

CHAPTER XII

THE ADVENT OF DIRECT GOVERNMENT

THE Federal Constitution is in many other respects besides its amending clause a most unsatisfactory instrument for a courageous and thoroughgoing democracy. In the not very remote future it will have to be modified in certain essential matters — both by amendment and by interpretation. In the present connection, however, the discussion of the detailed character of these amendments need not detain us. As soon as public opinion is aroused to the plain fact that the amending clause is the most formidable legal obstacle to the democratizing of the American political system, that article of the Constitution will become the centre of attack. Conservatives of all classes will rally to its defence, and for a good many years the issue will dominate American politics and work havoc among existing partisan alignments. But until the fight is on and some of the intervening years have elapsed, it is scarcely worth while to discuss the specific use to which the democracy will put its newly won freedom of action. The controversy itself will help to develop a specific program of revision, the nature of which cannot be at the present time plausibly or profitably defined.

Very different, however, is the situation with respect to

the state constitutions and governments. They offer to the American people a unique and priceless opportunity for collective experimentation, which seeks to accomplish social purposes by means of democratic political agencies. Many American states are already using their legal powers with courage and with success in the interest of some kind of a social program. Almost as many have exhibited a similar intention to modify their political organizations according to what are considered to be thoroughly democratic political principles. In carrying out these social and political programs the people of the states are not hampered usually by the difficulty of amending their constitutions. A majority of the citizens voting at an election can, in a majority of the states, ratify constitutional amendments. They have used the machinery of amendment freely in the past. They are by way of using it at the present time more freely than ever. When using it, their action is generally dictated by the interest, or the supposed interest, of progressive democracy. The alterations which progressive democracy may or should make in state political organization become, consequently, a matter of immediately profitable political discussion.

The point of departure for any such discussion must be the record which the local democracies have left, of the previous use of their power of amending their constitutions. This record does not present a very encouraging superficial appearance. The state constitutions have, during the past four generations, been very much modified without being very much improved. In the beginning the typical state

political system was characterized by a consistency similar to that of the Federal system. Its foundation was government by Law, but on this foundation was built a sufficiently self-respecting system of semi-representative government. It differed from the Federal system, in that the executive and the courts were not usually as independent of the legislature as were the Federal executive and courts. The tendency was, however, to make the three powers more independent one of another, and in general to modify the state constitutions so as to make them conform to the Federal model.

This tendency did not long endure. As soon as the local democracies assumed power and gathered self-confidence, the Federal Constitution ceased to have much formative influence on the state constitutions. The power of comparatively easy amendment made the difference. The lack of that power in the case of the Federal system resulted in the erection of the Supreme Court into the regulator of the whole political machine. The possession of that power by most of the local democracies enabled them to keep the regulation in their own hands. The Supreme Court used its unique political opportunities and its wide discretionary authority for the purpose of preserving and improving the elaborate balance of the system. They added to government by Law the kind of human service which was necessary for its higher and completer development. The local democracies were incapable of any similar feat of political construction. Their instinctive effort was not to develop but to democratize government by Law. They tried to do so for one hundred years and they failed.

The general work of state political reorganization which was carried on during the first century of our national life has been described as that of imposing increasing limitations on the powers of the state legislatures. This formula emphasizes the most conspicuous aspect of the process, but does not define its essential nature. Essentially the process consisted of imposing every possible check on any and every positive function of state government. The legislative power suffered severer emasculation under these disciplinary measures than did the powers of the executive or the courts, but it was emasculated the more only because there was in the beginning more to emasculate. A similar process was going on throughout the whole governmental system. Although the executive and the courts did obtain in certain respects increased powers, their aggrandizement was only apparent. They had to be allowed some extension of authority, in order to serve as curbs on the legislature; but coincident with their aggrandizement as checks, they were being shorn of positive powers and responsibilities. The result was a system of government which was so completely checked that it lost all balance. It was comparable, not, as was the Federal system, to some elaborate masterpiece of artificial constructive genius, such as a Gothic cathedral, but rather to a bed of liquid clay. It became an indiscriminate mass of sticky matter, which merely clogged the movements of every living body entangled in its midst, and which exhibited a happy combination of uneasiness in its parts and immobility as a whole.

At the outset the legislatures were in theory and practice

the most powerful department of the government. It looked as if in the course of time the American political system might approximate to the English parliamentary system. But in spite of the initial prestige of the legislature among a people with the English legal tradition, in spite of its advantages as the most popular branch of the government, in spite of its intrinsic superiority as the law-making and money-appropriating power, it has pretty steadily declined both in the scope of its legal authority and in popular confidence. There was a moment, during the flourishing period of the Jacksonian Democracy, when the legislatures seemed to share in the increasing political authority which the people aspired to exercise; but it did not last. The local democracies soon became suspicious of all kinds of law and law-making power, except that which emanated directly from themselves. The people's law was embodied in the state constitutions, and these constitutions, rather than the legislatures, were considered to be the safest and the most effective agencies of the popular will. Much of the work formerly confided to legislatures began to be performed by constitutions. The latter waxed in size and abounded in detailed specification. In no matter did their provisions finally become more drastic than in their regulation of the body which was nominally supposed to be the source of all active regulation in the public interest. To a large extent the exercise of legitimate and necessary legislative discretion was checked and impaired. Inasmuch as the legislatures were unable to confine the power to pass special legislation within desirable limits, that power was

so far as possible taken from them. They were not even allowed to determine their own procedure. Finally, they were in many instances forbidden to assemble too often or for too long a time. If ever any instrument of government was plainly and emphatically condemned by public opinion, such condemnation was visited upon the state legislatures.

The distrust of the state legislatures resulted in the strengthening of the executive veto, and in popular acquiescence to the gradual extension of judicial supervision over legislation. But in neither case was this strengthening of negative authority any evidence of general public confidence. The legislatures were not considered competent to govern themselves, but they were fully competent to prescribe most exactly and completely the behavior of the executive authority. Statutes passed by the legislatures usually went into the most exhaustive detail in order to prevent the erring administrator from going astray. Appropriation bills specified minutely the way in which the public money should be spent, the assumption being that if any discretion were left to the executive, it would be abused. Responsibility for the proper performance of an action must be fastened upon people who did not participate in the action. So far as the administration was concerned, this minute supervision by the law might be plausibly justified as a necessary consequence of the disintegration which executive power had suffered at the hands of democracy. The governor had been deprived of his natural function of appointing subordinate state officials, who were

to a considerable extent elected by popular vote. Inasmuch as he had been deprived of any effective authority over his subordinates, he had ceased to be the responsible head of the administration. Yet his assistants had to be subjected to some species of control, and, as usual, the law was called in to perform the work which could not be intrusted to mere human beings.

Neither did the courts escape the effect of the prevailing effort to eliminate the personal equation from the operations of government. Judges who were considered wise and just enough to exercise the power, not granted to any European judges, of invalidating statutes, were usually considered incompetent to determine the procedure which ought to be used in their own court-rooms. When a judge was trying a case, he was generally supposed to be worthy of so little confidence that he was deprived of all effective authority over jury and counsel. Yet if the same judge were transferred to an appellate court, his authority became so magnified that he could on the most trivial grounds upset the findings of a trial court. In no part of the mechanism of state government could an official be found who escaped from this network of supervision and espionage.

Yet the net result of the multiplication of specific laws and of the absence of executive or legislative discretion was to convert the judges into the only effective public officials. The situation which prevailed fifteen years ago has been well described by Professor Roscoe Pound in a recent address before the Law Association of Philadelphia. "Law paralyzing administration was an every day spectacle. Al-

most every important measure of police and administration encountered an injunction. We relied on tax-payers' suits to prevent waste of public funds and misuse of the proceeds of taxation. In a number of states the courts would direct writs of mandamus to the governor where ministerial action was involved. Administration had become only a very subordinate agency in the whole process of government. Complete elimination of the personal equation in all matters affecting the life, liberty, property or fortune of the citizens seemed to have been attained. It was fundamental in our polity to confine administration to the inevitable minimum. Where some people went to extreme and were bureau-ridden, we went to the opposite extreme and were law-ridden."

{ Thus the American state governments carried government by law as far as it was humanly possible to carry it. They abandoned themselves to legalism as completely as a sail-boat abandons itself to the wind. Yet when abandoned to the wind the boat did not sail free without a man at the helm — it only drifted around. In spite of the ever increasing web of legal precautions woven about the unfortunate human beings who were trying to run this legalistic mechanism, there was no satisfaction with the result. In one way or another the public welfare was sedulously being sacrificed. The public moneys were misappropriated and misspent in spite of statutory specification and tax-payers' suits. Administrative officials could usually find shelter behind the law when things went wrong; but the law never helped to make things go right. Corruption

increased and abuses multiplied. Special privileges of all kinds abounded. The equal protection of the laws, which was guaranteed to all American citizens, was as remote as possible from their equal administration. In practice the equal protection of the laws meant the unequal opportunity of bringing law-suits. In so far as government by law was ineffective, it was government by corporations and political bosses. In so far as it was effective, it was government by litigation.

In point of fact, the local body politic had acquired a chronic headache. When the pain had first appeared the symptoms were treated as constituting the disease, and powders were taken to cure the symptoms. More headaches were followed by further doses of powder until, finally, a habit was established — the habit of having headaches and of trying to alleviate them with powders. The malady had become as closely associated with its supposed remedy as it was with its original cause. If the headaches were to be cured, not only must the disease be treated as something different from its symptoms, but the powders must be eschewed, even at the expense of a good deal of temporary physical distress.

{ If the experience of the American state governments • proves anything, it proves that democracy and legalism are incompatible. } For over three generations the local democracies attempted most ingeniously and tenaciously to democratize government by Law — to make the Law the representative agent of democratic policy. They placed themselves completely in the hands of the lawyers; and the

lawyers legislated in the people's name on the assumption that the more specific the provisions of a law and the more comprehensive its responsibility, the more effective would be its supremacy. They built up a system of legal prescription which, in case it could have been enforced, would have been intolerable; but it could not be enforced. The democracy never intended that it should be enforced. Coincident with the system of legal prescription was built up a much more human system of partisan government, whose chief object soon became the circumvention of government by Law. In the actual government of the states the laws were obeyed or evaded or ignored, according as it suited the prevailing party leaders, — which could be done with impunity, because the power to administer or to enforce the law had been largely dissipated. The lawlessness of the extra-official democracy was merely the counterpoise of the legalism of the official democracy. The lawyer having been permitted to subordinate democracy to the Law, the Boss had to be called in to extricate the victim, which he did after a fashion and for a consideration.

Finally, in their distress at the predicament into which they had allowed themselves to get, the local democracies began to adopt a remedy which, whatever its ultimate value, looked in a new direction. Instead of continuing the attempt to make government by Law democratic, they are trying really to organize popular government and make it effective. They have fallen back on the power behind the Law. They are proposing to withdraw from Law the

responsibility under which it has been suffering, and to exercise this responsibility themselves. They are proposing to take the Law into their own hands. Instead of embodying their program in a constitution which either accomplishes too much or not enough, they propose to retain the power to legislate and to prevent legislation from being adopted. The local democracies have suddenly decided or discovered that they themselves are free men worthy of confidence — even if their agents are not. Instead of being governed by the Law, they intend to govern themselves, and thus to humanize the Law at its source.

This latest phase of local democratic experimentation has not been received with as much satisfaction by the legal profession as were its previous phases. The class of lawyers, after having acquiesced in and assisted the slow inexorable process of converting every state official into a bond-servant of the Law, have suddenly discovered the value of human discretion as an agency of government. They object to direct legislation, because of its tendency to weaken the responsibility of the legislative body. As if in the past they had not exhausted their ingenuity in devising expedients to check legislatures in the exercise of specific legislative functions! They object to the recall of elected officials, because they fear that the threat of the recall will deprive governors or judges of that independence which is so necessary for the conscientious performance of administrative duties. As if the system, for which they as a class are largely responsible, did not convert the judges, to whom was confided the actual administration of the

civil and the criminal law, into perpetual suspects, who were regularly charged by counsel with dereliction and found guilty by a higher court! As if executive officials ever had any real independence under a legalistic mechanism of government which deprived them of every possible shred of discretion! Is it not somewhat late in the day for American legal conservatives to awaken to the value of government by men as a necessary supplement to government by Law?

Direct popular government may be fairly exposed to the kind of criticism which has been levelled against it by conservative publicists. I shall deal hereafter with the relation between direct and representative government. But before considering the nature and forms of a really democratic system of representation, we must try to understand the parentage and the probable effect of this new method of direct government. The relation between the old mechanism of democracy and the new is not as simple as either the friends or the opponents of the new democracy claim. When we consider the more obvious aspect of the instruments of direct government, they seem to make for the emancipation of democracy from the bondage to the Law. But from another and scarcely less obvious aspect the initiative, referendum and the recall seem merely to add one final comprehensive popular check to this network of personal and legal checks which has hampered the operation of the state political organization. Will the attempt of the democracy to exercise an ultimate discretion in the determination of public policy liberate the expression of the

popular will or finally and effectually paralyze its expression?

A consistent advocate of the second of these alternatives is President Butler of Columbia University. He considers the system of direct popular government to be reactionary, because its adoption would be comparable to the reversion from a higher to a lower organic type. It would mean the deliberate rejection of that specialization of structure and function which in the history of society, as in the history of organic life, has always been a symptom of progress. How can a sane body of political progressives propose to undermine further those specific organs of representative government which society labored so long and so hard to acquire?

In urging this criticism so confidently is not President Butler being betrayed by his antipathies? Was the system of state government which the instruments of the new democracy threaten to destroy — was it characterized by that specialization of structure and function which is the trademark of high forms of organic and social life? Had not the legislature already been deprived of specifically legislative responsibility, and had it not already assumed many properly administrative duties? Had not the executive already been deprived of specifically administrative responsibilities and been allowed to encroach upon the proper spheres of legislative and judicial action? Had not the courts been weakened as expounders of the law and as purveyors of justice in order that they might be strengthened as law-makers? The three powers which had been so care-

fully separated in theory were utterly confounded in practice. The old system contained no genuine specialization of structure and function which the machinery of the new democracy had a chance to destroy.

The peculiar merit of direct popular government consists precisely in its tendency to create that which President Butler declares it will destroy. It may introduce into American democratic political organization a long-needed and salutary adaptation of structure and feeling to function. The traditional legalism not only prevented the several departments of government from properly redeeming their specific responsibilities, but it paralyzed the electorate in the redemption of its final and comprehensive responsibility. The lack of specific adjustment of which President Butler complains was characteristic not only of the machinery of political action, but of the fundamental relationship between the responsibilities of democracy and its instruments. The foundation upon which government by Law rested was not the rock of faith, but the sands of apprehension. The suspicion with which the exercise of the executive, legislative and judicial powers was regarded was the natural consequence of the suspicion with which the exercise of popular political power itself was regarded. The popular will was divided by mechanical legalism from a confidential relation with its own necessary and desirable means of expression. No wonder that the structure erected on such a foundation proved unstable, and became more rather than less unstable as the network of espionage was extended. Such a system cannot obtain any real integrity

until confidence in human nature is substituted for suspicion as its underlying impulse.]

Thus the adoption of the machinery of direct popular government is not comparable to the substitution of a political amoeba for a political vertebrate. It is comparable rather to the prescription of a draught of self-confidence to an invalid, who at least officially had been made sick with apprehension and remedial medicine. [It corresponds, if you please, to the application of a faith cure to a patient the root of whose ailment had been an infirmity of will. It is a decisive and courageous step in the direction of a specifically democratic political organization. Its effect should be eventually to invigorate the whole political body.] Of course even after the faith cure is applied, the patient will not be immediately transformed. He has many perverted ideas which can only be slowly eradicated. He has many frivolous and irresponsible habits which will seek their perpetuation under the very forms of the new faith. But the new faith certainly brings with it a new hope. While democracy may not realize the expectations of its advocates, the only chance it has of so doing is to build its structure on a foundation of self-confidence. Without departing from the ideal of orderly procedure which was so precious to the Fathers, it must still insist that government according to law shall derive its justification and its vitality from its conformity with the free decisions of the prevailing popular will.]

The aspiration towards genuinely popular government has been struggling for expression throughout the political

history of our American states. It assumed a perverted expression, because of the initial assumption that the necessary permanent program of democracy could be defined in advance and would not need to be changed; but it was insistent, if not self-conscious and clear-headed. In the state bills of rights political liberties received the same kind of consecration as civil liberties. The two were assumed to be supplementary. In the subsequent development of the system popular political power was submerged under a flood of legalism, but it was being submerged with its own consent. The authority which had been invoked in order to promote legalism was popular authority. During the whole tedious and barren process of making constitutions perform the work of legislatures and of making laws perform the work of human beings, the power in the name of which the Law had been aggrandized had itself undergone a similar aggrandizement. The one positive element in the century of state constitutional amendment had been the inexorable expansion of the "People's Law" as embodied in the state constitutions. The advent of direct government was the necessary consummation of this process. The Law was not serving the people any better than their legislatures and executives were supposed to serve them. The only remaining alternative was no longer to impose such huge responsibility upon it, and to depend upon the people for the exercise of at least a part of this responsibility.

That the American democracy has consumed over one hundred years in finding out that it cannot wholly delegate the active exercise of its responsibilities is not surprising.

The preliminary attempts to create a democratic political system necessarily involve serious difficulties of adjustment with the varied and alien stock of living political institutions and traditions. These institutions originated during a period in which public opinion was sluggish, ignorant and incompetent, in which social development had frequently to be subordinated to social conservation, in which the popular will had no effective means of expression except in local riots, and in which the national will necessarily escaped popular control. Yet alien as they were to the policy and methods of a democracy, the prevailing political institutions were so deeply rooted in contemporary human nature that the new democratic system had to make use of them. A similar difficulty confronted the European democracies in an even more acute and difficult form. The contrivances which have been invented as instruments of democratic purposes and policy have varied widely in different countries; but they have all tended to have a common defect. They have all tended to impose upon certain traditional representative agencies duties which a thoroughgoing democracy needed, but was not sufficiently prepared, to accomplish for itself.

On the continent of Europe, for instance, where during the seventeenth and eighteenth centuries monarchy had become national without the assistance or check of a general representative body, the democracy, when it came, found it difficult either to get along without the monarchy or to get along with the monarchy. It was alternately too dependent on the executive and too suspicious of him. In

Great Britain the nation had become united under parliamentary rather than under royal leadership, and when democracy came, it confided its responsibility to Parliament and was for long apparently well satisfied with the result. But of late years the tendency has been to subordinate Parliament to the executive and for the executive to rest directly on popular public opinion. To an outsider it looks as if the necessary practical result of such a tendency would be an increase of direct popular control over the government. It is just beginning to be understood that representative government of any type becomes in actual practice a species of class government. It cannot succeed except by virtue of a ruling class, which has earned the privilege of leadership and which has deserved and retained popular support. But it does not work so well in the case of a nation like France, which has lost confidence in its hereditary leaders, without having altogether rid itself of the political characteristics with which that hereditary leadership was associated. Neither does it or would it work well in a country like the United States, which has and can have no ruling class, and which, from the beginning, has been feeling its way towards the development of some kind of leadership adapted to ultimate popular political responsibility. It remains to be seen whether a representative system can be wrought for the benefit of a people who seek wholly to dispense with class leadership, and who have exhibited a consistent desire to democratize all their institutions.

If economic, social, political and technical conditions

had remained very much as they were at the end of the eighteenth century, the purely democratic political aspirations might never have obtained the chance of expression. Some form of essentially representative government was at that time apparently the only dependable kind of liberal political organization. It was imposed by the physical and technical conditions under which government had to be conducted. Direct government did not seem to be possible outside of city or tribal states, whose population and area was sufficiently small to permit the actual assemblage of the body politic at some particular place, either at regular intervals or in case of an emergency. But in the case of states chiefly devoted to agriculture, whose free citizens were distributed over a wide area, and were, in any event, too numerous for actual assemblage in any one spot, it seemed necessary for the people to delegate to a body of representatives the power required not merely for public administration, but for the discussion of public questions, the adoption of public policies and the supervising of the administration itself. Some form of a responsible representative government, that is, was prescribed by fundamental economic and social conditions. The function was performed in the several states according to the method best adapted to local traditions and by the class which had proved itself capable of leadership.)

(In the twentieth century, however, these practical conditions of political association have again changed, and have changed in a manner which enables the mass of the people to assume some immediate control of their political des-

tinies. [While it is more impossible than ever for the citizens of a modern industrial and agricultural state actually to assemble after the manner of a New England town-meeting, it is no longer necessary for them so to assemble. They have abundant opportunities of communication and consultation without any actual meeting at one time and place. They are kept in constant touch with one another by means of the complicated agencies of publicity and intercourse which are afforded by the magazines, the press and the like. The active citizenship of the country meets every morning and evening and discusses the affairs of the nation with the newspaper as an impersonal interlocutor. Public opinion has a thousand methods of seeking information and obtaining definite and effective expression which it did not have four generations ago. The community is broken up into innumerable smaller communities, each of which is united by common interests and ideas and each of which is seeking to bring a larger number of people under the influence of its interests and ideas. Under such conditions the discussions which take place in a Congress or a Parliament no longer possess their former function. They no longer create and guide what public opinion there is. Their purpose rather is to provide a mirror for public opinion, to advertise and illuminate its constituent ideas and purposes, and to confront the advocates of those ideas with the discipline of effective resistance and, perhaps, with the responsibilities of power. Phases of public opinion form, develop, gather to a head, assert their power and find their place chiefly by the activity of other more popular unofficial

agencies. Thus the democracy has at its disposal a mechanism of developing and exchanging opinions, and of reaching decisions, which is independent of representative assemblies, and which is, or may become, superior to that which it formerly obtained by virtue of occasional popular assemblages.

The adoption of the machinery of direct government is a legitimate expression of this change. After centuries of political development, in which certain forms of representation were imposed upon progressive nations by conditions of practical efficiency, and in which these representative forms grew continually in variety and complexity, underlying conditions have again shifted. Pure democracy has again become not merely possible, but natural and appropriate. The attempt to return to it is no more retrogressive than was the attempt to recover classic humanism after its eclipse during the Middle Ages. Society has been passing through a period of prodigious fertility, during which new social aspirations, purposes, instruments and activities have multiplied with unprecedented rapidity. If these new interests and activities are to be assimilated, they must be recognized and incorporated into the system of government. As a consequence of the attempt to incorporate them into the system of government, society may seem to be yielding to the power of disintegrating economic and social forces. This appears to be the beginning of a reverse process of denationalization which will be equivalent to dissolution. Those who place any such interpretation upon the facts of modern social development and

the corresponding political changes fail to understand their meaning. Increasing direct popular political action is coming to have a function in the political organization of a modern society, because only in this way can the nation again become a master in its own house. Its very fecundity, and the enormous power which many of its offspring obtain, have compelled a democratic nation to adopt a more thoroughgoing method of promoting its integrity. As yet it is not making very much headway. It is distracted and disconcerted by its own fertility. It is terrified in particular by the capitalist and labor organizations to which it has given birth. But it will not continue to be disconcerted and terrified. It is adopting the very political instruments which are necessary for the purpose of keeping control of the increasingly numerous and increasingly powerful agencies of its own life. The attempt, far from being a reactionary reversion to an earlier political and social type, prepares the way, it may be hoped, for an advance towards a better and deeper social and political union, associated with direct popular political action and responsibility.

CHAPTER XIII

DIRECT *VERSUS* REPRESENTATIVE GOVERNMENT

IN the preceding chapter I have submitted some reasons for believing that direct government is not retrogressive merely because its methods exhibit certain analogies to those used in city and tribal states. Neither does the fact that the electorate in a directly governed state has certain positive functions to perform in relation to legislation place upon such a state the stigma of reaction. Direct government cannot be fairly condemned as reactionary unless the exercise of the broad general responsibilities which it imposes upon the electorate proves inimical to the delegation of sufficient and specific additional responsibilities to other departments of the government. This second aspect of the matter still remains to be discussed.

Will the advent of direct democracy result in any increase of the confusion and disorganization which prevails in the mechanism of American state representation? Or will the draught of self-confidence, which our local democracies are by way of swallowing, be communicated to the behavior of the rest of the political mechanism and invigorate the whole system? Will direct popular government commit the same fatal mistake which, to a greater or smaller extent, has already been committed by the national mon-

archies, by parliamentary government and by democratic legalism? Will it seek to appropriate or emasculate legislative or administrative functions which need to be delegated to other human agencies?

The critics of direct democracy can hardly be blamed for considering doubtful the answers to the foregoing questions. The American experiment in direct democracy is still in its early youth. Its meaning and its tendencies cannot be demonstrated from experience. If the active political responsibilities which it grants to the electorate are re-deemed in the negative and suspicious spirit which characterized the attitude of the American democracy towards its official organization during its long and barren alliance with legalism, direct democracy will merely become a source of additional confusion and disorganization. On the other hand, if, as a consequence of its rupture with legalism, the American democracy undergoes a change of spirit, if the attempt to discharge new and responsible activities in connection with its own government brings with it a positive inspiration and genuine social energy, the result may be to renovate American representative institutions and afford novel and desirable opportunities for effective political leadership. I prefer the second of these alternatives, but the preference can hardly be justified by a consideration of the results which have already been achieved in the directly governed states. It is born of an examination of the history, the needs and the ideals of the American local democracies.

✓ The more dogmatic partisans of direct government do

not help us very much in making a decision between the foregoing alternatives. In fact, they seem not to understand that any such alternatives exist. They usually attach much the same automatic efficacy to the system of direct government that the Fathers attached to constitutionalism and checks and balances. They have not, indeed, any declared intention of substituting direct for representative government. They admit verbally the necessity in a pure democracy of some effective delegation of specific governmental functions. But as a rule they devote very little attention and thought to the problem of a more powerful and efficient mechanism of legislation and administration. They are preoccupied by the flagrant betrayal of the popular interest which took place under the traditional system, and they seem to think that the adoption of the initiative, referendum and the recall will not merely protect the popular interest, but liberate the popular will — even though the popular will lacks, as much as it has lacked in the past, the impulse of positive social purposes. >

Such an attitude toward the instruments of direct government is merely another expression of the old superstitious belief in political mechanics against which progressive democracy is bound to protest. If the people in the directly governed states consider the new instruments of democracy as fundamentally a safeguard against abuse and oppression, they may succeed in abolishing one kind of abuse and oppression, but only at the price of its being succeeded by other kinds. If they do not impose limits

on their use of the instruments of direct government, based upon the conditions of their profitable service, it will prove to be a barren and mischievous addition to the stock of democratic political institutions. The success of the new instruments as negative safeguards will be commensurate with their success as agencies for the realization of positive popular political purposes. Their serviceability as agencies for the realization of popular political purposes will depend upon the ability of democratic law-givers to associate with them an efficient method of delegating popular political authority. Direct democracy, that is, has little meaning except in a community which is resolutely pursuing a vigorous social program. It must become one of a group of political institutions, whose object is fundamentally to invigorate and socialize the action of American public opinion.

The salient reasons which make it necessary to associate the advent of direct democracy with the attempt to realize a positive social program have already been indicated. They are derived from the profound alterations in the balance of a political organization which is substituting a positive for a negative social policy. The abstract legalistic individualism of the Jeffersonian democracy had in theory no need of any machinery of direct popular control. The activity of government was restricted, and its organs were emasculated, in the interest of a specific formulation of individual rights. Government was considered to be merely a form of temporary police supervision. Such a political system was placed in irons by the Law

and lacked the power to do any harm. It really needed to operate somewhat independently of public opinion. Fermentation of public opinion and active political and social experimentation could not accomplish anything of real social value. The essential popular needs were already safeguarded in the Law, which deserved vigilant protection and unquestioning obedience on the part of all good citizens. Effective popular control of such a government was unnecessary. Government was not intended to be the instrument of important popular social purposes.

In its actual historical development the government soon became the instrument of important popular social purposes, and it was obliged to develop a corresponding method of popular control. But the popular social purposes which the state and Federal governments formerly attempted to realize were derived from the old individualistic social economy, and the control supposed to be exercised by the partisan organizations was ineffective. A wholly new situation was created when the local democracies came to need and possess a genuinely social policy, which threw increased burdens upon the government, and commensurately increased its power. Under such conditions direct popular control over the mechanism of government became of essential importance. A negative individualistic social policy implies a weak and irresponsible government. A positive comprehensive social policy implies a strong, efficient and responsible government. But a strong and efficient government, which exercises a large part of the authority of the state and which is not bound by the substantive pro-

visions of the fundamental Law, might well be dangerous not only to individual civil rights, but to popular political rights. Every precaution should be adopted to keep it in sensitive touch with public opinion. A lack of responsiveness to public opinion would tempt it to become domineering and oppressive, and would in the long run make its own work abortive as well as dangerous. A social policy is concerned in the most intimate and comprehensive way with the lives of the people. In order to be successful, it must rest on the basis of abundant and cordial popular support.

The mechanism of direct government has, consequently, an essential function to perform in the organization of a social democracy. The realization of a genuine social policy necessitates the aggrandizement of the administrative and legislative branches of the government. Progressive democracy recognizes the need of these instruments, but it recognizes the need of keeping control of them. A strong government with an affirmative policy and effective popular control are supplementary rather than hostile one to another. The realization of such a policy will in the long run demand both an efficient system of representation and an efficient method of direct popular supervision.)

The friends of direct government do not usually advocate it, for the reasons indicated in the preceding paragraph. An exclusively representative government is to many of them a perfectly satisfactory form of democratic political organization. It is objectionable only because it has failed to be really representative. A recent convert to pure democracy, President Woodrow Wilson, has expressed

in the following words the reasons for his conversion : "If we felt we had genuine representative government in our state legislatures, no one would propose the initiative and the referendum in the United States. Our most ardent and successful advocates regard them as a sobering means of obtaining genuine representative action on the part of legislative bodies. They do not mean to set anything aside. They mean to restore and to reinvigorate rather." And a much more radical critic of our traditional system, Professor J. Allen Smith, who also favors direct popular political action, asserts that "a government of the representative type, if responsive to public sentiment, would answer all the requirements of a democratic state."

The adoption of direct government may, it is true, end by reinvigorating representative government; but if so, the result will not be accomplished by refusing "to set anything aside." The first thing which must be set aside is the method of representation which has passed in this country under the name of representative government. Direct government will never reinvigorate our existing state of political institutions. What it may accomplish is to supply energy to a new and better method of delegating popular political authority.

A statesman whose dominant object was the reorganization of existing state representative government would be foolish to depend upon the initiative and the referendum for the accomplishment of his purpose. There are a score of ways in which American state government could be made more representative without any invocation of the

instrument of direct government. The first condition of effective representation is the bestowal upon the representative body of some effective power and responsibility, which, as all admit, is precisely the condition which has been largely and increasingly absent from our so-called representative institutions. Direct government does not automatically satisfy this need. On the contrary, as the experience of the state of Oregon sufficiently proves, its merely external addition to the existing machinery of representation tends, if anything, to attenuate still further the meagre responsibilities officially conferred on our state representative agencies.

So far as these state representative agencies are concerned, a representative value cannot be restored to them, because they were never intended to be and never have been representative in any self-respecting meaning of the word. A thoroughly representative government is essentially government by men rather than by Law. The active exercise of effective political responsibility is confided to a body of the elect. They assume the same responsibility for the ultimate welfare of the state that the American system delegates to the Law and its official expounders. True, the legislative body may govern, just as the Law was permitted to govern, by virtue of an explicit or implied popular consent, but in a representative system popular power is exercised only to be delegated. For the time being, complete legal responsibility for the public weal is conferred upon the legislature. Quite obviously no such responsibility has been conferred by the American system either upon

the legislature or upon the legislature and executive together; and, to my mind, it cannot be expected that any exclusively representative system will be even fairly successful on any other terms.

The Progressive Republicans, who are advocating an increase of executive power and a closer coöperation between the executive and the legislature as the most effective means of reinvigorating the representative system, can make a very strong argument in its favor. They can make a stronger argument than can those advocates of "pure" democracy who expect to develop a genuinely representative government by grafting the instruments of direct government on an essentially and fatally unrepresentative system. But they cannot make a strong enough argument. The coöperation between an executive and a legislature, each of which derives its authority directly from the people, cannot be made properly operative except by some method of referring disputes to the common master — which means a considerable measure of direct government. Moreover, an American electorate would not submit for long to the increased power of the organs of government which would result from their coöperative action, without the creation of some means of effective popular control. But even if these difficulties could be overcome, it is doubtful how far any system can be considered really representative which does not bestow complete responsibility for the public welfare upon the government. The government must have the power to determine the Law instead of being circumscribed by the Law. Just in so far as its authority

was curtailed, its sense of responsibility would be relaxed and its integrity would be undermined.

A purely representative system, such as that of the United Kingdom, seeks to accomplish the fundamental objects of government by a method opposed to that of the traditional American system. The former bestows complete legal responsibility for the welfare of the state and the course of its development upon the elect in the expectation that thereby society will obtain the boon of rational guidance. "Representation is not," says Guizot, who was one of its most ardent advocates, "an arithmetical means employed to count individual wills, but a natural process, whereby public reason, which alone has the right to govern modern society, may be extracted from the bosom of society itself." This account of the ultimate meaning of a purely representative system was accepted substantially by John Stuart Mill, although with certain significant modifications; and it manifestly constitutes the only justification for the enormous power and responsibility bestowed upon the legislative body. As the result of their deliberations the action of the representatives must embody a program based upon the enduring and the binding interests of the nation.

The American constitutional system did not need to create a powerful organ of government whose wise leadership would help to extract reason from the bosom of society. That desirable result had already been accomplished. Reason had been printed on the bosom of society in indelible ink by virtue of the embodiment in the Constitution of the

great principles of legal morals. Its human purveyors were rather the judges than the legislature; and the business of the courts was not merely to declare the Word, but to keep the fire of political reason glowing in the political hearth. Under such a system executives and legislatures were not supposed, and did not need, to be particularly reasonable — which is certainly a proof of the wisdom of the Fathers of the Republic. They needed most of all to be obedient and self-restrained. For if any effective method exists of extracting reason from the bosom of society, the human purveyors of this rational extract certainly require some oracular writing for their guidance; and the more authoritative this oracle can be made, the better. So far as the object of political organization is to bring to the surface an already existing fund of reason, the method adopted by the founders of the American constitutional system may be preferred to the method characteristic of a purely representative system. The latter leaves the secretion and extraction of reason much more to the operation of a clumsy mechanism. As an edifice of political rationalism, the record of the discussion and action of the British Parliament during the past century cannot be compared to the constitutional decisions of the Supreme Court of the United States; and this is true notwithstanding the fact that even in the latter some traces may be occasionally discovered of the fallibility of that sovereign faculty.

Thus the difficulty with a purely representative government is similar to the difficulty which is involved in gov-

ernment by Law. The assumption made by the advocates of both of these systems is that society possesses at any one time a fund of social reason which, by virtue of its superiority to interested, inexperienced and perverse counsel, is entitled to determine social action. The state should be organized chiefly for the purpose of giving control to this fund of social reason. The means whereby this control is exercised differs radically in the two systems; but we need not bother about their respective advantages or disadvantages. Neither of them meets the needs of a progressive democratic society, because in a society of this kind no such fund of really authoritative social reason can be held to exist. There is a fund of social reason which should possess some authority; but it is so small compared to social aspirations and needs that a democratic society must be organized less to obey than to increase it. The work of extracting the stores of reason from the bosom of society must be subordinated to the more fundamental object of augmenting the supply of social reason and improving its distribution. Legalism and purely representative government are unsuited to the needs of a thoroughgoing democracy, because their method of organization depends on popular obedience rather than popular education. The promotion and the diffusion of social reason cannot be brought about without a reverence for orderly procedure and without the leadership of the elect; but the erection of legalism alone or of representation alone into a system is not sufficient to secure this most important of all political objects. The best chance of securing it opens up

as a result a more thoroughly popular organization of the state. The electorate must be required as the result of its own actual experience and unavoidable responsibilities to develop those very qualities of intelligence, character, faith and sympathy which are necessary for the success of the democratic experiment.

Thus neither representative government nor government by law nor any combination between the two is competent to meet all the requirements of a democratic polity. A clear-sighted, self-confident and loyal democracy will keep in its own hands the active control of all the agents and instruments of its own fulfilment. The instinctive repugnance which the American democracy has always exhibited to the delegation of too much power to any one of the separate departments of government is explicable and justifiable. No plebiscite can bestow authenticity upon an ostensibly democratic political system which approximates in practice to the exercise of executive omnipotence. No intermittent appeals to the people for their approbation can wholly democratize a system which approximates in practice to the exercise of legislative omnipotence. No reverence for the law can guarantee political and social liberty to a body of democrats who confide their collective destiny to written formulas as expounded by a ruling body of lawyers. In practice each of these systems develops into a method of class government. The men to whom the enormous power is delegated will use it, in part at least, to perpetuate the system which is so beneficial to themselves. But even if they were as wise as Solomon and as gallant and

disinterested as Sir Galahad, the systems for which they spoke and acted would still be evading rather than meeting the democratic problem. None of these systems make the people actively responsible for their own reasonableness and welfare. The people do not reap the advantages to which they are entitled, but if they did receive every possible advantage, they would not be earning it and could not keep what they received.

In all three of the principal departments of government, there are essential functions to be performed which must be delegated by a democracy to selected men under conditions which make for technical efficiency and individual independence and self-respect. The Fathers of the Republic were fully justified both in keeping the powers distinguished, and in seeking to balance one against the other. Their mistake consisted in the methods adopted for preserving or readjusting the balance. The preservation of a balance depends upon the harmonious development of several elements which enter into it; and as in the course of nature harmonious development is rare, the preservation of any such balance must usually be contrived by human insistence and intelligence. Only one part of a democratic system is entitled to exercise any such function — the electorate itself. The whole of a democratic political system is divided into three parts, not merely or primarily as a protection to individual and popular liberties, but rather to provide an essential positive function for the people to perform — the function of recreating the unity which is necessarily compromised by the no less necessary

specialization of governmental function. Such is the part which the people, or the closest possible approximation to the people, have to play in the process of their own nationalization or socialization. They must divide in order to act, to think, to rule, to move on and to aspire; but they must not impose upon any one of the resulting classifications or subdivisions the responsibility of ultimate social cohesion. That responsibility rests with the whole people, and its fulfilment depends upon popular intelligence, sympathy and faith.

Many sincere social democrats in this country, as well as in England or France, regard any such dependence upon direct government with the utmost repugnance. The industrial and social program of a democracy can, in their opinion, be accomplished with less friction and delay through the agency of an authoritative representative body. (They are probably right in expecting that in the near future direct popular government will increase the difficulty of securing the adoption of many items in a desirable social program. But reformers of this class, like the conservatives, attach too much importance to the accomplishment and maintenance of specific results, and too little to the permanent moral welfare of the democracy. They are willing to have the people imposed upon in the interest of what is or is intended to be the popular benefit.) An authoritative representative government, particularly one which is associated with inherited leadership and a strong party system, carries with it an enormous prestige. It is frequently in a position either to ignore, to circumvent or to wear down popular opposition.

But a social program purchased at such a price is not worth what it costs. It makes no difference how benevolent the intention of the government may be or how wise its legislation. The program which is carried out by such means will do nothing to make the people worthy of their advantages. The result will either be popular servility or organized popular resistance or both. The country in which a benevolent government has succeeded in carrying out the most comprehensive social policy of modern times is the country in which a social democratic party, organized to overthrow the government, has succeeded in obtaining the support of a third of the electorate.

Social reformers must, consequently, be patient as well as eager and tenacious. A moderate program which is well understood and cordially supported by public opinion, and upon which the electorate has been in some measure specifically consulted, will be much more beneficial than a more extensive program which is not so well understood, and which does not represent a genuine popular affirmation. From the beginning of civilization the people have been constantly imposed upon by moral or social or physical force in the real or supposed interest of their own welfare. The process will doubtless have to continue in some measure; but if democracy means anything, it means popular liberation in precisely this respect. It means that social reformers must present their arguments primarily to the electorate, and welcome every good opportunity of allowing the electorate to pass judgment upon their proposals.)

Our conclusion, then, is double-faced. Democracy im-

plies and needs some method of representation which will be efficient and responsible enough to carry out a social policy, but which does not imply the delegation of its own ultimate discretionary power to any body of men or body of law. No such representative system can be found in the provisions of existing state constitutions. An organization of the executive and legislative powers, which will give increased energy to both of them and which is adjusted to their coöperation both one with another and with a sufficient measure of direct government, is what is needed and must be contrived. The new organization will be intended first, last and always to promote political education. It must be adapted to action, but the action must merely be the decisive temporary result of widespread popular fermentation. It must have the chance to be efficient, but only for the purpose of being educational. It must be able to educate, but primarily by the road of efficient action. The new system can accomplish nothing without human energy, intelligence, sacrifice and faith, but if those qualities are present, it will make the best use of them.