldom can be gained without appealing to popular and class prejudices, and promising to gratify the sordid selfishness of a supposed majority at the expense of an unfortunate minority. Yet great men, very naturally, covet honors and political power, if bestowed upon them as a recognition of proved and acknowledged superiority. Honest men, great and small, prize whatever they gain by earning and deserving, but no honest man rejoices in the possession of that which another has earned and deserves. In the arts and sciences other than those of politics, the great are given opportunity to prove their superiority by honest endeavor and achievement, and the honors are awarded according to superior merit by those who are competent to judge,—never by popular vote, solicited by rival candidates for honors regardless of merit. Great men, whom the state sorely needs, will scorn the honors of state so long as those honors are bestowed by incompetent hands and without regard to merit; but they will seek those honors eagerly if they are denied to all who cannot claim them by right of proved superiority. The fit will seek political offices *when the unfit are barred from them*,—and not until then. Good men do not seek admittance into bad company. The only way effectually to exclude the unfit is by competitive examinations which the unfit cannot survive. Competitive examinations are

essential to a true *merit system* of selection, and a merit system always is attractive to superior merit, but repellant to inferiority. The fundamental error in all prevailing methods of selection for political office lies in the fact that every office is bestowed as a *favor* by those having the power of bestowal,—never as the right of the recipient. Any rational and just method of selection must be based upon the fundamental principle that every office belongs *by right* to the person who is best qualified and fitted for the performance of the functions and duties of the office, and the equally fundamental principle that it is the duty of the state to ascertain the persons who are thus *entitled* to the respective offices. The bestowal of public offices by *popular favor* invites and encourages the candidacy of the most unworthy and unscrupulous, who easily gain popular favor by methods which worthier candidates will not employ; and those who, by superior merit, are entitled to the offices as matter of right, are discouraged from entering such an unequal contest to obtain that which is their right, and rarely succeed if they attempt to do so.

§ 129. THE RIGHT OF MERIT. The *right to rule* always has been claimed; formerly by kings, by right of *divine* appointment; and latterly, by all other rulers, by right of human appointment, in the

form of the submission, the consent, or the choice of the governed. But a claimed right to rule never has been based upon superior *merit* or *fitness to rule*. Yet the only possible *right* to rule must be based solely upon superior merit and fitness to rule. The right to rule is a right to serve; it is the right to serve as the directing and controlling intelligence of the organized body politic. There can be no right to serve without ability to serve; and, among those who are endowed with ability to serve, the superior right is in the one who is endowed with superior ability. Although this principle is ignored in the selection of rulers, it is recognized and followed in the selection of persons for service in many of the subordinate offices and employments of the state; and its observance is recognized universally as essential to the successful conduct of private commercial and industrial enterprises, and all other enterprises (excepting only those of the state) which require organized effort. The right of merit is the basic principle of the systems of "classified civil service" which have been inaugurated and gradually are being perfected in the United States, and in some other countries, employing the rational process of examination, comparison and classification as the only rational means of eliminating the unfit and ascertaining those who, by right of superior merit, are entitled to the several offices and employments

which are included in the scheme of classified service. If this principle is sound when applied to subordinate offices and employments in the state, it is difficult to perceive any valid reason why it would not be equally sound if applied to the supreme offices of legislation, judicature, and executive administration. Experience, in every kind of organized effort, demonstrates that the fitness of the one who directs the effort is of more importance than that of his subordinates. There is a manifest incongruity in requiring higher qualifications for minor offices and employments than are required for the supreme offices of the state.

§ 130. RIGHT OF CLASSIFICATION. The principle of selection according to merit for political offices is only an aspect of the fundamental principle of *variation and selection*,—or, to state it with greater precision, the fundamental principle of selection of the fittest according to the law of variation among individuals of every species. Nature accomplishes such selection, in the lower orders of living things, by subjecting the individuals to a physical struggle for existence and survival; but the moral nature of man superadds the moral elements of right, duty, and justice, which require the application of man's reason, in accordance with his natural sense of right and justice, to the problem of the



selection of the fittest according to the law of variation among individuals of the human species. Variation among individuals, and the necessity of competition among them for existence and survival, are universal *facts*; and selection is a necessary *consequence* of those facts. The moral nature of man, however, requires the substitution of moral and intellectual competition, and a rational comparison and classification of men, as means of selection, in lieu of nature's plan of selection by survival in a physical struggle for existence. But human society has fallen far short of a complete fulfillment of that requirement, by its utter failure to secure any rational and just classification of individuals, and its persistent and perverse efforts to repress the natural and irrepressible tendency to classification.

The modern doctrine of universal *equality* (which involves a denial of the universal and undeniable fact of *variability*) originated in a righteous revolt against the intolerable injustice of an arbitrary classification which elevated a select few to the wholly artificial ranks of hereditary or accidental aristocracy, nobility, or royalty, and degraded the many to a hopeless condition of poverty or undeserved humiliation. Such arbitrary and unjust classification was the logical consequence of the operation of *natural selection* as modified by the restraints and interferences of defective political



organisms. But the doctrine of equality permits the continued operation of the same modified natural selection which produced the unjust classification complained of; while it encourages an equally arbitrary and unjust, and less rational, classification, by making the fit and the unfit alike eligible to the highest social and political honors, and by distributing those honors by popular favor regardless of merit. Furthermore, the modern doctrine of *equality* actually results, in its practical application, in the grossest *inequality*,—which arises from both economic and political competition among individuals, producing a purely arbitrary classification of persons by the criterions of *wealth* or *popularity*, instead of *merit*. Wealth and popularity now are the only avenues to social position and political power, and both those avenues are available to the most undeserving, unworthy and unscrupulous persons as well as to the really deserving, worthy and scrupulous,—the former having the advantage in the selfish and ignoble struggle for wealth and popularity. In the acquisition of wealth, undeserving avarice easily surpasses deserving merit; while popularity is more often the reward of false but specious pretensions and agreeable hypocrisy than of true merit and ability. Thus the possession of wealth, or of popularity, or of both, determines both the social and the political position and classi-

fication of the individual; while merit alone, without either wealth or popularity, counts for nothing. Individual *wealth* is measured by money; individual *popularity* is measured by general indications of public approbation or by the counted votes of the public; but individual *merit* can be measured only by the rational process of examination, comparison and classification, in accordance with the principles of natural justice. The moral sense of mankind revolts against the classification of individuals by the criterions of wealth or popularity, as well as those of lineage or royal favor; and this revolt is manifested in the prevailing social unrest and political disturbance in all countries and under all forms of government. But the moral sense of mankind would approve a just classification by the criterion of merit properly ascertained and proved; and such classification is the undeniable *right* of every human being.

But society *does* deny this undeniable right; and society thereby fails to perform its primary function of substituting a rational and just process of classification and selection for the crude and savage process of natural selection, which society supersedes. In consequence of this failure of society, worthy but modest persons, in every community, are condemned to obscurity, neglect, degradation and contempt, while self-seeking but unworthy persons are per-

mitted to force their way into social or political prominence and power and to usurp honors which do not belong to them. Such are not rare and exceptional cases; the exceptional cases are those in which social and political honors are bestowed upon the persons who are the most worthy of them. And this is not because of any lack of deserving persons upon whom to bestow such honors; it is because the public are unable to discriminate between the worthy and the unworthy, and society has failed to provide competent instrumentalities by which such discrimination can be made. So universal is this great social injustice that thoughtful observers are wont to declare that the world is "insane," and to exclaim, with Shakespeare, that

The times have grown so bad that wrens  
do perch  
Where eagles dare not prey.

§ 131. RIGHTS OF GENIUS. *Genius* is "the peculiar structure of mind with which each individual is endowed by nature; that disposition or aptitude of mind which is peculiar to each man, and which qualifies him for certain kinds of action or special success in any employment or pursuit." It is in this broad sense, rather than the particular but popular sense of "distinguished mental supe-

riority" or "superior power of invention or originality," that we here employ the word *genius* to designate the peculiar aptitude and fitness of each individual for some particular kind of action, employment, or pursuit. Every normal human being is endowed by nature with some peculiar structure and aptitude of mind which specially qualifies and disposes him for some particular kind of action. The happiness of the individual, and his value to society, depend upon his employment in the kind of action for which he is specially endowed and qualified by nature. Every man, in common with every living creature, naturally is disposed to pursue that course of action for which his natural endowments best qualify him, and, therefore, desires to do that which nature has given him the special genius for doing. This is the natural law of genius, and the *right* of genius is the right to obey that law. As the development of society is dependent upon the development of the genius of its individual members, it must be the paramount duty of society to ascertain, recognize, foster, and protect the genius of each of the several members of society, and to see to it that none is deprived of the right or opportunity to obey the law of his genius. But this paramount duty always has been and now is absolutely neglected by every state of society; and the social unrest and disturbance that afflict every state are,

in reality, the rebellious protests of neglected genius. Unrecognized genius is apt to become the embittered enemy of the social and political systems that have suppressed and thwarted it. The denial of the right of genius, and the consequent perversions of human nature, constitute the chief source of human misery and crime.

*Genius* of the highest order is modest, not arrogant and self-seeking; it is the most valuable asset of society, which should be sought out, recognized and nurtured by society; it abhors the sordid struggle for wealth with which to purchase recognition; it scorns the false and hypocritical pretensions or sycophancy by which recognition may be obtained without the trappings of wealth; it seldom is accompanied by those faculties which are requisite for the acquisition of wealth, favor or popularity; and society, therefore, is deprived of the benefit of all superior genius that is not favored by the fortunate circumstances of wealth, favor, popularity, or by sheer "luck." This loss to society is incalculable. Society has lost not only the benefits which it might have derived from genius which has been unjustly repressed, but also has suffered untold detriment from disturbances and insurrections that have been inspired and led by neglected and rebellious genius. And it is problematical how much of the crime that afflicts society is attributable to the

private and lawless reprisals of disappointed genius which has been deprived of opportunity for its natural and legitimate expression. Who can say that the most dangerous enemies of society today might not have been exemplary citizens, if the better aptitudes of their genius had been recognized and encouraged in youth and afforded adequate opportunity for development and expression throughout life?

Men of superior genius are conscious of their superiority; but only in rare instances does it happen that those who are born and reared in poverty and obscurity are able to develop their genius and obtain recognition. The discovery and recognition of genius, and opportunity for its development and expression are not only *rights* of individuals, but they are imperative *duties* of society; and the neglect of those duties has been society's undoing.

§ 132. MENTAL AND PHYSICAL MERITS. Since natural selection is nature's way of securing the fittest physical organisms by a physical competition of individual organisms, thereby accomplishing a natural differentiation and classification of organisms according to their various physical adaptations and relative physical fitness; and since the moral and mental faculties of man require a moral and rational plan of securing the survival and supremacy of the

fittest mental organisms by a mental competition of individual men, which will accomplish a morally right and just differentiation and classification of men according to their various mental adaptations and relative moral and intellectual fitness; and since, also, the activities of men, physical and mental alike, all are expressions of the moral sense and intelligent purpose of man,—his physical action without such sense and purpose necessarily being wholly abortive and contrary to both nature and reason; it follows that any rational and scientific process of selection which is intended to accomplish a right and just differentiation and classification of men must be based upon an examination of the various mental adaptations and relative moral and intellectual fitness of individual men, in order to accomplish their classification according to their relative mental adaptations and moral fitness. Social classification and political selection must, therefore, be based wholly upon the mental and moral fitness of individuals, and not at all upon mere physical fitness. In this connection it is important to observe the scientific inaccuracy of the distinction that commonly is made between *mental* and *physical* effort, and to call attention to the fact that every kind of so-called *physical labor* is nothing more than a physical manifestation of *mental* effort. The difference between the labor of the man who manipulates a shovel intelligently,



and that of the man who manipulates a pen intelligently, is a difference in *manner* of giving physical expression to mental effort and purpose. Physical force exerted without mind and purpose is mere *force*, not human labor.

§ 133. PRACTICABILITY OF SCIENTIFIC SELECTION. The results of the present inquiry, thus far, seem to justify the conclusions: that a rational and scientific method of political selection, based upon a just classification of individuals according to the variety and diversity of individual genius and merit, is absolutely necessary to the attainment of any better state of society and government than that which now exists; that such scientific classification and selection is *possible*; and that it is consistent with and required by the fundamental principles and laws of natural and social development and evolution. But the questions still remain: Is such scientific selection *practicable*? How will the persons who operate such method of selection, and who perform the functions of examination and classification, themselves be selected? How can such a system of selection be inaugurated and put in operation? What will be the principal effects of such scientific selection?

In approaching the question of the practicability of scientific selection, as applied to the classification



and selection of human beings, we fortunately are not without the instruction and guidance of experience and successful experiment. An adequate account of the various systems of examination, classification and selection of persons for civil and military service in all civilized countries, and of similar systems in schools and higher institutions of learning throughout the world alone would constitute a volume far exceeding the limits of the present work. It is possible, therefore, to examine and consider only such general facts and features of those systems as are most likely to throw light upon the question of the practicability of extending the operation of such scientific selection so as to include the entire population, and apply to all offices and employments of the state.

§ 134. SCHOLASTIC SELECTION. The methods of examination, classification and graduation of individuals, which are in practical operation in all schools, colleges and universities, especially in the United States, are of peculiar importance and value because nearly the entire juvenile population of the country is brought within their operation, embracing individuals of every class and condition.

The process of examination and classification necessarily begins upon the pupil's first appearance in school, and thereafter is repeated at regular

intervals during his school and college career. At each examination his proficiency is ascertained with some degree of accuracy, and he is assigned to the class in which he belongs. Not only is the pupil thus classified, but usually he is given the relative rank and standing in his class to which he is entitled by merit. When the pupil is graduated from the classes of one grade, he is admitted to the next higher grade to which his proficiency entitles him, and so on throughout his school-days. Thus the grade of school and the class in that grade in which each youth belongs, and his relative rank or standing among his fellows in his classes, all are definitely known; and natural emulation for the honors of advancement in grade, class, and rank, more than the desire for knowledge and self-improvement, constitutes the chief, but sufficient, incentive to earnest endeavor among the young in school. The sufficiency of worthy emulation, and the absence of any necessity for pecuniary rewards, as an incentive to youthful endeavor, deserve serious consideration in connection with the question whether pecuniary rewards really are *necessary* incentives to endeavor among the adult population, and whether such emulation for advancement in social grade, class and rank would not, throughout life, prove to be a sufficient incentive to worthy endeavor of all kinds—if such social grade, class and rank were obtainable by

merit and proficiency alone, regardless of wealth and popularity. The genuine elements of human nature are more truly exhibited by youth than by adults.

The facts of experience, in the case of educational institutions demonstrate the practicability of scientific selection when applied to the youthful portion of the population, and the sufficiency of worthy emulation as an incentive to endeavor. But many persons of *mature* years have entered upon and passed through the same educational processes, especially in colleges and universities, and always with the same results; which fact demonstrates the practicability of scientific selection by *educational process* in its application to youth and adult alike. Nor is this practical experience limited to ordinary schools and colleges. The institution of *manual training schools* and particularly of *opportunity schools*, (the benefits of the latter being available alike to persons of all ages, and maintained as public institutions), are effective in discovering, encouraging and developing the special aptitudes and talents of individuals, and also operate upon the principles of scientific examination, classification and selection.

A very considerable proportion of the entire population of the United States is brought within the operation of these several educational processes; and both the necessity and the practicability of

scientific selection in the operation of *educational* processes, are fully demonstrated. But does the demonstrated practicability of scientific selection in its application to educational processes prove that it would be practicable if applied to other social and political processes? In answer to this pertinent question it may be said that human life—individual, social, and political—is a continual process of *education*, of which schools and colleges are only a beginning; and that there is no valid reason why the processes of periodical examination and resulting classification according to aptitude, proficiency and merit, begun in schools and colleges, should not be continued, *as a public function*, throughout the life of every individual, and be available to all who are inspired by worthy emulation in the universal competition for advancement in the social scale.

§ 135. MILITARY SELECTION. The practicability of selecting fit persons for public service by scientific methods is demonstrated constantly by the thoroughly scientific methods, practiced in civilized countries, of examining and classifying men for enlistment, and also for promotion from the ranks, in military and naval service. The adaptability of individuals, both physical and mental, is ascertained accurately by examinations and tests, and those only are selected who are found to be adapted to and

fit for the particular service for which they are enlisted or to which enlisted men are promoted. And there is an increasing tendency, in the best organized military and naval establishments, to extend this scientific system of examinations and tests (called the "merit system") to the selection of officers for promotion in the higher ranks. This growing tendency is the result of experience, which has demonstrated the failure of arbitrary selection by official or popular *favor* as a means of selecting the fittest men for each rank and service.

But the recent "selective draft," by which approximately four millions of men were selected for the armies of the United States, affords a complete demonstration, not only of the practicability of scientific methods of selecting the fittest persons for every kind of service or employment, but also the practicability of a complete survey of the human resources of a nation, and an accurate classification of all persons, as the basis of selection for all kinds of service and employment. All males between the ages of eighteen and forty-five, comprising probably a large majority of the adult male population of the United States, were successfully and accurately examined, compared, and classified according to individual adaptability and fitness, and from this vast number were first selected those who were found to be eligible for any kind of war service; and those

eligible were then subjected to a still more particular examination, comparison and classification, resulting in the final selection of the fittest for each of the several kinds of service and employment demanded by the exigencies of war.

This "selective draft" was nothing else than a practical process of *scientific selection*; it embodied all the essential elements of examination, comparison and classification of the subjects of selection. It was a case of resorting to scientific selection to meet the exigencies of war, and it was successful. The exigencies of peace, and of imperiled civilization, equally demand a resort to scientific selection in all the political and social activities of every civilized nation, as the only rational and effective means of securing the fittest for the exercise of political powers and functions; for the realization of social and political justice, and the prevention of future wars, can be brought about by those persons only who are the fittest, the most competent, to secure those ultimate objects of civilized society.

§ 136. CIVIL SERVICE SELECTION. More than thirty years ago, the abuses of political patronage and favoritism in the selection and appointment of officials and employes in the several departments of the government of the United States had become so flagrant that the congress, acting upon the urgent

recommendations of the president, enacted legislation to bring about "civil service reform." By this legislation a permanent governmental agency was created, known as the Civil Service Commission, whose function it was to establish and maintain an elaborate and fairly scientific system for the examination, comparison, and classification of applicants for positions in certain designated kinds and classes of employment to be known as the "Classified Civil Service." The operation of the system was limited to such offices and employments as the president, by executive order or proclamation, should place in the Classified Civil Service; but which, unfortunately, were limited strictly to subordinate positions. This Classified Civil Service has been extended from time to time, as the beneficent results of the system have become more and more apparent; and similar systems have been inaugurated and are in successful operation in many of the state governments and in numerous cities.

The system of Classified Civil Service is justly called the "merit system," since it operates by the scientific process of ascertaining the relative merit and fitness of the several applicants, by means of competitive examinations, and results in the selection of the fittest. The methods and processes of this merit system gradually are being improved, and doubtless are susceptible of further improvement



and higher development, in the light of accumulating experience; but nevertheless this system of Classified Civil Service is *scientific selection*,—and its successful operation is an absolute and unquestionable demonstration of the practicability of scientific selection as a means of ascertaining and selecting the fittest persons for political offices and employments. Furthermore, the gradual extension of the Classified Civil Service, which has taken place by the inclusion from time to time, of higher offices and employments, in its operation, demonstrates not only the sound vitality and practicability of the system, but also its adaptability to higher political agencies and functionaries of government, and forecasts the ultimate extension of that scientific system to the selection of persons for the highest offices and functions of government. It is the *beginning* of political selection according to merit, and foreshadows the ending of political selection according to popularity or arbitrary and autocratic favor.

Thus the practicability of ascertaining the relative merit and fitness of persons, by the scientific processes of examination, comparison, and classification, and of selecting the fittest persons for every kind of action or employment, is demonstrated by actual experience, (1) in educational institutions of all kinds throughout the world, (2) in the selection of persons for military service, and (3) in the

Classified Civil Service which is in operation in the United States and many states and cities of the Union. Other proof of the practicability of such processes may be found in the experience of commercial, industrial, and scientific enterprises of every kind; and the experience of such enterprises abundantly proves, also, the practical folly and disastrous results of selecting agents or employes by any other criterion than that of fitness and merit.

§ 137. SURVEY AND CLASSIFICATION OF HUMAN RESOURCES. The obvious impossibility of ascertaining and knowing who are the fittest persons in a state, without first ascertaining the relative fitness of *all* persons in the state, already has been observed. It is equally obvious that, in order to ascertain the relative fitness of all persons in a state, an examination and classification of all persons in the state is necessary. Is such examination and classification practicable? This question, like that of the practicability of scientific selection as applied to particular classes of persons, is sufficiently answered by experience. The actual examination and classification of *nearly all* of the youthful population, which is an accomplished fact in the educational systems of the United States and of some other countries; the actual examination and classification of the *major portion* of the adult male population

of the United States, which was accomplished by the "selective draft" in 1918; the actual examination and classification of vast numbers of persons, in the aggregate, including adults of both sexes, which is being accomplished continually by Civil Service systems in and throughout the United States; and the partial examination and classification of *all* persons, including both sexes and all ages, which has been accomplished and repeated at intervals of ten years by the *census*;—all these accomplished facts of experience would seem to prove, beyond question, that a periodical examination and classification of *all* persons in the state is practicable. All these several processes have a common relation to the general problem of examination and classification of persons. It certainly is possible to co-ordinate and consolidate those cognate processes, which actual experience already has developed and put into practical operation; and the result of such co-ordination and consolidation would furnish the *ground-work*, at least, of a comprehensive survey and classification of human resources.

§ 138. INAUGURATION OF SCIENTIFIC SELECTION. The inauguration of a *scientific* system of political selection, which is to supersede the present autocratic system of popular elections and arbitrary appointments, is apt to strike the mind as a formi-

dable undertaking. But the formidable character of the undertaking disappears when we realize and consider the actual facts of the situation. The several processes which are essential to such a scientific system already have been inaugurated, and they now are in actual operation. All that remains to be done, in order to inaugurate a scientific system of political selection, is to co-ordinate, unite, perfect, and extend the several processes which already are inaugurated and in operation.

The several processes of *classification* according to relative merit and fitness, which now operate, independently of each other, in the public schools and universities, in the army and the navy, in the Classified Civil Service, in the Census Bureau of the United States, and in commercial and industrial organizations, surely can be co-ordinated and combined in a concrete system of examination and classification, which will perform the proper state function of ascertaining the relative merit and special aptitudes and fitness of every person in the state. Likewise, the several processes of *selection* according to superior merit and fitness, which now operate, independently of each other, in state educational institutions, in military and civil service systems, and in industrial and commercial enterprises, can be co-ordinated and combined in a concrete system which

will perform the proper political function of selecting the fittest persons for public service.

The formulation in detail of the plans and procedure for accomplishing such co-ordination and organization is the proper task of experts; and assuredly that task is not beyond the skill of experts such as those who have conceived and worked out the complicated, yet thoroughly scientific, organization and procedure of the Classified Civil Service, and that of the recent "selective draft."

## CHAPTER VII

### THE SELECTIVE ORGANISM

§ 139. SELF-CLASSIFICATION. The problem of social justice, in the last analysis, is the problem of the classification of individuals in society. The prevailing unrest which disturbs the peace of the world is the protest of *classes* against classification of individuals by the standards of *wealth* and *poverty*; a classification which places and keeps the unfortunate and complaining classes in their present condition of poverty and industrial slavery.

Classification is a universal and inevitable fact. The classification of individual human beings, in one way or another, is an unavoidable necessity, which arises from the universal fact and law of variation. It is the duty of society to classify its members by means of an organized and intelligent *system*; a system which operates, as an essential part of the social organism, in accordance with scientific principles. Society fails, and always has failed, to perform that duty; and, in consequence of that failure, individuals are left to the necessity of classifying themselves by the natural but merciless process of

a perpetual and selfish struggle for the *means* of self-classification.

In ancient and medieval times, the sword was the most efficient means of self-classification; but, in modern times, the possession of material wealth has supplanted armed force as the most effective means. The fact, that the possession of material wealth is the most effective means of successful self-classification—the means to the attainment of individual independence, social distinction, and power—has produced, and sustains, the present universal and inordinate desire for the possession of material wealth. It is a mistake, and an insult to human nature, to attribute the inordinate desire for wealth, which now possesses the souls of men, to a natural swinish instinct which impels all men to strive for wealth merely to gratify a supposed universal covetousness. An inordinate desire for the possession of wealth now is practically universal; but mean and sordid covetousness is by no means universal; therefore, if we look for the true motive which prompts *all* men to engage in a mad, selfish competition for riches, we shall find it in the universal necessity for self-classification, and the consequent necessity for acquiring the means of successful self-classification,—which is material wealth.

This universal craving for wealth, therefore, is a desire to possess the means to the attainment of



an end,—the end sought being a satisfactory classification of the individual in society; and the consequence of that fierce desire is this universal struggle for wealth, which necessarily and inevitably results in the impoverishment of all who are not well adapted and qualified for success in such a sordid struggle. Here, then, we find the fundamental cause of the present congestion of wealth in the hands of a fortunate minority, and the penury and want which falls to the lot of the unfortunate majority, (which is the *social injustice* so generally complained of),—this fundamental cause being the *necessity for self-classification*.

If the necessity for self-classification can be removed (by means of a scientific system of classification whereby society can perform its duty of justly classifying its individual members), then the cause of the prevailing inordinate desire for wealth will be removed. With the disappearance of this abnormal demand for wealth as the necessary means of self-classification, the present abnormal congestion of wealth, and consequent impoverishment of the unfortunate many, will disappear; for, under normal conditions, ordinary industry and frugality (which now do not suffice) always will suffice to insure a competency in a land of abundance. This reveals a remedy which not only respects and preserves the right of property, but which also extends

to the many, as well as to the few, the full enjoyment of that right.

§ 140. SOCIAL CLASSIFICATION. Instead of the much-talked-of socialization of industry and commerce, as a remedy for prevailing social injustice, the way to a just state of society lies through the socialization of individual classification. Instead of futile and destructive attempts to obliterate class distinctions by the impossible expedient of reducing all members of society to a common level, a constructive effort must be made to supplant the present unjust system of classification according to individual success or failure in the scramble for wealth, by a scientific and just system of classification according to individual character and attainments. Instead of leaving the individual under the necessity of contending for the pecuniary means wherewith he can place himself in a higher class in the social scale irrespective of his character and attainments, society must assume and perform its duty to place the individual in the class in which he belongs by right of merit only, irrespective of his pecuniary means. Instead of tolerating a universal struggle for the pecuniary means of social advancement, society must require its individual members to engage in the more worthy competition of individual excellence, knowledge, and skill in the arts and

sciences and in the sterling qualities of manhood and good citizenship, as the only available means of advancement in the social scale. This is the primary and most essential duty of society. It is essential, not only to the attainment of social justice to the individual, but also the attainment of individual justice to society, and the preservation and perfection of the social organism by evolving a system for equipping that organism with efficient organs for the performance of its functions.

A discussion of the practical organization and operation of a *system* of social classification and political selection is the purpose of the remaining pages of this chapter.

§ 141. INITIAL LEGISLATION. A systematic classification of individuals is prerequisite to any scientific process of political selection. Likewise, a systematic investigation and examination of persons is required before they can be classified properly. Such investigation and examination of individuals must be authorized by the political organism of society; and necessarily, therefore, must be in pursuance of legislation which authorizes it, and which provides the necessary means and instrumentalities for the formulation of a *plan* for establishing the system,—unless, indeed, the legislature itself should undertake the formulation of such plan. Some such

legislation, therefore, is the first step necessary to the inauguration of the required system.

Such initial legislation may be undertaken (if by or within the United States) by the national congress, or by the legislature of a state, or by the proper legislative power of any city which (as in the case of Denver, and a few other cities in the state of Colorado) enjoys full powers and independence in respect to the constitution of its own local government and the conduct and regulation of its purely local affairs; such a city in reality being a *state*,—though a subordinate and dependent state.

Proper caution and conservatism would limit such initial legislation to the creation of a special body of experts, composed of an adequate number of eminent sociologists, jurists, statesmen, educators, and, especially, experienced experts in the organization and operation of existing educational, industrial, military, and civil systems of examination and classification; such body to be clothed with sufficient authority and provided with adequate facilities for a thorough investigation and consideration of the problems presented. Such body of experts should be charged with the duty of making a preliminary survey of the people and their vocational distribution in the state, as a basis upon which to formulate a plan for the organization of a comprehensive system of classification, the benefits of which will be avail-

able to all the inhabitants; such plan to be reported to the legislative authority, together with a formal draft of such specific legislation as the body shall recommend for the establishment, organization, and operation of the system.

A preliminary survey of the human resources of the state would seem to be necessary as a basis for any complete plan of organization and operation. The general facts and specific data required for making such survey might, perhaps, be gathered and compiled from the latest and most complete official census. The required facts and data probably would comprise: (1) The total population of the state, and what proportions thereof are males, females, minors, and adults; (2) An enumeration of all vocations,—professions, arts, crafts, trades, pursuits and occupations of every kind in which the inhabitants of the state are engaged and the total number of persons who are engaged in each of them; and (3) the territorial distribution of the persons who are engaged in each vocation, giving the number of such persons in each political subdivision of the state, including the smallest subdivisions and municipalities. With these and such other facts and data as may be found necessary or desirable, the body of experts should be prepared to formulate a detailed plan for the organization and operation of the desired system.

The present treatise, however, would seem to be incomplete if it did not terminate in the proposal of some tentative plan and process by which a system of social classification and political selection might actually be organized and put into practical operation. Therefore, though anxious to avoid the slightest appearance of a grotesque assumption of oracular authority, the author must yield to the apparent necessity of setting forth his own conception of what such a plan and process should be. In so doing, and for the sake of conciseness as well as convenience, the proposed system will be referred to simply as the "System"; and the several divisions and subdivisions of the System will be called, respectively, "Departments," "Regions" and "Districts."

§ 142. PLAN OF ORGANIZATION. To insure the practicability of any plan of organization, it should be patterned after those systems of organization which are in successful operation; avoiding, so far as possible, the perils of original experiment. The proposed System should adopt, coordinate, and develop all that is useful to its purpose in the several systems of examination and classification which now are in operation, both within and without the political organization of society. Another guiding principle should be, that the functions of the System

must be performed by the System itself—not by men—by the operation of rules; leaving as little as possible to the discretion of the individual officers and agents who are employed in its operation.

In light of these guiding principles, the essential elements of a practical organization reveal themselves, as follows:

(1) The System must be co-extensive with the state which adopts it, and must be under the direction of a supreme governing body, which we will call the Supreme Directorate.

(2) The System must be divided into as many departments, each coextensive with the state, as there are distinct vocations, or groups of similar vocations, each of which requires a process of examination and classification peculiar to itself. Each of these several departments will be referred to as a Department.

(3) Each Department, independently of all other Departments, will divide the state, (for the purposes of the Department only), into territorial divisions, which we will call Regions.

(4) Each Region will be divided into smaller territorial divisions, which we will call Districts.

(5) Each Department will be governed by a supreme body, which we will call the Governing Board, and which will be subordinate only to the Supreme Directorate.



(6) The several Regions will be under the immediate administration of bodies of experts, which we will call Regional Boards,

(7) In each District the primary functions of the System will be performed by a board of experts, which we will call the District Board, and the several members thereof will be called Examiners.

#### I. SUPREME DIRECTORATE.

The selection and appointment of the persons who are to constitute the Supreme Directorate, as well as the selection of the members of the subordinate Boards, necessarily must be made, at the outset, by some of the present methods; but thereafter the System will perform this service for itself, as well as for all other governmental agencies.

The Supreme Directorate should consist of such number of members as will comprise at least one eminent specialist in each of the following sciences, viz., Sociology, Jurisprudence, Ethics, Political Economy, Mathematics, Physiology, and Psychology; together with experienced experts in the examination and classification of persons for Civil Service, Military Service, and for scholastic purposes; also experts in Industrial Relations and Organizations, in Commerce, and in Statistics.

The Supreme Directorate will effect its own organization and rules of procedure, and its powers and duties will be:

(a) To enumerate, arrange and classify, either singly or in groups, as may be necessary, all of the several arts, sciences, professions, trades, pursuits, occupations and vocations of every kind which are the objects of legitimate individual endeavor, and to assign each to the Department in which it properly belongs.

(b) To select and appoint the personnel of the Governing Board for each Department.

(c) To determine the number of Departments that are required for the efficient performance of the functions of the System.

(d) To direct and supervise the organization and co-ordination of the several Departments.

(e) To formulate and establish general Rules and Regulations for the government and administration of the System, and the several Departments thereof.

(f) To authorize, confirm or revise such rules and regulations as may be formulated and adopted by the Governing Board of any Department; but only so far as necessary to preserve the integrity and consistency of the System.

(g) To investigate and adjust any disagreements or disputes which may arise between the Governing Boards of any of the several Departments.

(h) To hear and determine all appeals from final actions or decisions of any Governing Board.

(i) To receive, compile, classify, and make record of all examinations and classifications of persons as the same are made by the several Departments and reported by the several Governing Boards to the Supreme Directorate.

(j) To determine, from the reports of the Governing Boards of the several Departments, the final and general classification of every classified person in the state, and make a record thereof.

(k) To transmit to every classified person, when he is finally classified, a certificate stating his grade and rank in each Department in which he is classified, and his final class and rank in the state.

(1) To ascertain, fix, and determine (in accordance with general rules previously formulated and adopted) the class, grade and rank which shall be required to render any person eligible to each of the several offices and employments in the state; and to formulate and establish rules for the determination of the right of appointment or of succession to each office and employment in the state.

## II. DEPARTMENTS.

There must be a separate Department of the System for every distinct department of human knowledge and skill which requires methods and rules of examination and classification peculiar to itself and not adapted to any other department of knowledge and skill. For example: the methods

and rules which would be necessary and appropriate to a Department of Medicine could not be adapted to the requirements of a Department of Mining, nor to those of any other distinct professions and trades. Each Department will be, in fact, a complete and independent organization of a particular art, science, or trade, for the purpose of definitely ascertaining and determining the degree of knowledge or skill which is possessed or acquired by any and every person in the state who desires to be examined and classified for that purpose in each or any Department. Each Department will be a complete and independent system for the purpose of the classification of persons in the particular art, science, or trade for which it is organized; but all Departments will be under the control and supervision of the Supreme Directorate for the purposes, only, of preserving the co-ordination of all Departments in the System, and of ascertaining and determining the final classification of each classified person from his grade and rank in each of the several Departments in which he may have been classified. It would seem that the efficiency of the System would be proportionate to the number and specialization of the Departments; because a large number of highly specialized Departments will afford to the individual a fuller opportunity to prove his proficiency and attainments in many special branches of knowledge

and skill, thus advancing himself in class and rank; besides affording a more comprehensive and satisfactory basis for the general classification of individuals by the System.

In fact, and in effect, each of the several Departments will be a legally established system by which some particular art, science or trade is enabled to perform for itself the function of examining and classifying individual proficiency therein, under the rules and sanctions of the law.

### III. DEPARTMENTAL GOVERNING BOARDS.

The Governing Board of each Department must be a purely expert body,—not in any sense a representative body, other than as it represents society, the state, and the law. The members of each Governing Board should be selected in the first instance, by the Supreme Directorate of the System, from among the most eminent specialists who can be found in the state and whose services are available. The personnel of each Board should include: (1) three persons who are pre-eminent in the particular branch of knowledge and skill which is represented by the Department for which he is selected; (2) three experts in the examination and classification of persons,—one of whom shall be an expert in military, another in scholastic, and the third in civil service examination and classification; and (3) three experts in social and industrial organization and

administration, of the kind which shall be deemed to be best adapted to the Department concerned.

The powers and duties of each Governing Board should be: (a) to ascertain and estimate, from such data as may be available, the probable number of persons in the state who are engaged in and who may be expected to seek examination and classification in the particular art, science or trade which is represented by the Department, and their distribution in the state; (b) to divide the state, for the purposes of the Department, into such number of Regions as may be required to facilitate the work of the Department; (c) to subdivide the several Regions into as many Districts as may be required to facilitate the work of examination; (d) to select and appoint the members of Regional Boards until the System shall select them; (e) to formulate and prescribe, subject to the approval of the Supreme Directorate, general rules and regulations for the government and guidance of the Department and its several Regional and District Boards and Examiners in the performance of their duties. (f) to direct, supervise and revise the work of the several Regional Boards; (g) to hear and determine all complaints of, and appeals from, any final action of any Regional Board; (h) to receive and keep record of all examinations and reports received from the several Regional Boards; and (i) to determine,

make record of, and report to the Supreme Directorate, the class, grade and rank in the Department of every person examined and classified therein.

#### IV. REGIONAL BOARDS.

The several Regional Boards in each Department will be chosen, in the first instance, by the Governing Board of the Department, and should be composed of persons who are especially expert in the particular art, science or vocation which is represented by that Department, together with experts in the existing systems of examination and classification of persons; the number of members required for each Regional Board to be determined by the Governing Board of the Department.

The powers and duties of the Regional Board will be: to appoint and organize the several District Boards; to supervise and regulate the conduct of examinations in the several Districts; to require and receive from District Boards reports and returns of all examinations; to make reports and returns to the Departmental Governing Board of all examinations made in the Region and approved by the Regional Board; to hear and determine all complaints and charges that may be made against any District Board, its Examiners or Agents, for any dereliction of duty; to allow appeals in all cases of complaint of unfair examinations, and to transmit to the Departmental Governing Board all papers and records,



or copies of records, pertinent to such appeals; and to perform such other duties as may be required by the rules and regulations prescribed by the Governing Board of the Department.

The reports and returns made to the Governing Board by the several Regional Boards in each Department, will be examined, revised, and classified by the Governing Board, and a full report and return thereof made to the Supreme Directorate; whereupon the latter will make a complete classification of each and all classified persons in the state, and will certify to each of such persons his proper class, rank and grade in the state as determined by his knowledge, skill and general fitness in all Departments in which he is classified.

#### V. DISTRICTS AND DISTRICT BOARDS.

The several District Boards should be composed of the most expert Examiners available, and in such number in each District as may be required. The members of District Boards shall be the Examiners for their respective Districts; the District Board assigning to each member a certain subdivision of the District, and furnishing each with such assistant examiners, agents, and clerical assistants as may be required for the proper performance of their duties.

Each District Board should have its permanent official headquarters at such place in the District as may be most accessible, where all requests for

examination and classification may be made either in person or by mail. Requests or applications for examination will be referred to the Examiner for the subdivision in which the applicant resides; and the Examiner will notify the applicant of the time and place when and where his examination will be held. Each examination will be conducted in accordance with the rules and regulations which are prescribed by the Supreme Directorate as well as those prescribed by the Departmental Governing Board, and in accordance with such forms, blanks and methods of examination as may be prescribed by the Governing Board. These forms, blanks, and methods will be such as are best adapted to examinations in the particular art, science or trade which is represented by the Department in which the examination is had; and should be so full and methodical in detail as to leave little or nothing to the discretion of the Examiner. When physical demonstration of skill is required, it must be conducted by Examiners who have been chosen for their special fitness and expertness in the particular subject of such examination or test; in which case, if the desired facts cannot be established by written questions and answers, a detailed statement of the facts of such demonstration, and the results thereof, must be made in writing, signed by the Examiner and also by the person examined. In all examinations, the

person examined may, over his own signature, note his objections and exceptions, if any he has, to the manner or the results of his examination. A detailed report, together with all papers and exhibits pertaining to each examination, and any objections or exceptions noted and signed by the person examined, shall be delivered by the Examiner to his District Board, to be included by the latter in its regular report and returns made to the Regional Board.

§ 143. GENERAL OPERATION OF SYSTEM. It will be observed that the examinations conducted by the several examiners, as revised and approved by their respective District Boards, constitute the groundwork of the System. The Examiner will do no more than to make the examination and report it to his District Board. Each District Board will be confined to the duties of primarily passing upon the sufficiency of examinations and reports thereof made by the several Examiners, requiring them to be corrected or completed when necessary, and of transmitting the examinations to the Regional Board. The Regional Board then will mark and grade such examinations in accordance with prescribed rules, and make report and return of all such examinations to the Governing Board of the Department. Thereupon the Governing Board will finally pass

upon the correctness of all examinations made in its Department, and will determine the class, rank and grade of each person examined in that Department; which determination, together with a complete transcript of each examination and their report thereon, will be transmitted by the Governing Board of the Department to the Supreme Directorate of the System.

It will be noted that each of the several Departments serves only to secure the fair examination and grading of all persons examined therein, and to determine the grade and standing of each of such persons in that particular Department of human enterprise.

The general and final classification of persons will be made only by the Supreme Directorate of the System. This will be done by ascertaining and recording, as to each classified person in the state, his grade and standing in each of the several Departments in which he has been examined and graded. Then, by general rules which apply alike to all persons, and upon the data thus obtained, the Supreme Directorate will classify every person in the state who has sought classification, determining and making record of the proper class, rank and grade of each person as determined by his proficiency, efficiency, and general fitness in all the Departments in which he has been examined, and

will deliver to each of such persons a certificate of his class, rank and grade in the state.

Thus far, the System has secured the first prime object for which it is established, namely, the *classification* of persons. It remains to consider the process of *selection*, which is to be based upon such classification.

§ 144. SELECTIVE OPERATION. The selection of the fittest persons for the several offices and employments of government will be accomplished by two separate processes, which together constitute the second function of the System. The first of these two processes is that of determining and prescribing the precise class, rank and grade which is required for the efficient performance of the duties of each public office and employment, from the highest to the lowest; and this must be accomplished in accordance with rules which are of universal application. The second, and last, process is that of determining the right of appointment or of succession to public offices and employments. This, also, will be accomplished in accordance with rules which are of universal application, and which will leave as little as possible to the discretion of the Supreme Directorate or its members; and every public office and employment will be classified according to the class, rank, and grade of personal

knowledge, attainments and fitness which is required for the efficient performance of the duties pertaining to it.

Whenever a new public office or employment is created, or whenever a vacancy occurs, (either by limitation of a fixed term of office or employment, or by the resignation, removal, or the death of the incumbent) the Supreme Directorate will ascertain, from such classification of offices and employments, the particular class, rank and grade which must have been attained in order to render any person eligible to such office or employment. The Supreme Directorate then will ascertain from its records the persons who are classified in the required class, rank and grade, and will award the right of appointment, or the right of succession, to such of those persons as shall be found to hold the highest grade or standing in the required class and rank, and will notify such person of his right of appointment or succession, and of the time within which he must avail himself of that right by qualifying and entering upon the duties of such office or employment. If any person so selected declines such office or employment, the person next highest in grade will be informed, in like manner, of his right,—and so on, until the office or employment is filled by the fittest person obtainable. In case several persons should be found to have equal right of appointment or suc-

cession to a particular office or employment, the selection of one from among such persons must be determined by lot or any other fair means which will exclude the possibility of favor.

The plan of classification and selection here outlined doubtless will be criticised and found defective in many respects; but it is hoped that it will be found sufficient, at least, to show the possibility of formulating and carrying into effect a better conceived plan, which will be practicable and successful, and by which an efficient system of social classification and political selection may be organized and put into operation. Such a consummation certainly is desirable, for its effects will be to abolish, or at least to mitigate, the gross injustice which now results from self-classification by means of wealth, and to do away with entirely the injustice, both to individuals and to society, of permitting inefficient and unfit persons to obtain public offices and employments, while depriving fit and efficient persons of their right to such offices and employments.

It is quite evident that the proposed Selective Organism will constitute a new and independent *power* in the organization of civil government. It will not be merely a department of the executive power; it will be a *fourth* power—the *selective power*—transcending in importance the legislative, judicial, and executive powers, which hitherto have



been regarded as comprising all powers of government. The omission of this *fourth power* from the organism of government, and the consequent failure of government to perform the selective function, is *the fatal defect* which is responsible for the universal and invariable failure of all forms of government, in all ages, and among all peoples.

#### CONCLUSION.

It has not been the purpose of this investigation to deal with or attempt the solution of the more specific social and economic problems of modern civilization, the solution of which is the duty of governments. The purpose has been to discover, if possible, the fatal defect in the political organization of society which must be the permanent cause of the absolute failure of every form of government in the performance of that duty, and to find the explanation of the invariable incapacity of governments for the solution of those problems,—with the hope of discovering and pointing out a way of supplying that fatal defect, and of rendering governments capable of accomplishing the ends for which they are instituted.

The present conflict between organized labor and organized capital is a struggle, not merely for the supremacy of one of them over the other, but for supremacy over the governing organism of society.

It is a conflict of classes. Labor, accusing capital of controlling existing governments in its own interest, openly declares its purpose to wrest that alleged control from capital, and to dominate and coerce governmental action in the interest of organized labor. Capital denies that it either claims or exercises any control over government, and challenges labor's claimed right of supremacy over either capital or government. Labor claims to be the creator of all wealth, and charges that governments operate, in the interest of capital, to deprive labor of the wealth which it creates. Capital contends that wealth is created by mental and physical labor jointly, neither of which can produce wealth without the other, and that those who direct the employment of capital in industry themselves are laborers, and entitled as such to their just share of the fruits of the combined efforts of labor and capital. But the truth is, that those who possess and direct the employment of capital usually obtain and hold *more* than their just share,—and this fact is the crux of all the trouble. It is not denied that the unjust distribution of wealth is the one aggravating cause of public disturbance and revolution.

It is true that governments are responsible for the unjust distribution of wealth, of which the laboring and the impoverished classes complain; but it is true, also, that this injustice is due more to the

fundamental defects of political science than to any direct and intentional domination of government by a capitalist class. Unfit officials doubtless are subject to corrupting influences, and honest officials often are incapable; but if all were fit and capable, the injustice complained of nevertheless would be irremediable, so long as government is based upon the sovereignty of men instead of the sovereignty of law. The efforts of the wisest and best of rulers and legislators to bring about a just state of society must be unavailing, when their wise and just conclusions may be overruled and annulled by the selfish command of a sovereign person, a sovereign class of persons, or a sovereign majority of the whole people.

The perennial conflict between capital and labor, between the rich and the poor, always is a conflict between the beneficiaries and the victims of injustice. And the triumphant supremacy of either of these classes, with power to enforce its selfish demands, never can result in anything but more injustice. *Justice* is a matter of principle, a matter of science, a matter of law,—never a matter of arbitrary will or power. *Law* is justice ascertained and enforced. A just government, therefore, must be one which recognizes and acknowledges the sovereignty of law and denies the sovereignty of men, denying to every *class* the right to enforce its own will. This truth

is embodied in the desire now often expressed for a "government of laws, not of men." This is Nomocracy.

It should be understood that Nomocracy is the antithesis of revolt and revolution. It is not the renouncing of the authority of a government, nor is it the setting up of a new form of government. It is the substitution of the sound principle of the sovereignty of the law for the unsound principle of the sovereignty of men, as the true foundation of any form of government. And the adoption of Nomocracy must be brought about, not by revolutionary force, but by and through the instrumentalities of existing governments.

Existing governments, and the persons who exercise the powers of existing governments, are not consciously and wilfully hostile to any sound principle; on the contrary, they are conscious of the fundamental weakness and insecurity of every form of government, and are searching eagerly for the cause of and the remedy for this weakness and insecurity. It is not reasonable to presume that any government now existing is so reckless and insane as to reject an undeniable truth, or to refuse to adopt, when once made known, a sound principle which will make governments strong and secure, capable of accomplishing the just ends of govern-

ment, and which will rescue governments from the perils of revolution.

The fundamental weakness of all existing governments now stands revealed. It is the absence from the organism of government of an essential and elemental part of any perfect organism. The development of suitable organs, by the selection of the individuals who are to serve as its organs, is an essential function which belongs to and must be performed by the organism of government. The *power* to perform that function is the first and most essential of *four* (not *three*, as heretofore always supposed) elemental powers of government: the *selective* power, the *legislative* power, the *judicial* power, and the *executive* power. The selective power, without which the organism of government is fatally defective and incomplete, is wanting, and must be supplied.

## RECAPITULATION

The results of these investigations, whether pleasing or otherwise, should be plainly stated. They may be summarized and reduced to the following definite findings and conclusions, some of which, at least, ultimately must be accepted as cardinal principles of a true science of Politics:

(1) Justice among men is necessary; and the necessity of justice is the source, the basis, and the true end of any just government.

(2) Natural Law is the law of justice, and is the supreme and fundamental law of society, to which the will of sovereign and subject alike should be subordinate.

(3) Cognition, not volition, is the faculty by which justice and natural law can be ascertained, and by means of which alone society may be justly governed.

(4) Government, not according to the just conclusions of right reason, but according to the dictates of will, setting human will above natural law, is autocratic despotism.

(5) Every existing government, whatever its form, sets human will above natural law, and therefore is an autocratic despotism.

(6) Sovereignty of any human will, whether it be the will of a monarch or the will of a majority, if it holds itself insubordinate and superior to natural law and justice, is contrary to and a defiance of the fundamental law of society.

(7) Democracy, in so far as it exists in fact, is Anarchy; in so far as it exists only in name but not in fact, it is a mere illusion; as a form of government, it is impossible.

(8) Public Opinion, in the sense of an opinion of a public mind which is superior to the individual mind, is purely imaginary, non-existent in fact, and impossible.

(9) Opinions and decisions of competent and responsible experts command and receive the respect and assent of the people; but the people have little respect for, and refuse to abide by, their own irresponsible opinions and decisions.

(10) Popular elections, as a means either of selecting public officials or of deciding political questions, are irrational, unscientific, incompatible with intelligent and efficient government, and are contemned and detested by the people themselves.

(11) The people themselves desire neither Democracy nor Popular Sovereignty; they desire efficient,



wise and just government; and they would welcome the inauguration of any practical method or system by which the most efficient, wise, and just men in the state could be discovered and installed in the offices of government. The people would have confidence in and respect for a government so constituted.

(12) The organization of a rational selective system is not only possible and practicable, but is to a considerable extent an accomplished fact in educational and many other scientific organizations and also in the selection of persons for minor political offices and employments, and is capable of development and extension to all social relations and activities.

(13) Individual merit is the sole standard of a just classification and gradation of men in society.

(14) The system of classification and gradation according to the standard of individual merit results, wherever it is in operation, in directing the energies of men to worthy emulation in striving for superior merit as means to personal advancement and promotion.

(15) The prevailing systems of classification and gradation according to the false standards of popularity or wealth result in directing the energies of men to unworthy rivalry in the pursuit of popularity or wealth as the only available means to the

attainment of political preferment and power or social eminence.

(16) *Necessity* and *desire* comprise all incentives to human endeavor. These incentives continue to operate, and with greater force and efficiency, whenever the true standard of merit entirely supersedes the false standards of popularity and wealth; merit then becomes *necessary* as the only available means to the attainment of social eminence or political preferment and power; while both popularity and wealth become unnecessary and unavailing, and therefore no longer are desired as means to those ends,—wealth remaining necessary and desirable only for its proper economic uses and purposes.

(17) The constitution and organization of the state upon the sound basis of a rational and scientific classification, gradation, and selection of men by the sole standard of individual *merit* would eliminate the chief inciting cause of cupidity and excessive greed for wealth (which now corrupts and deranges both the political and the economic life of nations), rendering possible the attainment of social justice; an end which, otherwise, is unattainable.

THE END































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