

candidate, to whichever party he belongs, whom it thinks capable and honest. Thus an independent group wields a power altogether disproportionate to its numbers, and by a sort of side wind can not only make its hostility feared, but secure a wider currency for its opinions. What opinion chiefly needs in America in order to control the politicians is not so much men of leisure, for men of leisure may be dilettantes and may lack a grip of realities, but a more sustained activity on the part of the men of vigorously independent minds, a more sedulous effort on their part to impress their views upon the masses, and a disposition on the part of the ordinary well-meaning but often inattentive citizens to prefer the realities of good administration to outworn party cries.

CHAPTER LXXXIV

THE TYRANNY OF THE MAJORITY

THE expression "tyranny of the majority" is commonly used to denote any abuse by the majority of the powers which it enjoys, in free countries under and through the law, and in all countries outside the law. Such abuse will not be tyrannous in the sense of being illegal, as men called a usurper like Dionysius of Syracuse or Louis Napoleon in France a tyrant, for in free countries whatever the majority chooses to do in the prescribed constitutional way will be legal. It will be tyrannous in the sense of the lines

"O it is excellent
To have a giant's strength, but it is tyrannous
To use it like a giant."

That is to say, tyranny consists in the wanton or inequitable use of strength by the stronger, in the use of it to do things which one equal would not attempt against another. A majority is tyrannical when it decides without hearing the minority, when it suppresses fair and temperate criticism on its own acts, when it insists on restraining men in matters where restraint is not required by the common interest, when it forces men to contribute money to objects which they disapprove, and which the common interest does not demand, when it subjects to social penalties persons who disagree from it in matters not vital to the common welfare. The element of tyranny lies in the wantonness of the act, a wantonness springing from the insolence which sense of overwhelming power breeds, or in the fact that it is a misuse for one purpose of authority granted for another. It consists not in the form of the act, which may be perfectly legal, but in the spirit and temper it reveals, and in the sense of injustice and oppression which it evokes in the minority.

Philosophers have long since perceived that the same tendencies to a wanton or unjust abuse of power which exist in a despot or a ruling oligarchy may be expected in a democracy from the ruling majority, because they are tendencies incidental to human nature.¹ The danger was felt and feared by the sages of 1787, and a passage in the *Federalist* (No. L.) dwells on the safeguards which the great size of a Federal republic, and the diverse elements of which it will be composed, offer against the tendency of a majority to oppress a minority.

Since Tocqueville dilated upon this as the capital fault of the American government and people, Europeans, already prepared to expect to find the tyranny of the majority a characteristic sin of democratic nations, have been accustomed to think of the United States as disgraced by it, and on the strength of this instance have predicted it as a necessary result of the growth of democracy in the Old World. It is therefore worth while to inquire what foundation exists for the reproach as addressed to the Americans of to-day.

We may look for signs of this tyranny in three quarters — firstly, in the legislation of Congress; secondly, in the constitutions and statutes of the States; thirdly, in the action of public opinion and sentiment outside the sphere of law.

The Federal Constitution, which has not only limited the competence of Congress, but hedged it round with many positive prohibitions, has closed some of the avenues by which a majority might proceed to abuse its powers. Freedom of speech, freedom of religion, opportunities for debate, are all amply secured. The power of taxation, and that of regulating commerce, might conceivably be used to oppress certain classes of persons, as, for instance, if a prohibitory duty were to be laid on certain articles which a minority desired and the majority condemned the use of. But nothing of the sort has been attempted. Whatever may be thought of the expediency of the present tariff, which, no doubt, favours one class, it cannot be said to oppress any class. In its political action, as, for instance, during the struggle over slavery, when for a while it refused

¹ The comparison of the majority to an absolute monarch is as old as Aristotle. *μόναρχος ὁ δῆμος γίνεται* (*Polit.* iv. 4, 26); *ὡς περ τυράννη τῷ δήμῳ χαρίζομενοι* (*Ibid.* ii. 12, 4). In the Greek cities, where the respect for law was weak, a triumphant party frequently overrode the law, just as the tyrants did.

to receive Abolitionist petitions, and even tried to prevent the transmission by mail of Abolitionist matter, and again during and after the war in some of its reconstruction measures, the majority, under the pressure of excitement, exercised its powers harshly and unwisely. But such political action is hardly the kind of action to which the charge we are examining applies.

In the States, a majority of the citizens may act either directly in enacting (or amending) a constitution, or through their legislature by passing statutes. We might expect to find instances of abuse of power more in the former than in the latter class of cases, because, though the legislature is habitually and the people of the State only intermittently active, the legislatures have now been surrounded by a host of constitutional limitations which a tyrannical majority would need some skill to evade. However, one discovers wonderfully little in the State Constitutions now in force of which a minority can complain. These instruments contain a great deal of ordinary law and administrative law. If the tendency to abuse legislative power to the injury of any class were general, instances of it could not fail to appear. One does not find them. There are some provisions strictly regulating corporations, and especially railroads and banks, which may perhaps be unwise, and which in limiting the modes of using capital apply rather to the rich than to the masses. But such provisions cannot be called wanton or oppressive.

The same remark applies to the ordinary statutes of the States, so far as I have been able to ascertain their character. They can rarely be used to repress opinion or its expression, because the State Constitutions contain ample guarantees for free speech, a free press, and the right of public meeting. For the same reason, they cannot encroach on the personal liberty of the citizen, nor on the full enjoyment of private property. In all such fundamentals the majority has prudently taken the possible abuse of its power out of the hands of the legislature.

When we come to minor matters, we are met by the difficulty of determining what is a legitimate exercise of legislative authority. Nowhere are men agreed as to the limits of state interference. Some few think that law ought not to restrict the sale of intoxicants at all; many more that it ought not to make the procuring of them, for purposes of pleasure, difficult

or impossible. Others hold that the common welfare justifies prohibition. Some deem it unjust to tax a man, and especially an unmarried man, for the support of public schools, or at any rate of public schools other than elementary. To most Roman Catholics it seems unjust to refuse denominational schools a share of the funds raised by taxing, among other citizens, those who hold it a duty to send their children to schools in which their own faith is inculcated. Some think a law tyrannical which forbids a man to exclude others from ground which he keeps waste and barren, while others blame the law which permits a man to reserve, as they think, tyrannically, large tracts of country for his own personal enjoyment. So any form of state establishment or endowment of a particular creed or religious body will by some be deemed an abuse, by others a wise and proper use of state authority. Remembering such differences of opinion, all I can say is that even those who take the narrower view of state functions will find little to censure in the legislation of American States. They may blame the restriction or prohibition of the sale of intoxicants. They may think that the so-called "moral legislation" for securing the purity of literature, and for protecting the young against various temptations, attempts too much. They may question the expediency of the legislation intended for the benefit of working men. But there are few of these provisions which can be called harsh or tyrannical, which display a spirit that ignores or tramples on the feelings or rights of a minority. The least defensible statutes are perhaps those which California has aimed at the Chinese (who are not technically a minority since they are not citizens at all), and those by which some Southern States have endeavoured to accentuate the separation between whites and negroes, forbidding them to be taught in the same schools or colleges or to travel in the same cars.

We come now to the third way in which a majority may tyrannize, *i.e.* by the imposition of purely social penalties, from mere disapproval up to insult, injury, and boycotting. The greatest of Athenian statesmen claimed for his countrymen that they set an example to the rest of Greece in that enlightened toleration which does not even visit with black looks those who hold unpopular opinions, or venture in anywise to

differ from the prevailing sentiment. Such enlightenment is doubtless one of the latest fruits and crowns of a high civilization, and all the more to be admired when it is not the result of indifference, but coexists with energetic action in the field of politics or religion or social reform.

If social persecution exists in the America of to-day, it is only in a few dark corners. One may travel all over the North and West, mingling with all classes and reading the newspapers, without hearing of it. As respects religion, so long as one does not openly affront the feelings of one's neighbours, one may say what one likes, and go or not go to church. Doubtless a man, and still more a woman, will be better thought of, especially in a country place or small town, for being a church-member and Sunday-school teacher. But no one suffers in mind, body, or estate for simply holding aloof from a religious or any other voluntary association. He would be more likely to suffer in an English village. Even in the South, where a stricter standard of orthodoxy is maintained among the Protestant clergy than in the North or West, a layman may think as he pleases. It is the same as regards social questions, and of course as regards politics. To boycott a man for his politics, or even to discourage his shop in the way not uncommon in parts of rural England and Ireland, would excite indignation in America; as the attempts of some labour organizations to boycott firms resisting strikes have aroused strong displeasure. If in the South a man took to cultivating the friendship of negroes and organizing them in clubs, or if in the far West a man made himself the champion of the Indians, he might find his life become unpleasant, though one hears little of recent instances of the kind. In any part of the country he who should use his rights of property in a hard or unneighbourly way, who, for instance, should refuse all access to a waterfall or a beautiful point of view, would be reprobated and sent to Coventry. I know of no such cases; perhaps the fear of general disapproval prevents their arising.

In saying that there is no social persecution, I do not deny that in some places, as, for instance, in the smaller towns of the West, there is too little allowance for difference of tastes and pursuits, too much disposition to expect every family to conform to the same standard of propriety, and follow the same

habits of life. A person acting, however innocently, without regard to the beliefs and prejudices of his neighbours would be talked about, and perhaps looked askance upon. Many a man used to the variety of London or Washington would feel the monotony of Western life, and the uniform application of its standards, irksome and even galling. But, so far as I could ascertain, he would have nothing specific to complain of. And these Western towns become every day more like the cities of the East. Taking the country all in all, it is hard to imagine more complete liberty than individuals and groups enjoy either to express and propagate their views, or to act as they please within the limits of the law, limits which, except as regards the sale of intoxicants, are drawn as widely as in Western Europe.

Fifty or sixty years ago it was very different. Congress was then as now debarred from oppressive legislation. But in some Northern States the legislatures were not slow to deal harshly with persons or societies who ran counter to the dominant sentiment. The persecution by the legislature of Connecticut, as well as by her own townsmen, of Miss Prudence Crandall, a benevolent Quakeress who had opened a school for negro children, is a well-remembered instance. A good many rigidly Puritanic statutes stood unrepealed in New England, though not always put in force against the transgressor. In the Slave States laws of the utmost severity punished whosoever should by word or act assail the "peculiar institution." Even more tyrannical than the laws was the sentiment of the masses. In Boston a mob, a well-dressed mob, largely composed of the richer sort of people, hunted Garrison for his life through the streets because he was printing an Abolitionist journal; a mob in Illinois shot Elijah Lovejoy for the same offence; and as late as 1844 another Illinois crowd killed Joseph Smith, the Mormon prophet, who, whatever may be thought of his honesty or his doctrines, was as much entitled to the protection of the laws as any other citizen. In the South, as every one knows, there was a reign of terror as regards slavery. Any one suspected of Abolitionism might think himself lucky if he escaped with tar and feathers, and was not shot or flogged almost to death. This extreme sensitiveness was of course confined to a few burning questions;

but the habit of repressing by law or without law obnoxious opinions was likely to spread, and did spread, at least in the South, to other matters also. As regards thought and opinion generally over the Union, Tocqueville declares:—

"Je ne connais pas de pays où il règne, en général, moins d'indépendance d'esprit et de véritable liberté de discussion qu'en Amérique. La majorité trace un cercle formidable autour de la pensée. Au dedans de ces limites, l'écrivain est libre, mais malheur à lui s'il ose en sortir! Ce n'est pas qu'il ait à craindre un auto-da-fé, mais il est en butte à des dégoûts de tout genre et à des persécutions de tous les jours. La carrière politique lui est fermée: il a offensé la seule puissance qui ait la faculté de l'ouvrir. On lui refuse tout, jusqu'à la gloire."—Vol. ii. ch. 7.

He ascribes not only the want of great statesmen, but the low level of literature, learning, and thought, to this total absence of intellectual freedom.

It is hard for any one who knows the Northern States now to believe that this can have been a just description of them so lately as sixty years ago. One is tempted to think that Tocqueville's somewhat pessimistic friends in New England, mortified by the poverty of intellectual production around them, may have exaggerated the repressive tendencies in which they found the cause of that poverty. We can now see that the explanation was erroneous. Freedom does not necessarily bring fertility. As they erred in their diagnosis, they may have erred in their observation of the symptoms.

Assuming, however, that the description was a just one, how are we to explain the change to the absolute freedom and tolerance of to-day, when every man may sit under his own vine and fig-tree and say and do (provided he drink not the juice of that vine) what he pleases, none making him afraid?

One may suspect that Tocqueville, struck by the enormous power of general opinion, attributed too much of the submissiveness which he observed to the active coercion of the majority, and too little to that tendency of the minority to acquiescence, which will be discussed in the next succeeding chapter. Setting this aside, however, and assuming that the majority did in those days really tyrannize, several causes may be assigned for its having ceased to do so. One is the absence

of violent passions. Slavery, the chief source of ferocity, was to the heated minds of the South a matter of life or death; Abolitionism seemed to many in the North a disloyal heresy, the necessary parent of disunion. Since the Civil War there has been no crisis calculated to tempt majorities to abuse their legal powers. Partisanship has for years past been more intense in Great Britain—not to say Ireland—and France than in America. When Tocqueville saw the United States, the democratic spirit was in the heyday of its youthful strength, flushed with self-confidence, intoxicated with the exuberance of its own freedom. The first generation of statesmen whose authority had restrained the masses, had just quitted the stage. The anarchic teachings of Jefferson had borne fruit. Administration and legislation, hitherto left to the educated classes, had been seized by the rude hands of men of low social position and scanty knowledge. A reign of brutality and violence had set in over large regions of the country. Neither literature nor the universities exercised as yet any sensible power. The masses were so persuaded of their immense superiority to all other peoples, past as well as present, that they would listen to nothing but flattery, and their intolerance spread from politics into every other sphere. Our European philosopher may therefore have been correct in his description of the facts as he saw them: he erred in supposing them essential to a democratic government. As the nation grew, it purged away these faults of youth and inexperience, and the stern discipline of the Civil War taught it sobriety, and in giving it something to be really proud of, cleared away the fumes of self-conceit.

The years which have passed since the war have been years of immensely extended and popularized culture and enlightenment. Bigotry in religion and in everything else has been broken down. The old landmarks have been removed: the habits and methods of free inquiry, if not generally practised, have at least become superficially familiar; the "latest results," as people call them, of European thought have been brought to the knowledge of the native Americans more fully than to the masses of Europe. At the same time, as all religious and socio-religious questions, except those which relate to education, are entirely disjoined from politics and the State, neither those who stand by the old views, nor those who embrace the new, carry that

bitterness into their controversies which is natural in countries where religious questions are also party questions, where the clergy are a privileged and salaried order, where the throne is held bound to defend the altar, and the workman is taught to believe that both are leagued against him. The influence of these causes will, it may be predicted, be permanent. Should passion again invade politics, or should the majority become convinced that its interests will be secured by overtaking the few, one can imagine the tendency of fifty years ago reappearing in new forms. But in no imaginable future is there likely to be any attempt to repress either by law or by opinion the free exercise and expression of speculative thought on morals, on religion, and indeed on every matter not within the immediate range of politics.

If the above account be correct, the tyranny of the majority is no longer a blemish on the American system, and the charges brought against democracy from the supposed example of America are groundless. As tyranny is one of those evils which tends to perpetuate itself, those who had been oppressed revenging themselves by becoming oppressors in their turn, the fact that a danger once dreaded has now disappeared is no small evidence of the recuperative forces of the American government, and the healthy tone of the American people.