

acquire the islands and admit them to the Union as a State or Territory. Their white population is at present far too small to make either course desirable—the registered voters were (in 1893) about 1800 persons of European or American stock, with 9554 natives and half-castes;—the presence of a large Asiatic population would, in view of recent Federal legislation against the Chinese, raise serious difficulties; and in case of war with a naval power the obligation of defending them might be found burdensome, although they are not quite so distant from the American coast as some of the Aleutian isles, acquired when Alaska was purchased. It is, however, certain that the Americans would not stand by and see any other nation establish a protectorate over them.

The fate of Western South America belongs to a still more distant future; but it can hardly remain unconnected with what is already by far the greatest power in the Western hemisphere. When capital, which is accumulating in the United States with extraordinary rapidity, is no longer able to find highly profitable employment in the development of Western North America, it will tend to seek other fields. When population has filled up the present territory of the United States, enterprising spirits will overflow into undeveloped regions. The nearest of these is Western South America, the elevated plateaux of which are habitable by Northern races. It may be conjectured that the relations of the vast territories in Ecuador, Peru, and Bolivia,¹ for which the Spaniards have done so little, and which can hardly remain for ever neglected, will one day become far closer with the United States than with any European power.

¹ These three countries have a total area of about 1,500,000 square miles, with a settled population not exceeding 5,500,000, besides an unascertained number of uncivilized Indians.

CHAPTER XCV

LAISSEZ FAIRE

A EUROPEAN friend of a philosophic turn of mind bade me, when he heard that I was writing this book, dedicate at least one chapter to the American Theory of the State. I answered that the Americans had no theory of the State, and felt no need for one, being content, like the English, to base their constitutional ideas upon law and history.

In England and America alike (I pursued) one misses a whole circle and system of ideas and sentiments which have been potent among the nations of the European continent. To those nations the State is a great moral power, the totality of the wisdom and conscience and force of the people, yet greater far than the sum of the individuals who compose the people, because consciously and scientifically, if also by a law of nature, organized for purposes which the people indistinctly apprehend, and because it is the inheritor of a deep-rooted reverence and an almost despotic authority. There is a touch of mysticism in this conception, which has survived the change from arbitrary to representative government, and almost recalls the sacredness that used to surround the mediæval church. In England the traditions of an ancient monarchy and the social influence of the class which till lately governed have enabled the State and its service to retain a measure of influence and respect. No one, however, attributes any special wisdom to the State, no one treats those concerned with administration or legislation as a superior class. Officials are strictly held within the limits of their legal powers, and are obeyed only so far as they can show that they are carrying out the positive directions of the law. Their conduct, and indeed the decisions of the highest State organs, are criticised, perhaps with more courtesy, but otherwise in exactly the same way as those of other persons and bodies.

Yet the State is dignified, and men are proud to serve it. From the American mind, that which may be called the mystic aspect of the State, and the theory of its vast range of action, are as conspicuously absent as they are from the English. They are absent, not because America is a democracy, but because the political ideas of the two branches of the race are fundamentally the same, a fact which continental observers of the United States constantly fail to appreciate. In America, however, even the dignity of the State has vanished. It seems actually less than the individuals who live under it. The people, that is to say the vast multitude of men who inhabit the country, inspire admiration, the organism is ignored. The State is nothing but a name for the legislative and administrative machinery whereby certain business of the inhabitants is despatched. It has no more conscience, or moral mission, or title to awe and respect, than a commercial company for working a railroad or a mine; and those who represent it are treated in public and in private with quite as little deference.

Hereupon my friend rejoined that people in America must at least have some general views about the functions of government and its relations to the individual. "We are told," he continued, "that the whole American polity is more coherent, more self-consistent than that of England; it must therefore have what the Germans call 'ground-ideas.' There is a profusion of legislation. Legislation must proceed upon these ideas, and by examining the current legislation of the Federal government and of the States you will be able to discover and present the beliefs and notions regarding the State which the Americans cherish."

The term "ground-ideas" does not happily describe the doctrines that prevail in the United States, for the people are not prone to form or state their notions in a philosophic way. There are, however, certain dogmas or maxims which are in so far fundamental that they have told widely on political thought, and that one usually strikes upon them when sinking a shaft, so to speak, into an American mind. Among such dogmas are the following:—

Certain rights of the individual, as, for instance, his right to the enjoyment of what he has earned, and to the free expression of his opinions, are primordial and sacred.

All political power springs from the people, and the most completely popular government is the best.

Legislatures, officials, and all other agents of the sovereign people ought to be strictly limited by law, by each other, and by the shortness of the terms of office.

Where any function can be equally well discharged by a central or by a local body, it ought by preference to be entrusted to the local body, for a centralized administration is more likely to be tyrannical, inefficient, and impure than one which, being on a small scale, is more fully within the knowledge of the citizens and more sensitive to their opinion.

Two men are wiser than one, one hundred than ninety-nine, thirty millions than twenty-nine millions. Whether they are wiser or not, the will of the larger number must prevail against the will of the smaller. But the majority is not wiser because it is called the Nation, or because it controls the government, but only because it is more numerous. The nation is nothing but so many individuals. The government is nothing but certain representatives and officials, agents who are here to-day and gone to-morrow.

The less of government the better; that is to say, the fewer occasions for interfering with individual citizens are allowed to officials, and the less time citizens have to spend in looking after their officials, so much the more will the citizens and the community prosper. The functions of government must be kept at their minimum.

The first five of these dogmas have been discussed and illustrated in earlier chapters. The last of them needs a little examination, because it suggests points of comparison with the Old World, and because the meaning of it lies in the application. It is all very well to say that the functions of government should be kept at a minimum; but the bureaucrats of Russia might say the same. What is this minimum? Every nation, every government, every philosopher, has his own view as to the functions which it must be taken to include.

The doctrine of *Laissez faire*, or non-interference by government with the citizen, has two foundations, which may be called the sentimental and the rational. The sentimental ground is the desire of the individual to be let alone, to do as he pleases, indulge his impulses, follow out his projects. The rational

ground is the principle, gathered from an observation of the phenomena of society, that interference by government more often does harm than good—that is to say, that the desires and impulses of men when left to themselves are more likely by their natural collision and co-operation to work out a happy result for the community and the individuals that compose it than will be attained by the conscious endeavours of the state controlling and directing those desires and impulses. There are laws of nature governing mankind as well as the material world; and man will thrive better under these laws than under those which he makes for himself through the organization we call Government.

Of these two views, the former or sentimental has been extremely strong in America, being rooted in the character and habits of the race, and seeming to issue from that assertion of individual liberty which is proclaimed in such revered documents as the Declaration of Independence and the older State constitutions. The latter view, incessantly canvassed in Europe, has played no great part in the United States; or rather it has appeared in the form not of a philosophic induction from experience, but of a common-sense notion that everybody knows his own business best, that individual enterprise has “made America,” and will “run America,” better than the best government could do.

The State governments of 1776 and the National government of 1789 started from ideas, mental habits, and administrative practice generally similar to those of contemporary England. Now England in the eighteenth century was that one among European countries in which government had the narrowest sphere. The primitive paternal legislation of the later middle ages had been abandoned. The central government had not begun to stretch out its arms to interfere with quarter sessions in the counties, or municipal corporations in the towns, to care for the health, or education, or morals of the people. That strengthening and reorganization of administration which was in progress in many parts of the continent, as in Prussia under Frederick the Great, and in Portugal under Pombal, had not spread to England, and would have been resisted there by men of conservative tendencies for one set of reasons, and men of liberal tendencies for another. Everything tended to make

the United States in this respect more English than England, for the circumstances of colonial life, the process of settling the western wilderness, the feelings evoked by the struggle against George III., all went to intensify individualism, the love of enterprise, and the pride in personal freedom. And from that day to this, individualism, the love of enterprise, and the pride in personal freedom, have been deemed by Americans not only their choicest, but their peculiar and exclusive possessions.

The hundred years which have passed since the birth of the Republic have, however, brought many changes with them. Individualism is no longer threatened by arbitrary kings, and the ramparts erected to protect it from their attacks are useless and grass-grown. If any assaults are to be feared they will come from another quarter. New causes are at work in the world tending not only to lengthen the arms of government, but to make its touch quicker and firmer. Do these causes operate in America as well as in Europe? and, if so, does America, in virtue of her stronger historical attachment to individualism, oppose a more effective resistance to them?

I will mention a few among them. Modern civilization, in becoming more complex and refined, has become more exacting. It discerns more benefits which the organized power of government can secure, and grows more anxious to attain them. Men live fast, and are impatient of the slow working of natural laws. The triumphs of physical science have enlarged their desires for comfort, and shown them how many things may be accomplished by the application of collective skill and large funds which are beyond the reach of individual effort. Still greater has been the influence of a quickened moral sensitiveness and philanthropic sympathy. The sight of preventable evil is painful, and is felt as a reproach. He who preaches patience and reliance upon natural progress is thought callous. The sense of sin may, as theologians tell us, be declining; but the dislike to degrading and brutalizing vice is increasing; there is a warmer recognition of the responsibility of each man for his neighbour, and a more earnest zeal in works of moral reform. Some doctrines which, because they had satisfied philosophers, were in the last generation accepted by the bulk of educated men, have now become, if not discredited by experience, yet

far from popular. They are thought to be less universally true, less completely beneficial, than was at first supposed. There are benefits which the laws of demand and supply do not procure. Unlimited competition seems to press too hardly on the weak. The power of groups of men organized by incorporation as joint-stock companies, or of small knots of rich men acting in combination, has developed with unexpected strength in unexpected ways, overshadowing individuals and even communities, and showing that the very freedom of association which men sought to secure by law when they were threatened by the violence of potentates may, under the shelter of the law, ripen into a new form of tyranny. And in some countries, of which Britain may be taken as the type, the transference of political power from the few to the many has made the many less jealous of governmental authority. The government is now their creature, their instrument—why should they fear to use it? They may strip it to-morrow of the power with which they have clothed it to-day. They may rest confident that its power will not be used contrary to the wishes of the majority among themselves. And as it is in this majority that authority has now been vested, they readily assume that the majority will be right.

How potent these influences and arguments have proved in the old countries of Europe, how much support they receive not only from popular sentiment, but from the writings of a vigorous school of philosophical economists, all the world knows. But what of newer communities, where the evils to be combated by state action are fewer, where the spirit of liberty and the sentiment of individualism are more intense? An eminent English statesman expresses the general belief of Englishmen when he says:—

“How is it that while the increasing democracy at home is insisting, with such growing eagerness, on more control by the state, we see so small a corresponding development of the same principle in the United States or in Anglo-Saxon colonies? It is clearly not simply the democratic spirit which demands so much central regulation. Otherwise we should find the same conditions in the Anglo-Saxon democracies across the seas.”¹

This belief of Englishmen is also the general belief of Americans. I suppose that nine men out of ten would tell a stranger that both the Federal government and the State governments

¹ Mr. Goschen, in an address delivered at Edinburgh in 1883.

interfered little, and would ascribe the prosperity of the country to this non-interference as well as to the self-reliant spirit of the people. So far as there can be said to be any theory on the subject in a land which gets on without theories, *laissez aller* has been the orthodox and accepted doctrine in the sphere both of Federal and of State legislation.

Nevertheless the belief is groundless. The new democracies of America are just as eager for state interference as the democracy of Britain, and try their experiments with even more light-hearted promptitude. No one need be surprised at this when he reflects that the causes which have been mentioned as telling on Europe, tell on the United States with no less force. Men are even more eager than in Europe to hasten on to the ends they desire, even more impatient of the delays which a reliance on natural forces involves, even more sensitive to the wretchedness of their fellows, and to the mischiefs which vice and ignorance breed. Unrestricted competition has shown its dark side: great corporations have been more powerful than in Britain, and more inclined to abuse their power. Having lived longer under a democratic government, the American masses have realized more perfectly than those of Europe that they are themselves the government. Their absolute command of its organization (except where constitutional checks are interposed) makes them turn more quickly to it for the accomplishment of their purposes. And in the State legislatures they possess bodies with which it is easy to try legislative experiments, since these bodies, though not of themselves disposed to innovation, are mainly composed of men unskilled in economics, inapt to foresee any but the nearest consequences of their measures, prone to gratify any whim of their constituents, and open to the pressure of any section whose self-interest or impatient philanthropy clamours for some departure from the general principles of legislation. For crotchet-mongers as well as for intriguers there is no such paradise as the lobby of a State legislature. No responsible statesman is there to oppose them, no warning voice will be raised by a scientific economist.

Thus it has come to pass that, though the Americans have no theory of the State and take a narrow view of its functions, though they conceive themselves to be devoted to *laissez faire* in principle, and to be in practice the most self-reliant of peo-

ples, they have grown no less accustomed than the English to carry the action of government into ever-widening fields. Economic theory did not stop them, for practical men are proud of getting on without theory.¹ The sentiment of individualism did not stop them, because State intervention has usually taken the form of helping or protecting the greater number, while restraining the few; and personal freedom of action, the love of which is strong enough to repel the paternalism of France or Germany, has been infringed upon only at the bidding of a strong moral sentiment, such as that which condemns intemperance. So gradual has been the process of transition to this new habit that few but lawyers and economists have yet become aware of it, and the lamentations with which old-fashioned English thinkers accompany the march of legislation are in America scarcely heard and wholly unheeded.

As the field of ordinary private law and administration belongs to the States, it is chiefly in State legislation that we must look for instances of governmental intervention. Recent illustrations of the tendency to do by law what men were formerly left to do for themselves, and to prohibit by law acts of omission and commission which used to pass unregarded, might be culled in abundance from the statute-books of nearly every commonwealth.² It is in the West, which plumes itself on being pre-eminently the land of freedom, enterprise, and self-help, that this tendency is most active and plays the strangest pranks, because legislators are, in the West, more impatient and self-confident than elsewhere.

The forms which legislative intervention takes may be roughly classified under the following heads:—

Prohibitions to individuals to do acts which are not, in the ordinary sense of the word, criminal (*e.g.* to sell intoxicating liquors, to employ a labourer for more than so many hours in a day).

Directions to individuals to do things which it is not obviously wrong to omit (*e.g.* to provide seats for shop-women, to publish the accounts of a railway company).

¹ Till recently, there has been little theoretical discussion of these questions in the United States. At present the two tendencies, that of *Laissez faire* and that which leans to State interference, are well represented by able writers.

² I have collected some instances in a note to this chapter. See also an article by Dr. Albert Shaw in *Contemporary Review* for May, 1887.

Interferences with the ordinary course of law in order to protect individuals from the consequences of their own acts (*e.g.* the annulment of contracts between employer and workmen making the former not liable for accidental injuries to the latter, the exemption of homesteads, or of a certain amount of personal property, from the claims of creditors, the prohibition of more than a certain rate of interest on money).

Directions to a public authority to undertake work which might be left to individual action and the operation of supply and demand (*e.g.* the providing of schools and dispensaries, the establishment of State analysts, State oil inspectors, the collection and diffusion, at the public expense, of statistics).

Retention, appropriation, or control by the State of certain natural sources of wealth or elements in its production (*e.g.* the declaration, made by Washington, Wyoming, Montana, and Idaho, that the use of all waters, whether still or flowing, within their respective bounds, is a public use, and for ever subject to State control, the prohibition by Indiana of the wasteful use of natural gas).

In every one of these kinds of legislative interference the Americans, or at least the Western States, seem to have gone farther than the English Parliament. The restrictions on the liquor traffic have been more sweeping; those upon the labour of women and children, and of persons employed by the State, not less so. Moral duties are more frequently enforced by legal penalties than in England. Railroads, insurance and banking companies, and other corporations are, in most States, strictly regulated. Efforts to protect individuals coming under the third head are so frequent and indulgent that their policy is beginning to be seriously questioned.¹ Gratuitous elemen-

¹ "A numerous and ever-increasing list of possessions has been entirely exempted from execution for debt, starting with the traditional homestead, and going on through all the necessities of life, implements of trade, and even corner-lots and money, until, in some States, as in Texas, almost every conceivable object of desire, from a house and corner-lot to a span of fast horses, may be held and enjoyed by the poor man free from all claims of his creditors. Without going further into details it may be boldly stated that the tendency of democratic legislation on this subject has been to require the repayment of debts only when it can be made out of superfluous accumulated capital."—Mr. F. J. Stimson, in a vigorous and thoughtful article on the "Ethics of Democracy," in *Scribner's Magazine* for June, 1887.

The latest Constitution of Texas provides that where a contractor becomes bankrupt, the labourers employed by him shall have a right of action against

tary and secondary education is provided all over the Union, and in the West there are also gratuitous State universities open to women as well as to men. And although the State has not gone so far in superseding individual action as to create for itself monopolies, it is apt to spend money on some objects not equally cared for by European governments. It tries to prevent adulteration by putting its stamp on agricultural fertilizers, and prohibiting the sale of oleomargarine; it establishes dairy commissions, bureaux of animal industry, and boards of live-stock commissioners armed with wide powers of inspection, it distributes seed to farmers, provides a State chemist to analyze soils gratuitously and recommend the appropriate fertilizers, subsidizes agricultural fairs, sends round lecturers on agriculture, and encourages by bounties the culture of beetroot and manufacture of sugar therefrom, the making of starch from State-grown potatoes, tree-planting, and the killing of noxious animals, — English sparrows in Massachusetts, panthers and wolves in Wyoming.¹ The farmer of Kansas or Iowa is more palpably the object of the paternal solicitude of his legislature than the farmer of any European country. And in the pursuit of its schemes for blessing the community the State raises a taxation which would be complained of in a less prosperous country.²

What has been the result of this legislation? Have the effects which the economists of the physiocratic or *laissez aller* school taught us to expect actually followed? Has the natural course of commerce and industry been disturbed, has the self-helpfulness of the citizen been weakened, has government done its work ill and a new door to jobbery been opened? It is still too soon to form conclusions on these points. Some few

the company or person for whose benefit the work on which they were employed was done.

¹ In Kansas the gift of bounties for the heads of coyotes (prairie-wolves) led to the rearing of these animals on a large scale in a new description of stock-farms!

² "Speaking broadly, and including indirect taxation, it may be stated that the laws now purport to give the State power to dispose of at least one-third the annual revenues of property. . . . Of course these taxes are largely, by the richest citizens, evaded, but upon land at least they are effectual. It is certainly understating it to say that the general taxation upon land equals one-third the net rents, *i.e.* Ricardo's margin of cultivation less expenses of management." — Stimson, *ut supra*.

of the experiments have failed, others seem to be succeeding; but the policy of State interference as a whole has not yet been adequately tested. In making this new departure American legislatures are serving the world, if not their own citizens, for they are providing it with a store of valuable data for its instruction, data which deserve more attention than they have hitherto received, and whose value will increase as time goes on.

It is the privilege of these unconscious philosophers to try experiments with less risk than countries like France or England would have to run, for the bodies on which the experiments are tried are so relatively small and exceptionally vigorous that failures need not inflict permanent injury. No people is shrewder than the American in perceiving when a law works ill, nor prompter in repealing it.

NOTE.

I COLLECT a few instances of recent legislation illustrating the tendency to extend State intervention and the scope of penal law: —

New York provides that no guest shall be excluded from any hotel on account of race, creed (some had refused to receive Jews), or colour.

Wisconsin requires every hotel above a certain height to be furnished with fireproof staircases; and Michigan punishes the proprietors of any shop or factory in which the health of employés is endangered by improper heating, lighting, ventilation or sanitarian arrangements.

Michigan compels railroad companies to provide automatic car couplings, so that employés shall not need to go between the cars. Other States direct the use of certain kinds of brakes.

Georgia orders railway companies to put up a bulletin stating how much any train already half an hour late is overdue; Arkansas requires this even if the train is only a few minutes late.

Wyoming requires railroads passing within four miles of any city to provide, at the nearest point, a depot whereat all local trains shall stop; while Arkansas forbids baggage to be tumbled from cars on to the platform at a depot; and Ohio permits no one to be engaged as a train conductor unless he has had two years' previous experience as train hand.

Massachusetts forbids the employment of colour-blind persons on railways, and provides for the examination of those so employed.

Ohio requires druggists to place on bottles containing poison a red label, naming at least two of the most readily procurable antidotes.

Several States order employers to find seats for women employed in shops, warehouses, or manufactories.