

Herbert Croly. *Progressive Democracy*. New York: Macmillan, 1914; New Brunswick, NJ: Transaction, 1998.

[303] CHAPTER XV
MAJORITY RULE AND PUBLIC OPINION

The type of state political system sketched in the preceding chapter has been described as the organization of executive leadership. It imposes functions upon the executive very different from those required by the traditional system. He would, indeed, remain, or rather he would for the first time become, really responsible for the execution of the laws and for the efficient transaction of the public business; but he would be equally responsible for the passing of such new legislation as was demanded by the prevailing popular opinion of the state. Thus his functions would be more representative than administrative. He would have obtained office by virtue of the support of a specific body of popular opinion for the purpose of accomplishing a definite program of legislation. This body of public opinion would constitute him as the political leader of the state with full power to carry out its will.

Advocates of direct government may claim that executive leadership of this class would be both dangerous and useless as long as the electorate could make its will prevail by means of the initiative and referendum. Why concentrate so much power in the hands of any one individual? In answer to this question we shall have to consider carefully how much and what kind of results can be accomplished [304] for popular public opinion by the delegation of power. If the electorate actually could make its will prevail by means of the initiative and referendum in their ordinary form, the organization of executive leadership might be useless, if not dangerous; but the point is that the organization of executive leadership provides popular opinion with an indispensable instrument of formulation and of collective action. The advocates of direct government often assume that at any particular time a perfectly mature and definite popular public opinion exists upon the various questions of state policy, and that such an opinion can be automatically registered by means of the instruments of direct government. Such is not the case. Public opinion requires to be aroused, elicited, informed, developed, concentrated, and brought to an understanding of its own dominant purposes. The value of executive leadership consists in its peculiar serviceability, not merely as the agent of a prevailing public opinion, but also as the invigorator and concentrator of such opinion.

Progressive democracy needs executive leadership, because it accomplishes so effectively one very important object of democratic political organization. Better than any exclusively parliamentary system, any legalistic system or any system of pure democracy, it organizes and vitalizes the rule of the majority. As a consequence of bestowing the leadership of the state upon one man who represents the dominant phase of public opinion, it develops and consolidates majority rule as it has never yet been developed and consolidated in the history of democracy; [305] and precisely because it gives power and meaning to majority rule, it will make a desirable contribution to the art of democratic government.

In the history of democratic political institutions there has never been any serious attempt made to contrive for the rule of the majority an efficient organization. Most of our so-called democratic instruments of governments originated during a period when democratic political institutions were considered to be both undesirable and impossible. Existing agencies of class government have gradually been adjusted to the more pressing needs of a democracy, but the adjustment has never been complete or satisfactory. Its incompleteness has been at least partly due to the persistent desire rather to avoid than expressly to recognize and to organize the rule of the majority. In the history of municipal democracies the domination of majorities had been almost universally factious and destructive of the integrity of the body politic. Democrats themselves have usually been apologetic about it, or else have associated it with some fatalistic

conception of its necessary righteousness and efficiency. In neither case has it been considered in a disinterested spirit as an indispensable instrument of democracy which should be operative only within certain limits, but which within those limits has a particular function to perform of exceptional importance. In a mature democracy rule ought not to be feared nor avoided nor worshipped. What democrats should try to do is to create it—to give to it an appropriate form, sufficient power and an effective counterpoise.

[306] None but an idolater could believe for one moment that the initiative and referendum in the forms which they have ordinarily assumed are instruments of majority rule. They depend on popular action, but the proportion of the people who act and in particular cases rule is never a majority. They are instruments of minority rule and usually of the rule of a very small minority.

The ordinary mechanism of the initiative operates so as to give to a small percentage of the voters the right to force the electorate either to accept or reject a specific legislative measure. This is an extremely valuable privilege, because the right to force a vote on specific legislative projects, which cannot be discussed in detail or amended, but which must be approved or disapproved as a whole, places an enormous power in the hands of a skillful and persistent minority. The initiators might frequently be able to wear down or circumvent the opposition of a less able and tenacious majority. The privilege, valuable as it is, should be granted, so that the electorate may have certain reserves which are not stationed on the political frontier, and which can be called up in times of need. But it should be granted only at the bidding of a carefully validated petition signed by a comparatively large number of voters, and whether granted or not it still leaves the problem of majority rule unsolved. It confides the leadership in legislation to small minorities, and allows to the majority only the negative function of submitting to the imposition or rejecting it. In any event the great weakness of the initiative in its ordinary form consists in its failure to work sufficiently in [307] favor of the popular political education. Measures submitted by this method to popular vote cannot in the very nature of the case receive that thorough ventilation and discussion which tends to inform and illuminate popular opinion. The general issue raised by the proposed law, upon which an ordinary voter may have formed an intelligent judgment, will be obscured behind specific provisions in which the average voter has little interest. The questions on which the voters are called upon to vote should be questions of general policy which are presented to them under conditions which will stimulate public attention.

The machinery of direct government not only confides the leadership in legislation to minorities, but in its actual operation it validates the adoption of legislation by minorities. It is, of course, notorious that when measures even of great importance are submitted to the electorate, they are not voted upon by anything like as large a proportion of the electorate as are the candidates for governor. At its highest the vote on a proposed law is rarely over eighty per cent, not of the registered vote, but of the vote for governor, while it frequently falls below twenty-five per cent. The average is about sixty per cent. Hence the provision which has sometimes been used, that a proposed law shall not be considered adopted unless it receives a majority of all the votes cast at the election, makes the whole system practically inoperative and is vigorously opposed by the advocates of the initiative and the referendum.

The friends of direct government do not pay enough attention to the fact that their proposed instruments of [308] democracy entirely break down as agencies of majority rule. No doubt the minorities which do legislate under the existing Oregon system are better qualified for the task than is the more inert majority. No doubt the system operates to confer on alert and energetic voters much more influence on legislation than was formerly the case. But surely when a sincere democrat offers arguments such as these to justify the operation of supposedly democratic instruments, he is comparable to a man who is sawing off the limb of a tree on the outer end of which he himself is sitting. Democracy is not government by peculiarly qualified

people or by a peculiarly qualified part of the people. It is or it should be government in which the largest possible proportion of the adult citizenship of the country effectively participate. The fact that in this instance the failure of the majority to participate is its own fault makes no essential difference. A democracy should not be organized so that the alert and vigorous minority can easily make its will prevail over their less vigorous fellow-citizens. It should be organized so as to stimulate the liveliest possible political interest over the widest practicable political area. Such agencies of minority rule as the initiative and referendum in their ordinary form fail absolutely to contribute to the accomplishment of this necessary democratic purpose. Their real value is that of negative safeguards, the existence of which may help to reconcile popular opinion to the more powerful organization of the fighting forces of a democratic state.

The several kinds of representative government do not, [309] of course, pretend to be agencies of majority rule. The particular function of representation by law in the traditional American system was to tie the hands of the majority and reduce it to insignificance in the management of public affairs. Representative assemblies, on the other hand, were supposed to embody not the will of any definite fraction of the community, but the dim religious light of public reason. Second chambers were universally constituted so as to check the power of a possible majority in any one legislative assembly. In practice, however, parliaments were never very successful as radiant centres of public reason. Their first business was to govern. They could not govern by unanimous consent or, like the Supreme Court of the United States, by the power of the Word. They had to govern through the agency of a majority, so that the essential aspect of parliamentary government came to be the creation and maintenance of a majority. But the mere fact that parliament, like the electorate, was a many-headed body made the creation and the maintenance of a majority a matter of great difficulty. A majority for what purpose? If all the members of a parliament took the trouble to form convictions of their own on all public questions and insisted on voting according to their convictions, the majority would be an unstable quantity and would be composed of different ingredients on different questions of public policy. Yet if a parliament was to live up to its professional part as the incarnation of public reason, it was surely the duty of each representative to make up his mind about all public questions and to vote according to [310] his convictions. As the effective government of the country a parliament needed to be organized primarily for definite and effective action; but its composition adapted it very much better to the work of deliberation and discussion.

The only solution of the difficulty was to build up a majority which would act together, no matter what its individual members thought. The result was the organization of national parties which placed loyalty to the party above individual conviction. Parties of this kind have never been organized in continental parliamentary bodies, partly because Frenchmen and Italians took their individual convictions more seriously than did Englishmen, and partly because the administrative system of continental countries was independent of the legislative assembly and gave in any event a certain strength to the government. But in Great Britain the administration was the creature of Parliament, Parliament had to be able to act decisively and efficiently. A majority had to be organized for that purpose. The necessary instrument for organizing and maintaining an effective majority was a partisan bond and machinery. A similar necessity existed in the legalistic government of the United States. In both cases strong national parties were built up for the purpose of democratizing essentially undemocratic institutions. The function of organizing efficient majorities was turned over to extra-official partisan organizations. These organizations were strong, because partisan loyalty was deliberately cultivated as the most effective means of binding citizens to [311] together for the promotion of the public interest. They became the real government of the country.

The two-party system is the most effective method which has yet been devised for the organization of majority rule. But it has serious and, to my mind, fatal drawbacks. It can never get away from the initial vice of being no more than an attempt to democratize a group of

undemocratic political institutions. Just in so far as a group of really democratic political institutions are created, the foundations of the two-party system are undermined. The two parties seek to accomplish for a democratic electorate certain purposes which such an electorate ought to accomplish for itself. The system results in the organization of one artificial majority and one artificial minority, bound together by partisan traditions, personal loyalties, community of interest, and to a minor extent by common ideas of public policy. The individual citizen can be politically effective only in so far as he becomes a member of one or the other of these parties; and as a member of one or the other of these parties he is committed to the sacrifice of his personal and of his class convictions for the sake of partisan harmony. In this respect the system costs too much. Of course a citizen can never enter into any effective political association except by sacrificing the attainment of less important public purposes to the attainment of more important public purposes. In the case of the two-party system, however, the cost for a man of definite convictions outweighs the compensation. The object of the system is to organize public opinion in the interest of action, [312] which is a desirable and necessary object; but in a genuine democracy it should be associated with a method of stimulating significant differences in public opinion. The development of such significant differences of public opinion is precisely what the two-party system seeks most to avoid. It organizes a majority so effectually that a voter cannot count politically unless he belongs to an organized party, and unless the maintenance of that party becomes his dominant political object.

Executive leadership provides, at least so far as the states are concerned, an alternative official method of organizing a majority for purposes of government. Very much as the cabinet with the prime minister at its head acts as official leader of the British Parliament, so the governor becomes the official leader of the people of the state. He acts for them or for as large a majority of them as he can gather together under his banner. He will himself have in some measure created this majority. He will have won the support of a sufficiently large proportion of the population of the state by submitting to them a program which appeals to them and by convincing them of his personal good faith. His power will depend not upon the support of a machine, which must be paid for getting out the vote, but on his ability to secure and to hold the attention of public opinion. He becomes not the popular ruler, but a temporary popular leader, whose business it is to present a program which will obtain the approval of a majority; and this majority will be tied together also by some measure of personal loyalty for him. A majority [313] cannot itself initiate legislation. It must act through an agent, and the best agent for the purpose is an individual endowed with the leadership and with the ordinary authority of an executive.

This temporary individual leadership can never take the place of a relatively permanent political association. As we shall see later, it must be built upon a foundation of more permanently organized social and political groups. But it may take the place of permanent partisan associations, whose object is not to express class interests or class and individual convictions, but merely to subordinate significant expressions of public opinion to the formation of an artificial voting majority. By grouping a majority around a man it associates majority rule with human interests and loyalties, just as the bipartisan system has always been associated with human loyalties and interests. Strong individual leadership supplies popular opinion with a needed mental and moral tonic. A vague popular aspiration or a crude and groping popular interest often requires incarnation in a single man, in order to reach a preliminary understanding of its own meaning and purposes. His exhortation and explanations and his proposals to convert such aspirations and interests into action bring them to a head and start them on a career of adjustment to the general social interest. Even the most sophisticated societies are rarely able to feel much enthusiasm about a principle or a program until it becomes incarnated in a vivid personality and is enhanced as a result of the incarnation. In the case of less sophisticated people, such as [314] compose the majority of a modern democracy, no program is likely to be politically effective unless it is temporarily associated with an effective personality.

The success of any form of government in which the electorate has positive and active functions to perform depends upon its ability to create a popular interest in its operations and purposes, deeper, more general and more discriminating than that which is invoked by a bipartisan legalistic or representative system. Executive initiative and leadership, acting on behalf of a prevailing majority, will create such a popular interest, not merely because it personifies a program and brings with it an unusually large numerical popular support, but because a state organized primarily for positive action tends by its very nature to arouse and concentrate public opinion. The new state, if it ever comes into existence, will act as a result of the declared purposes of the majority. It will awaken the interest of people who want programs accomplished, and who are eager to fight for or against specific proposals. The present system is supposed to embody reason, and is intended to subordinate the collective will to rules which will prevent it from going astray. In practice its reasonableness is tantamount to automatic operation in the interest of existing property owners. It arouses lukewarm interest in its behavior, except on the part of those who benefit from its operation. Politics is a game in which the players are allowed to risk only small stakes by the benevolent management of the bank. The bank takes its reward for ruling against excessively high play by appropriat[315]ing a regular percentage of the smaller returns. The new system, on the other hand, becomes the organized embodiment of a will — not a blind will, but one charged with a definite program. Politics under such a system ceases to be a game and becomes identified with the realities of life. The state is seeking under concentrated collective leadership really to accomplish something. Its proposed action may have momentous consequences for all individuals and classes, and will correspondingly compel their attention. The organization of majority rule will give unprecedented intensity and meaning to the political life of the state.

Assuming that executive leadership will constitute an effective organization of the rule of the majority, the criticism will naturally follow that the states will gain nothing by the new system except a new master. The unofficial partisan boss will be succeeded by a far more powerful official boss who will be the actual and inevitable ruler of the state rather than merely its leader. Some such result might eventually take place — provided executive leadership were merely added to the present system. But in the plan of political reorganization sketched in the preceding chapter, the other departments of the state political system are modified in a similarly radical manner. Both the legislature and the electorate will have the ability to make an effective resistance to any attempt by the executive to convert his leadership into an irresponsible executive despotism.

A legislative assembly, as described in the preceding [316] chapter, would constitute a natural and effective balance to the power of the executive. Just as the executive represents the dominant phase of popular opinion — popular opinion in so far as it could be consolidated and organized in favor of an immediate program — so the legislature would represent a frankly divided popular opinion. It would represent the salient, conscious, wilful, well-organized minorities which helped to make up the community. It would, consequently, lay bare public opinion at a different angle — public opinion separated into its ingredients — public opinion in its fragmentary, fermenting, striving and growing aspects. Minor phases of opinion would not merely be expressed, but they would be stimulated. The provision made for their official expression would encourage their formation and their activity. Leadership would be developed. The individual representative would bear the same relation to a special phase of opinion that the temporary executive leader would to his more general and more numerous constituency. The special body of opinion would become articulate in him and in his associates. He would, wherever possible, advance its purposes by his vote; but he would be, for the most part, a speaker rather than a voter. The primary function of the representatives of the minorities would be to popularize the convictions and the purposes of their constituencies.

Public opinion in its divided minor aspects, like public opinion in its dominant aspect, has been gradually obtaining by extra-official means an increasingly effective representation. A large number of voluntary associations have sprung up during the past twenty years, devoted to the propagation of special economic interests or special political and social ideas. Very often the primary object of these associations has not been political. Labor unions, farmers' associations and chambers of commerce were organized for social or business reasons, and have mixed in politics only incidentally and on special occasions. But just in proportion as the legislation of the state was determined by a social ideal, the special interests of these classes have become more and more affected by political action, and they have themselves been forced to participate in politics. They will be forced hereafter into still more active participation. The associations of business men, of farmers and of wage-earners will increase in numbers, in influence and in political responsibilities and opportunities. Just in proportion as they become politically active and responsible, they will seek some more effective method of political representation than that which they can obtain through the existing bipartisan district system.

These significant minor phases of public opinion are not, however, based exclusively on economic classes. The voters are also being grouped in relation to their convictions upon special phases of political economic and social reform. The number of civic societies, voters' leagues, ballot associations, woman's suffrage unions, single-tax clubs and the like are increasing steadily and are exercising more and more influence upon the political action of their members. All these associations are competing both with one another [318] and with the traditional political parties for the allegiance of a certain proportion of the electorate. They are becoming the most effective formative elements in American public opinion, and more than anything else they justify an increase of direct popular political power and the creation of a system of direct representation. In the course of time they are certain to demand some official vehicle of expression — some better method of presenting their claims for general consideration. As soon as their existence is encouraged rather than discouraged by our representative system, they will increase still more rapidly in numbers, in self-consciousness, and in aggressive vitality.

In a representative system which depended for its vitality upon partisan organization the encouragement of minority representation would be attended with grave drawbacks. It would help to undermine partisan discipline and consequently the efficiency of the government, which is the creature of partisan discipline. But under the proposed plan majority representation by means of executive leadership has already been officially constituted, so that the legislature can become without any loss of efficiency the proper agency for giving energy, self-consciousness and experience to the agitation of the salient minorities. Public opinion in all its vital phases would be aroused and would obtain appropriate means of expression. Instead of pressing the varied aspects of popular conviction and interest into two artificial moulds, as does the two-party system, every significant idea or interest could earn official recognition and expression, but without depriving [319] the government of the concentration necessary for efficient and responsible action.

The legislative assembly would become a parliament in the old sense of the word — a talking body, a battleground of opinion. The government would introduce its program of legislation. If it was a strong government and represented a substantial consensus of public opinion, its proposed legislation would probably obtain the support of enough of the legislators to be assured of final passage. If it was a weak government and represented a bare majority, the legislature might very well reject its proposals and force an appeal to the people at the following election. But whether the program of the administration was accepted or rejected by the legislature, it would be sure to arouse the opposition of a certain proportion of the delegates. The special minorities would probably be represented by their abler spokesmen, who would give vigorous expression to their reasons for opposing the official legislation proposals. The

supporters of the program, both in the cabinet and in the legislature, would be stimulated to make an equally vigorous statement of their reasons for supporting it. The course of the discussion would be followed with lively interest throughout the state, because voters would realize that it reflected and developed the clash of their own vital interests and convictions. Probably the record of it would be sufficiently circulated by voluntary agencies; but if it were not, it should be circulated at the expense of the state. Thus every proposal to carry out a definite public policy would have its [320] wholesome reaction on public opinion. If the bill were finally rejected and had to be referred to popular vote, the electorate would have had every chance of forming a decisive and intelligent judgment.

The peculiar value of effective minority representation is that it demands of all significant phases of popular opinion a frank statement of their case. They must come out into the open and present their claims for consideration under trying and testing conditions. As a consequence of this exposure they may become socialized. The raw material of the social fabric consists of special interests and special centres of association of all degrees of popularity, force, maturity, flexibility and worth. They play the same part in society as do particular desires and purposes in the life of the individual. They are dangerous, not in case they are allowed to obtain a normal development in cooperation with other special interests, but in case they are either allowed to overgrow or are unnecessarily suppressed. The best way to prevent either overgrowth or undergrowth is to make them public — to make them depend for their effective relative influence less upon legal safeguards than upon their ability to convince public opinion of their value. Instead of proposing, as did certain reformers a few years ago, to drive special interests out of politics, the object of a really educational political organization should be to drive them out from behind the law or away from illegal or antisocial conspiracy into politics. Just in so far as they are made to argue their case in public and to prove their social value by reasons which will appeal to other special [321] groups of interest and opinion, just to that extent they tend to become a useful part of the social organization.

The vitality of the resulting discussion would, of course, be increased by the fact that the state would be organized for action as well as consultation. Political ideas would obtain an increasing reality, because of their close relation to political action. A minority would be fighting not merely for verbal expression, but for the opportunity of legislating. Any minority with a good case and a sufficient program would have a chance of becoming part of a ruling majority. As soon as it entered into a majority it would be subjected to the supreme test of active political responsibility. In that event the exposure would become complete and the penalty of failure severe. Thus every phase of public opinion, whether minor or major, would be involved in a welcome struggle for existence. It might obtain temporary protection from such a struggle by the incorporation of its program into the relatively permanent political social heritage of the community; but even so it might at any time be hailed into court and asked to prove its social value.

Under the operation of the proposed plan the words “majority” and “minority” would assume a somewhat different meaning from that which is attached to them in ordinary political discussion. A majority is usually assumed to be a permanent collection of voters, organized for the purpose of keeping their representatives in power. Inasmuch as it can depend to a considerable extent upon the support of its individual members, no matter what its behavior [322] may be, it will have a natural tendency to act oppressively and tyrannically towards the minority. Under a representative system which depends upon parties to organize the effective government of the country, or in a country in which any one class was socially dominant, some justification might exist for attaching such a meaning to the word majority; but the kind of majority which would be created by a system of executive leadership would assume a different character. It would not be an organized collection of voters, tied together by a partisan discipline and patriotism, but a temporary grouping which could be easily and rapidly disintegrated. Instead

of dominating and superseding the official government, as does a partisan organization, and instead of surviving the failure or displacement of such a government, it would fall apart as soon as its opportunities for action vanished.

In a modern state, with its complicated and varied economic interests, its numerous and diversified classes, its nice balance of economic and social forces, its heritage of authentic traditions, knowledge and ideas, and its sensitive machinery for gathering and expressing public opinion — in such a state the will of a prevailing majority is beset by those of a cohort of possible majorities. Any miscalculation of strength on the part of the government, any unwarranted exercise of power, any error of judgment in preparing or advocating its program, any access of knowledge or resolution on the part of a certain proportion of the electorate, would easily displace an existing government and substitute a different combination of interests, [323] classes, associations or individuals. No prevailing majority could travel too fast or too far along the road of special legislation, whether in the interest of a locality, a class, or an economic reform, without losing many of its marginal adherents, and consequently the security of its hold upon power. Majority rule under such conditions would be salutary, precisely because it would be fluid and adjustable. Every important minority would be an incipient or part of an incipient majority. Majorities and minorities instead of being essentially hostile elements in public opinion would become supplementary. They would interpenetrate one with another, and would be fighting or cooperating according to the character of the existing government, the nature of its program and the support to which it was entitled. The government would not be confided to any one majority, but to a succession of majorities. Although no one of them would represent the people as a whole, the result of their successive domination would be to give all the vital opinions and interests of the electorate the opportunity to exercise influence upon the political policy of the state. The ensuing government would be more than that of a party or of two parties or of a group of special interests and classes. It would tend to be a government in which the ideas and the preferences of a great majority of the people would at some time or another be put to the test, and which would become a government of the whole people just in so far as the obstacles to social unity were gradually eradicated and an effective desire for a genuinely social consummation came into being.

[324] Notwithstanding the important functions bestowed on the executive, and the attempt to create a legislature which would constitute an effective check upon executive domination, the essential political responsibility in such a plan of government falls upon the electorate. The voters are not confiding to the executive the unlimited discretion which the French voters confided to Napoleon III. Neither are they confiding any discretion to the legislative assembly similar to that which is confided to the British Parliament. These representative agencies obtain a special, not a general, license. They have made specific promises and incurred specific obligations to their constituencies. Of course, inasmuch as all the exigencies of government cannot be foreseen, a certain amount of general discretion must be granted to any representative; but neither executive nor legislator can travel very far on an unpopular course. The electorate reserves for itself an effective immediate or proximate control. At present the powers reserved to the people are accessible only at long intervals and under rare conditions. According to the proposed plan, these powers would always remain in a state of incipient activity. They would be comparable not to a fleet which required four years to build, but to a fleet-in-being, which could strike with a little more coal in its bunkers and a few hands in the forecastle. A democracy would be merely foolhardy to grant the great powers necessitated by efficient administration to any man or group of men without providing for the possibility of a serious mistake. Every part of this machinery of representation, but particularly the executive, [325] would have continuously to seek and to earn the confidence of a sufficient constituency, just as the British cabinet is obliged to keep the confidence of a majority of the House of Commons. The people would have the means to revoke their trust not merely at stated intervals,

but at any time when in their opinion it was in danger of betrayal. The reservation of such a power does not bring with it any guarantee that a majority of the electorate would not be duped or bribed into the support of an unworthy man or an unsocial policy. No people can be guaranteed against the consequence of their own unintelligence, selfishness or lack of public spirit. But most assuredly the voters could not be betrayed except with their own explicit and continuous consent; and if a serious mistake were made, they would have every opportunity of discovering the error and every inducement to repair it.

The value of the recall as an instrument of genuinely democratic government has not been sufficiently appreciated. It provides the ultimate safeguard against betrayal, which may and should induce a democracy to bestow strength and efficiency upon its organs of government. In the absence of the recall a democracy can scarcely be blamed for reducing the length of official terms, and for using one department to check another. If the choice had to be made between a relatively inefficient but entirely popular government, and one which was highly efficient but alien to popular sentiment, any convinced democrat would select the first alternative. Above all else a democratic government must be kept closely in touch with [326] public opinion. The recall makes it more possible to keep an administration closely in touch with public opinion without any necessary sacrifice of efficiency. Once possessed of this effective and fundamental safeguard a democracy has no longer any reason to apprehend serious consequences from its own mistakes. It can afford to do away with minor safeguards. It can elect its officials for a number of years and bestow on them as much power and responsibility as is demanded by high standards of practical efficiency.

The recall is supposed to turn all officials elected subject to its operation into cowards—to deprive them of independence of conviction and purpose. If it produces any such effect, the ultimate failure of democratic government is tolerably well assured. No doubt the recall would prevent an executive from using his official power to impose upon a majority of the electorate a policy with which they disagreed; but in so far as the executive had any such power the government would be autocratic rather than democratic. A man of independent but unpopular convictions has every right and should be afforded full opportunity to convert his fellow-countrymen; but he has no right to force them to accept the consequences of his convictions or those of any other individual or minority. Independence is a trait which every popular representative should possess; but he should be allowed to exercise it only on condition that it has been earned. An elected official, endowed with a long term and with effective powers, yet subject to the recall, would have a far better chance of being independent [327] than an official who had an indefeasible title to an impoverished office for a comparatively limited term. The fact that he would constantly be threatened with the loss of popular confidence would act upon a man of independence of conviction as a stimulus to personal initiative. He would possess an extraordinary opportunity of recommending his own opinions to the public. He could make himself independent just in so far as he was capable of maintaining his leadership of public opinion; and only to that extent would he as a representative official be entitled to independence. Whenever under such conditions he ceased to be independent, the fault would be his own. It would mean that his leadership had failed, that he had lost his following and that he would do well temporarily to retire. Doubtless the very conditions which might afford a strong and a shrewd man an opportunity of guiding public opinion would convert a weak and unscrupulous man into a mere demagog; but such a danger is inseparable from any system of organized popular political leadership. The very condition which offered the demagog his opportunity would expose him, in case he sought to use it, to the severest of all tests.

The reader must not misinterpret the purpose with which I have entered into the foregoing analysis of a new state political system. My object has not been to recommend a particular plan of state political organization as the only plan which will meet the needs of a progressive democracy. What I have tried to do has been to explain the needs and requirements

of a genuinely popular system [328] of representative government; and the plan of the People's Power League of Oregon has been used as a peg upon which to hang this discussion. The particular method of state political reorganization may or may not be adopted, but whatever its fate, its underlying principles have a permanent value. A sincere progressive democracy must, in my opinion, ultimately consider them. The fundamental political responsibilities of a democracy should not be delegated to any body of law, to any representative individual or assembly or to any extra-official bipartisan political machinery. Yet a democracy, like any other active and progressive community, must have organs for the consideration and the realization of its policy. If it seeks to convert the ballot-box into the chief instrument of democratic action, it will most assuredly disintegrate. It needs an efficient method of representation, but its agents should not represent districts or parties or an elusive and remote public reason. They should represent, first, the essential function of determinate action; secondly, the various vital popular interests and classes; and, finally, the effective popular ideals and aspirations. A system of this kind would enable a democracy at once to act, to deliberate and, most of all, to learn.

With a society, as with an individual, fertility and growth depends upon the attainment of a mutually helpful relation between the will and the intelligence. The traditional American political system did not establish such a relation. By subordinating the community's power of action to specific rules derived from past political experience, it not only [329] enfeebled the power of collective action, and forced the democracy to create an unofficial method of accomplishing its necessary purposes, but it also enfeebled its power of thought. The American democracy could not think candidly, sincerely and vigorously, because its thinking, like its action, was circumscribed by the supposed authority of a system of rules. The emancipation of its power of collective action will bring with it the emancipation of its power of thought. The community will deliberate more earnestly and more fruitfully, because it has obtained freedom of action. The control of public opinion will be more effective under the new system than under the old, because the public will have to think as well as to act for itself. Publicity is not merely a matter of the advertising and communicating of opinion. An insincere and hypocritical opinion could be placed on the headlines of every newspaper in the country and shouted from every house-top without really becoming public. Really public opinion must be candid and consistent, and must be expressed in words which can be harmonized with other words and with actions. Public opinion could not be really public under the traditional political system, because it was concealing from itself the incompatibility between government by law and popular government. Public opinion under a genuinely popular representative system can become public and consequently effective, because it is no longer condemned to a necessary equivocation. The American democracy will become more considerate, because it will be obliged to think for itself.

[349] CHAPTER XVII
THE ADMINISTRATION AS AN AGENT OF DEMOCRACY

[355] In the plan of state government, which I have sketched in a previous chapter the executive has become essentially a representative agency. His primary business is that of organizing a temporary majority of the electorate, and of carrying its will into legal effect. He becomes primarily a law-giver and only secondarily an agency for carrying out existing laws. Yet he is none the less at the head of the administration; and the great majority of the progressives want him to be more responsible than he is now for administrative efficiency. They want him, that is, to have the power of appointment and dismissal over the upper grades of the civil service in very much the same way that the owner of a private business would have over his employee and they want to liberate the power of appointment from the partisan abuses which have resulted from the custom of confirmation by a senate. But they propose to grant this power to the executive in the interest not of frequent changes in administrative personnel, but in that of a relatively prolonged official tenure. The more clear-sighted progressives almost unanimously believe in a body of expert administrative officials, which shall not be removed with every alteration in the executive, but which shall be placed and continued in office in order to devise means for carrying out the official policy of the state, no matter what that policy may be.

Such is, of course, the situation in European countries. The executive changes more or less frequently in nations governed by a Parliament, but the administration remains. The executive is willing to have it remain, because a new group of cabinet officers cannot pretend properly to administer the business of the country without the assistance of a permanent body of officials who bring experience, training and expert knowledge to the job. These officials do not in theory exert any influence upon the policy of the government. They are professional servants, whose business it is to contrive the means to execute existing laws and to carry out any policy which has been decided upon by a departmental chief or by the cabinet. An American executive who is placed in power for the purpose of realizing the will of a temporary majority of the electorate, will also need the assistance of a body of permanent officials to assist him in converting his program into well-framed and well-administered laws and to carry on the business of the state in an efficient manner. It is essential that such an executive shall have the power to dismiss or to transfer presumably permanent sub-heads of department, but that he shall refrain from exercising it — unless in his opinion, and that of his personal cabinet, he were unable to get loyal and efficient service from his higher administrative assistants.

[357] There is no way of guaranteeing that executives who have the power to undermine administrative efficiency by dismissing or transferring officials from motives other than the good of the service, would not misuse it. The expectation that the system would result in the building up of a permanent body of expert officials is founded on the probable action of ordinary human motives. Assuming that an executive is elected who is responsible both for the successful business administration and for the successful enactment of a legislative program, and assuming that the legislative program is aimed primarily at accomplishing some policy of social amelioration, such an executive would need trustworthy expert assistance. If he did not use it in so far as it was already furnished by the state, or seek it out in so far as it was lacking, he would be courting failure and exposing himself to merited and relentless criticism. The need of the assistance of expert officials as necessarily follows from the practical situation of such a leader as did the fear of it from the situation of an irresponsible partisan executive. The irresponsible partisan executive did not want expert officials, because his success in office did not depend upon the carrying out of an administrative or legislative policy. It depended on his ability to satisfy his partisan superiors and associates without an excessively flagrant betrayal of the public service. The presence of experts in the public offices was under such circumstances as

superfluous or as inconvenient as it would be convenient and useful to an executive who was really responsible to an alert and self-conscious constituency.

[358] The need, however, of a permanent expert administration in a progressive democratic community depends upon more fundamental facts than the motives of individual leaders. In a state such as I have been sketching and such as seems to be demanded by prevailing political and economic conditions and ideals, a strong permanent administration is necessary as an agency of political continuity and stability. In the past our American states have derived their stability and continuity from a presumably permanent body of constitutional law, which was not supposed to enter into practical partisan political controversy and become subject to ordinary legislative and administrative vicissitudes. In the future there will probably be substituted for this permanent body of law a social program which will not make any corresponding pretensions to finality. Part of the program will have been embodied in law, and will be entitled to be considered as the prevailing policy of the state. Other aspects of it will still remain in a much more experimental condition, and will be a matter of active political controversy. But the really permanent element in the life of the community will be derived not from the accepted aspects of the program, but from the progressive democratic faith and ideal. The community will be united not by any specific formulation of the law, but by the sincerity and the extent of its devotion to a liberal and humane purpose.

The legislative and executive departments of the government will be occupied chiefly with the more fluid and experimental aspects of the social program. They must be [359] adapted to the work of arousing, formulating and focussing public opinion rather than to the task of giving expression to its achieved decisions. They have no more authority than they can earn from one election to another; and it is essential that they should remain in this somewhat precarious condition. An intelligent democracy would not care to bestow so much power on a government whose membership and policy could not be readily changed. The proposed organization of majority rule escapes being dangerous only by being essentially fluid. Its strength would depend upon the size of the majority and the reasonableness of its policy. No majority could expect long to survive the active stimulation of minority opinion which would be constantly taking place, — unless one economic class occupied a numerically preponderant position in the state.

A government of this kind, however, might escape one danger only to be involved in another. Its career might degenerate into a succession of meaningless and unprofitable experiments, which would not get enough continuity either to accomplish stable results or to teach significant lessons. This danger would not be serious in the case of an intelligent and purposive democracy. The sincere intention of such a democracy to promote individual and social welfare would give continuity to its policy and enable profitable lessons to be drawn from its experiments; but if any such result is to be accomplished, it must provide an appropriate agency for the work. The only agency which could be organized and equipped for its accomplishment would be a permanent body of experts in social administration.

[360] Just as the executive and the legislature would be concerned primarily with the more tentative and experimental part of the social program, so the administration would be concerned primarily with its comparatively permanent aspects. A certain part of the social program would be embodied in achieved legislation, upon the desirability of which public opinion was, for the time being, sufficiently agreed, and which was actually accomplishing or was failing to accomplish the desired results. Such is the case, for instance, with the workmen's compensation acts which have been passed in so many American states, and with the new and more stringent laws regulating public service corporations and manufacturing industries. Legislation of this kind has been passed in response to a relatively-permanent and widespread popular demand. It is less than formerly a matter of active political controversy, but at the same time it is far from having passed wholly out of the experimental stage. In almost every case it

depends for its success upon the ability and the disinterestedness with which the law is administered. Blundering and ignorant administration would condemn any of these laws to futility and unpopularity. They all of them confer large discretionary powers on administrative officials, and being experimental, they will require subsequently to be modified or supplemented in the light of the experience gained in their actual operation.

Thus the experts charged with the administration of these laws would become the official custodians of a certain part of the accepted social program. They would have better [361] means of knowing than any one else how well the existing law was serving its purpose; and they would exercise indirectly a good deal of influence upon any modification of the law which might be recommended by the executive and discussed and accepted by the legislature. Their work in enforcing the law, in watching its operation and in advising its amendment or supplementation would be dignified by an element of independent authority. Representing, as they would, the knowledge gained by the attempt to realize an accepted social policy, they would be lifted out of the realm of partisan and factious political controversy and obtain the standing of authentic social experts. The conscientious and competent administrator of an official social program would need and be entitled to the same kind of independence and authority in respect to public opinion as that which has been traditionally granted to a common law judge.

Although the kind of administrator that I am describing must obtain the standing of an expert, he must also be something more than an expert. He is the custodian not merely of a particular law, but of a social purpose of which the law is only a fragmentary expression. As the custodian of a certain part of the social program, he must share the faith upon which the program depends for its impulse; and he must accept the scientific method upon which the faith depends for its realization. Thus with all his independence he is a promoter and propagandist. As long as he remains in the government service, he should not carry his propagandism further than the official social [362] program justifies him in carrying it; but he should carry it as far as he can. He qualifies for his work as an administrator quite as much by his general good faith as by his specific competence.

As the amount of social legislation has increased, the tendency has been more and more to make its success depend upon the good faith and competence of its administration. The scope of discretionary administrative authority has been enlarged. In the past the administration of the civil law, except through the agency of the courts, was of small importance, because the law was supposed merely to recognize and interpret customary ways of economic and social behavior. But when the chief object of legislation is to carry into effect an experimental social program, the administration of the law has a different and more responsible function. Legislation is being used as a means of modifying social behavior, not social behavior as an excuse for formulating legislation. The legislator has become an innovator. He is dealing with an extremely complex and elusive material, and it is most difficult for him to define in advance how the objects of the law are best to be realized. The difficulty of the job has not prevented him from very frequently trying it out; but he has learned something from his failures. He is learning that an extremely detailed and comprehensive statute is usually ineffective, because of the impossibility of anticipating all the conditions which affect the operation of a specific rule. Social legislation is coming more and more to demand results rather than prescribe means. Statutes are being passed [363] in the interest of the safety of employees in factories, which merely define safety as such freedom from danger to life and health as the nature of the employment will reasonably permit. The duty of drawing up a set of regulations which will provide sufficient safeguards for the life and health of the operatives is intrusted to a commission. All that the legislature does is to declare that industrial employment shall be reasonably safeguarded. The commission makes a comprehensive investigation of the conditions upon which the health and safety of the industrial employees depend; and it issues orders based on the result of its

investigations. These orders can be attacked in the courts, but in adjudicating the case the courts have to accept as final the commission's record of the facts.

Legislation of this kind fits in very well with a system of direct government. The general question of policy involved in the attempt to protect the life and health of industrial employees is precisely one of those questions which can, if necessary, be submitted to popular vote with the reasonable assurance of getting a sound expression of popular opinion. If the bill contained a group of specific regulations intended to accomplish the desired result, popular attention could be diverted from the acceptability of the general policy to that of the efficiency of the proposed means. Public opinion would have two verdicts to pronounce instead of one; and none but an extremely well informed voter could feel any valid assurance as to the efficiency of the specific provisions of the law. But a bill which merely declared that the state wanted its industrial operatives [364] to work under safe and wholesome conditions, and gave certain specially equipped men full power to create safe and wholesome conditions, would be unequivocal in both respects. It says what it means; and, unlike so many American statutes, it means what it says. Instead of imposing a set of rigid regulations on factory operation, and of converting the administrator of the law into a policeman, it provides for the possibility of flexible and articulate human adjustments. The state, in the person of its industrial commissioners, will attempt to work with the manufacturers and their employees, and, after a full hearing and most assiduous consultation, to frame a reasonable and effective group of regulations.

A commission which gives a specific expression to the general policy of the state has been called a fourth department of the government. It does not fit into the traditional classification of governmental powers. It exercises an authority which is in part executive, in part legislative, and in part judicial, and which must be sharply distinguished from administration in its conventional sense. Such is undoubtedly the case, but even though it does not fit into traditional classifications, neither does it supersede them. It legislates, but without being or dispensing with a legislature. It administers, but without being or dispensing with an executive. It adjudicates, but without any power of attaching final construction to the law. It is simply a convenient means of consolidating the divided activities of the government for certain practical social purposes. Government has been divided up into parts, because no one man or group of men can be safely intrusted with the exercise of comprehensive governmental functions; but within the limits of a necessary and desirable separation of powers a partial reunion may be permissible and useful. It does not involve the same danger of usurpation as would result from the grant of legislative power to the executive, of executive power to a legislature, or of either or of both to the courts. The administrative commissions are really free only to do right. Just as soon as they go astray the bonds tighten upon them. They derive their authority from their serviceability, from their knowledge, and from their peculiar relation to public opinion. They constitute a tentative instrument for the accomplishment of a positive popular social program. They will disappear in case public opinion cannot unite upon a program, or in case they prove to be a defective instrument. There must preexist as the condition of their success an honest popular aspiration for social improvement, a sufficient popular confidence in the ability of enlightened and trained individuals to find the means of accomplishment, and the actual existence for their use of a body of sufficiently authentic social knowledge.

The authority granted to the fourth department is criticised because its social justice is supposed to be a justice without law — a justice which lacks the relative certainty and impartiality which can be obtained only from judgment according to accepted rules. I cannot understand the force of this criticism. The specific orders, issued by a commission after full investigation of the facts, will have the same value as a precedent for future administrative action as [366] would a rule declared by a court. The only difference is that the order of the commission would be adjusted and readjusted whenever the commission found, upon

investigation, that it was confronted by different facts. Courts are tempted to modify their own precedents in the interest of justice, whenever the adjudication of a novel case demands such modification; but they are loath to do so, because they do not like to abandon the secure footing of an accepted and tested rule. They are obliged to accept any groups of facts certified to them in the record, and they cannot be sure of being confronted by the real facts or all the facts. But an administrative body which has been commissioned by the legislature to prevent practices injurious to the health of factory employees has received a general mandate to promote a desirable social result. It must accomplish its work by means of definite orders which will be as much a matter of public record as the ruling of a court, but its rules, like all rules, are to be applied only in so far as they actually accomplish the result of promoting health. In modifying or supplementing these rules, as new or different conditions may demand, the commission will be able to discover by investigation and to place on the record all the relevant facts. It can, consequently, keep its rules in much more reasonable and effective operation than can a court; but it does not for that reason either dispense summary justice or dispense with rules. An administrative court is merely provided with a different procedure and with different instruments adapted to the more positive and formative character of its work.

[367] Underlying the contention that an administrative court can only dispense a kind of improved oriental justice is the general idea that justice derives its reasonableness from rules. Justice cannot be reasonable without being embodied temporarily in rules, but the rules are not reasonable in themselves: they are made reasonable by the way in which they are specifically applied. The reasonable application does not result automatically from the application of the rule to a particular case. It depends upon the insight of the judge into the meaning of the rule and into the facts of the particular case and upon his good-will. An administrative court has in this respect as fair a chance of laying down a valid rule and of giving to it a reasonable application as has a regular court. An administrative court represents, it is true, an organization of the collective will for the accomplishment of a social program; and in this respect it is not impartial in the sense that a regular court is supposed to be impartial. But reasonableness is not necessarily associated with impartiality. It all depends upon the validity of the social program and of its vitalizing social ideal. If the social program is necessary to social welfare, the bias which it gives to the judgment of an administrative court may prevent it from being impartial, but it will not prevent it from being reasonable. On the contrary, administrative bodies, by uniting action in the interest of a binding and fruitful social policy with the acquisition of the knowledge needed for still more discriminating future action along the same lines, are tending to accomplish what representative government has been [368] supposed to accomplish: they are becoming an effective agency for extracting from the bosom of society the immediately available supply of social reason. ***