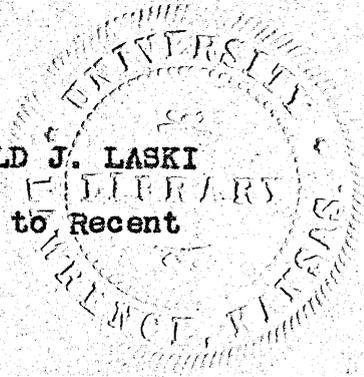


THE POLITICAL THEORIES OF HAROLD J. LASKI
Considered Particularly in Relation to Recent
Developments of Political Thought.



by

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PREFACE

The following chapters of this dissertation represent an attempt to obtain a critical and sympathetic understanding of the political philosophy of Harold J. Laski. As Laski is considered the most competent exponent of the pluralistic school of political science, his philosophy will probably have its influence in shaping the political institutions of the future. It is not my purpose to determine the value of his political doctrines. To attempt a task of such proportions at this time would be futile, for it takes years of political and historical experience to determine what influence any political doctrine has in the shaping of political institutions. My purpose, therefore, in this study has been to understand the theories advanced by pluralists in general, and the philosophy of Laski in particular.

I have found after a careful consideration of Laski's writings that the essence of his philosophy is more clearly expressed in his "A Grammar of Politics" than in most of his other writings, and because this work is quite comprehensive of his political ideas, I have chosen to follow its outline in this study. As a matter of fact it elucidates many points not so clearly explained in his other writings, perhaps it is more the expression of his own personality.

It is my purpose in the chapter on the Sovereign State to explain as clearly as I can how Laski's concept of the nature of the State represents a radical departure from the monistic school of political science. He begins by dissecting

the State as a biologist would his specimen, and from his findings induces his conclusions. He attempts to avoid all political by-paths which lead only into political and legal fictions and accepts nothing that is not apparently pragmatic.

In the chapter on Rights, I attempt to show how his concept of functional rights, together with those of other modern political philosophers, differ from the concept of natural rights which has so much influenced our political institutions and our political thinking. From out of the present chaotic system of natural rights, Laski attempts to induce order by making rights pragmatic. He abhors the idea that private property rights are sacred, and points out that many of our political ills are traceable to this source.

In the chapter on Federalism I attempt to show an antithesis between the present territorial system of representation and the functional system of representation based on associations which have a "consciousness of kind". It is probably in his advocating of functional representation that Laski makes the most radical suggestions in the reorganization of our political institutions. He even goes further than the guild socialists and asserts that relatively important social groups, and not merely economic groups, should be represented in the national parliament.

After diagnosing the ills of the State in the first part of his philosophy, he then turns and offers us remedies for our political difficulties. In the chapter on Political Institutions I offer an expose' of the political institutions as Laski says they should be. Many of his suggestions are

supported by other able political writers. His constructive philosophy is not so radical in its substance as his indictments would lead one to infer. For he realizes that political construction to be enduring must be rooted in the experience and habits of the people.

Closely related to and forming a part of his political edifice is his economic construction. Here I attempt to show that his ideas are practical in as much as they have already been adopted to some extent in various parts of the world. Also they are advocated by other authorities, which gives more weight to his point of view. Laski leans heavily on the guild socialist idea in constructing his economic philosophy. He does not advocate a radical breach, however, with the institutions and the traditions of the present, but a consistent reshaping of our economic order to meet the growing demands of an industrial civilization.

In his philosophy on the judicial process, it appears to me that he leans very heavily on the opinions of such men as Roscoe Pound, Justice Holmes, Justice Brandeis, and others. In general, he is not as original in his constructive political philosophy as he is in his political indictments of the sovereign state.

In his chapter on International Organization, I have been unable to determine what is his own philosophy and what is not. On this topic, therefore, I have hardly ventured to comment.

In my study of the author, I have attempted to feel

the impulses which motivate him to write, and to understand the experience and conditions which lead him to the conclusions which he indicates.

THE SOVEREIGN STATE.

The political philosophy of Harold J. Laski is essentially a philosophy of protest against the worship of the unitary and sovereign State. Laski is the most competent exponent of pluralism. He approaches his subject, as Wilde says, from the point of view "of the new socialized jurisprudence with its humanistic interpretation of laws and constitutions and its emphasis upon administrative decentralization". (1) He attacks most vigorously the classical doctrine of the sovereign State which implies an institution having an inherent right to dominate as a Superior being over all other institutions and being in fact the source of all legitimate authority.

1. The Monistic Concept of the State.

In order to clarify Laski's philosophy of protest against the classical doctrine of the sovereign state, it is necessary to attempt an explanation of that doctrine. The most outstanding classical advocate of the sovereign state was Hobbes. His whole political philosophy was founded on a psychological individualism. To him, men are by nature essentially individuals and selfish, each seeking the enrichment, the enlargement, and preservation of his own life by the satisfaction of his own desires. The natural state of mankind is not one of peace but of war all against all. The absence of moral restraints constitutes for Hobbes man's natural right, which he defines as "the liberty each

(1) Wilde, Ethical Basis of the State, p. 80.

man hath to use his own power as he will himself for the preservation of his own nature, that is to say, of his own life; and consequently of doing anything which in his own judgment and reason he shall conceive to be the best thereunto". (1) To assume, therefore, that every one has a natural right to everything would be equivalent to the statement that no one has a positive right to anything, but that anyone may have what he can get and have it as long as he has power to keep it; in short, the only natural right is might. Thus to Hobbes men are pure individuals with no essential interest in social life for its own sake, and possessed solely by the natural tendency to satisfy their own desires, and preserve their own existence. To Hobbes, says Wilde, the ordinary rules of social morality has no more validity among human beings than it does among the brutes, for a man who would be just and generous with his fellows has no security that his fellows will meet him on the same spiritual level, and has, therefore, "no more chance of survival than if he attempted to practice the Golden Rule among wolves".

Out of this unpleasant state of nature or, as Hobbes says, "the miserable condition of war, which is its necessary consequent, where there is no visible power to keep them in awe, and tie them by fear of punishment to the performance of their covenants", men organize themselves into states. (2) The organization of the State he represents as a contract of every man with every other by which he agrees

(1) Hobbes, *Leviathan*, p. 158.

(2) *Ibid*, p. 153.

to surrender his natural right to all things if others do the same. The rights as transferred are to be embodied in a collective person who shall represent them all and express their will. "This done, the multitude so united in one person is called a 'commonwealth'. This is the generation of the great leviathan, or rather, to speak more reverently, of that mortal god, to which we owe, under the immortal God, our peace and defense. For by this authority, given to him by every particular man in the commonwealth he hath the use of so much power and strength conferred on him, he is enabled, by terror thereof, to perform the wills of all, to maintain peace at home, and mutual aid against their enemies abroad!"(1)

The sovereign, says Hobbes, derives his authority by the consent of subjects, and he becomes the agent of the subjects for the purpose of directing their united strength for the benefit of the group. He exercises unlimited discretion, and an authority which cannot be revoked. The subjects have not the authority to change the form of government, for that would be a breach of the original covenant both toward the sovereign and toward one another. The sovereign cannot forfeit his power, for he made no covenant, and there is none therefore which he can break. If a subject rebels against the sovereign state, he thereby ceases to be a member of the State and returns to the original state of war. In this state anyone can destroy him without violating any right.

The sovereign State is the sole judge of what is neces-

(1) Hobbes, English Works, Vol. III. p. 158.

sary for the security of the 'commonwealth'. It may commit iniquity but not injustice. No man can complain if the sovereign State misuses its authority, for its acts were authorized beforehand by the subjects. (1)

Austin, a more modern classical writer, rejected the social contract idea which was held by Rousseau, Locke, and Hobbes, holding that the State was the result of a slow process of growth in which men came to the realization of the utility of government and preferred obedience to anarchy.(2) To Austin it seems that men are bound together in a political society by habit of obedience, and not by formal consent. The sovereign is the person or persons who habitually receive obedience from the bulk of the people in any society, but who render no obedience to any superior. To Austin the sovereign and the State are identical, and as such the source of law. They are the guarantor of all civil liberty, and the source of all natural rights, for rights are created by law, and political restraints are as important as civil liberty.(3)

Austin denied that government is based upon popular consent, asserting that only a few persons are intelligent enough to consider political questions - a large majority of the people submit to authority of the State through habit of obedience. He insisted that sovereignty is indivisible and unlimited, for if it were not it would cease to enjoy univer-

(1) Hobbes, *The Great Leviathan*, Ch. XVIII.

(2) Austin, *Lectures on Jurisprudence*, Vol. 1., p. 119.

(3) *Ibid*, Vol. 1., p. 156.

sal supremacy and therefore cease by definition to be sovereign. (1)

Laski in his comment on the Austinian theory asserts that "the State for Austin is a legal order in which there is a determinate authority acting as the ultimate source of power If the lawyer regards sovereignty as important only as a form of command, he is obviously entitled to discuss it in that aspect But these assumptions make it worthless as an explanation of the modern State for political purposes. There it is clear that the sovereign power is engaged in work which cannot at all be reasonably reduced to the form of a command". (2) Nearly every modern state is engaged in various types of activities which partake of the nature of business. They own and operate railroads, steamship lines, and coal mines. They insure their citizens against sickness and accidents, guarantees them employment at a minimum wage, educates their children, and assumes responsibilities for them in various other ways.

To Laski, Austin's idea of unlimited authority of the state is illogical. "No sovereign", he says, "has anywhere possessed unlimited power; and the attempt to exert it has always resulted in the establishment of safeguards. Even the Sultan of Turkey in the height of his power was himself bound down by a code of traditional observance, obedience to which was practically compulsory upon him. In law there was

(1) Austin, Lectures on Jurisprudence, Vol. 1., pp. 156-57.

(2) Laski, Grammar of Politics, pp. 50-51.

no part of the field of social relations he could not alter; in practice he survived only by willing not to will those changes which might have proved him the sovereign of Austinian jurisprudence". (1)

Laski says that to assume as Austin does that law is "simply a command is, even for the jurist, to strain the definition to the verge of decency". (2) As, for example, Congress may authorize the creation of a commission to adjust the difficulties between capital and labor, but it does not command that this adjustment be made. It is difficult, says Laski, "to see how the exercise of delegated authority can be brought within the ambit of the Austinian definition of law". (3)

Dicey in his criticism of Austin's theory of sovereignty says that we should note carefully "that the term 'sovereignty', as long as it is accurately employed in the sense in which Austin sometimes uses it, is a merely legal conception, and means simply the power of law-making unrestricted by any legal limit". (4) The legal sovereignty, he claims, is clearly vested by the English constitution in "Parliament". Every act, therefore, of "Parliament is binding on every Court throughout the British dominions, and no rule, whether of morality or law, which contravenes an Act of Parliament, binds any Court throughout the realm". (5) The Courts will take no notice of the will of the electors. The judges know

- (1) Laski, Grammar of Politics, p. 51.
- (2) Ibid, p. 51.
- (3) Ibid, p. 53.
- (4) Dicey, Law of the Constitution, p. 70.
- (5) Ibid, p. 425.

nothing about any will of the people except in so far as that will is expressed by an Act of Parliament, and would never suffer the validity of a statute to be questioned on the ground of its having been passed or being kept alive in opposition to the wishes of the electors". The legally sovereign power is assuredly nothing but Parliament. (1) Laski in his comment on this idea of legal sovereignty says, "everyone knows that to regard the King in Parliament as a sovereign body in the Austinian sense is absurd. No parliament would dare to disfranchise the Roman Catholics or to prohibit the existence of trade unions. If it made the attempt it would cease to be a Parliament. That is to say that in practice legally unlimited turns out to be power exercised under conditions well known to each generation".(2)

"The word sovereignty", says Dicey, "is sometime employed in a political rather than in a strictly legal sense". In this sense we find that body "politically" sovereign in a State that can force the citizens of the State to obey its will. This body is called the electorate, and is in fact the sovereign power of the state. The electors are the most important part of the sovereign power, for their will is under the present constitution sure to obtain ultimate obedience.(3)

The assumption Dicey makes, that the King in Parliament might be regarded as the legal and the electorate as the political sovereign, implies, says Laski, that the "notion

(1) Dicey, Law of the Constitution, p. 70.

(2) Laski, Grammar of Politics, p. 52.

(3) Dicey, Law of the Constitution, p. 73.

of sovereignty is divisible, which is entirely contradictory of the original definition". (1)

The most outstanding contemporary writer of the monistic theory of the state is W. W. Willoughby. He describes the sovereign State as a politically organized body in the nature of "a governing authority which is recognized as having authority to issue commands which are legally binding upon individuals, and enforceable when necessary by the collective strength of the group". In other words the State is said to "be the people and their government, together with the territory over which their primary and paramount jurisdiction extends ... or, finally, the State may be regarded from an abstract point of view as an entity or a concept of juristic thought. As thus viewed, the State is spoken of as a Person. This envisagement of the State as a legal person is perhaps the central concept of juristic political thinking". (2) Let us see what Willoughby means when he says the State is a legal person. He says the jurists make a fundamental distinction between a legal Person and a legal Thing. "A thing", says Pollock, "is the same possible in law, same possible matter of rights and duties conceived of as a whole and apart from all others, just as, in the world of experience, whatever can be separately conceived is a thing". The word "person" as he says is an entity capable of possessing or having imputed to it legal rights and obli-

(1) Laski, Grammar of Politics, p. 54.

(2) W. W. Willoughby, Fundamental Concepts of Public Law, p. 30.

gations. Thus the State is a legal person possessing legal rights and legal duties which the law recognizes can be enforced. (1)

Laski would say in his criticism of Willoughby's idea of the state as a legal person that there is implied in this concept a unity of the state which is contrary to actual facts of our experience. That it implies indivisible allegiance which contradicts the facts of our experience in that our allegiance is divided among as many groups, including the State, as we identify ourselves with. In other words allegiance is not a matter of kind but of degree. And to follow out Willoughby's reasoning consistently would lead us to say that the State is a group of legal persons each person possessing legal rights and duties which the law recognizes can be enforced. Willoughby, therefore, fails to recognize that when he imparts to his legal person, the State, the authority to issue commands which are legally binding there are other legal persons which possess the same characteristics and are vying with the state in asserting their authority over the individuals.

This point of view, as expressed in the classical writings of Hobbes and Austin, and reasserted in the contemporary writings of Dicey and Willoughby, says Laski, "asserts the supremacy of the State over other institutions. Its primary organs have the first claim upon the allegiance of men..... Its rights becomes matter of right. Its sovereignty becomes

(1) W.W. Willoughby, Fundamental Concepts of Public Law, p. 30.

spiritualized into moral preeminence Its conscience is supreme over any private conception of good the individual may hold. It sets the terms upon which the lives of trade unions may be lived. It dictates its doctrine to churches; and, in England at least, it was a state tribunal which, as Lord Westbury said, dismissed hell with cost. The area of its enterprise has consistently grown until today there is no field of human activity over which in some degree its pervading influence may not be detected". (1)

2. The Pluralistic Concept of the State.

Laski centers his attack against this classical doctrine of the Sovereign State, and asserts that the worship of the unitary and sovereign State must be destroyed and men's allegiance given to the lesser but more intimate deities of smaller social groups. His main criticism of the monistic theory of the state is, therefore, that they fail to recognize that "the State is but one of the groups to which the individual belongs, and there is no thought of unity in his allegiance". In the case of war, for example, as a member of the State a socialist may be called upon to fight, but as a member of the pacifist party he may be called upon to resist the demand. History clearly contradicts the view that in case of war or similar crisis "only the State will have power of compulsion". The conscientious objectors during the war followed the dictates of their own conscience just as sincerely as those who believed that it was the duty of the United States to enter

(1) Laski, Foundations of Sovereignty, pp. 234-35.

the war and "make the world safe for democracy". The allegiance of the conscientious objectors to an ideal was more powerful than their allegiance to a capitalistic State. The all imposing state has, therefore, no more inherent right to force people to fight for a cause which they deem unjust, than for it to force people to bow their knees in reverence of a creed in which they have no faith. The allegiance of the Pilgrims to their religious idealism was stronger than it was for their mother country. They were more willing to endure political and religious persecution, to brave the dangers of a wintery sea, and the war cries of the savages, than to render indivisible allegiance to an all imposing State. The State, therefore, can secure allegiance only in so far as the individual can identify his interests with those of the state.

"The monists", says Laski, protest against the pluralists in their attempt "to abolish what lawyers mean by sovereignty", and "to justify resistance to the State" by denying "that each state must possess a legally determinate superior whose will is certain of acceptance". (1) But we are not sure says Laski that the "will of the State is certain of acceptance", or that "any rule of conduct can be enforced". For that which determines the validity of the laws or rules of the State is the "opinion of the members of the State, and they belong to other groups to which such

(1) Laski, The Problem of Sovereignty, p. 12.

rule may be obnoxious". (1) The Volstead Act in the United States, is obeyed only to the extent that the people of the United States consent in their own minds to obey it and no farther. The reason there is so much violation of this all imposing rule is because it is unethical with a vast number of the people of the country. That is, they think the State is violating their sacred rights. As Laski says, therefore, "the will of the State obtains pre-eminence over the wills of other groups exactly to the point where it is interpreted with sufficient wisdom to obtain general acceptance, and no further. It is a will competing with other wills, and, Darwin - wise, surviving only by its ability to scope with its environment It finds its sovereignty by consent transformed into impotence by disagreement". (2)

Had the monists faced the facts of political history, says Laski, they would never have endowed the State with the characteristics of a perfect unity, and infallibility, and an absolute sovereignty, "which is almost entirely the offspring of the Reformation, an adaptation of the practice of the medieval church". (3)

Laski criticizes the monists' assumption that the all embracing State is more "fundamentally unified than its parts", and asserts that the parts out of which the whole is formed are "as real and as self sufficient as the whole ... The State is but one of the groups to which the individual belongs,

(1) Laski, The Problem of Sovereignty, p. 12.

(2) Ibid, p. 14.

(3) Ibid, p. 13.

and there is no thought of unity in his allegiance". (1)

In this psychological unity of relationships between the individual and the groups to which he belongs, including the State, the relationships with the group or groups which the individual believes are to him the most vital are the ones which will logically command his allegiance or consent. Sovereignty is not some all pervading power which forces harmony out of disharmony, unity out of disunity in political affairs of life. "It means no more", says Laski, "than the ability to secure assent. There is no sanction for law other than the consent of the human mind. It is sheer illusion to imagine that the authority of the State has any other safeguard than the will of its members". (2)

The will of the State must compete with other wills, and surviving only in its ability to cope with its environment. If it ventures into fields of endeavor without securing and maintaining the consent of its citizens, "it must pay the penalty for its audacity". If the State maintains the assent of its citizens to its acts, its sovereignty lives; if, however, it ceases to maintain this assent, its sovereignty dies. Laski, therefore, says that sovereignty is to be found in society at large, "not in the coercive power possessed by its instrument, but in the fused good will for which it stands". (3)

Laski, therefore, advocates the idea of administrative decentralization, or federalism applied to functions as well

(1) Laski, *The Problem of Sovereignty*, p. 11.

(2) *Ibid*, p. 14.

(3) *Ibid*, p. 12.

as to territories. He would apply it not less to the government of the cotton industry, the civil service, the trade unions, the medical profession, and the legal profession than to the government of Missouri, Kansas and other states of the Union. Each association being sovereign in its own particular sphere. Laski's political system places the state's acts, as I have pointed out, the acts of its primary organ, government, "on a moral parity with the acts of any other association. It gives to the judgment of the State exactly the power they inherently possess by virtue of their moral content, and no other". He realizes that territorial propinquity is no longer coincident with community interest, and that loyalty to a social group does not possess a territorial basis. He realizes that community interest is now determined by specific vocation. That is, the community interest of a brick layer is not with the manufacturer of automobiles, but with his fellow craftman. And so with the doctor, his community interests is not with the lawyer, but with the other members of his profession. Where people are gathered together who are of like interests and understanding, there results a mutual enhancement which makes for the greater power of each and of all.

"We are", says Laski, "in the midst of a new movement for the conquest of self government. It finds its main impulse in the attempt to disperse the sovereign power because it is realized that where administrative organization is made responsive to actual association of men, there is a greater

chance not merely of efficiency but of freedom also". (1)

3. Criticisms of the Pluralistic Concept of the State.

Mr. W. Y. Elliot in his criticism of Laski's pragmatic philosophy says "it is curious that Mr. Laski can arrive at a conclusion which strips the majesty from law without seeing that he is rendering the very individuals helpless whom he sets out to protect against the absolute sovereignty of the absorptive state. The authority he has taken from law he has given to the pseudo-individuals whom he calls corporate persons". (2) But Laski does not attempt to take from the majesty authority which he possesses. He examines conditions which appear in actual political experience and bases his conclusions upon inductive reasoning. The main difference, therefore, between the monists' concept of the state and that of the pluralists' lies in the different types of reasoning which each employ. The monists build their political system by deductive reasoning. The pluralists, on the other hand, build their pluralistic state by inductive reasoning. The pluralists are able, therefore, to keep more in contact with actual conditions of our political life and do not deal so much in legal abstractions as do the monists.

"The sum of Mr. Laski's attack on the doctrine of sovereignty" says Elliott, may be found in the following quotation. "It is clear that sovereignty of the state does

(1) Laski, Foundations of Sovereignty, p. 243.

(2) The American Political Science Review,
May 1924, pp. 259 - 60.

not in reality differ from the power exercised by a church or a trade union. The obedience the church or trade union will secure depends simply on what measure of resistance the command inspires". (1) The real sovereignty of the State is to be found in society at large, "not in the coercive power possessed by its instrument, but in the fused good will for which it stands The power of Parliament exerts is situate in it not by law but by consent, and that consent is, as certain famous instances have shown, liable to suspension". (2) "Apparently", says Elliott, "it is his contention that, since the legal power of Parliament gets itself obeyed in historical instances only when it does not meet resistance strong enough to thwart it, the supreme sovereignty of the State, upon which law is based is deprived of reality".

To me this attack on Laski's concept of sovereignty seems unjust in that it fails to recognize that Laski's concept of the sovereignty of Parliament is relative and not absolute as the monists declare it to be. That is, the sovereign power of Parliament rises and falls like a barometer when the barometric political pressure of the peoples' consent is applied or relieved. And this is a question of degree and not of kind as Mr. Elliott would have us believe. That is, the barometric sovereign power of Parliament could rise to the height of securing the consent of every citizen of the commonwealth, or it may fall so low as to maintain the con-

(1) Laski, *The Problem of Sovereignty*, p. 270.

(2) *Ibid*, p. 12 - 13.

sent of only one citizen. Just where between the two extremes active resistance to its demands would be exercised, or revolution occur, would be difficult to ascertain, for in many historical instances organized resistance is carried on by a small number of citizens. As Laski says, sovereignty is a matter of consent and consent is not a matter of kind but of degree.

F. W. Coker makes the most valid attack upon the pluralist position. He says, "It is true that, as Laski says, man is a creature of competing loyalties and that the State can not, therefore, hope to absorb the whole loyalty of any individual; the state fails where it attempts to ignore the whole objects of the loyalty of its subjects and to range over the whole area of human life. But it is also true that men are creatures of competing loyalties, that the loyalties of one may come into conflict with loyalties of others, and that the different groups which attract the loyalties of men of a given community come inevitably into conflict and rivalries of interest and competence. These facts create the need for an organization having the special function of adjusting and adjudicating such clashes as well as of caring for certain common interests". (1) Coker sees in the State, therefore, an institution which is essential to order. He is willing to admit the validity of the pluralists' position in so far as human nature is so arranged that men have competing loyalties. But as the result of this very fact, he sees that

(1) Merriam & Barnes, Recent Political Theories, p. 112.

the State is all important to act as an arbitrator between these competing loyalties. For these loyalties are competing within the individual's personality and that the State is necessary to arbitrate between these various loyalties for the benefit of the social good. To this comment Laski would say, I believe, that experience shows that men who exercise the sovereign power are inclined to favor their own class interests rather than the welfare of the State as a whole. And it appears to me that the experience of history dictates such a conclusion, and substantiates Laski's contention that the State is a plurality of reals.

Coker further criticizes the pluralists for claiming that the monists assume that the State is sovereign because all powerful. "No holder of the doctrine of sovereignty has maintained", says Coker, "that the State's actual power was not limited by the possibilities of effective disobedience. With no writer has sovereignty meant omnipotence". Laski would say in comment on this statement that no political scientist would claim that the State is omnipotent in the sense of being supernatural, but in political and legal matters men like Hobbes and Austin would say as Dicey does that legally the Parliament possesses "power of law making unrestricted by any legal limit". (1) Does not this imply omnipotence in the realm of legal power to enforce indivisible allegiance? And it is just this idea that Laski attacks

(1) Dicey, Law of the Constitution, p. 70.

when he says that there is nothing absolute and unqualified about it. It is a matter of degree and not of kind that the State should find for its decrees more usual acceptance than those of any other association. "It is not because of the force that lies behind its will, but because men know that the group could not endure if every disagreement meant a secession, that they agree to accept its will as made manifest for the most part in its law". (1)

Coker further criticizes the pluralists for assuming that the "State is not sovereign because there is no authoritativeness about its commands. That the State has, as compared with other essential associations in society, no superior claim to the individual's allegiance". (2) Coker takes the monistic view that the state exists to enact and apply law and that the state can not itself be subjected to limitations of the same character as those which itself is established to formulate and apply ... In brief, the State as an organization for law within any given territory, is superior to all other social groups within such territory". (3) But to admit this Laski says does not entitle it to "any moral pre-eminence of any kind. For, after all, the State is not an end, but merely the means to an end, which is realized only in the enrichment of human lives. What power and allegiance it can win depends always upon what it achieves for that enrichment. We are, that is to say, subjects of the

(1) Laski, *The Problem of Sovereignty*, p. 17.

(2) Merriam & Barnes, *Recent Political Theories*, p. 84.

(3) *Ibid.*, p. 89.

State, not for its purpose, but for our own ... We are entitled to suspect the State save as we see under its aegis the unfettered growth of human personality. We are entitled to condemn it save as its powers are used deliberately to defeat the forces which stand in the way of that growth". (1)

(1) Laski, Problem of Sovereignty, p. 88.

RIGHTS

Laski in his pragmatic philosophy of rights denounces the classical doctrines that rights are founded on authority, nature, or utility from the point of view of the individual. To him rights are dynamic in their nature and not static, because science and other forms of human achievements are constantly changing the texture of our social life and forcing us to readapt ourselves to the new elements which enter into it. The institutions which we build today to serve our purpose will pass away with the revolutions and the achievements of tomorrow. As rights, therefore, attempt to offer us a criterion by which we are able to make the most adequate adjustment to our social conditions for the welfare of the social group, they must be relative and not absolute in their nature.

1. Authoritative Rights

In order to clarify Laski's conception of rights, it may be useful to consider briefly the concepts of rights which have prevailed since the middle ages. The writers of the seventeenth and eighteenth centuries as well as most of those of the middle ages based their concept of rights upon the idea of authority, which was a logical deduction from the medieval concept that kings and princes received their right to rule by divine injunction. Even Luther who protested against the authority of the divine Church, "was driven to assert the divinity of States ... There were European Princes willing to accept this view; and when they met the

challenge of the reviving Church, insistence upon their sovereignty and the unified allegiance it implied was the simplest theoretic justification they could discover". (1)

Thus, what authority the divine Church formerly claimed the secular State later assumed. To Hobbes and others such an assumption of powers by the State was perfectly logical, for if the State is to live, he asserted, there must be in every organized political community some definite authority capable of maintaining obedience. The will of the State must be all or nothing, and if its authority is challenged the prospect of anarchy is obvious. Hobbes, therefore, became the most outstanding advocate of the doctrine that rights are dependent upon authority. He attempted to make, however, a distinction between rights in a state of nature, and rights in an organized State, or society. In a state of nature, says Hobbes, everyone has a right to everything, but the only sanction of such natural rights is force. To him "natural rights" mean simply those powers which an individual possesses apart from all human institutions. In other words natural rights are equivalent to natural might. The organized State, on the other hand, says Hobbes, has its justification in the fact that it, and it alone, is able to save mankind from the miseries of a condition in which there is no security. With the exception of the natural right which every individual has to preserve his own life, all the rights a man has in the civil state depend simply on the will of the

(1) Laski, Grammar of Politics, p. 45.

sovereign person or persons to whom he has handed over his natural rights. (1) "The exception", says Ritchie, "made by Hobbes in favor of the right of self-preservation seems inconsistent", for the Englishmen of his time argued that "You take my life when you take the means whereby I live".(2)

In speaking of Hobbes' idea that all the rights a man has in the civil state depend on the will of the sovereign person, Laski says, "my right is then that claim which the force of the State will, upon the order of its courts, be used to substantiate The body of statutes and legal rules will give to the observer a means of laying down with some precision exactly the rights each citizen of each State may expect to enjoy. Changes in law then produce changes in the substance of rights, and an annual scrutiny of statutes and decisions gives us the rule of government But so purely legalistic a view has nothing to contribute to an adequate political philosophy. A legal theory of rights will tell us what in fact the character of the State is; it will not tell us, save by the judgment we express upon some particular State, whether rights there recognized are the rights which need recognition". (3) In other words when the State becomes tyrannical and oppressive the idea that the legal sovereign has authority to determine what is right begins to disappear from men's minds, and they begin to build up a new conception of

(1) Hobbes, *The Great Leviathan*, p. 117.

(2) Ritchie, *Natural rights*, pp. 83-84.

(3) Laskie, *Grammar of Politics*, pp. 91-92.

rights which takes the form of "natural rights".

2. Natural Rights

Ritchie makes an adequate description of the transition from the concept of rights based upon authority to the concept of rights based upon the laws of nature. Ritchie says, "when traditional custom or constituted authority comes to be unsatisfactory to certain more reflective minds there arises a discrepancy between it and what seems to be the natural instincts or feelings of the individual, a discrepancy between law and conscience, and so reformers try to go back to an authority more venerable than parliaments and kings; they appeal from tyranny to God, from the mere custom of the multitude to the feelings that Nature has implanted in the breast of each of us". (1) Such were the mental reactions which induced Paine to say that man's natural rights form the foundation of his civil rights. He described natural rights as those which appertain to man in his right of existence. In these he included "the intellectual rights, or the rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others". Among his civil rights he includes the right of security and protection. (2) Thus we see that when he advocates civil rights as based on the laws of nature, he really asserts that rights are founded upon in-

(1) Ritchie, Natural Rights, p. 85.

(2) Paine, Rights of Man, p. 304.

instinctive feelings.

The unfortunate thing about Paine's theory of natural rights is that instinctive feelings differ so much in different persons. The individual's conscience is a mirror of the particular environment in which he has been reared and his concept of rights bear traces of its unavoidable influences. We cannot escape from the network of our social inheritance any more than we can escape from the inheritance of a particular physical and mental constitution. As Laski says "we do not imply by rights the reflection of a natural order which lies behind the shifting appearance of contemporary society. For such an order cannot be permanent in a world which science changes at a pace so rapid as we have come to expect The idea of a natural order is, of course intended to convey some quality of imperative rights. But these, in fact, must always change with the facts of time and place Our natural order is, at any time, a problem of pragmatic analysis. Its only permanence lies in the certainty that it will change". (1) For the institutions which are established today will be overthrown by the revolutions and achievements of tomorrow. We determine, therefore, what is right, and what is wrong by experience, and not by the simple irresponsible dicta of an inner light. This point is further illustrated by Bentham "who mercilessly dissected the obvious fallacies of our American Declaration of Independence with its eulogy of the 'self-evident truths that all men are

(1) Laski, Grammar of Politics, pp.89-90.

created equal and are endowed by their Creator with certain inalienable rights, and among these are life, liberty and pursuit of happiness'". Bentham asserted that men are not equal in any way, and that equality was not therefore a law of nature. To him natural rights were a mere "hodgepodge of confusion and absurdity". (1) Dicey points out that the Declaration of the Rights of man did not save from death one among the thousands of innocent citizens dragged before the Revolutionary Tribunal of France. The Declaration of Independence, with its proclamation of the inalienable rights of man, did not deliver a single negro from slavery. (2) Experience teaches us, therefore, that we cannot turn to those famous Declarations for a criterion of what is politically right and what is politically wrong. For in the conflict of individual impulses, instincts, desires, and interests, we cannot find a stable criterion.

3. Utilitarian Rights.

Bentham turns to the principle of utility as a criterion of what ought to be. "It is the principle of utility, accurately apprehended and steadily applied, that affords the only clue to guide a man through these straits. It is for that, if any, and for that alone to furnish a decision which neither party shall dare in theory to disavow".(3) Thus, in opposition to the law of nature, Bentham sets up the principle of "the greatest happiness of the greatest number"

(1) Leslie Stephen, *The English Utilitarians*, Vol. I, J. Bentham,
 (2) Dicey, *Law and Opinions in England*, p. 308. (p.122.
 (3) Bentham, *A Fragment on Government*, Ch. I. Par. XX.

as a criterion by which to judge of what ought to be.

But, as Ritchie points out, "people are no more agreed as to what is 'useful' than they are as to what is right or just according to the law of nature. It is true, the 'useful' taken by itself, is quite as ambiguous as the just While rejecting in words the theory of natural rights, Benthamism retains the abstract individualism which forms an essential part of that theory. Human beings are treated by the old fashioned Utilitarian as moral atoms, as similar in kind, so that one man's feelings can be quantitatively estimated and dealt with as if they were identical with another man's feelings". It is assumed that pleasure can be distributed among individuals "as so much pig wash can be distributed among so many pigs". (1)

As Ritchie points out, the theory of utility as a criterion of rights is open to many of the objections that can be made to the theory of natural rights. In fact, the theory of Utility "involves an assumption of the equality and similarity of all mankind in all times and places, which is just a part of the theory of natural rights in its crudest form". (2)

Laski, however, says that utility is the test of rights, though utility from the social rather than from the individual point of view. It is clear, says he, that the question involves those "to whom the rights are to be useful. There is

(1) Ritchie, *Natural Rights*, pp. 94-95.

(2) *Ibid*, p. 95.

only one possible answer. In any State the demands of each citizen for the fulfillment of his best self must be taken as of equal worth; and the utility of a right is therefore its value to all the members of the State. The right, for instance, of freedom of speech does not mean for those in authority, or for members of some special church or class. Freedom of speech is a right either equally applicable to all citizens without distinction or not applicable at all. For the plane upon which men meet with identical claims upon the common good is that of which the State fixes the horizon". (1)

4. Functional Rights

Laski's pragmatic philosophy does not attempt to reduce rights to an absolute formula by deductive reasoning as the classical writers did, but by scientific method of observation and inductive reasoning he redefines rights as "those conditions of social life without which no man can seek, in general, to be himself at his best. For since the State exists to make possible that achievement, it is only by maintaining rights that its end may be secured. Rights, therefore, are prior to the State in the sense that, recognized or no, they are that from which its validity derives". (2) This conception is similar to that of John Dewey who defines rights as the "name for the multitude of concrete demands in action which others impress upon us, and of

(1) Laski, Grammar of Politics, p. 91.

(2) Ibid, p. 91.

which we are obliged, if we would live, to take some account. Its authority is the exigency of their demands, the efficacy of their insistencies". (1) Laski defines rights as conditions, while Dewey defines rights as demands. But it appears to me that Dewey means that rights are demands for certain conditions which must be socially recognized if the individual is to be himself at his best. The end of the State is to maintain those conditions as rights. And rights are rights, says Laski, because "they are useful to the end the State seeks to serve". And we have rights, because "we are members of the State Our rights are not independent of society, but inherent in it. We have them, that is to say, for its protection as well as our own. To provide me the conditions which enable me to be my best self is to oblige me, at the same time to seek to be my best self. To protect me against attack from others is to imply that I myself will desist from attacking others. To give me the benefits of an education is to imply that I will so use the advantages education confers as to add to the common stock My personality, so to speak, bounds and limits the law of the State. But that boundary and that limitation are imposed upon conditions that in seeking to be the best self of which I am capable I seek, in their well being, my own". (2) Thus Laski in his political philosophy makes rights the foundation of our social order, and he builds rights upon the personality

(1) Dewey, *Human Nature and Conduct*, p. 326.

(2) Laski, *Grammar of Politics*, p. 94.

of the individual because ultimately the welfare of the community is built upon the happiness of the individual.

Tawney's little book "The Acquisitive Society" presents a concept of rights that is similar to that of Laski, and affords perhaps the clearest exposition of this point of view in the English language. Tawney describes the difference between the functional or social concept as against the legal or individualistic concept of rights. The legal or individualistic concept of rights is generally regarded, says Tawney, "to be beyond controversy, and, up to the eve of the present war, it was the working faith of modern economic civilization. What it implies is, that the foundation of society is found, not in functions, but in rights; that rights are not deducible from the discharge of functions, so that the acquisition of wealth and the enjoyment of property are contingent upon the performances of services, but that the individual enters the world equipped with rights to the free disposal of his property and the pursuit of his economic self interest, and that these rights are anterior to, and independent of, any service which he may render. The service to society will, in fact, it is assumed result from their exercise". (1) Thus legal property rights have been based on the idea of natural rights. For example, this attitude toward property has been inculcated so thoroughly into the political conscience of the American people that every State as well as the Federal Constitution specifically

(1) Tawney, The Acquisitive Society, p. 20.

gives protection to private property rights as though they were a part of the physical order of the universe. Article I of the Constitution framed for the State of Kansas, and adopted by the proslavery party in 1857 contained these words; "The right of property is before and higher than any constitutional sanction, and the right of the owner of a slave and its increase is the same and as inviolable as the right of the owner of any property whatever". This conception of property rights, in the words of Tawney, "is written large over the history of the nineteenth century, both in England and America. The doctrine which it inherited was that property was held by an absolute right on an individual basis, and to this fundamental is added another, which can be traced in principle far back into history, but which grew to its full stature only after the rise of the capitalistic industry, that societies act both unfairly and unwisely when they limit opportunities of economic enterprise. Hence every attempt to impose obligations as a condition of the tenure of property or of the exercise of economic activity has been met by corresponding resistance ... The enjoyment of property and the direction of industry are considered, in short, to require no social justification, because they are regarded as rights which stand by their own virtue, not functions to be judged by the success with which they contributed to a social purpose. Today that doctrine, if intellectually discredited, is still the practical foundation of social organization". (1) The American and

(1) Tawney, *The Acquisitive Society*, pp. 21-22.

English people have been accustomed to think that in their declaration of natural, or absolute rights they have security against socialistic interference with liberty and property. If, however, the public comes to believe that certain other forms of private property, besides property in human beings, are incompatible with the principle of social justice, no amount of justification of rights based on the eighteenth century view of the law of nature "can bar the way of a torrent of socialistic legislation"; nor can a multitude of constitutional checks do any thing except render the conflict of old and new ideas more dangerous to public peace. As Tawney says "an appeal to principles is the condition of any considerable reconstruction of society, because social institutions are the visible expression of the scale of moral values which rules the minds of the individuals, and it is not possible to alter institutions without altering that moral valuation". (1)

It is not so long ago that the enjoyment of property from the point of view of the individual required no social justification, because property rights were regarded as standing upon their own virtue. No one questioned them because they were not only sanctioned by tradition and law, but they were above the law. Thus the income tax was fiercely denounced by those who had to pay it because they considered that no one was under any obligations to society for his income and that the individual had an inherent right to spend

(1) Tawney, *The Acquisitive Society*, p. 3.

his income as he saw fit. Likewise those who opposed inheritance taxes did so on the ground that such a tax is an abrogation of the absolute rights of property. To the modern mind this point of view appears to be anti-social. There are those, of course, who because of a peculiar environment which they could not escape if they would, lack the social outlook. "Such persons", Tawney says, "are to be pitied, for they lack the social quality which is proper to man. But they do not need argument; for Heaven has denied them one of the faculties required to apprehend it". (1) Rather, the laws of life and death will take care of them. For we may say that in social life as well as in biological life "progress waits on death". Death comes socially as well as it does biologically, to those who are unable to adjust themselves to the new conditions of their life. Only those who are able to look forward rather than backward in a changing world have the characteristics to survive.

In this matter of writing upon the social justification of property rights, Laski in general agrees with Tawney, as one may see from a striking passage which we may be justified to quote: "the commodities and services which are necessary to life of the community are never so distributed as to relate to need or to produce a result which maximises their social utility. We build palaces when we need houses. We spend on battleships what is wanted for schools. The rich can spend the weekly wage of a workman on a single dinner,

(1) Tawney, *The Acquisitive Society*, p. 4.

while the workman cannot send his children adequately fed to school. A rich debutante will spend on an evening frock more than the annual income of the workers who have made it We have a large class maintained in parasitic idleness, whose tastes demand the application of capital and labor to the satisfaction of wants unrelated to human needs Men may begin to acquire property to safeguard their lives from want, but they continue to acquire it because of the distinction which comes from its possession They produce not to satisfy useful demands, but demands which can be made to pay. They will ruin natural resources. They will adulterate commodities. They will float dishonest enterprises. They will corrupt legislatures. They will pervert the sources of knowledge. They will artificially combine to increase the cost of their commodities to the public. They will exploit, sometimes with hideous cruelty, the backward races of mankind. They compel strikes which result in serious damage to the community, and it is the grim irony of the system that vaster part of those engaged in its promotion have little or no hope of enduring gain from the process they support ... It remains historically obvious that a community divided into rich and poor is, when the latter are numerous, built upon foundations of sand". (1)

Such glaring inequality and weakness of our present system of private property rights indicates the crying need of its revaluation so that it may be made more socially adapt-

(1) Laski, Grammar of Politics, pp. 175-76.

able to meet the ever changing conditions of our modern age. The most outstanding condemnation of our present system of private property rights is the constant emassing of large dynastic fortunes while poverty, the by-product of our industrial system, remains unrelieved. There are vast numbers of peoples in both town and country who are being reared on insufficient food, clothing, and house room; whose education is broken off early in order that they may go to work to earn their living. They are forced by the sheer necessities of life to endure long hours of exhausting toil with imperfectly nourished bodies, and who have therefore no chance of developing their higher mental faculties. Their poverty is a great and almost unmixed evil to them. Even when they are well their "weariness often amounts to pain". While their pleasures are few; and when sickness comes the suffering caused by weariness increases many fold. Overworked and undertaught, weary and care worn they have no chance to develop the higher faculties of their nature. They have no chance to exercise those rights which are essential to the development of a well ordered social life. And most of these conditions are traceable to the legal fiction that property rights are absolute and not subject to any social conditions whatever.

From such a philosophy of rights Tawney and Laski turn to construct a philosophy of protest against the old regime of private property with its inequalities, privileges, and abuses. They agree that rights are functional in their nature

and that by a functional theory of rights "is meant that we are given powers that we may so act as to add to the richness of our social heritage. We have rights, not that we may receive, but that we may do ... We do not possess them as avenues of personal enjoyment ... We possess them because each part of us is suffused with social implications"(1)

The criterion of one's right of possession is whether the services performed with property possess the social utility which is necessary to entitle the owner to his possession. If it does not, the owner must relinquish his rights of possession either to the State or to some one else who is capable of performing the social functions with them.

The practical significance of the philosophy of rights here set forth may be elucidated if we refer to Tawney's classification of property rights.

1. Property in payment made for personal services.
2. Property in personal possessions necessary to health and comfort.
3. Property in land and tools used by their owners.
4. Property in copy right and patent rights owned by authors and inventors.
5. Property in pure interest, including much agricultural rent.
6. Property in profits of luck and good fortune.
"quasi-rents".
7. Property in monopoly profits.

(1) Laski, A Grammar of Politics, p. 40.

8. Property in urban ground rents.

9. Property in royalties". (1)

The first four kinds of property condition the performance of work or the creation of some social utility. But it is obvious that the last four do not. The vital question which should concern "any society is, under which each of these two broad categories the greater part (measured in value) of the property rights which it maintains are at any given moment to be found. If they fall in the first group creative work will be encouraged and idleness will be depressed; if they fall in the second, the result will be the reverse". (2)

The functional theory of property does not mean nationalization of all property. It means only the nationalization of that property which would perform a greater social function under state ownership than it would under private ownership, and that the state will possess the authority to determine whether the property held by individuals is being used for the benefit of society or for the pelfery gain of the individual. There will be no longer the exploitation of national resources without regard to social implications. The responsibility of organizing the industry, says Tawney, would be placed on the shoulders of those "who work and use, not of those who own, because production is the business of the producer and the proper person to see that he discharges his business is the consumer for whom, and not for the owner of

(1) Tawney, *The Acquisitive Society*, pp. 63-64.

(2) *Ibid*, p. 64.

property, it ought to be carried on". (1)

The functional idea of property rights would "aim at abolishing those forms of property in which ownership is divorced from obligations ... It would seek to encourage those forms of economic organization under which the worker, whether owner or not, is free to carry on his work without sharing its control or its profits with the mere renter. Thus, if in certain spheres it involved an extension of public ownership, it would in others foster an extension of private property. For it is not private ownership, but private ownership divorced from work, which is corrupting to the principle of industry".(2)

Tawney condemns More's socialistic idea "that no equal and just distribution of things can be made, nor that perfect wealth shall be among men, unless this property (private property) be exiled and banished". (3) Whether or not private property is an evil, depends upon what sort of property it is and for what purposes it is used. If certain kinds of private property adds security to the individual and enriches his personality, then, that form of property is a blessing to the State; but the kinds of private property which degrades the physical and mental life of labor and creates a class of functionless property owners who spend this wealth in licentious living are an unmixed evil to the state and should be abolished. The parasitic landlords, and owners of capital who consume the wealth of society without contributing to it cannot be con-

(1) Tawney, *The Acquisitive Society*, p. 85.

(2) *Ibid*, p. 86.

(3) Sir Thomas More, *Utopia and the Dialogue of Comfort*, pp. 43-44.

demned in too strong a terms. For, says Tawney, if we "abolish those kinds of property which are merely parasitic, it facilitates the restoration of the small property-owners in those kinds of industry for which small ownership is adapted". (1)

Now, the functional concept of property, according to Laski, is conceivable only if "we seek to view man as a subject of rights. He has then the right to control things in the degree that such control enables him to be his best self". (2) That is, he has claim to such share of the national dividend as permits him to share those conditions of life which will enable him to be himself at his best. The democratic State exists to guarantee these conditions. If it refuses to guarantee these conditions, it becomes at once an institution of inequality and privilege. This claim upon the State is universal. For the State is bound to "guarantee to the individual that the pressure of social forces will not leave him helpless and stranded". (3)

"But the right is relative to duty. If I receive, it must be in order that I return. Society cannot maintain me for the privilege of my existence. I must pay my way by what I do. I must perform such functions as will produce the amount required for my maintenance. No man has a moral right to property except as a return for functions performed. He has no right to live because another has earned what suf-

(1) Tawney, *The Acquisitive Society*, p. 86.

(2) Laski, *Grammar of Politics*, p. 183.

(3) *Ibid*, p. 184.

fices for his maintenance. That alone is morally his which he gains by his personal effort". (1) There is therefore a valid distinction between owning and earning. But the earning or amassing of great fortunes has the same demoralizing effect on the character of the individual as does the owning without the earning of them. This is well emphasized by Charles Francis Adams in a passage we may be justified to quote. "As I approach the end, I am more than a little puzzled to account for the instance I have seen of the business of money getting. It comes from rather low instinct. Certainly, so far as my observation goes, it is rarely met with in connection with the finer or more interesting traits of character. I have known, and known tolerably well, a good many "successful men" "big" financially men famous during the last half century, and a less interesting crowd I do not care to encounter. Not one that I have ever known would I care to meet again, either in this world or the next; nor is one of them associated in my mind with the idea of humor, thought, or refinement. As a set of money getters and traders, they were essentially unattractive and uninteresting". Such an attitude certainly condemns private enterprise, and those who undertake a great business adventure may lose more in personal satisfaction than they gain by it. For those who have their finer sensibilities hardened in the grim struggle for existence cannot appreciate to the fullest extent the finer things of life.

(1) Laski, Grammar of Politics, p. 184.

FEDERALISM

1. Territorial Federalism

The characteristic feature of a federal State, says Garner "is that the power of legislation, government, and administration of the State, instead of being concentrated in a single set of organs at the capital or in their local representatives and agents, is divided and distributed between the central authorities on the one hand and the authorities of the component units of the federal union on the other ... The division and distribution are made by the constitution or by the organic legislative act by which the federation was formed, so that the autonomy conceded to, or reserved by the component States is guaranteed to them and cannot therefore be restricted or withdrawn at the will of the central government". Thus the various component units which make up the federal union are supreme in their immediate sphere of jurisdiction, and their autonomy cannot be taken from them without their consent. Within their sphere of jurisdiction the local units are free to legislate, govern, and administer in accordance with their own conceptions as to their local needs and interests. In matters that pertain to the State as a whole, the State is centralized in character; and in matters which are more or less local in character, the State is federal in its nature. (1)

Laski condemns the present system of federalism, based as it is on the territorial unit, as being not truly demo-

(1) Garner, Political Science and Government, p. 417.

cratic and as contributing little or nothing to the development of the personality of the individual. Territorial federalism lacks the ideal of a social purpose. This is because it enrolls into its membership the most heterogeneous elements. It works on the supposition that the farmer, the banker, the merchant, the lawyer, the doctor, the teacher, the bricklayer, the washer-woman, the mine owner, the miner, the section man, the railroad president, the hobo, and the university chancellor can be swept into a political unity by the mere fiction of political demarcation. On election day this heterogeneous folk is asked to come together and vote for some person to represent their "common interest". But this heterogeneous mass has no common interest, save the sheerest matters of external life such as streets, lights, policing, taxes, and even in these their interests differ. There can be nothing in common but artificial enthusiasm, no common will for something socially fine and inspiring. The "common will", in short, is nothing but the common denominator of diverse interests, and this lowest common denominator becomes "incarnate in the politician".

Social enthusiasm can be evoked, personalities can grow, only where there is a spirit of the group. A spirit of the group lives only where men feel that they belong by common interest to each other. Men, of the extreme diverse interests which we find in the territorial system of federalism, cannot be made to feel, except on election day, and then only by artificial methods of stimulation that they belong together. Herein lies the profoundest defect of the territorial system

of federalism. It attempts to bring into expression group loyalties and group enthusiasm, while the groups through which it operates are largely and inevitably artificial. The only way we can cure this political evil is to face frankly the issues of reorganizing our political life, says Laski, into its functional groups.

When our country was new nearly all men were engaged in a common occupation in a certain locality, such as stock raising, farming, or manufacturing, and the territorial principle worked rather well. But now territorial propinquity is no longer coincident with groups which have common political, social, and economic interests. The functional groups have no longer a territorial basis. The functional groups are now determined by a specific vocation. The group interests of a bricklayer is not with the manufacturer of automobiles, but with his fellow craftsmen. And so with the doctor, his primary interests are not connected with those of the lawyer, but with those of the other members of his profession. In the functional groups men are gathered together because of common interests and understanding. And because of their common interest, each working for all the rest, there results a mutual enhancement which makes for a greater power of each and of all. Each member of the group forms a part of the environment for all the rest. As Laski says, "No environment is ever a static thing. We live in it and make it. It becomes ours by our experience of it, and it becomes different because it is ours. Our view of what the environment means is

always intensely individual. It cannot be felt by others as we feel it. It does not convey to them the impact it makes on ourselves That is why, for instance, the making of law cannot be confined to a single class in a community. For its view of need is bound to be colored by its special interest, and because it has never been made to integrate that interest with those of other classes, it will be unable to realize, if not their existence, at least their validity". (1) Thus in a territorial system of federalism there is a grave injustice done to vast number of people who have no opportunity to have their interests represented. Such a government is not an institution of political equality, but an institution of inequality and privilege.

2. Group Federalism

Men have other interests than those they identify as the State. The State does not exhaust the social impulses of men. The result is men form political, social, and economic groups to satisfy their needs which cannot be satisfied by individual activity, or by the activity of the all imposing State. The functional group, says Laski, "is an attempt to advance some interest in which its members feel an answer to the wants of their experience. They are the original functions of the environment The group is real in the sense that the State is real. It has, that is to say, an interest to promote, a function to serve. The State does not call it

(1) Laski, Grammar of Politics, p. 242.

into being ... It grows in the whole environment as a natural response to the factors in that environment". (1) Its existence is as real as the individuals who compose it are real. The individuals who compose it are cemented together by common interests and understandings to promote certain policies which would add to the enhancement of the life of each and all. These group activities such as the trade union, the church, and the lodge offer means by which the natural impulses of men can seek satisfaction. These groups mould the personalities of the individuals and form an instrument whereby they contribute to the moulding. They gather together strands of conduct into a unification of behavior for those areas of experience they seek to control. The political parties, trade unions, golf clubs, and churches offer various avenues of enrichment of the life of the individual. "They determine, quite largely, his choice of friends, of opportunities, of a career. They drive roads through life along which, a little timidly and dubiously, he makes his way to his goal". (2) The part these various functional groups have in forming the personality of the individual is so great that they should be recognized as the units of federalism.

The state is to be regarded as federal in its nature because the functional groups to which the individual belongs are constantly making demands upon his allegiance in so far as he is able to identify his interest with them as against

(1) Laski, Grammar of Politics, p. 242.

(2) Ibid, p. 257.

the state. "When I respond," says Laski, "to the demands of the State, there grows between us a process which alters both response and demand. That process is compounded not merely from my State context, but from the total environment in which I find myself. The State which seeks my loyalty by seeking it is altering my relation, to the church and trade union, to all the multiplicity of fellowship to which I belong". (1) Law, as a demand of the State, is just therefore to me only in so far as it implies a protection of those experiences which add to the enrichment of my personality, and it is unjust to me if it attempts to maintain those institutions which hinder me in being my best self. The individual feels justified therefore to rebel against the demands of the law when those demands are for conditions which hinder him in developing the higher mental facilities of his nature. "Law," says Laski, "has to make its way to acceptance through the channels of the mind. And it will convey a different meaning to each mind it encounters because the experience of each mind, the system, therefore, of its wants, are different.. Legal right has no meaning for the individual save as he himself makes it have meaning. It has no sanctions save the authority he lends to it by articulating it with his own experience. We are loyal to the demands of the State just to the degree that the articulation accomplished results for us in a satisfied activity The State .. must make its law valid, must discover what I have called the legality of law,

(1) Laski, Grammar of Politics, p. 263.

by compounding it from the experience of its citizens. It can do so only by associating them with the process of law making" and permitting them to contribute from their experience whatever is relevant to the welfare of the group.(1)

The State can best coordinate the experience of its citizens by taking as its units of representation the functional groups from which the experience of the individuals are derived. Thus the theory is that the best man of each functional group will secure the best wisdom of his constituents, and, as Mr. Lippman says, "all these wisdoms combined are the wisdom that Congress needs". (2) The State, therefore, built upon functional units is comparable to the guild idea. For a guild is defined by Orage to be "a self-governing association of mutually dependent people organized for a responsible discharge of a particular function of society".(3) The difference between guild socialism and Laski's idea of organizing the State on the "functional principle" is that the guild socialists apply the principle of group representation to the economic or industrial units only, while Laski applies this principle to other social units as well. The State organized on the basis of the functional unit would have certain functions to perform "including that of police and fire protection, functions which affect all men equally as they reside in a community. But this fact gives it no claim to primacy over other functional groups. It follows from this

(1) Laski, Grammar of Politics, p. 251.

(2) Lippman, Public Opinion, p. 288.

(3) Orage, An Alphabet of Economics, p. 53.

reasoning that true democracy does not begin and end with voting on election day, but resides in the functioning of every organization which vitally affects the life of the citizen". (1) It follows, therefore, that the State does not possess the authority to dictate to the trade union, the church, the cooperative association what their policies shall be, but that each is sovereign within its own sphere. Like other institutions the State "means no more than the ability to secure assent. There is no sanction for law other than the consent of the human mind. It is sheer illusion to imagine that the State has any other safeguard than the consent of the will of its members". (2) Thus the amount of authority the State will possess in the "functional society" will depend upon the amount of authority which is necessary for it to perform the particular functions with which it is charged and no other.

The functional idea of representation is no idle dream. Its operation is older than the great experiment of Russia with her Soviet government. The Soviet idea probably was originated in England by the followers of Robert Owen. This plan provided for "a new set of boroughs when the unions are organized; every trade shall be a borough and every trade shall have a council of representatives to conduct its affairs". Similarly in modern Russia, "Soviet" is the name for council. Each Soviet" contains delegates from trades, factory shop

(1) Laidler, A History of Socialistic Thought, p. 402.

(2) Laski, Problem of Sovereignty, p. 14.

committees and professional and industrial groups, thus differing from the local political government where representation is based on geographical units". (1) Article I of the Russian Constitution declares their state to be "a Republic of the Soviets of Workers; Soldiers and Peasants Deputies. All the central and local power belongs to these Soviets". (2) The government is pyramidal in form. That is, groups of workers in local districts elect delegates to the local Soviets; these delegates, in turn elect representatives to the provincial Soviets and the latter choose the representatives to the All-Russian Congress of Soviets. A central executive committee of two-hundred members is chosen by the national congress. This executive committee chooses the commissars, which constitute the most important administrative body. The Commissars are in charge of foreign affairs, justice, finance, education, etc. (3) "The economic functions are centralized in the Supreme Economic Council, a cabinet department whose membership of sixty-nine consist of thirty representatives from industrial unions, twenty from regional councils, ten from the central executive committee, seven from the council of peoples commissars, and two from cooperatives". (4)

The defenders of the Soviet regime declare that this system of political organization, inasmuch as "All bureau-

(1) Laidler, Socialism in Thought and Action, p. 314.

(2) McBain & Rogers, New Constitutions of Europe, p. 387.

(3) Constitution of Russia.

(4) Laidler, Recent Developments in Socialism, p. 9.

cratic formalities and limitations of elections are done away with⁸, has many advantages over the old form of political organization. Representation according to occupation or the functional groups mark a great departure from the old system of territorial groupings.

Even though Laski favors a functional system of representation similar somewhat to the Russian Soviet system, it is not to be inferred that he subscribes to the Russian Communistic system. Pretending, as it does, to represent a panacea for the political and social ills of the world it is bound to fail because no mind, no assembly of human minds can conceive the vast and bewildering complexity of human life. "Its panacea is unreal simply because the world is too intricate for panaceas to have universal significance". (1)

(1) Laski, Communism, p. 243.

POLITICAL INSTITUTIONS

As Laski presents in the first part of his book "The Grammar of Politics" a destructive criticism of the present order, he presents in the second and most important part his philosophy of reconstruction. In his critical philosophy he assumes more or less a radical attitude toward the present order, but in his philosophy of reconstruction he seems to be more conservative. This change of attitude I believe is due to the fact that he knows full well that if his critical philosophy is to bear fruit the process of change must be evolutionary and not revolutionary in its methods.

In his discussion of the political institutions of the State he points out the weaknesses of certain present political institutions, such as separation of powers, proportional representation, bicameral legislative system, etc., and then offers his constructive suggestions to alleviate the present evils.

1. Separation of Powers

One of the most important political principles which underlie the foundations of most modern States is that of separation of powers. "Since the days of Aristotle", says Laski, "it has been generally agreed that political power is divisible into three broad categories". (1) It was left, however, for Montesquieu to popularize the idea. This he did in his famous work entitled "L' Esprit des Lois" pub-

(1) Laski, Grammar of Politics, p. 295.

lished in 1748. "In every government there are," he said, "three sorts of power". The first is the legislative power. "It enacts the general rules of the society. It lays down the principles by which the members of the society must set their course. There is, secondly, the executive power. It seeks to apply those rules to particular situations; where, for instance, an Old Age Pension Law has been enacted it pays out the specified sum to those entitled to receive it. There is, thirdly, the judicial power. This determines the manner in which the work of the executive has been fulfilled. It sees to it that the exercise of executive authority conforms to the general rules laid down by the legislature..... It settles also the relationship between private citizens, on the one hand, and between citizens and the government upon the other, where these give rise to problems which do not admit of solution by agreement". (1) But such a distinction of governmental functions Laski regards as an arbitrary one and "not one of nature". It is not "possible so to define the area of each of these authorities that each remains independent and supreme in its allotted territory. The separation of powers does not mean the equal balance of powers".(2) It is possible that all of these functions may be performed by a single body or by a single person. The distinction is not maintained practically speaking in our modern legislatures today. The Senate of the United States performs in a

(1) Laski, Grammar of Politics, p. 295.

(2) Ibid, p. 297.

general way these three functions of government. It performs executive acts when it confirms the nominations the President has made. It acts as a judicial tribunal in cases of impeachment. The President as the executive performs functions which are legislative and judicial in character. The Supreme Court has held that the ordinances issued by the executive to carry out the will of the legislature carry with them the force of law. And the pardoning power of the President really gives him a judicial function.

Though the three functions of government have not been strictly separated the tendency to keep them separate has been inseparably connected with the development of the rule of law in both England and the United States. The fear of despotism and tyranny, with which the colonists had bountiful experience, crystallized in their minds the political philosophy of Montesquieu which provided that power was to be checked with power. The builders of our political institutions during and after the Revolutionary War were so imbued with the philosophy of the rule of law and natural rights that they so balanced the powers of government, one against the other, that sovereignty should not be in government at all, but in law. The clearest and most philosophical statement of the relation of the separation of powers to the supremacy of the law is to be found in the constitution of Massachusetts (1780), where each set of powers is placed in its own bracket, with the injunction that no one department shall exercise the powers of another department. The purpose

of this separation was that "this government may be a government of law and not of men". (1) The colonists were afraid of centralized power. They would check power with power for the purpose of weakening it and rendering it harmless. "Then over this prostrate form of governmental power there would stand forth in all its beauty and grandeur the imposing figure of law, impersonal, impartial, exemplifying pure and abstract justice, unpolluted by contact with the human will. Above kings and parliaments, even above the people themselves would rise the sovereign majesty of the law". Thus it is the rule of law and not the rule of men that is aimed at by the principle of separation of powers.

2. Parliamentary Responsibility of the Executive.

The "separation of function", says Laski, "need not imply, though it has been taken to imply, a complete separation of personnel But, as Duguit has pointed out, the execution of any order involves the assistance of all ultimate authorities in the State; and the attempt as in the American Constitution, rigidly to separate the three powers, has only meant the building of an extra-constitutional relationship between them. The use of patronage, on the one hand, and the peculiar structure of parties, on the other, has affected by means open to serious question a conjuncture between the executive and the legislature which needs, in any case, to be made. Much the best method of obtaining it is to make the executive, as in England and France, a com-

(1) Constitution of Massachusetts, 1780.

mittee of the legislature". (1) Under this system the executive can only stay in office so long as he maintains the confidence of the legislature. This assures a flexible executive policy, and prevents such deadlocks as sometimes occur between the President and Congress in the United States. As the executive is a part of the legislature it enables it to explain its policy in a way that will assure adequate attention and organized criticism. By interpellation the executive is bound to account for his official conduct at all times to the legislature. Such a system "makes for responsibility. It prevents a legislature which has no direct interest in administration from drifting into capricious statutes. It asserts that executive degeneration is bound to set in when the policy of a ministry is not its own. It secures an essential coordination between bodies whose creative interplay is the condition of effective government". (2)

There is another great political asset of the system of subjecting the executive to the legislature, and that is that it tends to select men who have leadership and administrative qualities of the highest type. The parties contending for the control of the government would select from their number those most capable of surviving the constant scrutiny and interpellation by the members of the opposite parties. "The average member of an English cabinet has been tried and tested over a long period in public view. He has the 'feel'

(1) Laski, Grammar of Politics, pp. 298-99.

(2) Ibid, p. 299.

of his task long before he comes to that task. He has spent his earlier career in contact with the operations he is now to direct. To give the executive, by this means, the initiative in law-making, and to build its life upon the successful use of that initiative in the legislature, is an elementary induction from historic experience". (1)

But the election of an American President "is a leap in the dark; his average cabinet rarely represents anything at all". (2) As Bryce says "in America, which is beyond all other countries the country of a 'career open to talents', a country, moreover, in which political life is usually keen and political ambition widely diffused, it might be expected that the highest place would always be won by a man of brilliant gifts. But from the time when the heroes of the Revolution died out with Jefferson and Adams and Madison, no person except General Grant, had, down till the end of the last century, reached the chair whose name would have been remembered had he not been President, and no President except Abraham Lincoln had displayed rare or striking qualities in the chair". (3) And it can truly be said that no great man since Madison has ever been elected President except by historical accident. In no case has it been a case of proven merit. Each President has had to substantiate his leadership qualities after he was elected. It is easy in this respect

(1) Laski, Grammar of Politics, p. 300.

(2) Ibid, p. 30.

(3) Bryce, American Commonwealth, Vol. I. p. 77.

to agree with Laski's eulogy of the parliamentary system.

3. Position of the Judiciary under the Parliamentary System

The position of the judiciary is raised to a high plane of importance under the parliamentary system, for its whole purpose is to embody impersonal, impartial, "pure and abstract justice, unpolluted by the contact with the human will". To make it a part of the executive or in any way subordinate to it would rob the judiciary of its prime function, that of protecting "the body of citizens from executive encroachment". And this is why in the most advanced political systems there is a constant effort to "protect the independence of the judges". Judges should therefore be appointed on the basis of merit. For where the election of judges prevails there is "a much less high standard of competence", and the "judicial function implies first of all, that no judge shall be removed except for physical reasons or for corruption". For if he is to be impartial and exemplify the rule of law he should not be bound by the "passing phases of public opinion. And where the executive has quasi-judicial functions as does the President of the United States "the judiciary", says Laski, "should have such power of scrutiny as will see to it that the rules adopted by the executive are such as are likely to result in justice". (1)

It is sometimes assumed that for the executive to have the power of pardon is to attack the independence of the ju-

(1) Laski, Grammar of Politics, p. 301

diciary, but such an inference is for three reasons inconsistent with historical experience. "In the first place judicial errors do occur", and when they do, it should be the proper function of the executive to exercise the pardoning power. "There is secondly, the possibility of wrong assessment of penalty". Judges notoriously vary in the severity of punishment inflicted. For example, one man was sentenced by a court in Kansas City for two years in the Missouri State Penitentiary for stealing two cents from a lady, and another court sentenced a man for two years for first degree murder. In such extreme cases where the judges of the two courts have different temperaments it is necessary to have political means of ballancing justice by mercy when the necessity arises. "There is, thirdly, the fact that cases occur in which the penalty inflicted ought not to be operative for reasons made evident only after it has been assessed". (1)

4. Judicial Review

Judicial control of the legislature is one of the most vital questions with which political scientists have to deal. So important was this idea to the Fathers of the Constitution that they reserved to the people certain rights which the legislature could not infringe upon. The power to review legislative Acts to determine whether they infringe upon these rights was given to the Supreme Court. Thus the citizen should be guaranteed against legislative encroachment on those

(1) Laski, Grammar of Politics, p. 302.

rights which are inseparably connected with the development of the individual personality. For example, says Laski, "freedom of speech ought not to be interfered with as easily as licensing laws ... Acts of indemnity ought not to be available by the simple process of majority rule ... Legislation which aims at the disfranchisement of a special class or creed is an outrage upon the whole thesis of citizenship. Powers such as these ought never to be within the compass of a legislature except under severe restrictions as to their exercise". (1)

There are other matters besides the questions of individual rights upon which the legislature should not be permitted to act. "It ought not" says Laski, "to be able to ally itself to a particular church". (2) For such power would enable it to repudiate the principle of religious freedom and thus destroy the individuals freedom of personal development. "It ought not, in a word, to be able to alter the basic framework of the State except under special conditions ... Ideas so fundamental as these cannot be left to the hazards of a chance majority in the legislature". (3) To assure the individual that his personal rights will not be rescinded or that the framework of government which offers him security and protection will not be destroyed by the mere caprice of a legislature implies, says Laski, "a written constitution".

A written "constitution is a work of conscious art",

(1) Laski, Grammar of Politics, p. 305.

(2) Ibid, p. 305.

(3) Ibid, p. 305.

says Garner, "and the result of a deliberate effort to lay down a body of fundamental principles under which government shall be organized and conducted". (1) The enacted or written constitutions have the advantage of clearness and definiteness. The principles embodied in such a constitution cannot easily be twisted out of shape by the executive, the legislature, or the courts to mean what the exigencies of the moment may seem to require. Thus rights and other political institutions are apt to be more secure.

5. Constitutional Amending Process

The process of alteration of a written constitution is a problem which demands the most earnest consideration. "We need to avoid", says Laski "the unlimited authority of Parliament, on the one hand, and the unique inaccessibility of the American Constitution of the other". (2) The American method of constitutional amendment is too rigid to permit the introduction of needed changes and thereby retards the healthy growth and progress of the State. "It is built upon the supposition that the areas represented by State-lines are still genuine entities for the purpose of creative administration". (3) During the colonial period and the early part of the nineteenth century the occupational groups were coincident with territorial propinquity, but now territorial propinquity is no longer coincident with the occupational groups. "And to maintain the States as the effective power in the amending

(1) Garner, Political Science and Government, p. 508.

(2) Laski, Grammar of Politics, p. 305.

(3) Ibid, p. 307.

process is, accordingly, to deprive the central authority of the instrumental needs to fulfil its ends". (1) Laski believes that the central legislature should have the power to amend the constitution so as to redistribute the powers between the central government and the local bodies. "But", he says, "it ought not to be able easily to amend that technique. The majority required for the change proposed ought always to be larger than in the case of ordinary legislation". (2) "Perhaps", says an American professor of law, "a majority of each house for proposal and a majority of the states for ratification would make amendment easier without making it too easy". (3) Such an amending process would give a proposal the effect of ordinary legislation, but would not be in force until adopted by legislative action of the several states. To prevent sectionalism it may be so arranged that the majority supporting the amendment might be required to include states from the various sections of the country. Such a system would probably be more adequate to the needs of a rapidly changing society than our present cumbrous and laborious system.

6. What should Constitute the Electorate?

One of the most profound and difficult questions before the minds of political scientists today is, to whom are suffrages to be given, which of course involves the further question, who shall be debarred from suffrage? At the present time political scientists are generally agreed that suffrage

(1) Laski, Grammar of Politics, p. 307.

(2) Ibid, p. 307.

(3) Arneson, Elements of Constitutional Law, p. 27.

is not a natural right, but a right conferred by law at the discretion of the State, and that the State can widen or curtail suffrage if its higher interests require it. Laski says: "the modern democratic State has no alternative to universal adult suffrage". Each citizen of the State is entitled to vote so as to express himself on public questions. And further "no tests of exclusion seem available which would assist the State to the furtherance of its end. Property as a basis for the franchise merely limits the interests of the State to those of the owners of property. No technique is known whereby an educational qualification can be made synonymous with political fitness". (1) And until we know more about the significance and value of percentages of low mentality on the political life of the State, "One is scarcely justified in predicting the downfall of democracy because of the alleged large proportions of morons in modern electorates". (2) To Mr. Mill the foremost benefit of free government is the political education which the lowest ranks of the people receive in their participation in elections. "For political life in America is indeed a most valuable school". (3) Any attempt therefore to apply electoral fitness may result in a grave social injustice. But the growing complexity of modern government has created a demand for some sort of criterion by which the electoral fitness of the mass may be determined. For "people would no more think of giving suffrage to a man who could not

(1) Laski, Grammar of Politics, p. 311.

(2) Brooks, Political Parties and Electoral Problems, p. 358.

(3) Mill, Representative Government, p. 171.

read, than of giving it to a child who could not speak". (1)

7. Proportional Representation vs. Political Parties

The electorate in order to express itself must be organized and in its organization "we have the choice of two systems. We may either have equal electoral districts, each returning a single member; or we may have some larger, equal unit area, each returning a number of members upon the basis of proportional representation". (2) The democratic state of modern times is built upon the party system. And the primary function of the party, says Laski, is to sieve "the mass of opinions, sentiments, beliefs, by which the electorate moves", and "choose out those it judges most likely to meet with general acceptance It states that view as the issue upon which the voter has to make up his mind. Its power enables it to put forward for election candidates who are willing to identify themselves with its view". (3) A party is therefore nothing more or nothing less than an organized political faction aiming at securing benefits for its members, rather than carrying out a programme of public policy. And the wholesome working of the party system demands of its workers a degree of self-restraint which is difficult for average human nature to achieve, and the absence of which has, in many cases proved disastrous to the development of sound political institutions. Laski in his criticism of parties says that they "distort the issues that they create. They produce divisions in the elec-

(1) Mill, Representative Government, p. 174.

(2) Laski, Grammar of Politics, p. 312.

(3) Ibid, p. 312.

torate which they superficially represent. They secure, at best, an incomplete and compromising loyalty. They falsify the perspective of the issues they create. They build about persons allegiance which should go to ideas. They build up on the unconscious and they force the judgment of men into the service of their prejudices". (1) They also in America, at least, put forward almost always for the public office as Mill says, " an obscure man, or one who has gained any reputation he may possess in some other field than politics. And this is no accident, but the natural effect of the situation. The eminent men of a party, in an election extending to the whole country, are never its most available candidates. All eminent men have made personal enemies, or have done something or, at the lowest, professed some opinion obnoxious to some local or other considerable division of the community". (2)

Yet despite the weaknesses of political parties they are, says Laski, in actual practice a curious and paradoxical mixture of noble ideals and base motives which are exceedingly difficult to disentangle. They offer the only means by which the electorate of a large country can organize and express in a general way its political experience, and "are the most solid obstacle we have against the dangers of Caesarism".(3)

Laski rejects proportional representation and the multi-party system on the ground that they are incompatible with po-

(1) Laski, Grammar of Politics, p. 313.

(2) Mill, Representative Government, p. 270.

(3) Laski, Grammar of Politics, p. 314.

litical principles which would "make the business of government coherent and continuous". That the government would not represent a well organized body of public opinion, "but a patchwork of doctrines which compromise their integrity for the sake of power". (1) This would mean a constant reshuffling of political groups and short-lived administrations by which no coherent political program could be realized. Proportional representation would compel us, says Laski "to substitute great multiple member constituencies for the present areas. Thereby, we should intensify the complexity of choice, and increase the power of the professional organizer in politics. We should destroy any prospect of personal relations between the member and his constituents; he would become simply an item in a list, voted for almost entirely on party grounds ..." and "we should diminish the responsibility of the private member by increasing his sense that, whatever his personal effort, the party organizers who maintained the list of candidates would be able to ensure his return". (2)

But to Mill, Commons, and others proportional representation is necessary if a government is to be democratic in fact as well as in name. As Mill says the "pure idea of democracy, according to its definition, is the government of the whole people by the whole people, equally represented". (3) When the majority rule as they do in this country, we do not have a democratic government, but a government of inequality and privi-

(1) Laski, Grammar of Politics, 314.

(2) Ibid, pp. 315-16.

(3) Mill, Representative Government, p. 145.

lege. For in many cases our representatives represent only a majority of a mere majority which is only a minority. Governments today are made up of parties. And it is the true end of the party, says Morse, to promote, "not the general interest, but the interest of a class, a section or some one of the many groups of citizens which are to be found in every state in which there is political life". (1) It is impossible to deny the validity of this observation. In some cases a party frankly admits that it is made up largely of members of a certain class and that it is working in the interest of that class. It is, therefore, an essential part of democracy that the minority parties should have their interests proportionally represented in government. Unless they are represented, the government will be based, not on the principle of equality, but upon inequality and privilege of the major party. The members of the minor parties, whose interests are not represented in the government have not the equal opportunity to demand for themselves those things which are socially fine and inspiring. For those who run the government are able to dictate the conditions under which all must live. To Laski proportional representation would not assure the representation of the minor political groups, but that they would have their interests more adequately represented by having the minorities effectively organized so they would be able to exercise their part of the total pressure of the social forces of which "a given measure is the result. Political decisions

(1) Morse, Parties and Party Leaders, pp. 10-11.

are not made by an arithmetical process of counting votes. More urgent is the weighing of influences that takes place in the law-making process". (1) In a government where the minorities are not represented, says Laski, there always results a "process of give and take"..... which "enables every minority that is organized to give expression to its view, to exercise its 'pull' on the total pressure of which a given measure is the result". (2)

Laski further asserts that where proportional representation has been adopted it has not greatly improved the standards of political life. "In Belgium", he says, "it has tended to eliminate independence. In Switzerland, it has so multiplied the tiny groups, that no coherent opinion has been able to emerge. That always implies weak government, and weak government ultimately means irresponsible government. The minorities can always be sure of reasonable representation in the State so long as they are able to make their views articulate and organized to give them driving power". (3) To Laski therefore the two-party system is the most adequate party system of organizing and expressing public opinion in the process of government.

8. Unicameral vs. Bicameral Legislative Systems

Another very important political problem which demands the attention of the political scientists today and which Laski discusses is what legislative assembly is best suited to

(1) Laski, Grammar of Politics, p. 317.

(2) Ibid, p. 317.

(3) Ibid, pp. 317-18.

meet our modern needs. "It is almost a dogma of political science that it ought to consist of two chambers. Single chamber it is assumed, is the apotheosis of democratic rashness. We need a brake on the wheel". (1) And the Second chamber will as Garner says "serve as a check upon hasty, rash, and ill considered legislation. Legislative assemblies are often subject to strong passions and excitements and are sometimes impatient, impetuous, and careless". (2) Thus it would be the function of the second chamber to restrain such tendencies and to compel more careful consideration of legislative measures. It would guarantee to the individual liberty against the tyranny of the majority of a single chamber. It would temper the radicalism of a single chamber with more conservative elements. It offers a system whereby the units composing a federation can be represented and thus establish an adequate equilibrium between popular and sectional interests.

But the advantages of a second chamber are to Laski, as it was to Mill, more apparent than real. "The argument", says Laski, "that there must be delay against rashness of a single, elected assembly mistakes, or ignores, the conditions of modern politics. Legislation is not made ex nihilo; it does not suddenly, out of a clear sky, find its way to the statute-book". Almost all legislation is the result of prolonged and temperate discussion in which public opinion has had time to be crystalized. "The minimum wage, the abolition of the poor law, town-planning the nationalization of mines, all questions

(1) Laski, Grammar of Politics, p. 328.

(2) Garner, Political Science and Government, p. 605.

of this magnitude are before the public for years before parties adopt them with view to legislation". (1)

The check to the ascendancy of the majority which the second chamber proposes to provide is not the most available. Mill says that the most ideal check would be proportional representation. To Laski the necessary check is offered by "the slowness with which a great organization like a political party is persuaded to the acceptance of a novelty. Necessary revision is best affected by the prior consultation by government of the interests touched by the legislation proposed". That is, the best place to draft a bill for electric power control would be in the department of interior. For, the department head and his assistants could thus learn much better than in a debate what would be the probable results of their scheme. They could make the necessary adjustments in the light of special knowledge made available to them.

Furthermore the second chamber would act as a check on proposed changes which the majority party was elected to initiate. The power to check is a power to defeat changes proposed and this power says Laski should be exercised only by the electorate. "The necessary checks" he further asserts, "are always present in the inertia of the mass", and "any other checks will, almost inevitably, be a premium not upon improvement but upon opposition in terms of vested interest". (2)

(1) Laski, Grammar of Politics, p. 331.

(2) Ibid, p. 332.

The chief advantage of the unicameral system says Garner is that "it secures 'unity' instead of 'duality' in the organization of the legislative branch of the government". (1) In this connection it is interesting to recall that to Duguit two or three chambers means two or three sovereignties. (2) Such a condition would lead to deadlocks and irresponsibility. Such a case is especially true in the Congress of the United States. The House denies responsibility for financial legislation because its measures are constantly amended by the Senate; and the Senate denies responsibility because the bills have to originate in the House. Such irresponsibility leads to the result "that members are continually able to devote expenditures to objects which are either remote from, or unrelated to, the needs of the State". (3) The President is hampered in his administrative functions by the lack of necessary legislation.

The single-chamber legislature would dramatize political life and illuminate the public mind. It would encourage important newspaper criticisms because of the dramatic interplay of talent which would be attracted to the arena of debate. It would thus tend to give importance to debates and make them real because discipline in the ranks of the party would be absolutely essential to maintain itself in power. The executive would rise and fall on issues rather than on the political influence he is able to capitalize. In a unicameral legislative

(1) Garner, Political Science and Government, p. 603.

(2) Duguit, Manual of the Constitution, p. 344.

(3) Laski, Grammar of Politics, p. 344.

system such deadlock and shifting of responsibility would not occur. Government would become more simplified and people would soon learn where to locate responsibility.

Such a system implies that the executive would be a "committee of the legislature", and would exercise executive and administrative functions at the discretion of the legislature. This would provide, says Laski, for "a coherent legislative structure, but also that those who have planned it shall, if they can secure its acceptance, put it into operation. It makes responsibility immediate, direct, and decisive. Everyone can see who is to be blamed and praised. Everyone knows where measures must originate. Everyone sees exactly whom to punish ... No one can hope to promote his special nostrum, or to benefit his own constituency. Logrolling, such as that which takes place in the American legislature, is obviated at the outset". (1)

9. Legislative Initiative

Laski would, therefore, place legislative initiative in particular committees connected with each department. These committees would consist of some dozen members selected not on a partisan basis, but on specialized ability to handle particular problems with which the legislature has to deal. These committees would function as a consultative organ. They should have access to all the papers of the department except those of the most confidential nature. They should have the power to summon experts in various fields for their opinions on public

(1) Laski, Grammar of Politics, p. 348.

questions. They could not however prevent legislative initiative by the heads of each department who would assume the responsibility for particular measures. They could report disagreement with the executive only through the channels of debate.

Such legislative procedure would give publicity to the interests back of every bill as well as those back of the opposition. Light would be let in on the process of law making and committee room legislation would be curtailed. As President Wilson said, in criticism of the legislative procedure of Congress, "Legislation, as we nowadays conduct it, is not conducted in the open. It is not thrashed out in open debate upon the floors of our assemblies. It is, on the contrary, framed, digested, and concluded in committee rooms. It is in committee rooms that legislation not desired by the interests dies. It is in committee rooms that legislation desired by the interests is framed and brought forth".(1) This is due to the fact that no one can be held responsible for legislation under our decrepit system of legislation. The American system "is organized upon no coherent plan; there is no one to whom genuine initiative responsibility belongs for the passage of legislation". (2) But where the executive is responsible to the legislature, and where legislative committees are in constant contact with the various departments, the department heads would have to defend their legislative

(1) Wilson, New Freedom, p. 125.

(2) Laski, Grammar of Politics, p. 344.

and administrative policies at all times before a critical legislative assembly. It would also assure in legislative assemblies men who are equipped to understand ministerial policies.

Another important function which the executive should perform is the formation of government policy. Being as it should be "a committee of the party in power in the legislative assembly", it should have the "final choice of policy to be submitted for acceptance to the legislative assembly. Its existence, as an executive, will depend upon the fate of that policy". This implies that the executive should be the leaders of the party in power. They would be elevated to the position of the leaders of the party because of their leadership qualities. It would be their business says Laski, "to translate the declared will of the party into terms of measures. It would derive its knowledge of that will in part from the announcements of the party itself", and also from the pressure of public opinion as it moves upon its way. (1)

In order to coordinate the various governmental function under a parliamentary system into a unified program the cabinet system has developed. It has to assume, "collective responsibility for the whole ordering of policy and administration". (2) It enables the members of the executive to form a unity of outlook, and to act with unity and dispatch when exigencies arise. The cabinet system, says Lord Bryce, "concentrates the plentitude of power in one body, the legislature,

(1) Laski, Grammar of Politics, p. 356.

(2) Ibid, p. 359.

giving to its majority that absolute control of the executive which enables the latter, when supported by the legislature, to carry out the wishes of the majority with the maximum of vigor and promptness. The essence of the scheme is that the executive and the majority in the legislature work together, each influencing the other. Being in constant contact with members of the opposition party as well as in still closer contact with those of their own, they have opportunities of feeling the pulse of the assembly and through it the pulse of public opinion". (1) Bagehot attributes another merit to the cabinet system and that is its "flexibility and elasticity", which may be elements of strength in times of national emergency and crisis. Under such a system, as Bagehot pointed out, the people can upon sudden emergencies, "choose a ruler for the occasion", one who may be especially qualified for guiding the nation through a dangerous crisis. (2)

The leader of a party chosen as the executive leader becomes the Prime Minister. He selects his colleagues in a way that will assure him a majority support in the legislative assembly. In a State where the two party system prevails, the Prime Minister is practically independent in his choice of colleagues; but in a State where the multi-party system prevails the Prime Minister has little discretion in his choice of colleagues. He must select those who will aid him in forming a strong coalition cabinet. As the Prime Minister is the

(1) Lord Bryce, *Modern Democracies*, Vol. II. P. 464.

(2) Bagehot, *English Constitution*, Ch. 2, sec. 9.

leader of his party, he now becomes the leader of the legislative assembly. "To him, more than any other person belongs the responsibility for political strategy". (1)

10. Administrative Process

After the legislature accepts the policy formulated by the cabinet, it needs to be administered. The administrative branch of government is concerned therefore in the words of W. F. Willoughby with the actual "putting into execution the policies adopted by the government Its participation in the making of such decisions is, or should be, merely that of furnishing to the policy - determining organs of government, the legislature and the executive, the facts which should be taken into account by those organs in reaching their decisions". (2)

Laski agrees with Professor Willoughby that the departmental organization of governments should be organized according to the services performed. "But that does not mean", says Laski, "that such services can, or will, exist in water-tight compartments. The ministry of education may have to concern itself directly in relation to conditions of housing and parental wages". (3) As Willoughby says, it is a matter of practical expediency "that each service, or at least each department, shall have direct charge of the performance of all activities in which it engages in order that it may perform

(1) Laski, Grammar of Politics, p. 360.

(2) Willoughby, Governments of Modern States, pp. 385-86.

(3) Laski, Grammar of Politics, p. 369.

its prime function". (1) As, for example, the service having charge of public health should have direct charge of securing, compiling, analysing, and presenting of public health statistics. The services should be grouped therefore according to their purpose or function rather than the character of the activities engaged in.

Another very important principle of departmental organization is that which Laski calls "inter-departmental cooperation No one, I think, can survey the methods used by the government of modern States without the sense that for too little effort is made to pool experience in an organized way".

(2) It is the function says Willoughby, of the legislature to exercise general direction, supervision and control over the administrative branch of government, but the members of the legislature have neither "the technical qualifications nor the time to exercise the current, day to day direction, supervision, and control that must be had if efficiency in operation is to be secured". (3) It should be the function of the inter-departmental service to formulate and prescribe systems of accounts and reports that will be uniform for all the services. It should act as a body in compiling and presenting to the legislature the estimates of appropriations needed by the various departments. It would settle the disputes between services in respect to their respective jurisdiction, and would attend to the matters which would concern all the departments rather than departments individually.

- (1) Willoughby, Reorganization of the Administrative Branch of
- (2) Laski, Grammar of Politics, p. 371. (Government, p. 15.
- (3) Willoughby, Governments of Modern States, p. 394.

Each department says Laski, should be in direct contact with a legislative committee, so as to ensure in the legislature leadership competent to put the administrative program before it in an intelligent and cooperative way. That is to say the legislature should be made to feel its responsibility for administrative acts, and the administrative services should be made to feel their responsibility for the part they play in legislation.

In order to carry out a scientific and well coordinated administrative program, we should have a more adequate system of financial supervision in each department. This Laski believes is the most urgent need of modern governments. Such a system, he says "implies an officer second only in importance to the permanent head of the department who must be responsible (a) for all payments made by the department, and (b) for annotating in the terms of cost all the proposals which emanate from it". (1) He will have special relations with the ministry of finance, and thus handle and represent the department in all financial problems. "He must be able to show why the cost per bed in a naval hospital under his charge is higher than a similar bed in an army hospital, and he must make it possible for the ministry of finance to know and explain, for instance, the differing expense of dental services in schools and in the army and navy". (2)

Laski also believes there should be a bureau of research

(1) Laski, Grammar of Politics, p. 370.

(2) Ibid, p. 370.

connected with the administrative branch of government. And it would be the function of this bureau to collect and disseminate the facts pro and con on great administrative problems. " It would work largely through advisory committees of experts, both official and non-official. It would cultivate the closest relations possible with the universities and independent research bodies which, like universities, have a slightly scientific character". (1)

The new executive, legislative, and administrative devices which Laski outlines for us are indeed far sighted. Practically all the political institutions he proposes in the reorganization of the modern State have been tried and tested in some part of the world. This fact goes to prove that, though Laski appears in his destructive criticism to favor a radical revision of our political and economic institution he really advocates only such careful changes as can be based upon experience. He is not a nihilist who would destroy everything in order to reconstruct the new regime, for he would have us hold tenaciously to the good of our present political system, only gradually changing it to meet the growing demands of the modern age.

(1) Laski, Grammar of Politics, p. 372.

THE NEW ECONOMIC ORDER

1. Foundation of the Modern Economic Society

The struggle between empires shifted in the nineteenth century from the military to the economic and political field. The old imperialism of which Prussianism was a typical example was based on military conquest and political domination. The new imperialism of finance is based on economic opportunities and advantages. The source of strength of the old imperialistic order was the exploitation of subjected races by the conquerors. The source of strength of the new imperialistic order is the exploitation of labor by the owners of capital.

The roots of our modern industrial system reach far back into the past. The exploitation of man by man was the principle that the theorists of the eighteenth century bequeathed to the industrial pioneers of the nineteenth. The philosophy of individualism under the formula "Every man for himself" seemed a divine ordination for the foundation of our present economic order. This philosophy was also formulated by the American pioneers of the last century from their various experiences in home building in an unbroken wilderness.

But within the last half century the world has witnessed the most marvelous transformation in all fields of human endeavor. The whole attitude of the human mind has been gradually shifting from the individual to the social point of view. As President Wilson said, "We stand in the presence of a great revolution - not a bloody revolution; America is not given to spilling blood - but a silent revolution ... We are upon the

eve of a great reconstruction". (1) The thinkers of our day have turned bodily to criticize the State, society and our economic order. For they realize "the necessity of fitting a new social organization, as we did once fit the old organization, to the happiness and prosperity of the great body of citizens; for we are conscious that the new order of society has not been made to fit and provide the convenience of or prosperity of the average man". (2)

In the process of experience a new spirit has filtered into the lives of men; they are reaching out for something more socially fine and inspiring than they have had; they are striving to remove the iniquities and injustice of an artificially stimulated social system. Men are looking for a new vision. In the great democracies of the world, Russia, China, Germany, France and England, social experimentations are being tried on a vast scale. And out of this process of social experimentation a new political, social, and economic order is being evolved. The new order, says Laski, "must satisfy the principles of justice; it must give to the worker a secure and adequate livelihood, reasonable conditions of work, and a full opportunity to share in the making of the conditions upon which his happiness in work will depend. He must not feel that his life is at the hazard of another man's will. He must be able, by his effort, to purchase for himself the means to self-realization, so far, at least, as these are dependent upon material

(1) Woodrow Wilson, *The New Freedom*, p. 28.

(2) *Ibid.*, p. 4.

factors .. The authority which presides over his destiny must be an authority that is explicable in terms of moral principle".(1)

2. Indictment of the Capitalistic System

To Laski the strongest indictment of the present system is the "separation of management from laborers ... The worker has no right to express his ideas upon methods of production. He has no organized opportunity for suggestion". (2) "As a matter of fact you are", as President Wilson once said, "a servant of a corporation. You have in no instance access to the men who are really determining the policy of the corporation. If the corporation is doing the things it ought not to do, you really have no voice in the matter and must obey orders, and you have often times with deep mortification to cooperate in the doing of things which you know are against the public interest". (3) Under such conditions the worker has no claim upon the product of his work. He is only an animate tool of a heartless economic order which reduces him to the "essence of a slave". He is forced to toil long and hard under unsanitary conditions, speeded to exhaustion so that the rich may accumulate vast fortunes. When he attempts to organize with his fellows so that he may demand justice, he is discharged,

(1) Laski, A Grammar of Politics, p. 433.

(2) Ibid, pp. 433-34.

(3) Woodrow Wilson, The New Freedom, pp. 5-6. Wilson further asserts "that the masters of the government of the United States are combined capitalists and manufacturers of the United States... The government of the United States is a foster-child of the special interests".(New Freedom, pp. 57-58.) "We are caught in a great economic system which is heartless". (New Freedom, p. 10.)

blacklisted, hounded from industry. Overworked and under-taught, weary and careworn, he has no chance to develop the higher mental faculties of his nature.

Another strong indictment of our present economic order is the constant uncertainty of employment. Such a condition destroys the worker's sense of security which is essential if he is to develop himself to his best. It constantly holds up before him a specter of poverty. And to the worker poverty means, in the words of Henry George, "not merely deprivation; it means shame, degradation; the searing of the most sensitive parts of our moral and mental nature as with hot irons ... The strongest of the animal passions is that with which we cling to life, but it is an everyday occurrence in civilized societies for men to put poison to their mouths or pistols to their heads from the fear of poverty". (1) Thus from the fear of the pangs of poverty, from the artificial inequalities and injustice of our social order, it is but natural that men should make every effort to escape. Through the ages mankind has sought truth and justice and has constantly been making them a part of his mental nature. All along the way the established order has intervened, but his search has continued. Realizing as men do that our present system is infinitely inefficient, unjust, and corrupt, the whole attitude of the human mind is being brought to focus on the search of a better way.

3. Nationalization of Industry

The contribution which Laski has made to the search for

the new order seeks to undermine some of the misconceptions of our present economic order and thus pave the way for the re-construction of the new regime. Laski's philosophy of the new economic regime represents a very positive departure from a laissez faire theory of society. It places emphasis on a definite purpose to accelerate social advance. It assumes that the theories of progress, and of group values, have been sufficiently analyzed to warrant application and practice.

Under the new economic regime, says Laski, "it is essential, in any national plan of industry, that the ownership of the means of production (Laski elsewhere indicates that he does not mean all the means of production) should be vested in the State. That is necessary for two reasons. It emphasises where the ultimate incident of control must rest. It enables us to insist that the producers in the industry are not entitled to regard it as existing solely for their benefit; they cannot, therefore, claim such a level of prices as will give them a wage disproportionate either to need or to the result of effort". (1) This system implies that all surplus values created by the industry over and above the cost of production and the distribution of the products, belong to the State.

4. Labor's Share in the Management of Industry

While the State, says Laski, "must own the instruments of production, the producers are entitled to participate in the management ... Clearly, it must include a share in the

(1) Laski, Grammar of Politics, p. 439.

making of the conditions under which the members of the given vocation, whether they be lawyers or miners, chemists or carpenters, exercise their function. They must assist in settling their pay and their hours of work, the sanitation of their factories, the character of the particular job they do, the men with whom and, to no small degree, under whom, they are to work". (1) If the workers are given a voice in the management of their work, it will tend to humanize the impersonal industrial system. Government will change its character, and will become the administration of a great cooperative society. That is, the workers of an industry will have a voice in the formation of the general policies of the industry in which they are engaged, but the general administration of that policy will be left to the government. "Once a policy has been decided upon, its application is a matter of technique where each grade involved in the technique has the right to help. But help must be proportionate to qualification". For example, the miners cannot settle problems which belong to the mining engineer simply because they lack the knowledge necessary to cope with such technical problems. Also, to permit the laborer to administer the technical policies of an industry would be similar to permitting a patient to control the doctor who administers medicine to him.

The Post Office is a good example of a nationalized industry in the United States. Congress formulates the administrative policies of the industry, but it is left to men who

(1) Laski, Grammar of Politics, p. 440.

know the technicalities of administration of this industry to administer these policies. Such an arrangement is very inconsistent with the best form of administration. The members of Congress are often unable to make valid criticisms of the administration of the Post Office Department, and therefore unable to know whether the policies they formulate are being consistently administered. What Laski would propose to do in this case would be to select a committee in Congress on the basis of their knowledge in handling problems of postal administration to cooperate with the Head of the Post Office Department acting as an advisory body to aid the department in formulating the more general policies of the department. The advisory committees would also listen to the representatives of the employees, and thus gain the results of their experience in the operation of the policies adopted. Such a system would enable the employees of the Department to contribute from their experience whatever is relevant to the new policies. The administration of the service in the interest of the State would still be maintained, because "there is preserved in all its fullness the ultimate power of the legislative assembly to make the policy of the industry". The legislative body would be able to criticize more intelligently the operation of those principles which underlie administration of the service, because it would have its group of members in touch with every item of importance in the working of the department. (1)

(1) Laski, Grammar of Politics, p. 443.

It appears to be a contradiction of the principle of self government in industry to place final control outside the nationalized industry, but such is not the case. Self government in industry, says Laski, does not mean "the total and absolute control of all operations... We can allow a postal guild to tell the State what ought to be charged for the delivery of letters; we cannot allow it finally to determine the price of delivery. We can give it an opportunity to make its case an overwhelming one; but an external view is essential to the protection of others interested in the delivery of letters. The safeguards must always exist that the producers do not always seek to exploit the community for their own interests".(1)

Mr. Cole believes that society would be protected from exploitation by the guilds by "the substitute for economic rent which the State is to receive from the guilds in return for the use of the industrial plant. Each Guild will pay to the State an annual quasi - rent corresponding in some measure to the 'rent' of today". (2) To Laski such proof of protection of society is not adequate. For, "that substitute must be fixed in terms of the cost of production, and those costs may be charged with a wage bill for which there is no justification. Such a doubt Mr. Cole thinks is a betrayal of faith in human nature; to which I think the simple answer is that we have been betrayed by human nature so often that it is elementary wisdom to safeguard ourselves against it". (3)

(1) Laski, Grammar of Politics, p. 444.

(2) Cole, Self-Government in Industry, p. 237.

(3) Laski, Grammar of Politics, p. 444.

Mr. Cole further asserts that the State, instead of raising its revenue by a cumbrous system of taxation which is in most parts unjust will demand "a lump sum from the Guild congress, upon which, and upon the various Guilds, the business of collection will fall". The guilds will also assume "the task of dividing it equitably among the tax payers. To each Guild must be assigned its quota, and the heaviest burdens must be laid upon the broadest backs". But Mr. Cole fails to see that the "broadest backs" because of their financial power will become the ultimate dictator for all the lesser members of the guild Congress. Such a system would result in inequality, injustice and privilege, unless some outside power would direct and control the dominating guilds. And this outside control should remain always with the State.

5. A System of Councils to Advise the Government and to direct Industry subject to Governmental regulation

At the apex of each national industry Laski believes there should be a Governing Board subject to the control of the legislature. This board should represent three types of interests. "There will be members who represent the side of management, in which the technical side is included; others, again, will represent the different vocations, both manual and clerical; others, finally, will represent the public". (1) This board should not be too large, for no executive board can function adequately when it is too large. Members chosen to rep-

(1) Laski, Grammar of Politics, p. 445.

resent the vocations should be chosen by the members of the vocations. The qualification of the membership of the executive board should be on the basis of merit only. "The members who represent management should be elected by the managers and technicians jointly". (1) For, those who have been trained in the particular service can best determine those who have the requisite qualifications for the particular office they seek to hold. Those who are eligible should be permitted to continue in office as they render valuable service and can maintain the confidence of their constituents. The board should not be considered "a method of training apprentices". The public representative on the board should be subordinate to and nominated by the minister in charge of the department which has the general control of the industry.

The primary function of the Governing Board, says Laski, would be to carry "out the general policy of the legislative assembly. It must interpret its meaning in large outline, and think out the implications it contains. It will coordinate the work of the districts into which it will be necessary to divide the industry as a whole. It will act, therefore, as an advisory body to those districts, consider their problems, criticize their operations, remit to them suggestions, and ask them to carry out experiments either sectionally or upon a national scale". (2)

This board would be similar to the German Economic Council of the Reich. The operation of this Council system

(1) Laski, Grammar of Politics, p. 445.

(2) Ibid, p. 448.

in Germany represents a landmark of cooperation between employers and employees "on an equal footing" in the regulation "of salaries and working conditions as well as in the entire field of economic development of the forces of production".

(1) So urgent was the demand of the workers for a voice in the administration of the German industrial system that the idea found an anchorage in the German constitution. All bills of fundamental economic or social importance, it is provided, must be submitted to the Economic Council of the Reich for consideration before they are made law. The Council also is given power of legislative initiative, and the right to defend proposed legislation before the Reichstag over the protest of the Ministry. It is not proposed, however, to make the Council the third chamber standing alongside the Reichstag and the Reichsrat, for it has no power to enact or to veto, but can only advise and propose. But such a system of self-government in industry marks a radical departure from the autocratic system of capitalism. As the Under Secretary of State, Von Delbriech said: "We are on the eve of a period in which the Reichstag and the Reichsrat will be considered as one side of the balance and the Economic Council as the other. Behold in this a wholly new political evolution. There will come a day when the Economic Council will seek to become the

(1) Constitution of the German Republic, Section V. Article 165. The Constitution provides that the "workers and employees shall, for the purpose of looking after economic and social interests, be given legal representation in Factory Worker's Councils, as well as in District Worker's Councils organized on the basis of economic areas and in Worker's Council of the Reich". Article, 166.

heir of the Reichsrat and take its place". (1)

Laski would make, however, the function of the Governing Board broader in its scope than the functions now performed by the German Economic Council.

In the case of strikes or lock-outs the Governing Board would be authorized to hear the questions of dispute and attempt methods of conciliation. "No national stoppage should take place until the Governing Board has sought means of settlement". (2) In case of a district strike the Board should have right to demand an immediate report of the issues in dispute. It would be given, power, moreover, to determine the minimum wage in the industry. The fundamental principle which should govern the Governing Board in industrial disputes is equality of wages and hours throughout the industry, and the Board should "admit no settlement that violates this principle". (3) It is reasonable to suppose that eventually the broad functions of the Governing Board which Laski proposes will be gradually assumed by the German Economic Council. For it is conceivable "that by the quality of its personnel and its political sagacity the Economic Council may grow in public confidence and esteem so that it may not only seek to take the place of the somewhat emasculated Reichsrat, but may also actually rival or dominate the Reichstag". (4)

The Governing Board as proposed by Laski would act as a coordinating agent of all the regional divisions of the in-

(1) Quoted from Brunet, *The New German Constitution*, p. 268.

(2) Laski, *Grammar of Politics*, p. 446.

(3) *Ibid*, p. 448.

(4) McBain & Rogers, *The New Constitutions of Europe*, p. 122.

dustry. For each industry "must be divided into regions of which the number will depend upon the character of the industry and the principles upon which it is organized". (1) Regional or district organization of industry will enable various differences of customs, and interests in various localities to express themselves. It will avoid many of the evils of industry in being too centralized. It will provide also legal machinery to settle disputes which constantly arise between the employers and the employees.

The Regional Boards will be constructed similar in their personnel and organization to the Governing Board. "They will be responsible for the administration of the industry in their district. They will apply on the spot the national policy with the flexibility demanded by the special district conditions they confront". (2) But the Regional Boards should not have any control over the questions of wages and hours of work. For these questions are not regional but national in their scope, and there is no reason why the wage earners of the East should receive higher wages than those of the West. Equality in the ratio of real wages and hours of work in a particular industry is essential to maintain harmony within that industry. It will also be the function of these District Boards to appoint on the merit basis managers for the various mines and manufacturing plants within their district. They should be empowered to make all decisions relative to the problems within their respective districts. But the workers should have the right to appeal

(1) Laski, Grammar of Politics, p. 448.

(2) Ibid, p. 449.

their cases to the Governing Board or to the Economic Council.

The functional unit next in Laski's proposed industrial organization would be the Works Committees. To these he would give a much greater part in management of the industry than has been conferred upon the Factory Workers Councils as outlined in the German Constitution. For in spite of the elaborate organization of the German Factory Workers' Councils they are almost wholly advisory. "They may support with advice, cooperate, invoke conciliation, carry out awards, that have been accepted, agree with the employer, promote harmony, receive complaints, support the factory inspectors; but they are not vested with any legal power to render and enforce decisions or otherwise to participate in any effective way in the actual management of the business against the will of the employer". (1)

The Factory Workers Council Law of 1920 provided that the councils may "fix, in agreement with the employer, general shop regulations and any modifications of the same within the terms of collective agreements then in force". The Law also gave the Factory Workers' Councils the authority to "take measures to combat danger to health and accidents in the establishment; support the factory inspectors and other officials in the task of combating these dangers by information, advice, and calling them in when necessary, and by supervising and carrying out of orders of the industrial authorities and of the provisions for the prevention of accidents". (2) The

(1) McBain & Rogers, *The New Constitution of Europe*, p. 124.

(2) *German Work Council Law*, *Monthly Labor Review*, May, 1920, (p. 178.

Council may submit quarterly reports on the conditions and output of the industrial plants with which it is concerned. And it is given limited authority to entertain appeals in matters of hiring and firing.

But to Laski such a small range of functions would be entirely inadequate for the Works Committees. He would confer upon them the following subjects. "(1) Work rules. (2) Distribution of hours of work; timekeeping. (3) Payment of wages. (4) Settlement of grievances. (5) Holiday arrangements. (6) Physical welfare in mine and factory. (7) Factory and mine discipline ... (11) Organization of social side of factory life, e.g. sports, dramatic group etc. (12) Investigation of factors, e.g. housing conditions, inadequate provision of schools, which may effect the proper working of the factory". (1) Thus in many ways these work committees could be made to exercise great positive forces in our economic order.

It is through these works committees that the individual worker can hope to find a degree of freedom in the factory. In committees such as these there is a reasonable guarantee that his will has a full opportunity of expression. For the principle that government derives its powers from the consent of the governed is working itself out in industry also. It began in the church and was followed in the state; and a principle which like this has made its appeal to men and women is bound to work itself out in all phases of life. The workman does not often come in contact with the laws of his state, but

(1) Laski, Grammar of Politics, p. 452.

every day he is working under rules and regulations imposed upon him, without his consent, by the Czars of industry. The laborer feels just as our colonists felt during the pre-Revolutionary days, that if the king is going to make the laws, the colonists must have a representation in the process. And so today the wage-earner is justly demanding a voice in the making of the industrial regulations which so vitally effects his safety and happiness.

6. The Merit System Applied to Industry

Another very important function of national administration of industry is the recruitment of the staff and the methods of appointment, dismissal and of discipline. "It is clear that vacancies must be filled by advertisement; and that the persons selected to fill them must be qualified for the post, as the vocation to which they belong determines qualification". (1) In each factory or mine there will be an appointment section which will be connected with the schools and colleges in an organic way. These appointments sections will furnish particulars of its vacancies to the local branch of the vocational organization which will act as an employment exchange for the area.

The men who are to be appointed foremen must be trained for their particular work in the industrial training school which cooperates closely with the various industries within a particular area. The training implies that a foreman should receive definite information and form definite habits of action

(1) Laski, Grammar of Politics, p. 454.

in order to function efficiently. Education attempts to develop his latent abilities. The course of study will consist of a long list of problems which a foreman would have to meet in a particular department. Thus in a general way the student will learn the fundamental principles of administration of a department unit and thus be able to work out projects relative to his work. After the courses are completed, or when vacancies for foremanships arise, competitive examinations will be held to fill the particular vacancies. The foreman must carry the spirit of education from the class room to the shop, for it is the spirit of human development that is so necessary to true industrial democracy.

Next to the foreman there is the position of managerial assistants whose work "involves general planning and oversight. They should be chosen by a special selection committee, presided over by the manager, with representatives on it of the management side, and the Works Committee. This selection committee should, preferably, be a standing committee of the factory, for experience suggests that the judging of men is a quality which can be acquired only by experience". (1)

Positions of a technical nature like that of an accountant or chemist should be appointed similarly to the second group "save the selection committee should in these cases be fortified by the addition of a member of the technical vocation involved". (2) This suggestion reminds one of Mr. Cole's

(1) Laski, Grammar of Politics, p. 455.

(2) Ibid, 455.

assertion that "the election of work experts should be the business of the various crafts ... The expert will have to pass qualifying examinations, which will no doubt be in the charge of a professional organization similar to the professional institutes of today". (1)

The General Manager of the industry "should be appointed by the Regional Board. The latter can make all the inquiries it needs to satisfy itself that its selection is likely to be approved in the factory concerned, but the chief problem is that of capacity". Mr. Cole, it is to be remembered would have the managers elected by all the workers on the manipulative side of industry. But to Laski such a method is "open to all the usual objections that such self-election involves. It maximises intrigue, and it fails to do justice to ability". (2)

Promotion is another question which is vital to the new economic regime. The best recognition of a worker's ability, even "while his capacity does not justify us in giving him a more responsible function" is to increase his pay. This increase will be automatically raised and lowered according to his service record. Each worker, however, will be guaranteed a minimum wage.

In the case of all subordinate appointments, the candidates would be nominated by the Works Committee. "The committee of selection would fill it from within if it was con-

(1) Cole, Self Government in Industry, p. 455.

(2) Laski, Grammar of Politics, p. 455.

vinced of the suitability of some person in the factory itself; but if it was doubtful of his fitness, or if it thought definitely that it could do better outside, it would throw open the post to competition and leave the man on the spot to be weighed against those who choose to apply". (1) Such a system will protect the industry against industrial inbreeding and make for greater efficiency.

7. Consumers' Cooperatives

As the nationalized industries will occupy only a part of the industrial field the next greatest area will be "the province of the consumers cooperation". "A cooperative society is a voluntary association in which the people organize democratically to supply their needs through mutual action, and in which the motive of production and distribution is service, not profit". (2) The cooperative movement, says Laski, "may be described by saying that it is a democratic movement for the production of any article required by its members, the methods of production and distribution eliminating the idea of profit". (3) The extent of the commodities it already produces and the services it renders is very striking. It has its own banks, its own insurance service, its manufactures of boots and shoes, it runs its own restaurants, farms, recreational societies, publications, and dairies. In general "it has concentrated its operations on what may be called the general wants, and largely the standardized wants of the house-

(1) Laski, Grammar of Politics, pp. 456-57.

(2) Warbasse, Cooperative Democracy, p. 8.

(3) Laski, Grammar of Politics, p. 463.

holder". (1) It is essentially "a movement of the solid working class".

The relation between the cooperatives and the state should be one of constant cooperation so as to enable each to render the greatest service to society. Each should perform only those services which it is best fitted to perform. An industry such as mining, for example, is essentially fitted for "a scheme of nationalization; the cooperative store then becomes, at least in the sphere of domestic consumption, the natural distributing agency. It will thus enable us to cut out at a stroke the vast horde of middlemen who at present increase price by their intervention between producers and consumer". (2) The subjects of production which can best be handled by the State must be left to the operation of the State. For example, it is essential that the State should own and operate the coal and oil for the reason that the State interest in their conservation is paramount to the wishes of a constituency whose interest like that of a body of members in the cooperative movement is immediate consumption. (3) The consuming masses are interested in the total good of society, for they are society. Experience has shown that the organized consumers concede to the State when such concessions make for harmony and the public welfare.

In the cooperative organization each district will have "its local system of stores each governed by a district exe-

(1) Laski, Grammar of Politics, 463.

(2) Ibid, p. 465.

(3) Ibid, p. 465.

cutive elected by the membership of the district". (1) The executive should be a full time body and fully compensated for their services. They should be continuously reeligible for election but they should also be subject to recall so as to check error and corruption at its source.

In order to make the cooperative movement a success the education of its members is essential. The ideal of the cooperative movement is that each country shall have a cooperative educational institution and that each district and local society some form of educational organization. There are two types of cooperative schools: "First, those which teach cooperation as a general cultural course for students of economic problems, and second, those which give courses for the training of cooperative executives and managers". (2) Upon the work of these educational bodies will depend the amount of interest that can be created in the rank and file of membership; and it may be added that much of its quality will depend not so much on consciously direct propoganda as on the way in which it uses its potentially immense powers to raise the general level of citizenship". (3)

It should be realized that the extent of the cooperative is already very wide. The various local cooperatives are linked together in a great wholesale society by a federal constitution. "It is from the wholesale that the local societies buy the goods they are to retail to their members;

(1) Laski, Grammar of Politics, p. 466.

(2) Warbasse, Cooperative Democracy, p. 82.

(3) Laski, Grammar of Politics, p. 468.

and the profits gained by the wholesale are returned to its constituents members as a dividend on purchase exactly as in a local society". (1) Each member society has votes in the administration in proportion to the amount of its patronage to the wholesale or in proportion to the size of its membership. "About twenty countries have cooperative wholesale societies. These organizations are found supplying their members with every kind of goods. They import and in many countries they have factories and lands for supplying raw materials. Many carry on banking and insurance departments for their members".(2)

At the present time there is being formed a world wide international wholesale society to perform on a world wide scale the services which its member societies perform nationally. "Its province will include commodities which can best be produced and handled by an organization having in its international scope access to materials which are not naturally produced in many countries". (3) Products such as rice, coffee, tropical fruits, oils, and silk would naturally best be produced by the international society. In time it will in all probability own and operate steamship lines, transcontinental railroads, and other international utilities.

Thus it is clear that consumers' cooperatives are to a considerable extent producing organizations, and a close cooperation between the producer and consumer is the essential

(1) Laski, Grammar of Politics, p. 468.

(2) Warbasse, Cooperative Democracy, p. 68.

(3) Laski, Grammar of Politics, p. 69.

key to the success of the Cooperatives. Laski regards the Consumers' Cooperation as successful "just because it is restricted to the production and control of commodities upon which the judgment of the general body of consumers is as good a judgment as we can have". (1) He urges, however, that cooperatives must submit to state regulation and control in various ways. The cooperative dairies must submit to State inspection, and the factories must conform to State sanitation and safety regulation. Such conditions are essential to protect society and are not an infringement upon the province of the cooperatives.

In these ways Laski would attempt to meet the increasingly complex problem of modern economic organization through public control, to alleviate particularly all those ills which are intimately connected with the alternative periods of excessive optimism and of depression in industry. We are becoming to realize more and more that the trade-cycle is not a vast natural force totally beyond human direction and control. There are a number of ways which will aid man in controlling the economic forces of production and consumption. We can prevent gross inflation by balancing the forces of supply and demand on one side against the stabilization of currency on the other. We can control the issue of capital and require it to be vested where it will render the greatest service to society. We

(1) Laski, Grammar of Politics. p. 473.

can control each industry by means of representative councils entrusted with a wide range of self-government. Thus an intelligent direction and control of the economic forces by the State will tend to minimize the evils of the periods of depression.

THE JUDICIARY

1. Justice and the Judicial Process

The nature of a judicial system of a country is an index of the character of the people. For justice is not a metaphysical abstraction devoid of reality. It is in fact a product of human experience gained in man's attempts to adjust himself to the growing demands of his fellows in an ever changing environment. It is in other words a sense of righteousness or fair play which is essential to any society if the peace and happiness of its members are to be secure. This sense of fair play is a habit of the mind born with man's experience with his fellows and forms a part of the character to which he pretends. And his sense of justice colors his whole attitude toward his fellows and even to life itself. Dewey says, "were it not for the continued operation of all habits in every act, no such thing as character could exist If each habit existed in an insulated compartment and operated without affecting or being affected by others, character would not exist ... Character can be read through the medium of individual acts". (1) Thus a peoples sense of justice finds expression in the institutions of justice which they device. For as Laski says, "the men who are to make justice in the courts, the way in which they are to perform their function, the method by which they are to be chosen, the terms upon which they shall hold power, these, and their related problems, lie at the heart of the political philosophy.

(1) John Dewey, Human Nature and Conduct, p. 38.

When we know how a nation-state dispenses justice, we know with some exactness the moral character to which it can pretend". (1)

Freedom and equality of justice are twin fundamental conceptions of Anglo-Saxon jurisprudence, and together they form the basic principles on which our entire plan for the administration of justice is built. A judicial system which acknowledges class distinction, having one law for the poor and another for the rich, which grants certain privileges to one class that it denies to another, should be condemned as being devoid of those essential principles without which there can be no justice.

This idea of justice, as fundamental to positive law, a principle by which the positive law is tested, is often expressed in the law itself. For example, the Bill of Rights of the New Hampshire Constitution declares, "It is essential to preservation of the rights of every individual, his life, liberty, property, and character that there be an impartial interpretation of the laws and administration of justice". (2) To secure impartial laws and equal administration of justice so that the individual can enjoy those rights which are essential to his wellbeing the State exists. Courts and their work of declaring the law are but a means to the end of justice.

But the courts are an essential means to secure justice. For it is only in the courts, as Wilson says, "that men are individuals in respect to their rights. Only in them can the

(1) Laski, Grammar of Politics, pp. 541-42.

(2) Constitution of New Hampshire (1792) Part I, Bill of Rights
(13.

individual citizen set up his private right and interest against the government by an appeal to the fundamental understanding upon which the government rests". (1) And for this reason it is essential to freedom that the judiciary be independent of the executive. "In that sense", says Laski "the doctrine of the separation of powers enshrines a permanent truth".

No matter how impartial or ideal a system of justice we hope to erect we must always remember that justice is a product of the human mind. "It represents only what its makers represent. It is limited by the narrow experience the average judge will possess, the certainty, in the field especially of industrial relations, that he will find it usually difficult, and often impossible to grasp a point of view usually alien from what he himself has known". (2) "We may try" says Justice Holmes, "to see things as objectively as we please. None the less, we can never see them with any eyes except our own". (3) That is, man's point of view is a mirror of his own experience, and a judge's interpretation of the law is relative to his experience. And those responsible for "judicial interpretation must always be careful lest they mistake their private prejudice for eternal truth". (4)

2. Method of Choosing Judges

Such conditions make the method of choosing judges

- (1) Wilson, Constitutional Government in U. S. p. 143.
- (2) Laski, Grammar of Politics, p. 544.
- (3) B. N. Cardozo, The Nature the Judicial Process, p. 13.
- (4) Laski, Grammar of Politics, p. 545.

a most vital one. Generally speaking there are but two methods - election and nomination. And the method of election by the people is to Laski "without exception the worst". (1) It compels judges to engage in a political maelstrom. It is to be said with sorrow that many of the judges owe their offices to political bosses or to political organizations to which they pay political debts. For candidates for "judicial office cannot possibly put before an electorate either a program on the one hand, or a personal plea, on the other, which can have the slightest relevance to their future conduct". (2) Often times in the course of electioneering the judges are forced to speak and act in a manner inconsistent with and repugnant to any decent conception of judicial office. Such conditions hinders the independence of the judges and attracts inferior and unjudicial types of lawyers to the bench. The necessity of court-ing popularity when a judge's re-election is dependent on it is bound to alloy justice with politics and privileged interests. Furthermore the masses of voters do not always understand or appreciate the soundness of judicial opinions and hence a judge who renders a decision that is unpopular can be re-elected only with difficulty if at all. "The judicial history of American states", says Garner, "where popularly elected judiciaries are most common abound in instances of the defeat of able and distinguished jurists because of unpopular judicial opinions rendered by them". (3)

(1) Laski, Grammar of Politics, p. 245.

(2) Ibid, p. 546.

(3) Garner, Introduction to Political Science, p. 574-75.

The election by the legislature is also very undesirable because "if the choice is to be made on the ground of legal fitness, the average member of a legislature has no special qualifications for judging, and he is therefore likely to be swayed by political considerations irrelevant to the problem". (1) It is interesting to note that the Republican Presidents have usually submitted Republican names to the Senate. "Thus by political manipulation and appeals to party allegiance", says Munro, "men of doubtful integrity were frequently elevated to judicial positions". (2) Mr Justice Brandeis' appointment was fought by certain groups in the Senate because he had rendered distinguished service to organized labor. The system of legislative choice therefore, "usually means nomination by a party caucus and often a parceling out of judicial positions among the political divisions of the State with reference to geographical considerations rather than fitness for judicial office". (3) Under such conditions it is difficult "to suppress the tendency to make the judicial office the reward of party loyalty".

Laski would recommend that judges be appointed on "recommendation of the Minister of Justice, with the consent of a standing committee of judges, which would represent all sides of their work". (4) Because of their judicial experience they would know the bar as few others can know it, and would not be likely to be moved by political pressure. By

(1) Laski, Grammar of Politics, p. 546.

(2) Munro, The Government of the U. S., p. 495.

(3) Garner, Introduction to Political Science, p. 573.

(4) Laski, Grammar of Politics, p. 448.

using their experience in making appointments they could best determine "the probable fitness of men likely to prove successful on the bench. They would represent the best guarantee we could have that appointments were only with the needs of the office in view".

3. Promotion of Judges

Another vital problem of the judiciary has reference to promotion. In the United States there is little or no relation between the membership of the Supreme Court and the inferior courts. There is no way by which a district court judge of proven merit can hope to reach the Supreme Bench unless he is a political favorite. As Laski says, "A man who accepts a federal district judgeship in America practically excludes himself from the Supreme Court. It is the ladder of politics and not of merit by which a federal judge can hope to rise and to gain a reputation in America. For if a judge gains a reputation of being liberal in his attitude toward economic matters, he is ruled out when a promotion is in question". (1)

Laski's system of promoting judges would work very adequately in the United States. Instead of having the Supreme Court judges appointed because of political or economic reasons, they should be promoted to those judicial positions on the basis of merit they have shown in the inferior courts. Under our present Presidential system, Laski would have a committee of judges to present to the President a list of, say, three names

(1) Laski, Grammar of Politics, p. 549.

from the judges of the lower court from whom he shall select one for promotion. To prevent a political protege from being too rapidly advanced, it should be required that a minimum of five years in his present position could only make him eligible for promotion. And the bench could be safeguarded from being stocked with old judges "by the proviso that no judge who is less than five years from the age of retirement shall be recommended for promotion". (1)

4. Relation of the Executive to the Judiciary

There are two other very important questions that we should consider in reference to the judiciary. First, does military necessity warrant the suspension of the operation of the Civil Courts? In answer to this question Laski says that a judge should insist that "no jurisdiction should supersede his jurisdiction, that so long as his court can effectively function, no other courts can be permitted to function". (2) Such was the reasoning of the Supreme Court in the case of *Ex Parte Milligan*. The court held that in case of civil war or invasion where the civil courts were unable to administer justice according to law it would become necessary to substitute military authority for the civil authority to preserve the safety of the army and society. Under such conditions where no power is left but the military, it is allowed to govern and administer justice by martial law until civil courts are enabled to function. "As necessity creates the rule, so it limits its duration; for, if this government is continued after

(1) Laski, *Grammar of Politics*, p. 551.

(2) *Ibid*, p. 555.

the courts are reinstated, it is a gross usurpation of power. Martial rule can never exist where the courts are open, and in the proper and unobstructed exercise of their jurisdiction!"

(1) But to Laski certain restriction should be placed on the power of the executive, in the period of disorder. He would place the following limitations on the executive in exercise of its power. "(A) All trials under martial law, except for trivial offenses, should be carried out by civil officials nominated by the judges for the purpose from a standing panel of barristers. (B) These tribunals should not have power to inflict sentences of more than one year's imprisonment. (C) All trials for serious offenses, involving a longer sentence than one year, should be held in the ordinary courts, and the accused should have the right to counsel". No person should be detained for more than twenty-four hours without a charge being formulated against him; nor be held longer than a week without a trial. (2)

The second problem is, how far "can the court accept as a defense to an action the plea that the action taken was done in the course of his duty by a person acting as a martial law official?" (3) Here we need a safeguard against officials in their attempt to veil unnecessary action with the cloak of martial law. Laski suggests as a safeguard that no executive officer should urge "in defense of his action that he thought it necessary; he must prove to the satisfaction of the court

(1) Ex Parte Milligan, 4 Wallace 2; 18 L. Ed. 281.

(2) Laski, Grammar of Politics, pp. 555-56.

(3) Ibid., p. 554.

that not he only, but an average jury, can be made to agree with his judgment". (1) The Supreme Court of the United States has held a similar view in the case of Mitchell vs Harmony. It declared that under all conditions the validity of the acts of a martial law officer must be cases of immediate or impending danger, or "the necessity urgent for the public service, such as will not admit of delay, and where the action of civil authority would be too late in providing the means which the occasion calls for ... Every case must depend on its own circumstances. It is the emergency that gives the right, and the emergency must be shown to exist before the taking can be justified". (2)

5. The Lawyers' Attitude Toward the Law

The attitude of the lawyer toward the law is one of the most profound problems which the American people must consider if they are to obtain an impartial tribunal of justice. In the past fifty years the Federal judges have been appointed almost wholly from the ranks of attorneys representing the great monopoly corporations. As Mr. Bryce said, "Lawyers are now to a greater extent than formerly business men, a part of the great organized system of industrial and financial enterprise. They are less than formerly the students of a particular kind of learning, the practitioners of a particular art". (3) In other words, what has happened is that the best legal talent of the country has become the servants for public fran-

(1) Laski, Grammar of Politics, p. 557.

(2) Mitchell vs Harmony, 13 Howard, 115, 134.

(3) "America Revisited: The Changes of a Quarter Century".
(The Outlook, March 25, 1905.

chise corporations, spokesmen for tariff - nurtured trusts, counselors for bond syndicates, legal guides, philosophers and friends of individuals or companies holding rich privileges in coal, oil, timber, urban and suburban lands. This lucrative source of wealth is attractive and from it the lawyers grow rich.

In the process of filling our Federal Court benches with men who have come more or less indirectly from the employ of Privilege seekers, it is but natural that judges drawn from such sources will lean in the direction of privilege. Because their whole attitude toward law and justice will be colored by the experiences in their work. We can easily appreciate how the reverse would be true were the judges drawn from those serving as attorneys for trade unions, and how the cry would be raised, and not improperly, that the trade unions had captured the judiciary.

Being in the employ of a conservative employer whose ideal is to maintain the status quo it becomes an almost inevitable characteristic of the legal mind that it should tend to conservatism because it is largely engaged in the study of precedent. (1) This inevitably makes the lawyers slaves of tradition which holds the legal mind within the relentless mould of its absolutism. The great industrial and social changes which are constantly remaking our daily life by overcoming the conservatism of the average man. But the lawyers attitude is little affected by the innovations because he constantly at-

(1) Laski, Grammar of Politics, p. 572.

tempts to substantiate his position by turning to precedent. This naturally develops in him a retroactive psychology and he constantly attempts to interpret new truths in the terms of the past. He is unable, therefore, to adapt his stereotyped system of legal practice, to the changing conditions of our modern world. And to permit the "law to lag behind the needs of its generation has consequences of profound seriousness".(1) The lawyers must point out new roads of development in jurisprudence. They must be educated to realize, as Roscoe Pound has said, that "law is not an end but a means". And the new science of jurisprudence must deliver us he further asserts "from the condition of dry rot which juristic thought has hitherto contracted in periods of enactment and codification, and preserve or restore the juristic ideals of reason and justice". (2) We need, therefore, "to devise means whereby the study of necessary legal change can be made definite and continuous, in order that the adoption of the process of law to changing wants in such generation may be as rapid as possible". (3)

Law and the judicial powers have not kept step with our needs and the economic conditions of our time. As Pound says, "Our judicial organization and the great body of our American common law are the work of the last quarter of the eighteenth century and the first half of the nineteenth century. On the other hand our great cities and legal and social problems to which they give rise are of the last half of the nineteenth",

(1) Laski, Grammar of Politics, p. 573.

(2) Roscoe Pound, University Studies of Univ. of Nebr., Vol. IV.

(3) Laski, Grammar of Politics, p. 573. (p. 266)

and the first quarter of the twentieth century. (1) With the enormous growth of inequalities of wealth during the last half of the nineteenth century has come the enormous inequalities of judicial administration. This problem is fundamental because it strikes at the very heart of our economic political and social order. As Mr. Lyman Abbott said, "If ever a time shall come when in this city only the rich man can enjoy law as a doubtful luxury, when the poor who need it most cannot have it, when only a golden key will unlock the door to the court room, the seeds of revolution will be sown, the fire-brand of revolution will be lighted and put into the hands of men". (2)

In order to protect society against a mal-judicial system, Laski suggests five conditions by which a "continuous improvement of the law" may be obtained. The first and most vital condition is the change in the method by which lawyers are trained. Legal education must be more than "the acquisition of a merely practical technique. It must seek to convey an interest in the law as a science, the sense of it as a vital tract in human experience which is continually charted more adequately for those who use its paths ... It must wrestle with problems as well as offer statements. It must not assume that the judicial decisions which are its substance are right because they are judicial decisions". (3) The lawyer should

(1) Smith, Justice and the Poor, p. 7.

(2) From a Speech by Lyman Abbott at the Twenty-fifth Anniversary Dinner of N. Y. Legal Aid Society. Report of the

(3) Laski, Grammar of Politics, p. 575. (Speeches 1901, p. 32.)

be trained in other words to criticize and readapt the legal principles to changing conditions. He must be able to create legal and social values in the terms of social needs.

His training must, therefore, be something more than the mere legal technique or the memorizing of large number of cases with the ability to apply them to similar cases. He should learn that legal cases are legal problems and that "the judicial answer to the problem is to be proved as much as any other answer". (1) Such students will then go out not only to practice but also to improve the system. They become missionaries of new ideas, and thus adopt the experimental attitude in their profession. Only by such an attitude can law become "an expression of life, adapted to meet the changing needs of life".

The second condition which is very vital to the re-organization and advancement of our judicial system is to re-organize the legal profession. No other profession is so well organized to protect its own interests as is the legal profession. The lawyers "control the conditions of entrance to their profession. They determine almost completely their own standard of professional ethics". No other body of workers possess quite so completely the indicia of self-government; and their natural aptitude for a political career gives them "an over-whelming position in the legislative assembly". (2) But there has been no consistent effort to balance their

(1) Laski, Grammar of Politics, p. 576.

(2) Ibid, pp. 578-79.

advantages by a measure of service to society. It is not like the Royal Society of Medicine which assume a public-spirit and develop their profession in the interest of social advance. They worship the ideas of their legal fathers as truth revealed. They meet in legal societies "like the American Bar Association ... for a brief period of eat and drink and hear solemn orations on the great traditions of the law". (1) They do not attempt to study the problems of the law or suggest means of solution.

Laski suggests, therefore, that the legal organizations be not only functional organizations to enhance the interests of a particular group, but there should also be a research association within the ministry of justice. This research association should partake of the nature "of a permanent commission of lawyers whose business it is to research into the means of legal improvement, in part by investigation of complaint, in part by absorbing the lessons of international experience, in part also, by the development in the profession through their stimulus of deliberate inventiveness about the law". (2)

The field of judicial reform is being opened up. "The intelligent propaganda of the American Judicature Society is clearly pointing to the methods whereby judicial administration can be lifted out of the muddle into which it has fallen, and there is an increasing disposition on the part of the courts,

(1) Laski, Grammar of Politics, p. 279

(2) Ibid, p. 575.

the bar, and the legislature to make needed changes". (1) But such spasmodic attempts of reform are not sufficient to meet the ever growing demand for legal reform. It is being increasingly recognized that nothing less than a sincere and organized effort on the part of the state can hope to alleviate the maladjustment of our legal system. As it stands at the present, in the words of Elihu Root, "While the law is enforced, justice waits". (2)

The fourth condition which must be considered in the reorganization of the legal system "is the lay experience of the law; especially where, as the doctors and business men, there quite obviously exists a great reservoir of creativeness which largely goes unused". (3) That is, the experience of those who have had actual contact with the law should be capitalized. This could best be done by a permanent commission in the Ministry of Justice of which the purpose would be to study law reform. It would collect all information available on both domestic and foreign legal problems. It would receive from every relevant source inquiry, criticism suggestion upon the working of the law. It would organize scientific inquiry for the benefit of social advance. All the results of their concentrated effort would be brought to the attention of the Minister of Justice. Such a method would make possible many scientific legal changes in our judicial system and provide for "much more widespread legal experiments".

(1) Smith, Justice and the Poor, p. 19.

(2) Root, Addresses on Government and Citizenship, p. 493.

(3) Laski, Grammar of Politics, p. 575.

The final method of renovation of our judicial system is by utilizing much more "creatively than we do the knowledge and experience of the judiciary". Toward this end, the judges should be required to make an annual report of their experience in the court and suggest therein what reforms they would suggest that their work has taught them to be desirable. Such reports would constantly open up new fields of legal investigation and thus tend to shape our judicial systems according to the needs of the time. (1)

(1) Laski, Grammar of Politics, p. 581.

CONCLUSION

Among those who challenge the orthodox interpretation of the nature of the State, Harold J. Laski takes a preeminent place. He combines the English historical with the French theoretical method of approach to political discussion, and writes with learning and with a vivacious enthusiasm all his own. In his attack on the monistic doctrine of sovereignty, on the territorial system of representation, and on the system of private property rights, he makes those whom he convinces feel that the official custodians of political science are somewhat 'passe'. His pragmatic philosophy attempts to point the way to a better social order in which the essential attributes of the human personality may find expression. He abhors the idea of the sacrosanct system of property rights with the enthusiasm of a crusader of new ideas, but at the same time he rejects the radicalism of the communists who would permit the state to wither away. Between the two extremes Laski attempts to find the "golden mean".

The demolition of the doctrine of sovereignty is one of his prime objectives, for he realizes that this step is an indispensable preliminary to elaborate constructive proposals. This ancient dogma has been subjected to attack in recent years from many quarters. It has so thwarted the development of an effective system of international control that many serious minded students of political science are casting it into the discard. United State Senators have opposed the entrance into the League of Nations because it vio-

lates the sacred principle of national sovereignty, but to many of the more serious students of international affairs such arguments appear to be highly doctrinaire. It is only in the sphere of domestic law that the doctrine still holds its dominant sway. Against its entrenched position here, Laski has enthusiastically directed his attack.

His reason for this attack is his belief that with the advent of the control of government by business interest, modern democracy has become perverted. It is necessary, therefore, that we return to the foundation of the State reconstruct a new synthesis. As the state has been developed out of man's experience in his relationships with his fellows to enable the mass of men to realize the social good on the largest possible scale, it is necessary when government becomes perverted of the end which the State seeks to serve that we return to that experience to reconstruct a new synthesis. Men are coming, as often before, to realize that their obligations to obey the state is "dependent upon the degree to which the State achieves its purpose". This fact implies that "the allegiance of man to the state is secondary to his allegiance to what he may conceive to be his duty to society as a whole. It is, as a secondary allegiance, competing in the sense that the need for the safeguards demands the erection of alternative loyalties which in any given synthesis oppose their wills to that of the State". (1) Man must therefore judge the State in the terms of functions which express the idea of a social purpose.

(1) Laski, Authority in the Modern State, p. 122.

Laski's system of rights offers "a shibboleth" by which it is possible to judge the operations of the state in its relation to the end it seeks to serve. As rights are those conditions which are essential to the adequate expression of the fundamental attributes of human nature, they are therefore prior to the State. They deprive the state of its authority to robe itself in the garment of sovereignty and then act for the selfish interest of a given class or creed. They deprive the State of its authority to declare war when war is an abrogation of those conditions which the State seeks to maintain. They command the State to enter into a League of Nations if such a policy is essential to maintain the peace of the world. They command the state to adopt a socialistic program if that program has a plethora of social value. In brief, Laski's system of rights, though it is not highly original with him, offers a foundation upon which to construct a new political synthesis.

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