

~~reforming movement, whose supporters never understand its own proper meaning and purpose, is sure in the end to go astray. It is all very well for Englishmen to do their thinking after the event, because tradition lies at the basis of their national life. But Americans, as a nation, are consecrated to the realization of a group of ideas; and ideas to be fruitful must square both with the facts to which they are applied and with one another. Mr. Roosevelt and his hammer must be accepted gratefully, as the best available type of national reformer; but the day may and should come when a national reformer will appear who can be figured more in the guise of St. Michael, armed with a flaming sword and winged for flight.~~

CHAPTER VII

I

RECONSTRUCTION; ITS CONDITIONS AND PURPOSES

The best method of approaching a critical reconstruction of American political ideas will be by means of an analysis of the meaning of democracy. A clear popular understanding of the contents of the democratic principle is obviously of the utmost practical political importance to the American people. Their loyalty to the idea of democracy, as they understand it, cannot be questioned. Nothing of any considerable political importance is done or left undone in the United States, unless such action or inaction can be plausibly defended on democratic grounds; and the only way to secure for the American people the benefit of a comprehensive and consistent political policy will be to derive it from a comprehensive and consistent conception of democracy.

Democracy as most frequently understood is essentially and exhaustively defined as a matter of popular government; and such a definition raises at once a multitude of time-honored, but by no means superannuated, controversies. The constitutional liberals in England, in France, and in this country have always objected to democracy as so understood, because of the possible sanction it affords for the substitution of a popular despotism in the place of the former royal or oligarchic despotisms. From their point of view individual liberty is the greatest blessing which can be secured to a people by a government; and individual liberty can be permanently guaranteed only in case political liberties are in theory and practice subordinated to civil liberties. Popular political institutions constitute a good servant, but a bad master. When introduced in moderation they keep the government of a country in close relation with well-informed public opinion, which is a necessary condition of political sanitation; but if carried too far, such institutions compromise the security of the individual and the integrity of the state. They erect a power in the state, which in theory is unlimited and which constantly tends in practice to dispense with restrictions. A power which is theoretically absolute is under no obligation to respect the rights either of individuals or minorities; and sooner or later such power will be used for the purpose of opposing the individual. The only way to secure individual liberty is, consequently, to organize a state in which the Sovereign power is deprived of any national excuse or legal opportunity of violating certain essential individual rights.

The foregoing criticism of democracy, defined as popular government, may have much practical importance; but there are objections to it on the score of logic. It is not a criticism of a certain conception of democracy, so much as of democracy itself. Ultimate responsibility for the government of a community must reside somewhere. If the single monarch is practically dethroned, as he is by these liberal critics of democracy, some Sovereign power must be provided to take his place. In England Parliament, by means of a

steady encroachment on the royal prerogatives, has gradually become Sovereign; but other countries, such as France and the United States, which have wholly dispensed with royalty, cannot, even if they would, make a legislative body Sovereign by the simple process of allowing it to usurp power once enjoyed by the Crown. France did, indeed, after it had finally dispensed with Legitimacy, make two attempts to found governments in which the theory of popular Sovereignty was evaded. The Orleans monarchy, for instance, through the mouths of its friends, denied Sovereignty to the people, without being able to claim it for the King; and this insecurity of its legal framework was an indirect cause of a violent explosion of effective popular Sovereignty in 1848. The apologists for the Second Empire admitted the theory of a Sovereign people, but claimed that the Sovereign power could be safely and efficiently used only in case it were delegated to one Napoleon III—a view the correctness of which the results of the Imperial policy eventually tended to damage. There is in point of fact no logical escape from a theory of popular Sovereignty—once the theory of divinely appointed royal Sovereignty is rejected. An escape can be made, of course, as in England, by means of a compromise and a legal fiction; and such an escape can be fully justified from the English national point of view; but countries which have rejected the royal and aristocratic tradition are forbidden this means of escape—if escape it is. They are obliged to admit the doctrine of popular Sovereignty. They are obliged to proclaim a theory of unlimited popular powers.

To be sure, a democracy may impose rules of action upon itself—as the American democracy did in accepting the Federal Constitution. But in adopting the Federal Constitution the American people did not abandon either its responsibilities or rights as Sovereign. Difficult as it may be to escape from the legal framework defined in the Constitution, that body of law in theory remains merely an instrument which was made for the people and which if necessary can and will be modified. A people, to whom was denied the ultimate responsibility for its welfare, would not have obtained the prime condition of genuine liberty. Individual freedom is important, but more important still is the freedom of a whole people to dispose of its own destiny; and I do not see how the existence of such an ultimate popular political freedom and responsibility can be denied by any one who has rejected the theory of a divinely appointed political order. The fallibility of human nature being what it is, the practical application of this theory will have its grave dangers; but these dangers are only evaded and postponed by a failure to place ultimate political responsibility where it belongs. While a country in the position of Germany or Great Britain may be fully justified from the point of view of its national tradition, in merely compromising with democracy, other countries, such as the United States and France, which have earned the right to dispense with these compromises, are at least building their political structure on the real and righteous source of political authority. Democracy may mean something more than a theoretically absolute popular government, but it assuredly cannot mean anything less.

If, however, democracy does not mean anything less than popular Sovereignty, it assuredly does mean something more. It must at least mean an expression of the Sovereign will, which will not contradict and destroy the continuous existence of its own Sovereign power. Several times during the political history of France in the nineteenth century, the popular will has expressed itself in a manner adverse to popular political institutions. Assemblies have been elected by universal suffrage, whose tendencies have been reactionary and undemocratic, and who have been supported in this reactionary policy by an effective public opinion. Or the French people have by means of a plebiscite delegated their Sovereign power to an Imperial dictator, whose whole political system was based on a deep suspicion of the source of his own authority. A particular group of political institutions or course of political action may, then, be representative of the popular will, and yet may be undemocratic. Popular Sovereignty is self-contradictory, unless it is expressed in a manner favorable to its own perpetuity and integrity.

The assertion of the doctrine of popular Sovereignty is, consequently, rather the beginning than the end of democracy. There can be no democracy where the people do not rule; but government by the people is not necessarily democratic. The popular will must in a democratic state be expressed somehow in the interest of democracy itself; and we have not traveled very far towards a satisfactory conception of democracy until this democratic purpose has received some definition. In what way must a democratic state behave in order to contribute to its own integrity?

The ordinary American answer to this question is contained in the assertion of Lincoln, that our government is "dedicated to the proposition that all men are created equal." Lincoln's phrasing of the principle was due to the fact that the obnoxious and undemocratic system of negro slavery was uppermost in his mind when he made his Gettysburg address; but he meant by his assertion of the principle of equality substantially what is meant to-day by the principle of "equal rights for all and special privileges for none." Government by the people has its natural and logical complement in government for the people. Every state with a legal framework must grant certain rights to individuals; and every state, in so far as it is efficient, must guarantee to the individual that his rights, as legally defined, are secure. But an essentially democratic state consists in the circumstance that all citizens enjoy these rights equally. If any citizen or any group of citizens enjoys by virtue of the law any advantage over their fellow-citizens, then the most sacred principle of democracy is violated. On the other hand, a community in which no man or no group of men are granted by law any advantage over their fellow-citizens is the type of the perfect and fruitful democratic state. Society is organized politically for the benefit of all the people. Such an organization may permit radical differences among individuals in the opportunities and possessions they actually enjoy; but no man would be able to impute his own success or failure to the legal framework of society. Every citizen would be getting a "Square Deal."

Such is the idea of the democratic state, which the majority of good Americans believe to be entirely satisfactory. It should endure indefinitely, because it seeks to satisfy every interest essential to associated life. The interest of the individual is protected, because of the liberties he securely enjoys. The general social interest is equally well protected, because the liberties enjoyed by one or by a few are enjoyed by all. Thus the individual and the social interests are automatically harmonized. The virile democrat in pursuing his own interest "under the law" is contributing effectively to the interest of society, while the social interest consists precisely in the promotion of these individual interests, in so far as they can be equally exercised. The divergent demands of the individual and the social interest can be reconciled by grafting the principle of equality on the thrifty tree of individual rights, and the ripe fruit thereof can be gathered merely by shaking the tree.

It must be immediately admitted, also, that the principle of equal rights, like the principle of ultimate popular political responsibility is the expression of an essential aspect of democracy. There is no room for permanent legal privileges in a democratic state. Such privileges may be and frequently are defended on many excellent grounds. They may unquestionably contribute for a time to social and economic efficiency and to individual independence. But whatever advantage may be derived from such permanent discriminations must be abandoned by a democracy. It cannot afford to give any one class of its citizens a permanent advantage or to others a permanent grievance. It ceases to be a democracy, just as soon as any permanent privileges are conferred by its institutions or its laws; and this equality of right and absence of permanent privilege is the expression of a fundamental social interest.

But the principle of equal rights, like the principle of ultimate popular political responsibility, is not sufficient; and because of its insufficiency results in certain dangerous ambiguities and self-contradictions. American political thinkers have always repudiated the idea that by equality of rights they meant anything like equality of performance or power.

The utmost varieties of individual power and ability are bound to exist and are bound to bring about many different levels of individual achievement. Democracy both recognizes the right of the individual to use his powers to the utmost, and encourages him to do so by offering a fair field and, in cases of success, an abundant reward. The democratic principle requires an equal start in the race, while expecting at the same time an unequal finish. But Americans who talk in this way seem wholly blind to the fact that under a legal system which holds private property sacred there may be equal rights, but there cannot possibly be any equal opportunities for exercising such rights. The chance which the individual has to compete with his fellows and take a prize in the race is vitally affected by material conditions over which he has no control. It is as if the competitor in a Marathon cross country run were denied proper nourishment or proper training, and was obliged to toe the mark against rivals who had every benefit of food and discipline. Under such conditions he is not as badly off as if he were entirely excluded from the race. With the aid of exceptional strength and intelligence he may overcome the odds against him and win out. But it would be absurd to claim, because all the rivals toed the same mark, that a man's victory or defeat depended exclusively on his own efforts. Those who have enjoyed the benefits of wealth and thorough education start with an advantage which can be overcome only in very exceptional men,—men so exceptional, in fact, that the average competitor without such benefits feels himself disqualified for the contest.

Because of the ambiguity indicated above, different people with different interests, all of them good patriotic Americans, draw very different inferences from the doctrine of equal rights. The man of conservative ideas and interests means by the rights, which are to be equally exercised, only those rights which are defined and protected by the law—the more fundamental of which are the rights to personal freedom and to private property. The man of radical ideas, on the other hand, observing, as he may very clearly, that these equal rights cannot possibly be made really equivalent to equal opportunities, bases upon the same doctrine a more or less drastic criticism of the existing economic and social order and sometimes of the motives of its beneficiaries and conservators. The same principle, differently interpreted, is the foundation of American political orthodoxy and American political heterodoxy. The same measure of reforming legislation, such as the new Inter-state Commerce Law, seems to one party a wholly inadequate attempt to make the exercise of individual rights a little more equal, while it seems to others an egregious violation of the principle itself. What with reforming legislation on the one hand and the lack of it on the other, the once sweet air of the American political mansion is soured by complaints. Privileges and discriminations seem to lurk in every political and economic corner. The "people" are appealing to the state to protect them against the usurpations of the corporations and the Bosses. The government is appealing to the courts to protect the shippers against the railroads. The corporations are appealing to the Federal courts to protect them from the unfair treatment of state legislatures. Employers are fighting trades-unionism, because it denies equal rights to their employers. The unionists are entreating public opinion to protect them against the unfairness of "government by injunction." To the free trader the whole protectionist system seems a flagrant discrimination on behalf of a certain portion of the community. Everybody seems to be clamoring for a "Square Deal" but nobody seems to be getting it.

The ambiguity of the principle of equal rights and the resulting confusion of counsel are so obvious that there must be some good reason for their apparently unsuspected existence. The truth is that Americans have not readjusted their political ideas to the teaching of their political and economic experience. For a couple of generations after Jefferson had established the doctrine of equal rights as the fundamental principle of the American democracy, the ambiguity resident in the application of the doctrine was concealed. The Jacksonian Democrats, for instance, who were constantly nosing the ground for a scent of unfair treatment, could discover no example of political privileges, except the continued retention of their offices by experienced public servants; and the only case of economic

privilege of which they were certain was that of the National Bank. The fact is, of course, that the great majority of Americans were getting a "Square Deal" as long as the economic opportunities of a new country had not been developed and appropriated. Individual and social interest did substantially coincide as long as so many opportunities were open to the poor and untrained man, and as long as the public interest demanded first of all the utmost celerity of economic development. But, as we have seen in a preceding chapter, the economic development of the country resulted inevitably in a condition which demanded on the part of the successful competitor either increasing capital, improved training, or a larger amount of ability and energy. With the advent of comparative economic and social maturity, the exercise of certain legal rights became substantially equivalent to the exercise of a privilege; and if equality of opportunity was to be maintained, it could not be done by virtue of non-interference. The demands of the "Higher Law" began to diverge from the results of the actual legal system.

Public opinion is, of course, extremely loth to admit that there exists any such divergence of individual and social interest, or any such contradiction in the fundamental American principle. Reformers no less than conservatives have been doggedly determined to place some other interpretation upon the generally recognized abuses; and the interpretation on which they have fastened is that some of the victors have captured too many prizes, because they did not play fair. There is just enough truth in this interpretation to make it plausible, although, as we have seen, the most flagrant examples of apparent cheating were due as much to equivocal rules as to any fraudulent intention. But orthodox public opinion is obliged by the necessities of its own situation to exaggerate the truth of its favorite interpretation; and any such exaggeration is attended with grave dangers, precisely because the ambiguous nature of the principle itself gives a similar ambiguity to its violations. The cheating is understood as disobedience to the actual law, or as violation of a Higher Law, according to the interests and preconceptions of the different reformers; but however it is understood, they believe themselves to be upholding some kind of a Law, and hence endowed with some kind of a sacred mission.

Thus the want of integrity in what is supposed to be the formative principle of democracy results, as it did before the Civil War, in a division of the actual substance of the nation. Men naturally disposed to be indignant at people with whom they disagree come to believe that their indignation is comparable to that of the Lord. Men naturally disposed to be envious and suspicious of others more fortunate than themselves come to confuse their suspicions with a duty to the society. Demagogues can appeal to the passions aroused by this prevailing sense of unfair play for the purpose of getting themselves elected to office or for the purpose of passing blundering measures of repression. The type of admirable and popular democrat ceases to be a statesman, attempting to bestow unity and health on the body politic by prescribing more wholesome habits of living. He becomes instead a sublimated District Attorney, whose duty it is to punish violations both of the actual and the "Higher Law." Thus he is figured as a kind of an avenging angel; but (as it happens) he is an avenging angel who can find little to avenge and who has no power of flight. There is an enormous discrepancy between the promises of these gentlemen and their performances, no matter whether they occupy an executive office, the editorial chairs of yellow journals, or merely the place of public prosecutor; and it sometimes happens that public prosecutors who have played the part of avenging angels before election, are, as Mr. William Travers Jerome knows, themselves prosecuted after a few years of office by their aggrieved constituents. The truth is that these gentlemen are confronted by a task which is in a large measure impossible, and which, so far as possible, would be either disappointing or dangerous in its results.

Hence it is that continued loyalty to a contradictory principle is destructive of a wholesome public sentiment and opinion. A wholesome public opinion in a democracy is one which keeps a democracy sound and whole; and it cannot prevail unless the individuals composing

it recognize mutual ties and responsibilities which lie deeper than any differences of interest and idea. No formula whose effect on public opinion is not binding and healing and unifying has any substantial claim to consideration as the essential and formative democratic idea. Belief in the principle of equal rights does not bind, heal, and unify public opinion. Its effect rather is confusing, distracting, and at worst, disintegrating. A democratic political organization has no immunity from grievances. They are a necessary result of a complicated and changing industrial and social organism. What is good for one generation will often be followed by consequences that spell deprivation for the next. What is good for one man or one class of men will bring ills to other men or classes of men. What is good for the community as a whole may mean temporary loss and a sense of injustice to a minority. All grievances from any cause should receive full expression in a democracy, but, inasmuch as the righteously discontented must be always with us, the fundamental democratic principle should, above all, counsel mutual forbearance and loyalty. The principle of equal rights encourages mutual suspicion and disloyalty. It tends to attribute individual and social ills, for which general moral, economic, and social causes are usually in large measure responsible, to individual wrong-doing; and in this way it arouses and intensifies that personal and class hatred, which never in any society lies far below the surface. Men who have grievances are inflamed into anger and resentment. In claiming what they believe to be their rights, they are in their own opinion acting on behalf not merely of their interests, but of an absolute democratic principle. Their angry resentment becomes transformed in their own minds into righteous indignation; and there may be turned loose upon the community a horde of self-seeking fanatics—like unto those soldiers in the religious wars who robbed and slaughtered their opponents in the service of God.

II

DEMOCRACY AND DISCRIMINATION

The principle of equal rights has always appealed to its more patriotic and sensible adherents as essentially an impartial rule of political action—one that held a perfectly fair balance between the individual and society, and between different and hostile individual and class interests. But as a fundamental principle of democratic policy it is as ambiguous in this respect as it is in other respects. In its traditional form and expression it has concealed an extremely partial interest under a formal proclamation of impartiality. The political thinker who popularized it in this country was not concerned fundamentally with harmonizing the essential interest of the individual with the essential popular or social interest. Jefferson's political system was intended for the benefit only of a special class of individuals, viz., those average people who would not be helped by any really formative rule or method of discrimination. In practice it has proved to be inimical to individual liberty, efficiency, and distinction. An insistent demand for equality, even in the form of a demand for equal rights, inevitably has a negative and limiting effect upon the free and able exercise of individual opportunities. From the Jeffersonian point of view democracy would incur a graver danger from a violation of equality than it would profit from a triumphant assertion of individual liberty. Every opportunity for the edifying exercise of power, on the part either of an individual, a group of individuals, or the state is by its very nature also an opportunity for its evil exercise. The political leader whose official power depends upon popular confidence may betray the trust. The corporation employing thousands of men and supplying millions of people with some necessary service or commodity may reduce the cost of production only for its own profit. The state may use its great authority chiefly for the benefit of special interests. The advocate of equal rights is preoccupied by these opportunities for the abusive exercise of power, because from his point of view rights exercised in the interest of inequality have ceased to be righteous. He distrusts those forms of individual and associated activity which give any individual or association substantial advantages over their

associates. He becomes suspicious of any kind of individual and social distinction with the nature and effects of which he is not completely familiar.

A democracy of equal rights may tend to encourage certain expressions of individual liberty; but they are few in number and limited in scope. It rejoices in the freedom of its citizens, provided this freedom receives certain ordinary expressions. It will follow a political leader, like Jefferson or Jackson, with a blind confidence of which a really free democracy would not be capable, because such leaders are, or claim to be in every respect, except their prominence, one of the "people." Distinction of this kind does not separate a leader from the majority. It only ties them together more firmly. It is an acceptable assertion of individual liberty, because it is liberty converted by its exercise into a kind of equality. In the same way the American democracy most cordially admired for a long time men, who pursued more energetically and successfully than their fellows, ordinary business occupations, because they believed that such familiar expressions of individual liberty really tended towards social and industrial homogeneity. Herein they were mistaken; but the supposition was made in good faith, and it constitutes the basis of the Jeffersonian Democrat's illusion in reference to his own interest in liberty. He dislikes or ignores liberty, only when it looks in the direction of moral and intellectual emancipation. In so far as his influence has prevailed, Americans have been encouraged to think those thoughts and to perform those acts which everybody else is thinking and performing.

The effect of a belief in the principle of "equal rights" on freedom is, however, most clearly shown by its attitude toward Democratic political organization and policy. A people jealous of their rights are not sufficiently afraid of special individual efficiency and distinction to take very many precautions against it. They greet it oftener with neglect than with positive coercion. Jeffersonian Democracy is, however, very much afraid of any examples of associated efficiency. Equality of rights is most in danger of being violated when the exercise of rights is associated with power, and any unusual amount of power is usually derived from the association of a number of individuals for a common purpose. The most dangerous example of such association is not, however, a huge corporation or a labor union; it is the state. The state cannot be bound hand and foot by the law, as can a corporation, because it necessarily possesses some powers of legislation; and the power to legislate inevitably escapes the limitation of the principle of equal rights. The power to legislate implies the power to discriminate; and the best way consequently for a good democracy of equal rights to avoid the danger of discrimination will be to organize the state so that its power for ill will be rigidly restricted. The possible preferential interference on the part of a strong and efficient government must be checked by making the government feeble and devoid of independence. The less independent and efficient the several departments of the government are permitted to become, the less likely that the government as a whole will use its power for anything but a really popular purpose.

In the foregoing type of political organization, which has been very much favored by the American democracy, the freedom of the official political leader is sacrificed for the benefit of the supposed freedom of that class of equalized individuals known as the "people," but by the "people" Jefferson and his followers have never meant all the people or the people as a whole. They have meant a sort of apotheosized majority—the people in so far as they could be generalized and reduced to an average. The interests of this class were conceived as inimical to any discrimination which tended to select peculiarly efficient individuals or those who were peculiarly capable of social service. The system of equal rights, particularly in its economic and political application *has* worked for the benefit of such a class, but rather in its effect upon American intelligence and morals, than in its effect upon American political and economic development. The system, that is, has only partly served the purpose of its founder and his followers, and it has failed because it did not bring with it any machinery adequate even to its own insipid and barren purposes. Even the meager social interest which Jefferson concealed under cover of his demand for equal rights could not be promoted

without some effective organ of social responsibility; and the Democrats of to-day are obliged, as we have seen, to invoke the action of the central government to destroy those economic discriminations which its former inaction had encouraged. But even so the traditional democracy still retains its dislike of centralized and socialized responsibility. It consents to use the machinery of the government only for a negative or destructive object. Such must always be the case as long as it remains true to its fundamental principle. That principle defines the social interest merely in the terms of an indiscriminate individualism—which is the one kind of individualism murderous to both the essential individual and the essential social interest.

The net result has been that wherever the attempt to discriminate in favor of the average or indiscriminate individual has succeeded, it has succeeded at the expense of individual liberty, efficiency, and distinction; but it has more often failed than succeeded. Whenever the exceptional individual has been given any genuine liberty, he has inevitably conquered. That is the whole meaning of the process of economic and social development traced in certain preceding chapters. The strong and capable men not only conquer, but they seek to perpetuate their conquests by occupying all the strategic points in the economic and political battle-field—whereby they obtain certain more or less permanent advantages over their fellow-democrats. Thus in so far as the equal rights are freely exercised, they are bound to result in inequalities; and these inequalities are bound to make for their own perpetuation, and so to provoke still further discrimination. Wherever the principle has been allowed to mean what it seems to mean, it has determined and encouraged its own violation. The marriage which it is supposed to consecrate between liberty and equality gives birth to unnatural children, whose nature it is to devour one or the other of their parents.

The only way in which the thorough-going adherent of the principle of equal rights can treat these tendencies to discrimination, when they develop, is rigidly to repress them; and this tendency to repression is now beginning to take possession of those Americans who represent the pure Democratic tradition. They propose to crush out the chief examples of effective individual and associated action, which their system of democracy has encouraged to develop. They propose frankly to destroy, so far as possible, the economic organization which has been built up under stress of competitive conditions; and by assuming such an attitude they have fallen away even from the pretense of impartiality, and have come out as frankly representative of a class interest. But even to assert this class interest efficiently they have been obliged to abandon, in fact if not in word, their correlative principle of national irresponsibility. Whatever the national interest may be, it is not to be asserted by the political practice of non-interference. The hope of automatic democratic fulfillment must be abandoned. The national government must stop in and discriminate; but it must discriminate, not on behalf of liberty and the special individual, but on behalf of equality and the average man.

Thus the Jeffersonian principle of national irresponsibility can no longer be maintained by those Democrats who sincerely believe that the inequalities of power generated in the American economic and political system are dangerous to the integrity of the democratic state. To this extent really sincere followers of Jefferson are obliged to admit the superior political wisdom of Hamilton's principle of national responsibility, and once they have made this admission, they have implicitly abandoned their contention that the doctrine of equal rights is a sufficient principle of democratic political action. They have implicitly accepted the idea that the public interest is to be asserted, not merely by equalizing individual rights, but by controlling individuals in the exercise of those rights. The national public interest has to be affirmed by positive and aggressive fiction. The nation has to have a will and a policy as well as the individual; and this policy can no longer be confined to the merely negative task of keeping individual rights from becoming in any way privileged.

The arduous and responsible political task which a nation in its collective capacity must seek to perform is that of selecting among the various prevailing ways of exercising individual rights those which contribute to national perpetuity and integrity. Such selection implies some interference with the natural course of popular notion; and that interference is always costly and may be harmful either to the individual or the social interest must be frankly admitted. He would be a foolish Hamiltonian who would claim that a state, no matter how efficiently organized and ably managed, will not make serious and perhaps enduring mistakes; but he can answer that inaction and irresponsibility are more costly and dangerous than intelligent and responsible interference. The practice of non-interference is just as selective in its effects as the practice of state interference. It means merely that the nation is willing to accept the results of natural selection instead of preferring to substitute the results of artificial selection. In one way or another a nation is bound to recognize the results of selection. The Hamiltonian principle of national responsibility recognizes the inevitability of selection; and since it is inevitable, is not afraid to interfere on behalf of the selection of the really fittest. If a selective policy is pursued in good faith and with sufficient intelligence, the nation will at least be learning from its mistakes. It should find out gradually the kind and method of selection, which is most desirable, and how far selection by non-interference is to be preferred to active selection.

As a matter of fact the American democracy both in its central and in its local governments has always practiced both methods of selection. The state governments have sedulously indulged in a kind of interference conspicuous both for its activity and its inefficiency. The Federal government, on the other hand, has been permitted to interfere very much less; but even during the palmiest days of national irresponsibility it did not altogether escape active intervention. A protective tariff is, of course, a plain case of preferential class legislation, and so was the original Inter-state Commerce Act. They were designed to substitute artificial preferences for those effected by unregulated individual action, on the ground that the proposed modification of the natural course of trade would contribute to the general economic prosperity. No less preferential in purpose are the measures of reform recently enacted by the central government. The amended Inter-state Commerce Law largely increases the power of possible discrimination possessed by the Federal Commission. The Pure Food Bill forbids many practices, which have arisen in connection with the manufacture of food products, and discriminates against the perpetrators of such practices. Factory legislation or laws regulating the hours of labor have a similar meaning and justification. It is not too much to say that substantially all the industrial legislation, demanded by the "people" both here and abroad and passed in the popular interest, has been based essentially on class discrimination.

The situation which these laws are supposed to meet is always the same. A certain number of individuals enjoy, in the beginning, equal opportunities to perform certain acts; and in the competition resulting there from some of these individuals or associations obtain advantages over their competitors, or over their fellow-citizens whom they employ or serve. Sometimes these advantages and the practices whereby they are obtained are profitable to a larger number of people than they injure. Sometimes the reverse is true. In either event the state is usually asked to interfere by the class whose economic position has been compromised. It by no means follows that the state should acquiesce in this demand. In many cases interference may be more costly than beneficial. Each case must be considered on its merits. But whether in any particular case the state takes sides or remains impartial, it most assuredly has a positive function to perform on the promises. If it remains impartial, it simply agrees to abide by the results of natural selection. If it interferes, it seeks to replace natural with artificial discrimination. In both cases it authorizes discriminations which in their effect violate the doctrine of "equal rights." Of course, a reformer can always claim that any particular measure of reform proposes merely to restore to the people a "Square Deal"; but that is simply an easy and thoughtless way of concealing novel purposes under familiar formulas. Any genuine measure of economic or political reform will, of course,

give certain individuals better opportunities than those they have been recently enjoying, but it will reach this result only by depriving other individuals of advantages which they have earned.

Impartiality is the duty of the judge rather than the statesman, of the courts rather than the government. The state which proposes to draw a ring around the conflicting interests of its citizens and interfere only on behalf of a fair fight will be obliged to interfere constantly and will never accomplish its purpose. In economic warfare, the fighting can never be fair for long, and it is the business of the state to see that its own friends are victorious. It holds, if you please, itself a hand in the game. The several players are playing, not merely with one another, but with the political and social bank. The security and perpetuity of the state and of the individual in so far as he is a social animal, depend upon the victory of the national interest—as represented both in the assurance of the national profit and in the domination of the nation's friends. It is in the position of the bank at Monte Carlo, which does not pretend to play fair, but which frankly promulgates rules advantageous to itself. Considering the percentage in its favor and the length of its purse, it cannot possibly lose. It is not really gambling; and it does not propose to take any unnecessary risks. Neither can a state, democratic or otherwise, which believes in its own purpose. While preserving at times an appearance of impartiality so that its citizens may enjoy for a while a sense of the reality of their private game, it must on the whole make the rules in its own interest. It must help those men to win who are most capable of using their winnings for the benefit of society.

III

CONSTRUCTIVE DISCRIMINATION

~~Assuming, then, that a democracy cannot avoid the constant assertion of national responsibility for the national welfare, an all-important question remains as to the way in which and the purpose for which this interference should be exercised. Should it be exercised on behalf of individual liberty? Should it be exercised on behalf of social equality? Is there any way in which it can be exercised on behalf both of liberty and equality?~~

~~Hamilton and the constitutional liberals asserted that the state should interfere exclusively on behalf of individual liberty; but Hamilton was no democrat and was not outlining the policy of a democratic state. In point of fact democracies have never been satisfied with a definition of democratic policy in terms of liberty. Not only have the particular friends of liberty usually been hostile to democracy, but democracies both in idea and behavior have frequently been hostile to liberty; and they have been justified in distrusting a political régime organized wholly or even chiefly for its benefit. "La Liberté," says Mr. Emile Faguet, in the preface to his "Politiques et Moralistes du Dix-Neuvième Siècle"—"La Liberté s'oppose à l'Égalité, car La Liberté est aristocratique par essence. La Liberté ne se donne jamais, ne s'octroie jamais, elle se conquiert. Or ne peuvent la conquérir que des groupes sociaux qui ont su se donner la cohérence, l'organisation et la discipline et qui par conséquent, sont des groupes aristocratiques." The fact that states organized exclusively or largely for the benefit of liberty are essentially aristocratic explains the hostile and suspicious attitude of democracies towards such a principle of political action.~~

~~Only a comparatively small minority are capable at any one time of exercising political, economic, and civil liberties in an able, efficient, or thoroughly worthy manner; and a régime wrought for the benefit of such a minority would become at best a state, in which economic, political, and social power would be very unevenly distributed—a state like the Orleans Monarchy in France of the "Bourgeoisie" and the "Intellectuals." Such a state might well give its citizens fairly good government, as did the Orleans Monarchy; but just in so far~~