Chapter Five

I

It is a commonplace that the persistence of l an institution is due solely to the state of mind that prevails towards it, the set of terms in which men habitually think about it. So long, and only so long, as those terms are favourable, the institution lives and maintains its power; and when for any reason men generally cease thinking in those terms, it weakens and becomes inert. At one time, a certain set of terms regarding man's place in nature gave organized Christianity the power largely to control men's consciences and direct their conduct; and this power has dwindled to the point of disappearance, for no other reason than that men generally stopped thinking in those terms. The persistence of our unstable and iniquitous economic system is not due to the power of accumulated capital, the force of propaganda, or to any force or combination of forces commonly alleged as its cause. It is due solely to a certain set of terms in which men think of the opportunity to work; they regard this opportunity as something to be given. Nowhere is there any other idea about it than that the opportunity to apply labour and capital to natural resources for the production of wealth is not in any sense a right, but a concession.[1] This is all that keeps our system alive. When men cease to think in those terms, the system will disappear, and not before.

It seems pretty clear that changes in the terms of thought affecting an institution are but little advanced by direct means. They are brought about in obscure and circuitous ways, and assisted by trains of circumstance which before the fact would appear quite unrelated, and their erosive or solvent action is therefore quite unpredictable. A direct drive at effecting these changes comes as a rule to nothing, or more often than not turns out to be retarding. They are so largely the work of those unimpassioned and imperturbable agencies for which Prince de Bismarck had such vast respect - he called them the *imponderabilia* - that any effort which disregards them, or thrusts them violently aside, will in the long run find them stepping in to abort its fruit.

Thus it is that what we are attempting to do in this rapid survey of the historical progress of certain ideas, is to trace the genesis of an attitude of mind, a set of terms in which now practically everyone thinks of the State; and then to consider the conclusions towards which this psychical phenomenon unmistakably points. Instead of recognizing the State as "the common enemy of all well-disposed, industrious and decent men," the run of mankind, with rare exceptions, regards it not only as a final and indispensable entity, but also as, in the main, beneficent. The mass-man, ignorant of its history, regards its character and intentions as social rather than anti-social; and in that faith he is willing to put at its disposal an indefinite credit of knavery, mendacity and chicane, upon which its administrators may draw at will. Instead of looking upon the State's progressive absorption of social power with the repugnance and resentment that he would naturally feel towards the activities of a professional-criminal organization, he tends rather to encourage and glorify it, in the belief that he is somehow identified with the State, and that therefore, in consenting to its indefinite aggrandizement [elaboration], he consents to something

in which he has a share - he is, *pro tanto* [for much], aggrandizing himself. Professor Ortega y Gasset analyzes this state of mind extremely well. The mass-man, he says, confronting the phenomenon of the State, "sees it, admires it, knows that *there it is*... Furthermore, the mass man sees in the State an anonymous power, and feeling himself, like it, anonymous, he believes that the State is something of his own. Suppose that in the public life of a country some difficulty, conflict, or problem, presents itself, the mass-man will tend to demand that the State intervene immediately and undertake a solution directly with its immense and unassailable resources... When the mass suffers any ill-fortune, or simply feels some strong appetite, its great temptation is that permanent sure possibility of obtaining everything, without effort, struggle, doubt, or risk, merely by touching a button and setting the mighty machine in motion."

It is the genesis of this attitude, this state of mind, and the conclusions which inexorably follow from its predominance, that we are attempting to get at through our present survey. These conclusions may perhaps be briefly forecast here, in order that the reader who is for any reason indisposed to entertain them may take warning of them at this point, and close the book.

The unquestioning, determined, even truculent maintenance of the attitude which Professor Ortega y Gasset so admirably describes, is obviously the life and strength of the State; and obviously too, it is now so inveterate and so wide-spread - one may freely call it universal - that no direct effort could overcome its inveteracy or modify it, and least of all hope to enlighten it. This attitude can only be sapped and mined by uncountable generations of experience, in a course marked by recurrent calamity of a most appalling character. When once the predominance of this attitude in any given civilization has become inveterate, as so plainly it has become in the civilization of America, all that can be done is to leave it to work its own way out to its appointed end. The philosophic historian may content himself with pointing out and clearly elucidating its consequences, as Professor Ortega y Gasset has done, aware that after this there is no more that one can do. "The result of this tendency," he says, "will be fatal. Spontaneous social action will be broken up over and over again by State intervention; no new seed will be able to fructify.[2] Society will have to live for the State, man for the governmental machine. And as after all it is only a machine, whose existence and maintenance depend on the vital supports around it,[3] the State, after sucking out the very marrow of society, will be left bloodless, a skeleton, dead with that rusty death of machinery, more gruesome than the death of a living organism. Such was the lamentable fate of ancient civilization."

[1] Consider, for example, the present situation. Our natural resources, while much depleted, are still great; our population is very thin, running something like twenty or twenty-five to the square mile; and some millions of this population are at the moment "unemployed," and likely to remain so because no one will or can "give them work." The point is not that men generally submit to this state of things, or that they accept it as inevitable, but that they see nothing irregular or anomalous about it because of their fixed idea that work is something to be given.

[2] The present paralysis of production, for example, is due solely to State intervention, and uncertainty concerning further intervention.

[3] It seems to be very imperfectly understood that the cost of State intervention must be paid out of production, this being the only source from which any payment for anything can be derived. Intervention retards production; then the resulting stringency and inconvenience enable further intervention,

which in turn still further retards production; and this process goes on until, as in Rome, in the third century, production ceases entirely, and the source of payment dries up.

II

The revolution of 1776-1781 converted thirteen provinces, practically as they stood, into thirteen autonomous political units, completely independent, and they so continued until 1789 formally held together, as a sort of league, by the Articles of Confederation. For our purposes, the point to be remarked about this eight-year period, 1781-1789, is that administration of the political means was not centralized in the federation, but in the several units of which the federation was composed. The federal assembly, or congress, was hardly more than a deliberative body of delegates appointed by the autonomous units. It had no taxing power, and no coercive power. It could not command funds for any enterprise common to the federation, even for war; all it could do was to apportion the sum needed, in the hope that each unit would meet its quota. There was no coercive federal authority over these matters, or over any matters; the sovereignty of each of the thirteen federated units was complete.

Thus the central body of this loose association of sovereignties had nothing to say about the distribution of the political means. This authority was vested in the several component units. Each unit had absolute jurisdiction over its territorial basis, and could partition it as it saw fit, and could maintain any system of land-tenure that it chose to establish.[4] Each unit set up its own trade-regulations. Each unit levied its own tariffs, one against another, in behalf of its own chosen beneficiaries. Each manufactured its own currency, and might manipulate it as it liked, for the benefit of such individuals or economic groups as were able to get effective access to the local legislature. Each managed its own system of bounties, concessions, subsidies, franchises, and exercised it with a view to whatever private interest its legislature might be influenced to promote. In short, the whole mechanism of the political means was non-national. The federation was not in any sense a State; the State was not one, but thirteen.

Within each unit, therefore, as soon as the war was over, there began at once a general scramble for access to the political means. It must never be forgotten that in each unit society was fluid; this access was available to anyone gifted with the peculiar sagacity and resolution necessary to get at it. Hence one economic interest after another brought pressure of influence to bear on the local legislatures, until the economic hand of every unit was against every other, and the hand of every other was against itself. The principle of "protection," which as we have seen was already well understood, was carried to lengths precisely compatible with those to which it is carried in international commerce today, and for precisely the same primary purpose - the exploitation, or in plain terms the robbery, of the domestic consumer. Mr. Beard remarks that the legislature of New York, for example, pressed the principle which governs tariff-making to the point of levying duties on firewood brought in from Connecticut and on cabbages from New Jersey - a fairly close parallel with the *octroi* [tax] that one still encounters at the gates of French towns.

The primary monopoly, fundamental to all others - the monopoly of economic rent - was sought with redoubled eagerness.[5] The territorial basis of each unit now included the vast holdings confiscated from British owners, and the bar erected by

the British State's proclamation of 1763 against the appropriation of Western lands was now removed. Professor Sakolski observes dryly that "the early land-lust which the colonists inherited from their European forebears was not diminished by the democratic spirit of the revolutionary fathers." Indeed not! Land-grants were sought as assiduously from local legislatures as they had been in earlier days from the Stuart dynasty and from colonial governors, and the mania of land jobbing ran apace with the mania of land-grabbing.[6] Among the men most actively interested in these pursuits were those whom we have already seen identified with them in pre-revolutionary days, such as the two Morrises, Knox, Pickering, James Wilson and Patrick Henry; and with their names appear those of Duer, Bingham, McKean, Willing, Greenleaf, Nicholson, Aaron Burr, Low, Macomb, Wadsworth, Remsen, Constable, Pierrepotit, and others which now are less well remembered.

There is probably no need to follow out the rather repulsive trail of effort after other modes of the political means. What we have said about the foregoing two modes - tariffs and rental-value monopoly - is doubtless enough to illustrate satisfactorily the spirit and attitude of mind towards the State during the eight years immediately following the revolution. The whole story of insensate scuffle for State-created economic advantage is not especially animating, nor is it essential to our purposes. Such as it is, it may be read in detail elsewhere. All that interests us is to observe that during the eight years of federation, the principles of government set forth by Paine and by the Declaration continued in utter abeyance. Not only did the philosophy of natural rights and popular sovereignty[7] remain as completely out of consideration as when Mr. Jefferson first lamented its disappearance, but the idea of government as a social institution based on this philosophy was likewise unconsidered. No one thought of a political organization as instituted "to secure these rights" by processes of purely negative intervention-instituted, that is, with no other end in view than the maintenance of "freedom and security." The history of the eight-year period of federation shows no trace whatever of any idea of political organization other than the State-idea. No one regarded this organization otherwise than as the organization of the political means, an all-powerful engine which should stand permanently ready and available for the irresistible promotion of this-or-that set of economic interests, and the irremediable disservice of others; according as whichever set, by whatever course of strategy, might succeed in obtaining command of its machinery.

[4] As a matter of fact, all thirteen units merely continued the system that had existed throughout the colonial period - the system which gave the beneficiary a monopoly of rental-values as well as a monopoly of use-values. No other system was ever known in America, except in the short-lived state of Deseret, under the Mormon polity.

[5] For a brilliant summary of post-revolutionary land-speculation, cf. Sakolski, *op. cit.*, ch. II.

[6] Mr. Sakolski very justly remarks that the mania for land-jobbing was stimulated by the action of the new units in offering lands by way of settlement of their public debts, which led to extensive gambling in the various issues of "land-warrants." The list of eminent names involved in this enterprise includes Wilson C. Nicholas, who later became governor of Virginia; "Light Horse Harry" Lee, father of the great Confederate Commander; General John Preston, of Smithfield; and George Taylor, brother-in-law of Chief Justice Marshall. Lee, Preston and Nicholas were prosecuted at the instance of some Connecticut speculators, for a transaction alleged as fraudulent; Lee was arrested in Boston, on the eve of embarking for the West Indies. They had deeded a tract, said to be of 300,000 acres, at ten

cents an acre, but on being surveyed, the tract did not come to half that size. Frauds of this order were extremely common.

[7] The new political units continued the colonial practice of restricting the suffrage to taxpayers and owners of property, and none but men of considerable wealth were eligible to public office. Thus, the exercise of sovereignty was a matter of economic right, not natural right.

III

It may be repeated that while State power was well centralized under the federation, it was not centralized in the federation, but in the federated unit. For various reasons, some of them plausible, many leading citizens, especially in the more northerly units, found this distribution of power unsatisfactory; and a considerable compact group of economic interests which stood to profit by a redistribution naturally made the most of these reasons. It is quite certain that dissatisfaction with the existing arrangement was not general, for when the redistribution took place in 1789, it was effected with great difficulty and only through a *coup d'Etat*, organized by methods which, if employed in any other field than that of politics, would be put down at once as not only daring, but unscrupulous and dishonourable.

The situation, in a word, was that American economic interests had fallen into two grand divisions, the special interests in each having made common cause with a view to capturing control of the political means. One division comprised the speculating, industrial-commercial and creditor interests, with their natural allies of the bar and bench, the pulpit and the press. The other comprised chiefly the farmers and artisans and the debtor class generally. From the first, these two grand divisions were colliding briskly here and there in the several units, the most serious collision occurring over the terms of the Massachusetts constitution of 1780.[8] The State in each of the thirteen units was a class-State, as every State known to history has been; and the work of maneuvering it in its function of enabling the economic exploitation of one class by another went steadily on.

General conditions under the Articles of Confederation were pretty good. The people had made a creditable recovery from the dislocations and disturbances due to the revolution, and there was a very decent prospect that Mr. Jefferson's idea of a political organization which should be national in foreign affairs and non-national in domestic affairs might be found continuously practicable. Some tinkering with the Articles seemed necessary - in fact, it was expected - but nothing that would transform or seriously impair the general scheme. The chief trouble was with the federation's weakness in view of the chance of war, and in respect of debts due to foreign creditors. The Articles, however, carried provision for their own amendment, and for anything one can see, such amendment as the general scheme made necessary was quite feasible. In fact, when suggestions of revision arose, as they did almost immediately, nothing else appears to have been contemplated.

But the general scheme itself was, as a whole, objectionable to the interests grouped in the first grand division. The grounds of their dissatisfaction are obvious enough. When one bears in mind the vast prospect of the continent, one need use but little imagination to perceive that the national scheme was by far the more congenial to those interests, because it enabled an ever-closer centralization of control over the political means. For instance, leaving aside the advantage of having but one central

tariff-making body to chaffer [bargain or haggle] with, instead of twelve, any industrialist could see the great primary advantage of being able to extend his exploiting operations over a nation-wide free-trade area walled-in by a general tariff; the closer the centralization, the larger the exploitable area. Any speculator in rental-values would be quick to see the advantage of bringing this form of opportunity under unified control.[9] Any speculator in depreciated public securities would be strongly for a system that could offer him the use of the political means to bring back their face-value.[10] Any ship owner or foreign trader would be quick to see that his bread was buttered on the side of a national State which, if properly approached, might lend him the use of the political means by way of a subsidy, or would be able to back up some profitable but dubious freebooting [pillaging] enterprise with "diplomatic representations" or with reprisals.

In general, the farmers and the debtor class, on the other hand, were not interested in these considerations, but were strongly for letting things stay, for the most part, as they stood. Preponderance in the local legislatures gave them satisfactory control of the political means, which they could and did use to the prejudice of the creditor class, and they did not care to be disturbed in their preponderance. They were agreeable to such modification of the Articles as should work out short of this, but not to setting up a national[11] replica of the British merchant-State, which they perceived was precisely what the classes grouped in the opposing grand division wished to do. These classes aimed at bringing in the British system of economics, politics and judicial control, on a nation-wide scale; and the interests grouped in the second division saw that what this would really come to was a shifting of the incidence of economic exploitation upon themselves. They had an impressive object-lesson in the immediate shift that took place in Massachusetts after the adoption of John Adams's local constitution of 1780. They naturally did not care to see this sort of thing put into operation on a nation-wide scale, and they therefore looked with extreme disfavour upon any bait put forth for amending the Articles out of existence. When Hamilton, in 1780, objected to the Articles in the form in which they were proposed for adoption, and proposed the calling of a constitutional convention instead, they turned the cold shoulder; as they did again to Washington's letter to the local governors three years later, in which he adverted to the need of a strong coercive central authority.

Finally, however, a constitutional convention was assembled, on the distinct understanding that it should do no more than revise the Articles in such a way, as Hamilton cleverly phrased it, as to make them "adequate to the exigencies of the nation," and on the further understanding that all the thirteen units should assent to the amendments before they went into effect; in short, that the method of amendment provided by the Articles themselves should be followed. Neither understanding was fulfilled. The convention was made up wholly of men representing the economic interests of the first division. The great majority of them, possibly as many as four-fifths, were public creditors; one-third were land-speculators; some were money-lenders; one-fifth were industrialists, traders, shippers; and many of them were lawyers. They planned and executed a *coup d'Etat*, simply tossing the Articles of Confederation into the waste-basket, and drafting a constitution *de novo* [altered constitution], with the audacious provision that it should go into effect when ratified by nine units instead of by all thirteen. Moreover, with like audacity, they

provided that the document should not be submitted either to the Congress or to the local legislatures, but that it should go direct to a popular vote! [12]

The unscrupulous methods employed in securing ratification need not be dwelt on here.[13] We are not indeed concerned with the moral quality of any of the proceedings by which the constitution was brought into being, but only with showing their instrumentality in encouraging a definite general idea of the State and its functions, and a consequent general attitude towards the State. We therefore go on to observe that in order to secure ratification by even the nine necessary units, the document had to conform to certain very exacting and difficult requirements. The political structure which it contemplated had to be republican in form, yet capable of resisting what Gerry unctuously [hypocritically] called "the excess of democracy," and what Randolph termed its "turbulence and follies." The task of the delegates was precisely analogous to that of the earlier architects who had designed the structure of the British merchant-State, with its system of economics, politics and judicial control; they had to contrive something that could pass muster as showing a good semblance of popular sovereignty, without the reality. Madison defined their task explicitly in saying that the convention's purpose was "to secure the public good and private rights against the danger of such a faction [*i.e.*, a democratic faction], and at the same time preserve the spirit and form of popular government."

Under the circumstances, this was a tremendously large order; and the constitution emerged, as it was bound to do, as a compromise document, or as Mr. Beard puts it very precisely, "a mosaic of second choices," which really satisfied neither of the two opposing sets of interests. It was not strong and definite enough in either direction to please anybody. In particular, the interests composing the first division, led by Alexander Hamilton, saw that it was not sufficient of itself to fix them in anything like a permanent impregnable position to exploit continuously the groups composing the second division. To do this - to establish the degree of centralization requisite to their purposes - certain lines of administrative management must be laid down, which, once established, would be permanent. Therefore, the further task, in Madison's phrase, was to "administration" the constitution into such absolutist modes as would secure economic supremacy, by a free use of the political means, to the groups which made up the first division.

This was accordingly done. For the first ten years of its existence, the constitution remained in the hands of its makers for administration in directions most favourable to their interests. For an accurate understanding of the newly erected system's economic tendencies, too much stress can not be laid on the fact that for these ten critical years "the machinery of economic and political power was mainly directed by the men who had conceived and established it."[14] Washington, who had been chairman of the convention, was elected President. Nearly half the Senate was made up of men who had been delegates, and the House of Representatives was largely made up of men who had to do with the drafting or ratifying of the constitution. Hamilton, Randolph and Knox, who were active in promoting the document, filled three of the four positions in the Cabinet; and all the federal judgeships, without a single exception, were filled by men who had a hand in the business of drafting or of ratification, or both.

Of all the legislative measures enacted to implement the new constitution, the one best calculated to ensure a rapid and steady progress in the centralization of

political power was the Judiciary Act of 1789.[15] This measure created a federal supreme court of six members (subsequently enlarged to nine), and a federal district court in each state, with its own complete personnel, and a complete apparatus for enforcing its decrees. The Act established federal over-sight of state legislation by the familiar device of "interpretation," whereby the Supreme Court might nullify state legislative or judicial action which, for any reason it saw fit, to regard as unconstitutional. One feature of the Act, which for our purposes is most noteworthy, is that it made the tenure of all these federal judgeships appointive, not elective, and for life; thus marking almost the farthest conceivable departure from the doctrine of popular sovereignty.

The first chief justice was John Jay, "the learned and gentle Jay," as Beveridge calls him in his excellent biography of Marshall. A man of superb integrity, he was far above doing anything whatever in behalf of the accepted principle that *est boni judicis ampliare jurisdictionem*. Ellsworth, who followed him, also did nothing. The succession, however, after Jay had declined a reappointment, then fell to John Marshall, who, in addition to the control established by the Judiciary Act over the state legislative and judicial authority, arbitrarily extended judicial control over both the legislative and executive branches of the federal authority;[16] thus effecting as complete and convenient a centralization of power as the various interests concerned in framing the constitution could reasonably have contemplated.[17]

We may now see from this necessarily brief survey, which anyone may amplify and particularize at his pleasure, what the circumstances were which rooted a certain definite idea of the State still deeper in the general consciousness. That idea was precisely the same in the constitutional period as that which we have seen prevailing in the two periods already examined - the colonial period, and the eight year period following the revolution. Nowhere in the history of the constitutional period do we find the faintest suggestion of the Declaration's doctrine of natural rights; and we find its doctrine of popular sovereignty not only continuing in abeyance, but constitutionally estopped from ever reappearing. Nowhere do we find a trace of the Declaration's theory of government; on the contrary, we find it expressly repudiated. The new political mechanism was a faithful replica of the old disestablished British model, but so far improved and strengthened as to be incomparably more close-working and efficient, and hence presenting incomparably more attractive possibilities of capture and control. Therefore, by consequence, we find more firmly implanted than ever the same general idea of the State that we have observed as prevailing hitherto - the idea of an organization of the political means, an irresponsible and all-powerful agency standing always ready to be put into use for the service of one set of economic interests as against another.

[8] This was the uprising known as Shays's Rebellion, which took place in 1786. The creditor division in Massachusetts had gained control of the political means, and had fortified its control by establishing a constitution which was made to bear so hardly on the agrarian and debtor division that an armed insurrection broke out six years later, led by Daniel Shays, for the purpose of annulling its onerous provisions, and transferring control of the political means to the latter group. This incident affords a striking view in miniature of the State's nature and teleology. The rebellion had a great effect in consolidating the creditor division and giving plausibility to its contention for the establishment of a strong coercive national State. Mr. Jefferson spoke contemptuously of this contention, as "the interested clamours and sophistry of speculating, shaving and banking institutions"; and of the rebellion itself he observed to Mrs. John Adams, whose husband had most to do with drafting the

Massachusetts constitution, "I like a little rebellion now and then... The spirit of resistance to government is so valuable that I wish it to be always kept alive. It will often be exercised when wrong, but better so than not to be exercised at all." Writing to another correspondent at the same time, he said earnestly, "God forbid we should ever be twenty years without such a rebellion." *Obiter dicta* of this nature, scattered here and there in Mr. Jefferson's writings, have the interest of showing how near his instinct led him towards a clear understanding of the State's character.

[9] Professor Sakolski observes that after the Articles of Confederation were supplanted by the constitution, schemes of land-speculation "multiplied with renewed and intensified energy." Naturally so, for as he says, the new scheme of a national State got strong support from this class of adventurers because they foresaw that rental-values "must be greatly increased by an efficient federal government."

[10] More than half the delegates to the constitutional convention of 1787 were either investors or speculators in the public funds. Probably sixty per cent of the values represented by these securities were fictitious, and were so regarded even by their holders.

[11] It may be observed that at this time the word "national" was a term of obloquy, carrying somewhat the same implications that the word "fascist" carries in some quarters today. Nothing is more interesting than the history of political terms in their relation to the shifting balance of economic advantage - except, perhaps, the history of the partisan movements which they designate, viewed in the same relation.

[12] The obvious reason for this, as the event showed, was that the interests grouped in the first division had the advantage of being relatively compact and easily mobilized. Those in the second division, being chiefly agrarian, were loose and sprawling, communications among them were slow, and mobilization difficult.

[13] They have been noticed by several recent authorities, and are exhibited fully in Mr. Beard's monumental *Economic Interpretation of the Constitution of the United States*.

[14] Beard, *op. cit.*, p. 337.

[15] The principal measures bearing directly on the distribution of the political means were those drafted by Hamilton for funding and assumption, for a protective tariff, and for a national bank. These gave practically exclusive use of the political means to the classes grouped in the first grand division, the only modes left available to others being patents and copyrights. Mr. Beard discusses these measures with his invariable lucidity and thoroughness, *op. cit.*, Ch. VIII. Some observations on them, which are perhaps worth reading, are contained in my own book *Jefferson*, ch. V.

[16] The authority of the Supreme Court was disregarded by Jackson, and overruled by Lincoln, thus converting the mode of the State temporarily from an oligarchy into an autocracy. It is interesting to observe that just such a contingency was foreseen by the framers of the constitution, in particular by Hamilton. They were apparently well aware of the ease with which, in any period of crisis, a quasi-republican mode of the State slips off into executive tyranny. Oddly enough, at one time Mr. Jefferson considered nullifying the Alien and Sedition Acts by executive action, but did not do so. Lincoln overruled the opinion of Chief Justice Taney that suspension of *the habeas corpus* was unconstitutional, and in consequence the mode of the State was, until 1865, a monocratic military despotism. In fact, from the date of his proclamation of blockade, Lincoln ruled unconstitutionally throughout his term. The doctrine of "reserved powers" was knaved up *ex post facto* as a justification of his acts, but as far as the intent of the constitution is concerned, it was obviously a pure invention. In fact, a very good case could be made out for the assertion that Lincoln's acts resulted in a permanent radical change in the entire system of constitutional "interpretation" - that since his time, "interpretations" have not been interpretations of the constitution but merely of public policy; or, as our most acute and profound social critic put it, "the Supreme Court follows the election returns." A strict constitutionalist might indeed say that the constitution died in 1861, and one would have to scratch one's head pretty diligently to refute him.

[17] Marshall was appointed by John Adams at the end of his Presidential term when the interests grouped in the first division were becoming very anxious about the opposition developing against them among the exploited interests. A letter written by Oliver Wolcott to Fisher Ames gives a good idea of where the doctrine of popular sovereignty stood; his reference to military measures is particularly striking. He says, "The steady men in Congress will attempt to extend the judicial department, and I hope that their measures will be very decided. It is impossible in this country to render an army an engine of government; and there is no way to combat the state opposition but by an efficient and

extended organization of judges, magistrates, and other civil officers." Marshall's appointment followed, and also the creation of twenty-three new federal judgeships. Marshall's cardinal decisions were made in the cases of Marbury, of Fletcher, of McCulloch, of Dartmouth College, and of Cohens. It is perhaps not generally understood that, as the result of Marshall's efforts, the Supreme Court became not only the highest law-interpreting body, but the highest law-making body as well; the precedents established by its decisions have the force of constitutional law. Therefore, since 1800, the actual mode of the State in America is normally that of a small and irresponsible oligarchy! In 1821, Mr. Jefferson, regarding Marshall quite justly as "a crafty chief judge who sophisticates the law to his mind by the turn of his own reasoning," made the very remarkable prophecy that "our government is now taking so steady a course as to show by what road it will pass to destruction, to wit: by consolidation first, and then corruption, its necessary consequence. The engine of consolidation will be the federal judiciary; the other two branches the corrupting and corrupted instruments." Another prophetic comment on the effect of centralization was his remark that "when we must wait for Washington to tell us when to sow and when to reap, we shall soon want bread." A survey of our present political circumstances makes comment on these prophecies superfluous.

IV

Out of this idea proceeded what we know as the "party system" of political management, which has been in effect ever since. Our purposes do not require that we examine its history in close detail for evidence that it has been from the beginning a purely bipartisan system, since this is now a matter of fairly common acceptance. In his second term Mr. Jefferson discovered the tendency towards bipartisanship,[18] and was both dismayed and puzzled by it. I have elsewhere[19] remarked his curious inability to understand how the cohesive power of public plunder works straight towards political bipartisanship. In 1823, finding some who called themselves Republicans favouring the Federalist policy of centralization, he spoke of them in a rather bewildered way as "pseudo-Republicans, but real Federalists." But most naturally any Republican who saw a chance of profiting by the political means would retain the name, and at the same time resist any tendency within the party to impair the general system which held out such a prospect.[20] In this way bipartisanship arises. Party designations become purely nominal, and the stated issues between parties become progressively trivial; and both are more and more openly kept up with no other object than to cover from scrutiny the essential identity of purpose in both parties.

Thus the party system at once became in effect an elaborate system of fetishes, which, in order to be made as impressive as possible, were chiefly molded up around the constitution, and were put on show as "constitutional principles." The history of the whole post constitutional period, from 1789 to the present day, is an instructive and cynical exhibit of the fate of these fetishes when they encounter the one only actual principle of party action - the principle of keeping open the channels of access to the political means. When the fetish of "strict construction," for example, has collided with this principle, it has invariably gone by the board, the party that maintained it simply changing sides. The anti-Federalist party took office in 1800 as the party of strict construction; yet, once in office, it played ducks and drakes with the constitution, in behalf of the special economic interests that it represented.[21] The Federalists were nominally for loose construction, yet they fought bitterly every one of the opposing party's loose-constructionist measures - the embargo, the protective tariff and the national bank. They were constitutional nationalists of the deepest dye,

as we have seen; yet in their centre and stronghold, New England, they held the threat of secession over the country throughout the period of what they harshly called "Mr. Madison's war," the War of 1812, which was in fact a purely imperialistic adventure after annexation of Floridian and Canadian territory, in behalf of stiffening agrarian control of the political means; but when the planting interests of the South made the same threat in 1861, they became fervid nationalists again.

Such exhibitions of pure fetishism, always cynical in their transparent candour, make up the history of the party system. Their *reductio ad absurdum* is now seen as perhaps complete - one can not see how it could go further - in the attitude of the Democratic party towards its historical principles of state sovereignty and strict construction. A fair match for this, however, is found in a speech made the other day to a group of exporting and importing interests by the mayor of New York - always known as a Republican in politics - advocating the hoary Democratic doctrine of a low tariff!

Throughout our post-constitutional period there is not on record, as far as I know, a single instance of party adherence to a fixed principle, *qua* [with the character of] principle, or to a political theory, *qua* theory. Indeed, the very cartoons on the subject show how widely it has come to be accepted that party platforms, with their cant of "issues," are so much sheer quackery, and that campaign promises are merely another name for thimblerigging [a shell game]. The workaday practice of politics has been invariably opportunist, or in other words, invariably conformable to the primary function of the State; and it is largely for this reason that the State's service exerts its most powerful attraction upon an extremely low and sharp-set type of individual.[22]

However, the maintenance of this system of fetishes gives great enhancement to the prevailing general view of the State. In that view, the State is made to appear as somehow deeply and disinterestedly concerned with great principles of action; and hence, in addition to its prestige as a pseudo-social institution, it takes on the prestige of a kind of moral authority, thus disposing of the last vestige of the doctrine of natural rights by overspreading it heavily with the quicklime [caustic substance] of legalism; whatever is State-sanctioned is right. This double prestige is assiduously [unceasingly] inflated by many agencies; by a State-controlled system of education, by a State-dazzled pulpit, by a meretricious [harlot] press, by a continuous kaleidoscopic display of State pomp, panoply [impressive ceremonial display] and circumstance, and by all the innumerable devices of electioneering. These last invariably take their stand on the foundation of some imposing principle, as witness the agonized cry now going up here and there in the land, for a "return to the constitution." All this is simply "the interested clamours and sophistry," which means no more and no less than it meant when the constitution was not yet five years old, and Fisher Ames was observing contemptuously that of all the legislative measures and proposals which were on the carpet at the time, he scarce knew one that had not raised this same cry, "not excepting a motion for adjournment."

In fact, such popular terms of electioneering appeal are uniformly and notoriously what Jeremy Bentham called impostor-terms, and their use invariably marks one thing and one only; it marks a state of apprehension, either fearful or expectant, as the case may be, concerning access to the political means. As we are seeing at the moment, once let this access come under threat of straitening or stoppage, the menaced interests immediately trot out the spavined [deteriorated],

glandered hobby of "state rights" or "a return to the constitution," and put it through its galvanic movements. Let the incidence of exploitation show the first sign of shifting, and we hear at once from one source of "interested clamours and sophistry [fallacy]" that "democracy" is in danger, and that the unparalleled excellences of our civilization have come about solely through a policy of "rugged individualism," carried out under terms of "free competition"; while from another source we hear that the enormities of *laissez-faire* have ground the faces of the poor, and obstructed entrance into the More Abundant Life.[23]

The general upshot of all this is that we see politicians of all schools and stripes behaving with the obscene depravity of degenerate children; like the loose-footed gangs that infest the railway-yards and purlieus of gas-houses, each group tries to circumvent another with respect to the fruit accruing to acts of public mischief. In other words, we see them behaving in a strictly historical manner. Professor Laski's elaborate moral distinction between the State and officialdom is devoid of foundation. The State is not, as he would have it, a social institution administered in an anti-social way. It is an anti-social institution, administered in the only way an anti-social institution can be administered, and by the kind of person who, in the nature of things, is best adapted to such service.

[18] He had observed it in the British State some years before, and spoke of it with vivacity. "The nest of office being too small for all of them to cuddle into at once, the contest is eternal which shall crowd the other out. For this purpose they are divided into two parties, the Ins and the Outs." Why he could not see that the same thing was bound to take place in the American State, as an effect of causes identical with those which brought it about in the British State, is a puzzle to students. Apparently, however, he did not see it, notwithstanding the sound instinct that made him suspect parties, and always kept him free from party alliances. As he wrote Hopkinson in 1789, "I never submitted the whole system of my opinions to the creed of any party of men whatever, in religion, in philosophy, in politics, or in anything else where I was capable of thinking for myself. Such an addiction is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all."

[19] *Jefferson*, p. 274. The agrarian-artisan-debtor economic group that elected Mr. Jefferson took title as the Republican party (subsequently re-named Democratic) and the opposing group called itself by the old pre-constitutional title of Federalist.

[20] An example, noteworthy only because uncommonly conspicuous, is seen in the behaviour of the Democratic senators in the matter of the tariff on sugar, in Cleveland's second administration. Ever since that incident, one of the Washington news papers has used the name "Senator Sorghum" in its humorous paragraphs, to designate the typical venal jobholder.

[21] Mr. Jefferson was the first to acknowledge that his purchase of the Louisiana territory was unconstitutional; but it added millions of acres to the sum of agrarian resource, and added an immense amount of prospective voting strength to agrarian control of the political means, as against control by the financial and commercial interests represented by the Federalist party. Mr. Jefferson justified himself solely on the ground of public policy, an interesting anticipation of Lincoln's self-justification in 1861 for confronting Congress and the country with a like *fait accompli* - with Lincoln, however, executed in behalf of financial and commercial interests as against the agrarian interest.

[22] Henry George made some very keen comment upon the almost incredible degradation that he saw taking place progressively in the personnel of the State's service. It is perhaps most conspicuous in the Presidency and the Senate, though it goes on *pari passu* [as joined pairs] elsewhere and throughout. As for the federal House of Representatives and the state legislative bodies, they must be seen to be believed.

[23] Of all the impostor-terms in our political glossary, these are perhaps the most flagrantly impudent, and their employment perhaps the most flagitious. We have already seen that nothing remotely resembling democracy has ever existed here; nor yet has anything resembling free competition, for the exist-

ence of free competition is obviously incompatible with any exercise of the political means, even the feeblest. For the same reason, no policy of rugged individualism has ever existed; the most that rugged individualism has done to distinguish itself has been by way of running to the State for some form of economic advantage. If the reader has any curiosity about this, let him look up the number of American business enterprises that have made a success unaided by the political means, or the number of fortunes accumulated without such aid. *Laissez-faire* has become a term of pure opprobrium; those who use it either do not know what it means, or else willfully pervert it. As for the unparalleled excellences of our civilization, it is perhaps enough to say that the statistics of our insurance companies now show that four-fifths of our people who have reached the age of sixty-five are supported by their relatives or by some other form of charity.