COLLECTIVISM, A MODERN POLITICAL THEORY AND ITS MANIFESTATIONS

by

RUTH ELIZABETH BECK, A.B.

UNIVERSITY OF KANSAS

1921.

Submitted to the Department of Political Science the Faculty of the Graduate School of the University of Kansas in partial fulfillment of the requirements for the degree of Master of Arts.

Approved by:

Herman B. Schuck
Instructor in Charge

Herman B. Schuck
Head or Chairman of Dept.

CONTENTS

BIBLIOGRAPHY

Documents

British Statutes
United States Statutes at Large
Reports of United States Supreme Court
Proceedings of New York Constitutional Convention, 1915.

Books

Arnold, Mathew, Culture and Anarchy, Smith, Elder and Company, London, 1875.

Buckle, Henry Thomas, History of Civilization in England, Clarendon Press, Cambridge, 1899.

Burdick, Charles, The Law of the American Constitution, G. P. Putman's Sons, New York, 1923.

Burgess, John William, The Reconciliation of Government With Liberty, Charles Scribners' Sons, New York, 1915.

Carlyle, Thomas, Heroes and Hero-Worship, C. D. Heath and Company, Boston, 1918.

Carver, Thomas Nixon, Essays in Social Justice, Harvard University Press, Cambridge, 1915.

Coker, Francis William, Readings in Political Philosophy, Macmillan Company, New York, 1914.

Commons and Andrews, Principles of Labor Legislation, Harper and Brothers, Publishers, New York, 1916.

Collected Essays or The Man vs. the State, edited by Truxton Beale, Appleton and Company, New York, 1916.

Cunningham, William, The Growth of English Industry and Commerce in Modern Times, Volume II, Clarendon Press, Cambridge, 1912.

Cushman, Robert Eugene, Police Power of the National Government, Reprint from Minnesota Law Review, Vol. III, Numbers 5, 6, 7, April, May, June 1919 and volume IV, numbers 4 and 5, March and May, 1920.

Dicey, Albert V., Law and Opinion in England, Macmillan Company, London, 1905.

Dickens, Charles, Hard Times, Chapman and Hall, London 1862.

Disraeli, Benjamin, Sybil, Appleton and Company, New York, 1910.

De Witt, B. P., The Progressive Movement, Macmillan Company, New York, 1915.

Dunning, William Archebald, Political Theories from Rousseau to Spencer, Macmillan Company, New York, 1920.

Fay, C. E. Life and Labor in the Nineteenth Century, Oxford University Press, Cambridge, 1920.

Fite, Warner, Individualism, Longmans, Green, and Company, New York, 1911.

Garner, James W., Introduction to Political Science, American Book Company, New York, 1910.

Gettell, Raymond G., History of Political Thought, The Century Company, New York, 1924.

Hobhouse, L. T., Liberalism, Henry Holt and Company, London, 1912.

Holcomb, Arthur, The Foundations of the Modern Commonwealth, Harpers and Brotners, Publishers, New York, 1923.

Kelley, Edmond, Individualism and Collectivism, G. P. Putmans' Sons, New York, 1901.

Kingsley, Charles, Alton Locke, Chapman and Hall, London, 1890.

Krabbe, Hugo, The Modern Idea of the State, Appleton and Company, London, 1922.

Lecky, W. E. H., Democracy and Liberty, Volume II, Longmans, Green and Company, London, 1899.

Merriam, Charles Edward, American Political Idea, Macmillan Company, New York, 1920.

Mill, John Stewart, Autiobiography, Henry Holt and Company, New Yonk , 1885.

Mill, John Stewart, On Liberty, Henry Holt and Company, New York, 1885.

Mill, John Stewart, Letters, Volumes I and II, Edited by Hugh Eliot, Longmans, Green and Company, London, 1910.

Mill, John Stewart, Political Economy, Volumes I and II, D. Appleton and Company, New York, 1874.

Morris, William, The Dream of John Ball, Collected Works, Volume XVI, Longmans, Green and Company, London, 1920.

Pigou, A. O. Wealth and Welfare, Macmillan Company, London, 1920.

Read, Charles, Never Too Late To Mend, Charter and Windus, London, 1907.

Ruskin, Joh, Unto This Last, John Uyley and Sons, New York, 1900.

Smith, Adam, The Wealth of Nations, Adam and Charles Black, Edinburgh, 1850.

Spencer, Herbert, Social Statics, D. Appleton and Company, New York, 1865.

Webb, Beatrice and Sidney, A Constitution for the Socialist Commonwealth of Great Britain, Longmans, Green and Company, London, 1920.

Webb, Beatrice and Sidney, The Decay of the Capitalist Civilization, Brace, Harcourt and Company, New York, 1923.

Webb, Beatrice and Sidney, History of Trade Unionism, Longmans, Green and Company, New York, 1923.

Young, James T., The New American Government and Its Work, Macmillan Company, 1923.

Miscellaneous

American Political Science Review, Volumes 1, 2, 5, 6, and 9.

American Political Science Quarterly, Volume 6.

Contemporary Review, Volume 98.

Southwestern, Political Science Quarterly.

Proceedings of American Manufacturers Associations 1904 and 1914.

INTRODUCTION

CHAPTER I.

The aim of this study is twofold; first, to clarify the English and American use of the term, collectivism, and second, to trace the evolution of the political idea which we know by that term. This idea elaborated forms a current school of political thought, the principles of which are becoming more firmly established in the public mind and public practice. The outstanding idea of political collectivism is state regulated and state adjusted liberty, standing halfway between individualism and socialism.

In continental Europe the term collectivism has been interpreted somewhat differently from the interpretation given it in England and in the United States. In the former, it forms a part of many radical systems of socialism, which propose that the means of production, land and capital, be nationalized to prevent their being used under private control to the detriment of society. Schäffle, speaking for the German interpretation, explains its program as advocating the distribution of wealth and wealth making facilities among the citizens according to the degree of social utility and the amount of productive labor contributed.(1)

(1) Schäffle, The Impossibility of Social Democracy, p. 12, 1911.

Collectivism in France, like Germany is a phase of socialism which advocates equal division of the unequal earnings of the workmen. Needless to say this doctrine did not make itself immediately popular in France where the individual qualities are strongly marked, and such a program as the one proposed allowed no scope for the development of personal ambition. In 1878 a congress was called to formulate a program for Fremch collectivists; its promoters hoped that collective ownership of land and capital would be the most outstanding feature of any program which might be adopted. They were disappointed because of the conservatism of French workmen, but a compromise program was substituted which was extremely significent. This included such things as insurance against accident and old age, protection of women and children in industry, a recognition of labor unions, and an immediate demand for a shorter working day. These demands include many of the things which English and American collectivists include in their program at the present time. The program adopted at Lyons in 1878 was a compromise due to the fact that the movement was new and workmen were wary as to where such a program as the one originally proposed would lead.(2) Meanwhile German socialists preached

(2) Leckey, Democracy and Liberty, Vol. II, P. 337, 1899.

their conception of collectivism consistently, and by this method were able to capture a few trade unions, so by 1879 at a congress held in Marseilles, they were able to announce the same program which had been rejected the previous year at Lyon.(3) The program adopted in 1879 remains in force at the present time, and with slight modification, is the official collectivists' program in France at the present time. French collectivism, like the German from which it is derived, formulates a program for general public welfare which is to be realized by state ownership and regulation of land and capital.

The word "collectivism" itself is new, and as we have shown was first used loosely in continental Europe as a synonym for socialism. Some authors in English speaking countries have accepted this use of the term as for example, Edmund Kelley has called his two volume work which pictures a communists' commonwealth, Individualism and Collectivism.(4) More recently writers have given a narrower and much more concise meaning to the term. For example, Doctor Charles W. Eliot, President Emeritus of Harvard University defines it as being that school of

(3) Jevons, The State in Relation to Labor, p. 148, 1890.
(4) Edmund Kelley, Individualism and Collectivism, 1901.

political thought which stands halfway between individualism and socialism. Europeans on the continent continue to ignore the Eliot interpretation as is evidenced by the book of Emile Vandervelde, member of the Belgium Chamber of Deputies, who calls his detailed discussion of communism, collectivism.(5)

State interference for public welfare to realize itself through government prohibitions and government regulations is the thing which most English and American authors have in mind when they use the term. Individualism is not to be abandoned, but hedged in by such restrictions as shall be necessary to promote the general welfare, being supervised by whatever branch of government which has "range and power" to perform the required tasks effectively.(6)

The English term "collectivism" was first used in its present sense in contradistinction to individualism, when the latter had shown itself inadequate to meet the needs of a rapidly changing social order in the nineteenth century.(7)

In the meanwhile socialists' doctrines made their way into England as the had into France, carrying with them

(5) Vandervelde, Collectivism, 1906.
(6) Political Science Review, Vol. 5, p. 109, 1912.
(7) John Stewart Mill, Autobiography, p. 261, 1873.

the terminology of the cult. Men like Robert Owen with his various schemes for collective action, thought the term to be identical with communism, and there the term rested until Professor Albert V. Dicey read into it a new meaning in a series of lectures delivered at Harvard University in 1898, two of which form chapters in his book, Law and Opinion in England, he applies the term to all government regulations pointing toward the general welfare.(8) This meaning has been almost uniformly accepted by both English and American political scientists. Among his American followers, W. F. Willoughby has worked out a complementary theory, a cycle of political evolution, the third phase of which is collectivism. His cycle is anarchy, individualism, collectivism, socialism, and communism. Contemporary England and present day United States he fits into the cycle under collectivism.(9)

In the present day life such a doctrine is a necesssity to sane workers from being reduced to peonage by the industrial system, to minimize the danger to public health and safety in areas where population is heavily concentrated, to fight the evils of large scale production,

(8) Dicey, Law and Opinion in England, Chap. VIII, IX, 1905
(9) Willoughby (W. F.), Government of Modern States, p. 175, 1920.

and to recognize the extent of social interdependence. Such a theory devoloped after free competition of the individualistic school proved a failure, due to the uncertainty of the natural regulators upon which it depended. The whole school has been described as "normalizing liberalism" based upon state interference by means of the judiciary and the police power.

The modern school of collectivism goes beyond the philosophy of John Stewart Mill who maintained, "the sole for which mankind is warrented in interfering, either individually or collectively, in the liberty of action of any of their members is self-protection."(10)

To quote further from the same author on the states right to interfere with the individual--"his,(the individual) own good, either physical or moral is not sufficient warrent".(11) Following this same line of reasoning, he reaches the conclusion that the individual is sovereign over himself and his own body.

It does not require a great deal of effort to see that this theory has been consistently exceeded; the Eighteenth Amendment, the numerous laws which prohibit workmen from being employed for longer than eight hours a day, minimum wage laws below which the workman is not permitted to

(10) John Stewart Mill, On Liberty, p. 25, 1885.
(11) Ibid p.26,

go regardless of his own opinion upon the subject, laws prohibiting certain risks in dangerous trades, laws which abolish the fellow servant doctrine, assumption of risk theory, and the contributory negligence doctrine are proof that the individual is not completely sovereign over his own body and mind. Intense industrialization which makes the employee a creature of his employer, and in American, political parties which overshadow the individual to the extent his opinions are crystalized for him are excellent evidence that the individual cannot lay claim to full sovereignty over his own body and mind.

The idea of collectivism is about seventy years in advance of the term in England, and in the United States, about fifty. It shall be our purpose to trace the development of the theory in both England and the United States in the following chapter.

CHAPTER II

PART I

The establishment and recognition of collectivism as a school of political thought in England in largely the work of the Nineteenth Century, particularly the fifth and sixth decades. As a political doctrine it established itself first in England and then in the United States. The reasons for its coming, why and where it did are worth of note.

During the first half of the century, England was to all appearances following the doctrine of individualism, subscribing to laissez-faire more or less completely. This period of apparent success was one of greatest danger to the adherents of individualism, who due, for the most part, composed of wealthy merchants and manufacturers, for the great mass of here-to-fore inarticulate workmen in the cities as well as in rural districts were discontented. Wages for both rural and urban workers were far below a comfortable standard. Working conditions were wretched everywhere, and living conditions were equally miserable, so that a worker was constantly surrounded by an ambition killing squallor whcih was most deadly.(12)

Discontent was everywhere; workers were guilty of sedition and conspiracy, and arson is recorded in the rick-burnings of rural laborers. In the factories neither materials

(12) Dicey, Law and Opinion in England, p. 219, 1905.

nor machinery escaped.(13)

In the England of 1848 a revolution seemed quite possible, and if the English were to follow the example of continental Europe, it was quite probable, Chartism with its demands for reform registered this discontent, which had too many elements in common with revolution for the governing class to regard with any degree of saneness. The British Isles had not yet recovered from that fear of revolution which had been theirs since the first enthusiasm for the French Revolution had worn away; reaction and fear of reform characterized British statesmanship of the period. Chartism stood against this program which was not only reactionary, but highly individualistic.

By the time the Chartists' demands were clearly established in the public mind, direct and immediate remedies were demanded for the more serious abuses, by the more carefully thinking portion of the population. Reform legislation seemed to meet this need most satisfactorily, in fact, some one said, "O, an act of Parliament can do anything."(14)

Through the influence of the Utilitarian Liberials a reform program was begun by the Reform Bill of 1830. This bill did not give direct benefits to the discontented masses, but by reducing the abuses which enfranchised Englishman

(13) Webb, S., The History of Trade Unionism, p. 129, 1920.
(14) Nicholas Murray Butler, The Great Political Superstition, Forum, January, 1916.

might practice, and by redistribution of seals in Parliament, danger of an individualistic oligarchy was greatly decreased.

Literary men contributed materially to the cause of the unprotected workers. The novelests especialy were able to arouse public opinion to the seriousness of the situation. Charles Kingsley in Alton Locke explains how the system operates to the detriment of a poor tailor, whose story he gives us in autobiographical form. After the failure and death of his father, Alton became the ward of a wealthy uncle, who under the prevailing standards, had no obligations to his nephew save to place him in a trade, and even there he was restricted in his choice for a frail and delicate boy could only become such an artisan as a shoemaker or tailor. "A pale, consumptive, rickety, weakly boy, all forehead and no muscle--have not clothes and shoes from time immemorial been the appointed work of such?"- this was the reasoning of his uncle. That a weakly frame is usually compensated by increased activity of brain was not considered by "King Laissez-Faire!" There is a prophetic voice in the worker, Crosswaithe who pronounces most bitter judgment against the non-regulatory system.(15) There is a

Charles Dickens in Hard Times presents much the same type of argument; Bounderly epitomiges the typical factory owner of the period, selfseeking, wholly unconcerned with anything so long as his factory is returning a tidy profit, his workers

(15) Kingsley, Alton Locke, p. 23, 1890.

merely a part of his wealth-making tools. Dickens calls his story an allegory of Fact against Fancy. Fact is the actual situation as it was in 1852 under the non-regulatory system, while Fancy is the hoped-for government interference in behalf of the workers. Charles Read as well as Dickens and Kingsley lifts his voice in protest in Never Too Late to Mend.

Robert Southey, who was not only a literary man, but a political philosopher of some profundity, speaking of the period under discussion said,"moral evils are men's own making, and undoubtedly the greater part of them may be prevented."(16) He felt that prevention was the duty of the state and the church. Carlyle, Ruskin, Morris, and Arnold gave their disapproval of existing conditions. John Stewart Mill became particularly vigorous during the last part of his life.(17) In each case these men worked toward the establishment of a more humanitarian attitude.

Since so many men of note found just cause for complaint in the conditions to which the discontented mass were subjected, individualism was called upon to depend itself. The outstanding question was can liberty be regulated and still be liberty? The answer given to this question during the first three decades of the Nineteenth Century was emphatically, no!

(16) Southey, Colloquies On the Progress and Prospect of Society, p. 110, 1894.
(17) John Stewart Mill, Autobiography, p. 294, 1873.

If a cure were to be affected at all, it would be through the exercise of self-help and individual initiative. By the sixth decade this same question brought an affirmative answer in the form of state regulation.

Professor Dicey says that this change in public opinion was due to several causes.[18] These include Tory Philanthropy and the Factory Movement. The former is best explained by Lord Shaftsbury or Thomas Babington Macaulay. Theoretically Macaulay was not interested in breaking down the individualists' school, but on the contrary, is hoping to sustain it. Yet in the discussion of the Ten Hours Bill in Parliament for the reduction of the working day, he made the most forceful speech in its favor, basing his defense upon a humanitarian ground. Southey too, preached Tory Philanthropy.

The issue was fairly joined when the Factory Movement was begun. This divided Parliament into sharply defined groups, individualists and collectivists, although they were not so called at that time. Great political leaders lined up on one side or the other, both in Parliament and out. Benjamin Disraeli wrote a novel called Sybil for the purpose of reassuring his public. John Bright regarded the Ten Hours Bill and all the people who advocated it as unwarrented meddlers.

(18) Dicey, Law and Opinion in England, p. 210, 1905.

Regulation won a victory in the Factory Acts which gave prestige to the idea, and established precedent for this phase of government regulation in England. By 1850 the future of collectivism seemed to be fairly certain.

The Chartists' Movement, which had in 1848 ended in failure because of its method and personnel, was succeeded by a stronger weapon, trade unionism. According to the Combination Act of 1825, it was illegal for any organization to interfere with either the laborers' or the employers' freedom of contract. The capable and sane leaders who dominated the labor movement after the downfall of Chartism did much to establish the respect and dependability of labor organizations in the popular mind.(19) The growth of the movement was greatly facilitated by the Tories under Disraeli who were a type of benevolent aristrocrat willing to unite with the Unionists to accomplish the passage of welfare measures.

A third reason suggested by Professor Dicey is the modification of social and economic beliefs due to the men of letters which we have discussed in the first part of the chapter.

A fourth explanation offered for the change, is the group of characteristics which mark modern commerce.

(19) Pigou, Economics of Welfare, p. 372, 1920.

Combination had taken the place of unlimited individualism.

In the middle of the century, there developed a group of tendencies which Herbert Spencer calls New Toryism in his pamphlet by that name.(20) The new Tory by his philanthropic tendencies became a material help to collectivism. He tells us that the two major political parties, Whigs and Tories stood for two diametrically opposite types of social organization, the Whigs were characterized by a "regime under status" and the Tories by a "regime of contract."(21)

Under the Whig policy came the repeal of laws which prevented labor combinations, and which prohibited workmen to move freely from place to place. Freedom of speech and freedom of press became realities under their rule. The Whigs, who subsequently became the Liberals had stood for individual liberty as opposed to state domination and regulation for over a hundred years, Why then when the Liberals came into power at different intervals during the Nineteenth Century did they tend to become more and more coercive in their attitude toward individual liberty? To gain the best good for the greatest portion of the public had been the constant aim of liberalism, and since the people were not always capable of judging what things constitute the popular good, especially in

(20) Spencer, The New Toryism, Forum, Vol. 54, p. 291.
(21) Ibid, p. 293.

problems of a somewhat technical nature, the Liberal party has resorted to measures, which in a strict sense of the word are coercine.(22) It is not the object which Spencer critizes, for these he concedes to be desirable, but the method. Coercine action he feels may be regarded as "regime under status". He does not deny that there is substantial English precedent for this action, as for example the sumptuary legislation of Henry VIII. This, Mr. Spencer concedes, may have been most beneficial to the people concerned, but such benefits, he argues, can be assured only so long as obedience is exacted by coercion. Philanthrophic motive although, which though its value is present and admitted, is overshadowed by the fact that it depends upon compulsion for efficiency.

All coercive measures demand both state and national, for their continued effectiveness. These things belie the word "Liberal" and the passage of such legislation by Parliament is the assumption of unwarrented power on the part of that body. A familiar truth in social and political practice is that usage precedes law. If restructions are constantly being laid upon the individual and these he habitually practices, in the course of time this curtailment of privilege becomes the accepted principle.

(22) Spencer, The New Toryism, Forun, Vol.54, p.297.

On the other hand, Toryism has always stood for state coercion as opposed to the freedom of the individual. When the Liberals passed regulations in accordance with this privilege, they ceased to be Liberals and became the new Tories. So it was that the two major in Great Britian came to stand for collectivism, notwithstanding Spencerian disapproval.

Since collectivists were obliged to fight for every step in advance which they made during this period, their legislative measures must necessarily come piecemeal, and such a method has certain disadvantages. It was not uniform, which meant there was danger of driving the abuses from the regulated factories to places which were not recognized as factories, and therefore escaped regulation entirely. This necessitated a multitude of additional regulations and such a program requires time. For example, the Ten Hour Act passed in 1848 required until 1853 to pass regulations as would insure its proper application.(23)

This method is not without certain advantages however, for the intervals between enactments have helped Parliament out of a philosophical dilemna, for it was theoretically individualistic and practically collectivistic, and time gave the public an opportunity to adjust itself to the Parliamentary program. Parliament was in the beginning determined not to

(23) Fay, Life and Labor in the Nineteenth Century, p. 168, 1920.

interfere with the freedom of contract of adult male workers, In spite of this fact, they felt that the Humanitarian cause justified them in interfering first in behalf of children then young people, and last of women workers. Later, much regulations were extended to men.

Relief for workers outside the factories came more slowly. Working conditions for mine workers were especially bad, men were fined excessively, and even employment itself was by no means certain. The act of 1860, section 29 established government supervisors, and by the Act of 1887 Parliament recognized the legality of miners' unions and gave gratis, as an indication of their approval, branch secretaries to such organizations.

In 1867 the Crown appointed the Royal Commission of Iniquity for Trades Unions. The majority report of this organization to Parliament recommended only halfway recognization, while the minority which was favorable to the trade unions, managed to get their point of view accepted. Parliamentary action came in 1875 in the Combinations Act. Of this act it has been said, "on the face of it, (it is) a compromise between the desire of the collectivist to promote combined bargaining, and the conviction of the individualist that every man ought, so long as he does not directly infringe the right of his neighbors, enjoy complete contractual freedom." (24)

(24) Dicey, Law and Opinion in England, p. 260, 1905

In the Trades Disputes Act passed in 1906 immunity was given to the funds of trade unions for liability in breach of contract. Legally the trade unions occupied an extraordinarily favored position, "Severity has given place to favoritism: the denial of equality has lead to the demand for and concession of privilege."(25)

The fellow servant doctrine had been modified by the Employer's Liability Act of 1880, which had in turn been revised by the Workman's Compensation Act of 1897, which itself announced the principle that the employer must insure his workmen against the hazards of industry. In 1911 the National Insurance Act extended this principle to the risks of unemployment and sickness.(26)

The Trades Disputes Act and National Insurance Acts are not the first cases in which Parliament has given aid to workers out of employment. The American Civil War by the southern blockade brought a cotton shortage known in the textile industries as the "Cotton Famine". Everywhere mills were shut down and great numbers of operatives were thrown out of employment. About a third were taken into construction work where they recieved laborer's pay. The greatest credit for weathering this storm was due to the laborers themselves, for

(25) Dicey, Law and Opinion in England, Appendix, p. 495.
(26) Fay, Life and Labor in the Nineteenth Century, p. 294, 1920.

they by means of collective action such as cooperative stores and savings banks were ready for the emergency. This is excellent proof of the improved condition of the English workingman.(27)

What are the principles by which collectivism may be identified? Before answering this question it might be well to point out that a person might repudiate entirely the doctrine of the individualist, refusing to believe that the benefits bestowed upon society by any elaboration of individual liberty, and not accept collective action of the state as a cureall for the various social and economic maladjustments. This critical attitude brings a satisfactory result in that it forced suggested remedies to prove themselves by actual practice.

Professor Dicey, originator of the term in its present sense considers collectivism as being marked by four cardinal principles; an extension of the idea of protection, a preference for collective action, a restriction upon freedom of contract, and the equalization of advantages among persons possessed of unequal means of attaining them.

There are points where the line of demarcation between individualism and collectivism are extremely vague. Both agree, for example, that protection is a necessity in such evident cases as insanity, and both agree that this protection should

(27) Fay, Life and Labor in the Nineteenth Century, p. 280, 1920.

come from the state. Sometimes the individualist invades the enemy territory to the extent, that he criticizes government for not having granted all the protection which he feels due to him. If a citizen sues another for breach of contract, he should, according to this extreme view, be awarded complete compensation for the loss which was occasioned by the breach of contract, for the money spent to bring legal action, and for the pains and trouble which the whole proceeding cost him. He will point out as a matter of fact he rarely if ever recieves enough to compensate for these losses. Individualists uniformly concede that state action if absolutely necessary for the protection of property, but such protection carries with it the mental reservation that it will be privately owned property, so that there is no real violation of the individualistic principles.

Protection carries with it three groups of meaning, which are determined by application; the guidance for minors, and incapables, regulations of existing rights and privileges for the more complete enjoyment of the rights, and the prohibition of such practices, which if not definitely harmful, are not conclusive of the best good. (28)

Protective regulations of the guidance group include

(28) Dicey, Law and Opinion in England, p. 290, 1905.

child labor laws, compulsory educational measures, labor of women and children in factories, workshops and stores, and in some cases even work in the home is supervised by regulation.

The second group, the regulation of privilege group is well illustrated by traffic restriction, trademarks, patents and copyrights. The third group is described as preventative legislation, such as those laws which forbid the adulteration.

Modern collectivists legistation tends to increase number of protected persons and groups of persons immeasureably, all of which legislation is based upon the assumption that the state is a better judge of the welfare of its citizens than they themselves are.

Contractual freedom too is materially curtailed and before the close of the Nineteenth Century this principle was firmly established. The Agricultural Holding Acts of 1875 and 1895 as well as the Workman's Compensation Act of 1897 secured for both classes mentioned marked advantages by careful and minute wording of provisions. These carefully worded acts admit of very little interpretative latitude due to the detailed nature of their contents, which results in a restriction of the contractual field. By these safeguards the parties entering into a contract are forbidden to vary from the prescribed form. Parliament had provided that it should be implied, if not stated in every lease that the leasee should recieve adequate compensa-

tion for all improvement in the way of buildings or other additions which enhanced the value of the property.

The third principle of collectivism is the outstanding preference for collective action. Experience has shown that a single workman does not bargain on equal terms when he sells his labor to his employer, because he doesn't have the bargaining experience, nor the resources which are available to his employer. Nor is his position similar to merchant for he cannot sell his services until market conditions are favorable again and then strike a good bargain, for if he refuses low wages, he will very likely be without employment, his small store of savings will be exhausted and he faces either returning to work at whatever terms are dictated by his employer or continual non-employment which means starvation. In this case the collectivist maintains that the interests of the laboring class can best be realized through labor unions or the action of the state. Regardless of whether it be the state or trade unions, any agency which has the right to interfere in disputes between the employer and the employee occupies a most favored position.(29)

Since under the present scheme economic and social advantages are not equalized, there should be on the part of the government some effort made to secure at least an approach to equal opportunities. Possibly no better examples of this

(29) Conspiracy Act of 1875, 38 & 39 Victoria, C. 86, 33.

can be found than employers liability acts and educational measures.

As late as 1859 John Stewart Mill objected to the state assuming the educational function, saying state control could go no further than to compel parents to furnish elementary education.(30)

In spite of objections, the first National English educational act had been passed in 1833 which gave aid in the form of money grants, but the first really effective school legislation was passed in 1876. This forced parents to keep children in school until they had received an elementary education. This act further provided that, "if such a parent fail to perform such duty he shall be liable to such orders and penalties as are provided in the Act".(31) By 1880 compulsory attendance of children at school was made national.(32) By 1891 elementary education had been made free.

Before the Employer's Liability Act it was held that the employer was not liable to pay compensation if one of his workmen were injured due either to his own negligence or the negligence of a fellow worker. Now he is compelled to insure this workman against the hazards of industry.(33) It is also provided in this act that a workman cannot barter away his compensation unless he recieve an equal value in

(30) John Stewart Mill, On Liberty, p. 194, 1885.
(31) Elementary Education Act, 39 & 40, Victoria, C. 79, s4,
(32) Ibid s1 C. 56, s1.
(33) Workman's Compensation Act of 1900, 60 & 61, S67.

return.

All of these regulations are obviously collectivistic, workers insured against the hazards of industry by their employers, schools maintained by the state for the purpose of making education free: all clearly show that individualism as a political theory has passed its prime long since. We have discarded", says Mr. Cunningham, "this doctrine deliberately and finally in regard to industrial life and management in Great Britain".(34)

(34) Cunningham, The Growth of English Industry and Commerce in Modern Lines, Vol. II, p. 866, 1902.

CHAPTER II.

PART II.

The history of collectivism is somewhat different in the United States than in England although there are many elements of similarity. The fundamentals however are identical in both cases. In both countries the philanthropic and humanitarian ideal preceded and lead to collectivism. In Americans and in England, many people felt a strong sense of injustice because of the numerous inequalities they saw on all sides, especially political and economic inequalities; this paved the way for the men of letters who helped cast public opinion in the public welfare model. Unregulated industry has been uniformly reluctant to release its hold upon wealth and wealthmaking facilities, including labor. Political and economic theory was far behind actual conditions, which accounts for the lagging behind of the academic world. Both English and American schools of collectivists passed through very similar steps in their evolution to arrive at the same principles namely, extension of the idea of protection, equalization of advantages, limitation of the contractual field and a preference for collective action.

The United States began with a highly individualistic theory, the less government the better. An American pioneer's idea of liberty covered a wide territory, with the

result that early American public law and public policy reflected this attitude. His independent philosophy is an outgrowth of actual conditions, for the frontier life was one of solution and demanded great self reliance. Government was so remote as to exercise little active influence, but when government did interfere for the purpose of regulation, such measures were met with most vigorous resistance. The Whiskey Rebellion in western Pennsylvania of 1794 gives a most excellent example of the fiercely individualistic attitude of this early period.

It was New England which first developed and announced a philosophy for the conditions just described. The Trancendentalists, whose thought and literature affected the period most profoundly, stood for a peculiar variety of individual philosophy. It was not entirely an original philosophy, but in a measure syntnetic. The English philosophy, Locke had taught that intellectual action is limited to what is precieved through the five senses. The German, Emmanual Kant maintained that there are ideas of the soul which are not due to any of the senses; for example a sense of time is common to everyone, although such knowledge is not recieved through the senses. This Kant calls an intuition or trancendental. To read the real meaning the Trancendentalists tell us, one is obliged to transcent the experience of any of the senses. This philosophy places an extraordinarily high value upon the individual, emphasizing isolation and solitude. Notwithstanding this theory

The Trancendentalists made some collectivistic experiences, the greatest of which was Brook Farm, composed of one hundred and fifty experimentors, who like the Tory Philanthropists in England were highly humanitarian in their outlook, which certainly could not be classified as pure individualism; it is this element which is collectivistic.

Many prominent men of letters flocked to the Trancendentalists standard, existing a lasting influence upon the thought of the times, and paving the way for later authors, who were to be as significent to their times as the Trancendentalists had been earlier. Margaret Fuller, Amos Bronson Alcott, Ralph Waldo Emerson, and Nathaniel Hawthorne were always softened by humanitarian quality which ran through all they did.

This same solicitude for mankind appears in the abolitionists writings. Personal freedom is emphasized from a humanitarian standpoint always. There is a remarkable insistance for a kindly group feeling.

The post bellum period ushers in conditions and a literature reflective of these conditions of a vastly different variety. New questions demanded increased government power with which to meet them. Transcontinental railroads brought new problems. Grants of land were made by way of inducing railroad construction, and these were supplemented by

liberal money grants, which were graduated sums according to the nature of the territory through which they were built, a mountain route recieving more than one passing through foothills or prairie land. By providing transportation settlers would be attracted to the West, but at a profit to railroad promoters and owners. In assuring themselves of advantage, railroads developed offensive and persistant abuses which made regulation for public welfare imperative.

The growth of cities was attended by greater industrialization, which in turn had been stimulated by the numerous mechanical inventions created under the pressure of civil war. Factory owners demanded protection for two reasons; that they be allowed to maintain themselves, and that they might be able to expand with freedom and security. Enlargement of industry meant an increased supply of labor, and the larger number of laborers meant eventually a realization of their own strength. This found workers asking for the right to organize for the purpose of bargaining more effectively, even through the use of such implements as the strike and the black list.

Greater concentration of population in cities brought the question of public utilies. Should these be owned and operated for profit, or should service for the comfort and convenience of the people be considered first?

Trusts, pools, monopolies of all kinds were proof that public protection was seriously needed.

Again literary men through books magazines and periodicals helped to crystalize public opinion into a demand for government action especially against trusts and pools.(35) The abuses of this variety of individualism presented some genuinely picturesque phases such as bossism, election corruption together with various other corrupt practices which lent themselves remarkably well to literary effort. There is an idea which occurs again and again in these propagandistic writings, that is, our economic and political system rather than the men who practice the different political and ecomonic abuses is to blame for a good deal.

The struggle for the collectivist view point in the vocational world has been characterized as being a struggle between the "haves" and the "have nots", the "haves" being in power were not only reluctant to release their hold, but were willing to fight to retain it.(36) These "haves" have followed literally the teaching of Adam Smith, a most comforting doctrine that the natural effort of every individual to better his own condition, when suffered exert itself in freedom and security, is so powerful a principle, that it is alone and without assis-

(35) Howells, Lindsay, Whitlock, Blythe, Payne, Garlin, Churchill London were among those contributed to literature of this type.
(36) B. and S. Webb, A Constitution for the Socialists Commonwealth of Great Britain, p. 223.

tance capable of carrying on a society of wealth and prosperity." He did not foresee the selfish scramble which could but result, and there is a possibility that those of his followers who were, planned upon aluding by the Greek maxim which admonishes one to first gain and independent income and then practice virtue.

The earmarks by which the individualistic period may be identified are self-reliance and a strong stress upon the natural abilities of the individual, for these in a large measure were to determine his success. As time went on, the wilderness was no longer the menace it had been and the qualities for the average man were felt only by reflection, for it was the leader only who enjoyed them now. In practical affairs business forms developed along lines which promised to be the greatest advantage to the owners. Business organizations of enormous size went unregulated, and this meant exploitation of the less able was the order of the day. It was the conomists who justified this extremely selfish program in "a shorter day is an absurdity because it will reduce production, hence wages; one day's rest in seven is a curious provision".(37) William Graham Summers in the sixth and seventh decades of the Nineteenth Century, who shifted to a less individualistic view point later in his life, at this time he labels the unfortunates as being "nasty, shiftless, criminal, whining, crawling and good for

(37) Wells, Recent Economic Changes, p. 431, 1889.

nothing people".(38)

The right, the natural right of an individual to carry out his own interests as he saw them best was one of the major ideas of the earlier period which held over until late in the Nineteenth Century. To restrain the individual was to stifle his initiative, to make him a colorless creature without ability to decide for himself. Regulations themselves were not infallible, and since either method involved risk elements, why not allow the single individual to assume that risk? This, it was argued, would occasion less discomfort and inconvenience to fewer people that state regulations which might sometimes be in error. To this criticism qualifications should be added which materially alter the meaning. The individualist assumes that all government regulations are restrictions, which is not uniformly true. Quarantine regulations prevent persons afflicted with contageous diseases from mingling freely with the rest of the population with the result that those who are not afflicted are assured freedom and safety. English speaking lands are an excellent example of this principle for Anglo-Saxon liberty is a regulated liberty.

Nor can it be said to be really true that each person does know his own affairs better than anyone else, therefore can manage them most advantageously. In urban centers particularly is this argument weak for very few people really know what is best for them in questions involving technical

(38) Carver, Essays in Social Justice, p. 50, 1915.

information such as sanitation and public education. Individual action would likely be of little value in the construction of a water main, or the standardization and maintenance of a public school system or the enforcement of railway regulations.

"To every age the question of freedom presents itself in some form", and by freedom we mean the whole range of interpretation from Hegel and Fichte to whom the idea of freedom meant right, to the collectivist idea of group freedom with all of the restriction to one generation is a part of the regulated liberty of the next.

Industrial organizations like the American Association of Manufacturers announce an extremely individualistic program. "The owners of factories have absolute right to manage their own properties, and must maintain such rights against any mob of bandits or law breakers."(40) In this same document the labor movement and labor leaders were sharply criticized. Samuel Gompers was held up to ridicule for having advocated a socialized industrial organization. But the next decade saw a radical change on the part of the Association for a definitely constructive program was adopted which was to be realized through federal and state legislation.(41)

(39) MacDonald, Modern Conceptions of Liberty, Contemporary Review, Agust, 1923, p. 197.
(40) Proceedings of American Manufacturers Association, p. 284, 1905.
(41) Proceedings of American Manufacturing Association, p. 193, 1914.

William Barnes, a delegate to the New York Constitutional Convention in 1915 offered the Convention an amendment to the proposed constitution to establish a maximum wage to be paid by an employer to his employees, with a graduated scale according to the occupation.(42) This was rejected by the convention as an infringement upon the contract right, and beside savored too much of autocracy to be favorably received. In a democratic state such a policy could not fail to arouse antagonism. The voice of the mob in a democracy is another of Mr. Barnes objections, able to rule through the force of numbers, mediocrity would become the order of the day and nothing but retrogression could result, which is rather more individualistic than might be expected, even from a reactionary.

Judge Clearwater too sponsored the individualist's cause with a good deal of enthusiasm. He introduced an additional angle into the problem by touching upon immigration into the United States. This, he said, came not only in undesirable quantities, but very bad quality, which meant the building up of a prolitarian class which he explained as composed of men who had no property, and who lacked the industry and frugality to accumulate. Instead of comunal responsibility as seen in old age insurance, in laws for the payment of a non-employment insurance to take place of personal frugality, honesty, and sobriety which would result in a property accumu-

(42) Proceedings of New York Constitutional Convention, 1915.

lation for old age or non-employment, he advocated the personal virtues.

No less person than Professor Burgess tells us that government attempts by social and economic legislation attempts to do for the individual what his religion, his conscience, his honor and his charity should do.(43)

Other distinguished people who have been attracted to the individualistic standard have included William Howard Taft, who until recently when his dissenting opinion in Adkins vs. The Childrens' Hospital established a welfare attitude, has been individualistic, and this point of view he upholds in The Duty of the State. Nicholas Murray Butler, has in The Great Political Superstition, E. J. Gary in Overlegislation, Charles W. Eliot in Specialized Administration all show a strongly anti-collectivist attitude.

This period of American individualism does not draw heavily upon the Eighteenth Century theory and philosophers. It was not Locke, but rather Mill and more particularly Herbert Spencer as he announced his principles in Social Statics. The American theory had shifted from the purely personal individualism of the earlier school to the social and industrial variety. Earlier theories like that of Jefferson had been

(43) Burgess, Reconciliation of Government with Liberty, p.380, 1915.

that strong government was identical with tyranny and absolutism. The Theory of the Eighteenth Century was based upon liberty of the individual while industrial output unrestrained by regulation was the one which followed in the Nineteenth.

Nor were these individualists genuinely consistant in their attitude. Industry for the most part favored a protective tariff; all demanded government protection of property, government enforcement of contract, the maintenance of peace and order together with numerous other services.

At the end of the Civil War began the great struggle between the railroads for control. Consolidation became an issue of greatest importance. Who should control these organizations which were so vitally connected with the public welfare, and yet built and operated by private capital? Who would protect the public from unjust discriminations and extraordinarily high rates? The right of supervision and regulation had been decided in the Granger Cases of 1876. Congressional enactments followed amplifying and elaborating this regulatory right. Among these the Adamson or Eight Hour Law was passed in the fall of 1916 at the urgent request of President Wilson for the purpose of averting a nation wide railroad strike. A strike of the proportions of the one threatened would have most harmful to interstate commerce. A test case for the proving of the validity of the Adamson Act came in Wilson vs. New. In this case it was decided that since Congress did have power to re-

gulate commerce between the several states by express grant in the constitution, congressional power over interstate commerce and the implements of interstate commerce was supreme. Since questions of wages and labor disputes stop the free and unhampered flowing of commerce between states, Congress has power to regulate disputes of this Character.(44)

The Interstate Commerce Commission of 1887 was the first really effective attempt at control, and this was not direct congressional control, but commission control through an appointive personnel. It was the result of over twenty years of struggle, but when it came, it represented a definite victory for collectivism.

The Federal Trade Commission of 1914 was created to act as a preventative to bring more equitable conditions through the courts, rather than to punish after an infringement upon the act had taken place.(45)

Some foreseeing thinkers saw no real conflict between individualism and group interest, and felt that no serious controversy need exist. The individual is a part of society, very largely dependent upon it, rather than an enemy hostile to group action. Warren White points out that the advocates of the "let alone" theory were certainly not advocates of anarchy, for the value of government protection and regulation which formed so important a part of that protection, was a thing that even the

(44) United States Reports, V. 243, p. 332.
(45) Political Science Quarterly, September, 1915.

Most rabid individualist did not question. The earlier American individualist would have considered liberty consistent with order and industrial wellbeing, because even though liberty loving, he was far too intellectual to be other than orderly, and order depended somewhat upon regulation.(46)

Freedom then consists not of an absence of social relationships, but rather the nice adjustment of them. Freedom of a man to follow a line of business presupposes that there exists a well-established police power, a stable system of currency, of transportation and commercial law. An individualist must then be a thorough going socialist according to Mr. Fite, who defines Socialism as a comprehensive organization of society. Individuality can never be transcended, and any organization will fulfill its own meaning, only so far as, in a harmonious way it gives free play to individual differences.(47) It is in this way that the idea of a police state has given way to a welfare state which recognizes and provides for the broadened demands made upon it.

American philosophers have not been silent upon the extension of state power. Woodrow Wilson laid down the principle that the state should perform no functions which might be equally possible under equitable conditions to optional associations. Here he draws a distinction between state interference and state

(46) Fite, Individualism, p. 275, 1911.
(47) Ibid, Individualism, p. 279, 1911.

regulation, by explaining that regulation meant the giving of of a larger share of advantages to the less fortunate, and restricting the fortunate until conditions were somewhat equalized.(48)

James W. Garner classifies the functions of the modern states into those that are necessary, those that are natural and normal, and those that are neither natural or normal.(49) He does not advocate consistent interference of the state in these functions, although he does condede it should be an instrument of progress.

Still different is the classification of W. W. Willoughby who divides state functions into essential and non-essential. The non-essential he reclassifies into socialistic and non-socialistic; under the former he considers the ownership and operation of utilities by the state, which the non-socialistic include, and these he points out must either be done by the state or left undone, include education and labor protection. The functions expand indefinitely because of the increasing tendency to force more and more responsibility upon government. Responsibility is met by regulation, the more outstanding phases of which we consider in the following discussion of police power, contract power, "due process", interstate commerce, and taxing power as welfare instruments in the hands of government.

(48) Wilson, The State, p. 273, 1887.
(49) Garver, Introduction to Political Science, 318, 1910.

CHAPTER III.

Collectivism, as it has developed in its present day usage frequently, in fact most generally, does not appear under that title. Legislation, judicial interpretation and voluntary associations, non-political which regulate for the welfare of the group, but which do not extend to government ownership and operation are collectivistic. By general welfare we mean that condition of well being which has been stimulated by mutual restraints and mutual accelerations growing out of wisely chosen and well applied government regulation. Social legislation of every type in pure collectivism. Voluntary organizations, at least as far as government is concerned, such as labor and trade unions which attempt to establish on more secure basis, the position of labor in its various fields of effort, are representative of collectivism.

Doctor Charles Eliot has most aptly described collectivism as being midway between individualism and socialism. This midpoint he concieves to be government regulation at whatever point it shall be expedient, and covering whatever ground shall be necessary, but, and here he is emphatic, not government ownership and operation.

This being the case, what agencies exist as the most suitable tools with which to fashion collectivists' measures in our present day governmental scheme. Careful observation

would lead one to say these agencies fall roughly into six classes; the police power, "due process" of the fifth and Fourteenth Amendments, commerce clause, taxing power and postal power.

By police power is meant that right to protect and regulate public health, morals, safety and public welfare. It is most obvious to even a casual observer that this constitutes one of the strongest powers through which the state may regulate. All sorts of labor legislation is exacted through the police power. Those laws which are passed stipulating the number of hours an employee may work under given conditions, those laws which assure a minimum wage for workers, those laws which attempt to improve the conditions under which the less healthful callings are carried on, those which establish workman's compensation and its corallary, employer's liability acts, are enacted without exception by the authority of the police power.

A most interesting development in constitution interpretation has accompanied the evolution of the hour legislation. By hour legislation we mean those regulations which the length of the working day. In 1896 a Utah statute was passed making it illegal to employ men in mines and dressing or core refining for more than eight hours a day. When a case testing the validity of this statute came before the court, it was argued that

such a law deprived the employee of freedom of contract.(54) The court stated that the constitution should not be contrued to deprive the state of power to amend its law so far as to conform to the wishes of the citizens in regard to their welfare. Since mining and smelting cannot be carried on without special provisions for the health and safety of those who are engaged in them against the hazards of employment, it is necessary to make regulations in an effort to bridge the gap. The court continued by pointing out that the employee did not stand on an equality with his employee, and in the absence of regulation, workers were very often obliged to conform to working conditions which were detrimental to their health.(55)

In 1904 before the New York Court of Appeals was brought the question of constitutionality of a statute which forbade the employees of bakeries and confectionaries to work longer than ten hours a day. In the New York Court this statute was upheld, but in the United States Supreme Court, it was declared unconstitutional. Speaking of the case Justice Peckham said that the bakers' trade had never been considered an especially unhealthful one. That his attitude was definitely anti-collectivistic is shown by his statement, "statutes of the nature of that under review, limiting the hours in which grown and intelligent men

(54) Holden v. Hardy, 169 U. S. 366.
(55) Burdick, The Law of the American Constitution, p. 578, 1922.
(56) Lockner v. New York, 198 U. S. 45, 61.

may labor to earn their living, are meddlesome interferences with the rights of the individual, and they are not saved from condemnation by the claim that they are passed under the exercise of the police power, upon the subject of the health of the individuals whose rights are interfered with, unless there be some fair ground, reasonable in and of itself, to say that there is material danger to public health or the health of the employees, if the hours of labor are not curtailed".(56)

Justices Harlan, Day and White dissented from such a markedly individualistic view point in the following opinion which was written by Justice Harlan. "We judicially know that the number of hours which a workman should continuously labor has been for a long period, and it yet, a subject for serious consideration among civilized peoles, and by those who have any special knowledge of health."(57)

Justice Holmes dissented say, "This case has been decided upon an economic theory which a large part of the country does not entertain * * *. The Fourteenth Amendment did not enact Mr. Herbert Spencer's Social Statics * * *. I think liberty in the Fourteenth Amendment, when it is held to pervent the natural outcome of dominant opinion, unless it can be said that a rational and fair man would necessarily admit that the statute proposed would infringe upon the fundamental principles as they have been understood by the traditions of our people and

(57) Case cited p. 41, note 55- p. 71 and 72.

our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us. A reasonable man might think it a proper measure upon the score of health. Men, whom, I certainly would not pronounce unreasonable would uphold it as the first installment of the general regulation of the hours of work." (58)

With the opinions of Justices Holmes and Harlan in mind, it is not difficult to see why the United States Supreme Court later upheld an Oregon statute which prohibited the employment of women in a laundry or other mechanical establishment for more than ten hours a day. (59) This decision came in 1908, three years after the famous bakeshop case. Because the court felt that long hours were injurious to women workers, and through them an injury to their children, and as a result an injury to the community at large; it was thought protection was due on that score and on the score of bargaining ability. Recognizing that inadequate economic training which along with physical inequalities placed women workers at a disadvantage, the court maintained that the Oregon statute served to equalize such inequality.

In 1917 the regulatory idea was further extended in the state of Oregon by a statute which limited the hours of work for men in industries which had not been regarded as particularly injurious or harmful. This statute was brought before the United States Supreme Court to decide upon its constitution-

(58) Case cited p. 41, note 55, p. 71 and 72.
(59) Muller v. Oregon 208 U. S. 412.

ality. The law provides for a maximum working day of ten hours, providing also that no employee be permitted to work overtime for longer than three hours a day; all compensation for overtime was to be time and one half. The court upheld this case and made no reference to Lochner v. New York which had been ruled out in 1905.(60) The Adamson Act or Eight-Hour Law was passed by Congress in 1916 ofr the purpose of averting a nation-wide railroad strike. The validity of the act was tested in Wilson v. New.(61) In this case the court was concerned with the question of whether Congress was regulating interstate commerce in the act because by its passage, complete suspension of commerce was avoided. The majority opinion of the court asserted that Congress was really regulating interstate commerce, in spite of the incidental regulation of the length of a working day, for without exceeding its powers could pass a law for the compulsory arbitration of labor disputes of employees of interstate carriers.

The constitutionality of minimum wage legislation was questioned in 1917. Here again the issue was fought out on a Oregon statute which stated that it was unlawful to employ in that state any woman or girl for wages which were not sufficient to maintain her, so that the state would not be obliged to make up the difference between the wages paid by the factory and the cost of a decent livlihood in the form of human salvage insti-

(60) Bunting v. Oregon, 243 U. S. 426.
(61) Wilson v. New, 243 U. S. 332.

tutions. In Stettler v. O'Hara the Supreme Court held the statute to be constitutional, because under the police power it protected not only the physical but the moral wellbeing of the workers, and therefore the welfare of the community. (62)

In Adkins v. The Children's Hospital it was decided that a minimum wage prescribed for adult and legally capable women workers was an unjustified infringement upon the contract right, and further it was an infringement upon individual freedom as contemplated in the Constitution. (63) To preserve individual freedom as contemplated in the Constitution wxalts the common good, for society as a whole cannot be better served than by preservation against arbitrary upon the liberty of the individual, was the majority opinion of the court. Chief Justice Taft and Justice Brandeis took no part in the consideration or decision of the case, although his probable attitude would have been that of Chief Justice Taft. Here is an inconsistency which seems scarcely explainable, the Federal Supreme Court for the District of Columbia refused to permit that territory to do the thing which a state might do under the police power in Stettler v. O'Hara.

In the same year that Stettler v. O'Hara was heard, the New York Legislature enacted a law which made the employer liable for injuries to employees which occur in the course of the day's work; the liability was graduated according to the extent of disability based upon the loss of earning power. It is usually

(62) Stettler v. O'Hara 243 U. S. 629.
(63) Adkins v. Children's Hospital, 261 U. S. 525.

included in the law which compels compensation that the fellow servant doctrine and the doctrine of contributory negligence do not operate. By contributory negligence we mean that the injured person has been guilty of carelessness and neglect which has lead to his injury and forbidding workers to make contract by which they agreed not to use their right of compensation if injured, were not an unconstitutional taking of property no interference with the contract right. This exercise of the police power guarantees more immediate than the common law method.(64) In Iowa a similar statute was passed during the same year which gave the worker his choice as to which he would have operate in his case, the employer's liability statute or the old common law rule of a damage possibility. The statute was upheld by the Supreme Court of the United States.(65) The state of Washington presented a far more vigorous version of the idea, for here the employer was not only required and since he alone is responsible for his own misfortunes can't recover damages. The fellow servant doctrine is an extension of this same idea. If this rule prevails, the injured workman cannot recover damages for his injury. One worker, injured by the negligence of his fellows, under this doctrine has no redress, for the negligence of one is the responsibility of all. Some states have expressly abolished these rules and some like Oklahoma, have abolished it in specific trades only; there it is abolished for railroad workers, interurban railway workers and mining employers. In 1911 the states of Onio and California passed

(64)New York Central R. R. Company v. White, 243 U. S. 188.
(65)Hawkins v. Bleakley, s 43 U. S. 210.

constitutional amendments which authorized the state legistures to pass suitable compensation acts.

It was also held in this same connection that imposing flat liability to take out state insurance against industrial accident, but also to contribute to a state fund for the maintenance of that insurance.(66) The Supreme Court also upheld an Arizona statute which, while requiring the employer to pay compensation to injured workers, it was left to a jury to determine the amount.(67)

The Federal Employers' Liability Act was passed at the insistence of President Roosevelt in 1906.(68) This act was regarded as a great step toward social justice, but was declared unconstitutional by the United States Supreme Court because it included employees of interstate carriers even when they were not engaged in any of the processes of interstate commerce. A new act was passed in 1908 which remedied this defect.(69) It was argued that if the conditions under which the work of commerce is done were bad, they often interferred with the free flow of interstate commerce. By this reasoning and by the principle of constitutional interpretation, upholding the statute whenever possible, the Employers' Liability Act of 1908 was upheld.

(66) Mountain Lumber Company v. Washington, 243 U. S. 219.
(67) Middleton v. Texas P. and L. Company, 249 U. S. 152.
(68) 34 United States Statutes at Large, 232.
(69) 35 United States Statutes at Large, 65.

The United States Supreme Court has been almost uniformly collectvistic in its attitude in regard to labor questions. A Kansas statute which made it a misdemeanor for an employer to require that his employee would not become a member of, or if already a member not retain membership in a labor union, was enacted. This was held to be an infringement of contract and therefore illegal; there were three dissenting opinions.(70) The opinions of Holmes, Day and Hughes maintained that labor organizations were entirely legal, and that the state may protest the right of workers to join such organizations.

The history of the Federal child labor laws is somewhat significant in connection with collectivism too. The first of these acts was declared unconstitutional in 1916 on the ground that it interferred with the conditions of employment, a matter which is left to state regulation entirely, although the act purported to be a regulation of interstate commerce.(71) Satisfied that there was not only an urgent need for such a law, even though the first effort had failed, but also a strong popular demand, Congress passed a second child labor law.

The first of these laws provided that it was illegal to transport in interstate commerce the mine products of child labor up to sixteen years of age. It also prohibited the products of

(70) Coppage v. Kansas, 236 U. S. 1.
(71) Hammer v. Dagenhart, 247 U. S. 251.

manufacturing establishments in which children under fourteen were employed for longer than eight hours a day, or before six in the morning or after seven in the evening. Justice Holmes speaking of the law in Hammer v. Dagenhart said in part, "This act does not meddle with anything belonging to the states, but to Congress to regulate. It may not carry out its views of public policy whatever indirect effect that may have upon the state--the public policy of the states is shaped with a view to benefit the nation as a whole".

The second of these laws proposed to make the employment of children impractical and unprofitable by placing a high tax upon those articles which had been made by child labor. Since raising of revenue was not the real purpose of the act, but the regulation of child labor, it was regarded by Mr. Justice Taft, as too flimsy an excuse to infringe upon a power which had been reserved exclusively for the states by the Constitution. Though such regulation was for a public purpose, it was not one which Congress was at liberty to legislate upon either through the police power or more directly through taxing power.(72) There is a distinction between a tax and a penalty. Taxes are often imposed with a chief object of raising revenue and an incidental object of penalizing. When the penalizing feature becomes the dominant one, the tax has lost its revenue raising purpose to a large de-

(72) Burdick, The Law of the American Constitution, p. 185, 1922.

gree. Although the act called the Second Child Labor Act did not declare child labor illegal, by placing a a penalizing tax upon the products of child labor, Congress made it illegal for all practical purposes. If this act has been permitted to stand Congress might in the future on pretext of the taxing power usurp powers guaranteed to the states by the Tenth Amendment. For these reasons the Second Child Labor Act was declared unconstitutional. (73)

Under the police power the various states have passed child labor legislation as they have seen fit. These acts set an age limit which usually varies from fourteen to sixteen years of age, and the working of children at night is generally illegal. It has been pointed out that it might be a good deal better plan to substitute a physical examination for the age limit, since by that means the state and the employer would have a more accurate means by which to gage the capacity and fitness of children to work. Many unfortunate situations grow out of the unequalities which arise from state differences in regulation, resulting in child exploitation in the less carefully supervised areas. For the collectivist even this is a hopeful sign, for any sort of state regulation, weak though it may be is useful in that it establishes a precedent for regulation and supervision, which when followed by a vigorous public opinion, will ultimately result in adequate legislation.

The obligation to maintain good order is another charge

(73) Bailey v. Drexel Furniture Company 259 U. S. 20.

of the state growing out of the police power. Ordinarily protection of a community can be accomplished by the regulation of proprietary right, without actual confiscation and destruction of property.(74) Property, animals, plants and trees which are likely to spread disease may be destroyed. In cases of this character it is customary for the state legislature. If property is used for illegal purposes such as the various sorts of gambling equipment, it too may be destroyed through the police power, but if the property can be put to a legitimate use there is no authority for destroying it. Good order is possibly one of the things which we take for granted, but it is a significant thing in the consideration of general welfare, possibly the firststep.

Public health is a part of the police power which obviously touches the people most vitally. Under this heading states regulate the practice of medicine, and the licensing of practitioners within their borders.(76) This same power gives the states a right to establish quarantine regulations in cases of contageous disease, and require the compulsory administration of such preventations as vaccination.(77) Burial in cemetaries located in densely populated districts is forbidden on the score of health,(78) not only cemetaries, but liveries and brickyards may be forbidden.

The Pure Food and Drug Acts of 1906 were examples of extensive health legislation, which goes beyond the state police

(74) Burdick, The Law of the American Constitution, p. 561, 1922.
(75) Philadelphia v. Scott, 80 Pa. 81, 85.
(76) Dent v. West Virginia, 129 U. S. 114.
(77) Jacobson v. Massachusetts, 197 U. S. 11.
(78) Laurel Hill Cemetary v. San Francisco, 216 U. S. 358.

power for authority to the Federal power to regulate interstate commerce. This act prohibits the transportation of any food or drugs which are not branded truthfully, or which are adulterated, or which are in a condition unfit for food. The penalty includes confiscation of goods and fine.(79)

By maintaining peace and order, and thereby establishing security for its citizens, the state is not only able to carry out that portion of the police power which has been traditionally attributed to it, but paves the way for further collectivist's demands. It is not enough that the citizens be saved from violence and fraud.(80) It is not sufficient that they be free from the encroachment by other individuals, either singly or in associations, or even by government itself. The state largely through the police power, must look beyond to the collective needs of its people, the welfare of its citizens. It must care for the welfare of a complex social order which brings a multitude of interactive common interests.

It has been the habit of the courts to interpret the term safety very broadly. The right to bear firearms is carefully regulated, notwithstanding the Second Amendment which states, "the right of the people to keep and bear firearms shall not be infringed". The rate at which vehicles may travel on the public highways and city streets may be regulated. A railroad may be

(79) Crossman v. Truman, 192 U. S. 189.
(80) Garver, Introduction To Political Science, p. 323, 1910.

forced to fence its property, crossings must be carefully equipped with safety devices; they are liable for fires caused from sparks spread by locomotives. The destruction caused by a mob is chargeable to the municipality in which riot took place.

According to the definition of police power given above, public morals came within the scope and here is a weapon with which collectivism has been able to attack one of the strongest fortresses of individualism. Herbert Spencer maintained it was a violation of a moral law to "interfere between quacks and those who patronize them".(81) He argued also against the state refusing to license quacks to look after the sick, since it was part of one's individual right to buy whatever he chose from any source he pleased. To Spencer these things savored too much of regulation, which could only result in the "evils of officialdom" for they could only be called "socialistic meddling". These repressions in the end would sacrifice individuality to the extent that "everybody would be like everybody else".(82) Spencer saw that regulations would bring that thing which John Stewart Mill had prophesied, "A people among whom there is no habit of spontaneous action for collective interest, who habitually look to their government to command and prompt them in all matters of joint concern * * * who expect to have everything done for them except what can be

(81) Herbert Spencer, Social Statics, p. 199, 1865.
(82) Ibid , p. 135.

made a matter of mere routine * * * they have their faculties only half developed; and their education is defective in one of its most important branches".(83)

The objections of Mill and Spencer are not valid in the United States at the present time. As proof substantiating this statement we have but to consider the safeguards placed upon individual rights in the Fifth and Fourteenth Amendments of the Constitution. The second bit of proof is found in the numerous voluntary collective organizations, which are carried on quite independent of state assistance. Possibly no better example of this could be found than the independent party movement as shown under the leqdership of Mr. Robert La Follette. His demand for a government program which will revive constructive public domain legislation, his demand that the inheritance and excess profits tax be increased, and his insistance that Congress provide for the ratification of the pending child labor law, show that American "faculties are more than half developed". It is a movement originated among the people, voluntarily supported by its followers who have formulated for themselves a program of growing significance.

To return to the Fifth and Fourteenth Amendments which through due process' and equal protection privilege make a bulwark of defense for the individual against regulations of such

(83) John Stewart Mill, Political Economy, p. 567.

a character as to make "everybody like everybody else", and crush all initiative as predicted by John Stewart Mill. The interpretation of the Fourteenth Amendment was raised in the Slaughter House Cases in Louisiana.(84) There the state legislation granted to a commercial slaughtering concerns created for that purpose, the right to slaughter all the animals used for food in that community. Local butchers felt such a law was not only a loss, but a serious inconvenience forcing them to do all their slaughtering upon the monopolists' grounds. When the case was brought before the United States Supreme Court, it was agreed that a monopoly had been created which deprived the local butchers of their property with due process of law. Louisiana State Supreme Court sustained the legislation on the ground that it had been justified by the demands of public health in the city of New Orleans. This being the case the Louisiana legislature was clearly within the rights in creating the slaughtering monopoly under the police power. The United States Supreme Court, to which the case was appealed, decided the Louisiana law did not deprive the New Orleans butchers of property. In

In connection with this case Justice Miller, perhaps the most able mind of the group drew a distinction between public liberty and personal liberty. Public liberty, he stated was regulated by the state through the police power, while personal

(84) Butchers' Union Company v. Crescent City Live Stock Landing and Slaughtering Company, 111 U. S. 746.

liberty, by the Fifth and Fourteenth Amendemnts fell under the jurisdiction of the Federal and state governments. The case of the New Orleans butchers was dismissed by the Federal Supreme Court, leaving the plaintiffs to redress their grievance through the Louisiana courts as those courts saw fit. It is interesting to note that the redress did not come through the courts at all, for the state legislature passed an act which destroyed the slaughter house monopoly. The remedial act was sustained by the United States Supreme Court as proper exercise of the police power.

The question arose in regard to the nature of the liberty of the Fourteenth Amendment; was it the political-scientific liberty or was it the philosophical liberty of the Preamble. The latter interpretation was given by Justice Field in the Slaughter House Cases, and is significant in that it marks the entrance of English Utilitarianism into American judicial interpretation. By Utilitarianism that school of political philosophy headed by Jeremy Bentham and James Mill which had for its outstanding features: all considerations of right are subordinated to considerations of happiness, the importance of number, and the insistance of equality between men, all of which was to be realized through moral education.(85) In speaking of the New Orleans butchers

(85) Hobhouse, Liberalism, p. 69, 1911.

case, Justice Field said, "all monopolies in any known trade are an invasion of these privileges, (lawful employment without restraints)* for they encroach upon the liberty of citizens to acquire property and pursue happiness.

There are still evidences of a fairly strong character which show that the Spencer and Mill idea has a goodly number of contemporary followers. The Kentucky Court of Appeals declared, "the right to use liquor for one's own comfort is an inalienable right".(86) The United States Supreme Court has on the other hand uniformly upheld dry legislation, even the drastic Volstead Act.

In this connection it is interesting to note that the United States Supreme Court has been very careful not to establish itself as a critic of the state legislatures, and state courts. This is probably a very wise step for such criticism would "go on irritating and perplexing * * * for everlasting, without smallest chance of ever coming to an agreement".(87) This statement of Jeremy Bentham would not apply completely, even although made in another connection is singularly apt in this case. If Federal dictation were based upon individual cases, specific acts of individual states, rather than broad general rules, friction and irritation would

* Writer's words.
(86) Commonwealth v. Campbell, 133 Ky. 50, 63.
(87) Coker, Readings in Political Philosophy. p. 556, 1914.

surely follow. If the liberty of the Amendments, Fifth and Fourteenth were the liberty of the preamble, each person would be left to pursue his own happiness according to the ideal of the Benthamites, with the courts as the one restraining influence. By the Slaughter House Cases, the United States Supreme Court repudiated that censorial position.

Regardless of the influence of the Utilitarians, acts of all sorts were passed by the legislatures which pointed in opposite directions. State and national legislatures became exponents of the general welfare passing "laws which seek to carry out certain important national objects as temperence, health, improvement of the race and equalization of wealth".(88) We are further warned by Thomas Reed Powell not to be alarmed by liberal interpretations of the judiciary which make possible this legislation; he seems to regard the wellbeing of the people worthy of as much consideration as the wellbeing of a single individual. We do not have a right on this basis to assert that we are departing from the spirit of the Fathers and giving autocratic power to the government.(89)

This attitude of the judiciary is given again in the case of Munn v. Illinois in which the court sustained an Illinois statute regulating rates charged by railroads

(88) Contemporary Review, August 14, 1910, p. 197.
(89) Political Science Review, Vol. I., p. 605.

and grain elevators.(90) They went even further to give their sanction to a law which prohibited the manufacture for personal or household use as early as 1879 in the state of Mississippi. This same body gave their approval to a law which prohibited oleomargarine being manufactured even though the ingredients were not harmful, and the product was sold as oleomargarine when put upon the market.(91) These few cases are sufficient to show that there was no abridgement of individual liberty without "due process" according to court interpretation.

The fourth of the listed agencies through which collectivism may realize itself is the interstate commerce clause of the Constitution. This might be termed a measure for corporate control as well as commerce in the older sense. Corporations which struggle against collectivism are of three classes: railroads, enormous manufacturing concerns like the American Tobacco Company, and great banking firms with ramifications in every direction.(92) Railroads have through the Interstate Commerce Act, trusts through the Sherman Anti-trust Act and similar anti-trust acts, while banking is supervised by the Federal Reserve System. Concerning each of these phases volumes have been written and more facts are constantly being contributed by students. In a way a few phases of the

(90) Munn v. Illinois, 94 U. S. 113.
(91) Mugler v. Kansas, 123 U. S. 623.
(92) DeWitt, The Progressive Movement, p. 115, 1915.

Interstate Commerce Commission established in 1887 show how collectivistic principles have been applied. In the beginning its effectiveness was greatly hampered by lack of authority, apply to "any common carrier engaged in the transportation of persons or property".(93) This excluded express companies, railway terminal companies, warehouses and pipe lines. By these facilities railroads continued to extend special privileges to a few favored concerns. The commission lacked proper power by which to determine rates, for they had not the power to assess the physical valuation of the roads. Another defect in the Act of 1887 was lack of provisions for safety of employees. In 1887 many railroads were using hand-brakes and pin couplers. Standard Safety Devices were required by the Safety Appliance Act of 1887 with result that in 1893 there were three men killed for every one thousand employees in the railroad yards, while in 1908 only one man per thousand was killed. The safety device phase of interstate commerce is illustrative of the gradual increase in power of the Commission.

These developments have made a remarkable change in political theory. Duguit maintains that the modern state is chiefly concerned with well-being, and that the idea of

(93) 24 United State Statutes at Large, 24, p. 379.

sovereignty in the old sense of the word, must give way to public service, that is, the emphasis is laid upon the duties of the state rather than the Austinian emphasis upon the rights and privileges of the state. Hugo Krabbe in his Modern Idea of the State puts forward something of the same scheme in that the state is the community which, by its establishment of legal values, creates agencies for the rendering of public service, in whatever form necessity shall demand.

In numerous respects collectivism coincides with the pluralists conception of state functions. Both make a protest against the rigid legalism of the monists, especially as represented by the Austinian idea. Both realize the fact that there are many important associations, which are non-political, yet which merit recognition. These organizations represent numerous groups of interest, all of which are legitimate and demand some place in the scheme of things. To the pluralist the state is not a unique organization, but rather one of any organizations which are to the purpose for which they were created as significant as the state is in its own sphere. The Collectivist does not concede quite all of this, but he does concede the right of organizations to exist and function if it be for the general welfare. Both are of an evolutionary method. Pluralists and collectivists alike maintain the states are subject to moral limitations.

Destructive or regulatory taxation for police purposes is an efficasious weapon for the welfare theory. Theme are a number of instances where the federal taxing power has been used as a regulator. In 1902 a ten cent tax per pound was placed upon all oleomargarine colored like butter.(94) This has for its purpose the destroying of the olemargarine business. In 1890 a tax of ten dollars was imposed upon the sale of smoking opium,(95) which tax was raised to three hundred dollars a pound in 1914.(96) In 1912 the manufacture of white phosphorus matches was driven out by a tax of two cents a hundred.(97)

Congressional debates over the various measures mentioned above show that the primary purpose of Congress was not to raise revenue, but to exercise the police power. The calculations of the Senate Committee on Finance show that the revenue expected from these measures was very slight.(98) No less an authority than Judge Cooley maintained that revenue is not the sole object of the taxing power. Justice Story cites the constitutional tax provision which gives Congress power to "lay taxes, to pay public debts, and provide for the common defense and promote general welfare". The tax power may then, be used for the promotion of the general welfare.

(94) Act of 1902, 32 United States Statutes at Large 193.
(95) Act of 1890, 26 United States Statutes at Large 5670.
(96) Act of 1914, 38 United States Statutes at Large 577.
(97) Act of 1912, 21 United States Statutes at Large 81.
(98) Cushman, Minnesota Law Review, June 1919, p. 267.

The right of using the taxing power for these broad purposes would not, in the opinion of its advocates destroy the fundamental rights, for the Supreme Court would stand as a safeguard. Limitations set up for the protection of individual rights need not interfere with the use of the taxing power of Congress however, in matters of common defense and general welfare.(99)

The postal power too has been used effectively by Congress as an agency of the police power. The use of the postal power as a regulator of public morals, safety, health and welfare carries with it the question as to whether Congress does have the real authority to regulate through this channel. The exclusion of obscene literature from United States mails is an example of the postal power being used as an instrument for police power. A caution is given by Professor Robert Eugene Cushman in this connection and that is that Congress not use the postal power as an indirect method by which it may interfere with questions of purely local welfare.

Collectivism under its present conditions presents some questions which it is well to note. Will administrative and legislative regulation become so elaborate as to be genuinely obnoxious to the majority? Will regulations become so detailed as to lose their effectiveness? How much regulation will represent public opinion and how much legislative

(99) Cushman, Minnesota Law Review, June 1919, p. 273.

and administrative affairs are clothed with wide discretionary authority will there be danger? If as some present tendencies indicate government is moving toward greater centralization, and if under commerce, "due process", police power, postal, contract and taxing power, it is increasing its range of regulatory authority, what assurance has the citizen that his liberty will not be subverted? The answer of such authorities as Burdick and Cushman is that the courts will stand as a guardian and preserver of the legitimate rights of the individual. As the citizen group maintains intelligent interest in its problems, and further provides for its continuence, it will have developed a nicely balanced and critical attitude which can be a safeguard and an avenue through which a more constructive program may come. Collectivism seems to occupy a middle ground which is highly compatable with this nicely balanced and critical attitude, ofrering either conciously or unconciously a program which the growing demands of an increasingly complex political order be made realized.