



Natural Rights and the Theory of the Political Institution

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NATURAL RIGHTS AND THE THEORY OF THE POLITICAL INSTITUTION¹

THE term natural rights suggests the political speculations of the seventeenth and eighteenth centuries in Europe, and the various revolutions that took them in some sense as their slogans. These revolutionary movements were one after the other increasingly forward-looking, constructive undertakings, until we may fairly say that as their results we find in representative government and growing democracy, revolution incorporated in the institution of government itself. That is, the form of government has become such that in its own operation the people can by legislation and amendment change it into any form they desire and still will have acted in a strictly legal and constitutional fashion. Furthermore, in the interplay of legislation and the execution and judicial interpretation of the legislation there arise not only the opportunities, but also the legally recognized occasions for the continual reconstruction of governmental institutions, so that a constant growth may take place in the form of institutions, and government may become in its own operation something entirely different from what it was, without any break or overthrow of constituted authority. Revolution has been incorporated into the constituted form of government itself.

And this has involved a revolution itself, for such an institutionalizing of revolution has been no less revolutionary with reference to revolution itself than it has been with reference to fixed forms of government. The tendency of each revolutionary movement had been to fix itself in relatively unchangeable governmental structure, that the successes it has spent and fought for might be preserved and intrenched, and thus had prepared the appropriate situation for the next revolution that sought in its turn to build its achievements into a new structure that should hold out

Against the wreckful siege of battering days.

¹Read at the joint session of the American and Western Philosophical Associations with the American Political Science Association and Conference on Legal and Social Philosophy, at Chicago, December 29, 1914.

In fact, the form of government in democratic countries has responded more completely to the demand for the opportunity for continual change than have the customs and attitudes of the community itself. The embedded structure of society has become more conservative than its more external forms and machinery. The possible revolutions, in the old sense, which we can envisage to-day are supposed to be directed against this inner structure such as the very producing and holding of wealth, or the procreating and nurture of children, and it is quite on the cards that these revolutions might be carried out by methods which would be strictly constitutional and legal.

It is not remarkable, then, that rights which looked very definite to the gentlemen who drew up the American Declaration of Independence, or those who formulated the bills of rights that were to justify the French revolutions, should have an entirely different aspect and meaning to-day. Life, liberty, security, property, and even the pursuit of happiness took on a definite connotation from the dangers and hindrances men sought to eliminate, the dangers and hindrances which an autocratic government could put in the way of the enjoyment of these imprescriptible rights. And when these dangers and hindrances had been removed the definitions of the rights which had been given in terms of what threatened them lost their bearings and at the same time their content. How simple and self-evident are the following definitions, taken from the declaration of rights and duties prefixed to the French constitution of September 23, 1795:

"The rights of man in society are liberty, equality, security, property."

"Liberty consists in the power to do that which does not injure the rights of others."

"Equality consists in this, that the law is the same for all, whether it protects, or whether it punishes."

"Equality does not admit any distinction of birth, or any inheritance of power."

"Security results from the cooperation of all to assure the rights of each."

"Property is the right to enjoy and dispose of one's goods, one's revenues, of the fruit of one's labor, and of one's industry."

"The law is the general will expressed by the majority of all the citizens or of their representatives."

"That which is not forbidden by law may not be prohibited. No one may be constrained to do that which the law does not ordain."

"No one may be summoned before court, accused, arrested, or

detained, except in cases determined by law, according to the forms prescribed by law."

"Those who incite, give legal form to, sign, execute, or have executed arbitrary acts are culpable and are to be punished."

"All unnecessary severity in securing the person of the accused is to be severely repressed by law."

"No man may be judged until he has been heard or legally summoned."

"The law may only judge such penalties as are strictly necessary and proportioned to the offense."

"All treatment which aggravates the penalty set by the law is a crime."

"No law either criminal or civil may be applied retroactively."

"Every individual may dispose of his time and his services, but he may not offer himself for sale or be sold. His person is not alienable property."

"All taxes are established for the common good. It should be divided among those contributing to it, according to their abilities."

"The sovereignty resides essentially in the entirety of the citizens."

"No individual and no group of citizens may take to himself or itself sovereignty."

"No one without legal commission may exercise any authority or fill any public office."

"Every one has the right to take equal part in the formation of the law, in the nomination of the representatives of the people, and of public officers."

"Public offices may not become the property of those who hold them."

"Social security can not exist if the division of powers has not been established, if their limits have not been fixed, and if the responsibility of public officers has not been assured."

Here we find liberty defined in terms of taking away liberty and other rights to be defined, equality in terms of the absence of legal distinctions, security in terms of its source, property in terms of the absence of interference with its use, whatever it may be. But to the minds of men of the year four, these definitions had definite contents, because they were undertaking to determine the conditions under which certain powers which it did not even occur to them to define might be exercised.

Now that these conditions are in large measure assured, that the danger of inherited dynastic autocratic power has largely disappeared, these same powers lack the definition which the outlining of certain conditions of their exercise gave to them, and with Taine we

may criticize the working conceptions of the French Revolution as abstract.

It is to be remembered, however, that a *working* conception can be abstract only in so far as that to which it refers for its functioning, needs only to be designated, not to be analytically defined. The abstract political individual of the seventeenth and eighteenth centuries and the abstract economic individual of the nineteenth century were quite concrete, every-day persons. They were pointed out by the negative definitions of those who speculated about them, and the negative definitions had reference to the hindrances to their activities which most interested the individuals. Thus Spinoza was interested in a community in which the inherent reason of the individual should find its natural expression, and the passions should be relegated to their proper place. Such a state would be founded by and through a *libera multitudo*, free in the Spinozistic sense that it would be conscious of its essentially rational nature. It is from the standpoint of Spinoza's theory of the passions as passive and privations that he is led to regard man as the embodiment of an abstract potentia, which by his definition comes to consciousness and so to freedom by the very disappearance of those privations which are our passions. It is the irony of Spinoza's speculation that for his conduct it was the passions, the negations, which were after all defined as to their content, while the potentia which was to exist in positive consciousness is defined only in terms of the cessation of the passions, and the conditions under which this may take place. The positive content of reason to which Spinoza arises in the denouement of his "Ethics" is a mystical emotion. But in his own struggle and in that which he predicated of all human conduct it was through the definition of what he had to overcome that he designated the individual which was to rise triumphant. This potentia has the right to express itself, but the right is defined in terms of the obstacles to its expression.

The timorous Hobbes facing the disturbances of the Puritan revolution and the worse conditions which were likely to ensue defined the individual in terms of those hostile impulses which must lead to a *bellum omnium contra omnes*. It was this human being, lifted through Hobbes's fear out of all human relationship, whose rights, recognized only in a state of nature, must be entirely surrendered to an autocratic sovereign, who is defined entirely in terms of what he must surrender to be safely admitted within a human society. There could and can be no doubt to whom Hobbes referred in his abstract definition of the individual, nor can there be any question that the definition indicates the hindrances which keep the individual out of the social state to which he belongs. In the case of Hobbes the rights

—so-called—of man are positive. They are the concrete satisfactions of every desire, just in so far as the man is able to attain that satisfaction. The individual who surrenders these rights, on the contrary, is entirely empty as a social being. He is the mere creature of the absolute sovereign.

The revolution of 1688 found its philosopher in John Locke, and its theory in his treatise on "Civil Government." Building on the very foundations which had seemed so abhorrent to Hobbes, the party that dethroned James and brought in by act of Parliament William and Mary appealed to a certain common interest which they felt to be the interest of the individual. Thus we find in Locke's account of the state of nature the whole content of social existence which, according to Hobbes, was possible only under the absolute autocrat. There is lacking only a settled statement of law, received by common consent, an indifferent judge to administer it, and an executive to enforce the decisions. But this legislation, justice, and execution is only the carrying out of actions with reference to common ends which are already in the natures and conduct of men, before the government is constituted. The government comes in only to give adequate expression and effect to natural social attitudes and conduct of men in a state of nature. There is to be found property, the family, and neighborly interest in one another. Was ever human nature so quickly regenerated as between the publications of the "Leviathan" and the "Treatise on Civil Government?" With such a human nature, so admirable in its native state, the emphasis must now be laid upon the restrictions to be placed upon government, not those to be placed upon the individual. The laws must be free from the influence of private interest, they must have in view alone the public good. The taxes raised must be by common consent, and the original power of the people to fashion its own government for its own ends must not be placed in any other hands or power.

Here we have a statement of rights of the people against any usurping, misgoverning government. And they again are negative, and yet they are the issues of the revolution of 1688, the elimination of court and dynastic interests in legislation, the vigor of parliament, and, in especial, its unquestioned hold upon the purse strings. But none of these human rights which Locke affirms over against a dethroned monarch is stated in positive form. There is no definition of the common good, nor of the purposes for which taxes should be raised and expended, nor what is the essential function of parliament. And for the purposes of presenting the case of the revolutionary party the statement was far more effective than one which had undertaken to state what the common good of the community was or in what lay the authority of the supreme legislative body.

With Rousseau the affirmation of the social character of human nature is still more emphatic. There is not only a common good that exists, and can be recognized by all, there is also a common will by which it can be affirmed and enforced. The government which Locke calls out to carry out the social nature of men is but the expression of Rousseau's *volonté générale* which, it is true, constructs a government as an instrument to carry out its purposes. This government, however, is but a means to accomplish a definite common purpose, commonly conceived, and the execution of which is commonly determined. Over against such a mere instrument, such a servant of the common interest and will, the rights of the men who make up the state are the more sharply defined, but for that very purpose negatively stated. A statement of them was given in the form of the preamble to the constitution of the year four.

The rights of man, especially those which have been called natural rights, have been the expression of certain negative conditions under which men in society and under government could express themselves. And they have been formulated with reference to definite hindrances which have brought to consciousness the powers which were seeking expression, but only in terms of the obstacles themselves. In the "Areopagitica," in the whole eloquent plea for freedom of publication, Milton undertakes no definition of what is good to print, and we are in the same case to-day. After all we are legally free to say and to print what a jury of twelve talesmen think it proper for us to say and print. If this legal situation were the actual situation and the determination of what we might say or publish did lie with any twelve theoretically good men and true, picked by the sheriff, and not with what we call public sentiment, the situation would be ludicrously absurd. However, public sentiment does not undertake to define what it is proper to print except over against the dictum of a legislature or a judge, and then it does not speak positively as to what is the nature of what may be said or printed. It approves or disapproves of the particular law or decision that is applied in the particular case, and if you undertake to formulate a right out of this, you find that you have only an abstraction.

The natural right to liberty may be rendered by the pregnant phrase that there is no freedom except under the law, which is another way of saying that nothing may be forbidden to you which must not, by the same act, be forbidden to every one else under the same conditions, although this is not all that this phrase implies; but it will tell you nothing of what you are at liberty to do. It has always been for the crushing out of exceptional privileges that our wars of freedom have been fought. Not even the statement that a man must be an end and never a means can be made a positive con-

tent, *i. e.*, can be made into a positive statement of what responsible personality consists in. In general no man is free who has not the means of expressing himself, but just what is necessary to that self-expression can not be made clear. It is probable that Epictetus was far freer than was his master, and at the present time millions of men are expressing their freedom in exposing their bodies to torture and death. I do not say that we can not formulate a fairly comprehensive statement of what has come to be the stature and measure of what the citizen should be in our minds at the present moment. We would give him undoubtedly economic freedom, an education, an association with his fellow citizens and fellow workmen that would ensure him the means of control over situations affecting his physical, social, and intellectual well-being. But of one thing we may be sure—that the next struggle for liberty, or our liberties, will arise out of some infraction that will not have reference to the definition which we have formulated of what the man should be and, consequently, of what constitute his liberties. On the contrary, we will find in all probability that the struggle will lead to a quite different definition from the one with which we started. No more illuminating instance of such a struggle can be found than in the fight of laborers for liberty to combine. The contests have always been over concrete restrictions, and every victory and defeat has left the question of what is the right to liberty of combination still undecided, though it has settled possibly for long periods to come a certain class of cases. The contents of our so-called natural rights have always been formulated negatively, with reference to restrictions to be overcome. When these restrictions have been overcome they represent a positive content of what we call for the time being our liberties. Thus we claim freedom of conscience in religious conduct. Slavery has gone by the board. Popular education, freedom of laborers to combine, etc., are mile-stones in our progress, and at each struggle we have added something to the fundamental rights of the man who is a part of the modern community. But we have also discovered that we never fight our battles over again. It is never the same question that arises again, and over against the new situation we find ourselves as unable satisfactorily to define the content of what our liberties are as our forefathers have been before us. We feel the narrow walls and brace ourselves to burst open the doors of opportunity that we find shut, but we can never apply the keys by which former doors were locked.

Historians of the theory of natural rights take pains to point out that the question of the inherent character of these rights has been confused with that of their priority to the society within which they

find their expression. The most glaring instance of this error is to be found in the common assumption of the contract theorists of society, that we can conceive of the individual citizen existing before the community, in the possession of the rights which afterwards the society undertakes to protect. On the contrary, it is pointed out that a right implies a recognition, and that this is a recognition which can not be found outside of an organized social group. Thus they deny the possibility of rights inhering in the men in the state of nature as presented by Spinoza and Hobbes, for these men have only powers, such as have the beasts of the field, but no rights. On the other hand, the state of nature which upon Locke's hypothesis precedes the compact forming the state is already a society, however deficient it may have been in governmental institutions. Had Locke had the acquaintance of our anthropologists with primitive groups he would have recognized that his precontract men would have possessed an organized group of social habits out of which indeed governmental institutions were to arise, but which already performed the functions of government as definitely as the later institutions were destined to do. Rousseau of course is subject to the same error of supposing that his socially endowed men with their recognition of each other's personalities could have existed without some form of social organization that must have fulfilled the function in some way of social control. If we are to correct their history we would substitute, for the coming together of these Lockean and Rousseauian precontract—men, the situations in which tribes that include a number of clans find the blood-feuds so costly in life and tribe-strength, that they get together to formulate a graduated set of fines and primitive courts to enforce these penalties. Here governmental institutions arise out of communities that have been controlled largely by customs that needed no institutional instruments for the exercise of their function. Here the rights that are formulated and enforced have already existed and hence have been already recognized in another form, and indeed in a true sense have been already enforced,

If we rob the term natural right of this implication of nature—that the right existed in a previous state of nature—can the term still be retained? We find that the term natural right is bound up with another very important conception in the history of political theory, that of natural law. Here the reference to nature does not imply a prior existence, but points rather to the fundamental character of the law, or in the other case to the fundamental character of the right. Here the emphasis upon *natural* sets it off against what is felt to be unnatural. Thus there is supposed to be a natural law of propinquity in marriage which throws into sharp contrast instances of unnatural marriages. And there are in the same sense

the natural rights which may be contrasted with the unnatural rights which have been conferred upon privileged classes or individuals. Thus equality has been asserted as natural to man, and freedom of movement in the satisfaction of his wants. And the term may have either a backward or a forward look.

When Adam dug and Eve span
Who was then the gentleman?

looked backward for the typical expression of human nature. Nature as Aristotle conceived it, on the other hand, reached its typical expression at the end of a period of growth or realization. And a modern evolutionist, Herbert Spencer, has presented the hypothesis of a human society that is to be the result of a process of evolution, within which there is to be complete adaptation, so that finally there will arise a human nature that is as yet only in embryo.

This conception of a right that belongs to the nature of society and that of the men who constitute that society brings us finally to the question, what beyond its recognition is involved in a right. We have seen that it comes to consciousness through some infraction, but this does not reveal its essential character. It can only exist in a society. Is it, then, conferred upon the individual by the group or society? From the standpoint of Bentham and Austin there are no natural rights, all rights being conferred, unless we accept Spencer's criticism on Benthamism that there must be assumed an original right to the enjoyment of pleasure. In any case it is the *common interest* on the part of society or those who constitute society in that which is the right of the individual which gives that right its recognition, and gives the ground for the enforcement of the right.

The attitude of the individual and of society may, however, be quite different, depending upon the point of view we adopt as to the character of the object which the individual sets before himself as his end. Is he pursuing a private end which chances to have the approval of the rest of the community? Or is his object one that is to him also a common good? Even Mill has sought to show that through indissoluble association the private end may become the common end in the view of the individual himself. Kant sought, approaching the problem from the opposite pole, to reach a like goal through substituting the good will itself for the universal form of the act, advancing then from the good will as an end to a society of good wills as a kingdom of ends. It remained for post-Kantian philosophy to find in the doctrine of the universality of the end of the individual's act, and the fact that that end must be social, being an objectification of the self, the starting-point for a theory of the state. I have no intention of discussing this theory. I wish simply to point out that

Kant, Hegel, and Mill all assume that the individual in society does in large measure pursue ends which are not private, but are in his own mind public goods and his own good because they are public goods. Here we have a basis for a doctrine of rights which can be natural rights without the assumption of the existence of the individual and his right prior to society. The right is arbitrary from the standpoint of neither the individual nor the community. In so far as the end is a common good, the community recognizes the individual's end as a right because it is also the good of all, and will enforce that right in the interest of all. An evident illustration is found in property. The individual seeks property in a form which at the same time recognizes the property of others. In the same fashion the community in recognizing property as a common social object, which is yet the end of the individual, enforces the right of the individual to his own possession. This character certainly inheres in all so-called natural rights. In all of them we recognize that the individual in asserting his own right is also asserting that of all other members of the community, and that the community can only exist in so far as it recognizes and enforces these common ends, in which both the individual and the community are expressed.

It follows from this conception that the number of natural rights will be limited and in some sense defined at any time, depending upon the meaning we give to the term enforce. If by that we imply the exercise of force majeure through the judicial and executive institutions of the community, the number of kinds or rights which can be enforced at any one time in a community will be necessarily limited. If by enforcement we imply as well the action of custom, public opinion, and sympathetic response, and indeed these are the chief forces that enforce the will of the community, then the number of natural rights which men may possess will be practically unlimited, for their common objects may not be counted. Even the most selfish end must have the form of a public good, to have any value to the private individual, otherwise it can not be his to have and to hold. It is evident that in one sense we have boxed the compass. We started with life, liberty, security, equality, pursuit of happiness, as natural rights. They were recognized as present in happiness, as natural rights. They were recognized as present in consciousness only when they were in some manner trenched upon. They were found to be incapable of definition as to their content. From the point of view just suggested, every object that is pursued in a common or social form, implies a common good, that may demand recognition and the enforcement of the right of the individual. Here there is no limit to the number of such goods, and hence no limit to such rights. They seem to be definable in terms of con-

tents, for they are all the common interests of men and mankind, and we have them as contents ever in mind, as they are prizes of our effort, and the solace of our hours of relaxation.

This anomalous situation repeats itself when we look to the nature of human rights and to their guaranties in our political and judicial institutions. What is evident at once is the difficulty of formulating fundamental rights which are to be distinguished from the multitudinous objects, the ends of actions, that are sought through our government and courts. The problem is that of determining the distinction that is to be made between the private right which must take its chances against other demands of a like sort and the specific common good which is endangered and calls for the especial protection of our institutions. I think I shall not be subject to contradiction if I assert that in this country at least, where we have gone further than men have gone in other countries in the attempt to formulate fundamental rights in our written constitutions, and in the use of the courts in their protection, we have not succeeded in rendering definite what the rights are which should receive these guaranties, and that behind the effort to state and defend these rights have always loomed other issues, which theoretically should be kept out of the question, but which come to be the deciding influences in the action of the courts.

It is evident that we do not assume that in other cases than those especially protected human rights are to be sacrificed. On the contrary, we assume that they are protected in the ordinary process of social conduct, both within and without the courts. Nor do we or should we assume that the rights which are so protected are less precious than those which call for the unusual action provided by our state and federal constitutions. On the contrary, must we not assume that issues which arise under the application of these guaranties are those leading to the formulation of new objects and the rights which attach to them? It is largely under the doctrine of the police power, that such new objects and rights are emerging in our kingdom of ends, and here what is demanded is not an exact definition of abstract human liberties, of the right to the due process of law, but that these new interests which have been what we have been pleased to call private interests in the past, should have the opportunity to appear as common goods. It is evident that categories which are to serve all these purposes must be abstract and empty of content and that they should get their content through the struggle which arises on the bare floor and between their distant walls.

It is not for me to discuss the architecture, curious and at times fascinating in its archeological interest, of the staircases and corridors and doorways by which these modern throbbing issues reach

these halls, nor the strange garbs that they have to assume to be presented at court. It is important to recognize what is going on, and to distinguish between that part of the process which merely holds the issue back from making its plea, and that which allows it to become gradually formulated. And it is important that we should realize the relation between these two phases of the process. This can be recognized in the instances which are most in evidence in the courts, those having to do with the protection of rights involved in property. In the social legislation which is appearing in such volume in all our states, rights which have in the past inhered in property are seriously affected. Now it is not of importance that these earlier rights should be protected if some common good which they have failed to recognize is at stake, nor should there be obstacles placed in the way of the appearance of this common good involved, in the interest of the ancient right. What is of importance is that all the interests which are involved should come to expression. For this purpose it is of importance that no hasty action should take place. And from this standpoint it is clear that political guaranties which delay action in the legislatures and constitutional provisions which are enforced in the courts have the same function.

On the face of it the former method, that of political guaranties, is the more logical, for it is in the legislature that it is possible to present more fully the human interests that are involved. Especially in a legislature such as the English, in which the responsibility for the execution of the laws is and must be felt. And in England the political guaranties are practically the only ones in existence. But I can not discuss the relative value of these two types of guaranties, I can only insist that we should recognize that the drag which we put by means of both of them upon the changes in the structure in our society serves only the purpose of enabling all the interests that are involved in the issue at stake to come to the surface and be adequately estimated. Let us labor under no delusion; while we do not want hasty or ill-considered action, there is after all no right that must not eventually get its formulation in terms of a common good so universal that even those most opposed in the struggle will accept and acclaim it. And such a formulation must eventually take place in terms of concrete living interests.

In other words, we must recognize that the most concrete and most fully realized society is not that which is presented in institutions as such, but that which is found in the interplay of social habits and customs, in the readjustments of personal interests that have come into conflict and which take place outside of court, in the change of social attitude that is not dependent upon an act of legislature. In the society which is closest to that of the primitive

man we find the reality of all that is prefigured and set out in the institutions, and while problems that are not and can not be solved through the readjustments of the individual's habit and the immediate change in social attitudes have to be dealt with in the halls of legislature and the rooms of our high courts, they are only brought there to enable men to envisage them more clearly and especially to become conscious of interests which could not appear immediately in their reactions to each other. When, however, this has taken place and the essential meaning of the problem has been grasped, its solution lies in the action of common citizens with reference to the common goods which our institutions have brought to their view and so analyzed that they can react to these new interests as they have to those to which they are already adjusted.

In these days of discussion over the meaning of *Kultur*, we may entertain a false view of institutions. They are the tools and implements of the community; they are not civilization itself. Society has progressed by a process of integration which has gradually brought men and women who have been separated by physical and social distances so close together that they have come to react to those who have been afar off as to those with whom they have been in immediate sympathetic relation, and political institutions have held people together in these as yet not fully integrated groups and in part have helped them to get still closer together and in part have kept them still farther apart. The political institution has especially held men together because it has represented and in some sense undertaken to make good, what was lacking through the absence of immediate social interrelationship. Thus through military activity men of different groups and different localities have been brought into a relationship which could be but the shadow of a real human community. And yet the relation of those thus socially and geographically at a distance could be mediated by the direct connection to the monarch. Here was a common bond, though it did not run from man to man directly, but from each to the sovereign. It became, of course, a basis for direct relationship in war through the attitude toward the common leader. But it also served other purposes. It gave in the first place a sense of the larger social whole to which men belonged. In the second place, the subjection to the monarch carried with it the theory at least of his protection. Thus the relation to the king could serve to replace in some degree the complete socialization of the whole realm. The king was the guarantee for all the rights that were not respected because men belonged to so many different groups and classes and districts instead of to one self-conscious community. Not only military activity has thus brought men of different groups together and held them together by

means of a political institution till social integration could take place. Religion has served the same purpose. In Europe Pope and Emperor were together the institutional figures which in the Holy Roman Empire drew the shadowy outlines of Christendom and made it possible for men to realize that theoretically they belonged to a single society. But even more compelling than the influence of arms and religious faiths has been the influence of barter and trade and the wealth which they have procreated. Exchange of goods does not wait upon the decision of the clanging fight nor the acceptance of the prophet's message. It has undistanced the Alexanders and the Gregorys, and has set up a tenuous society of economic men from which no accessible member of the human race is excluded. Thus has money, that root of all evil, set the most grandiose problem to human kind of achieving the completed society which wealth-in-exchange has sketched. But if men that are otherwise hostile to each other will trade together there must be some guarantee that the human rights which neither is bound to respect in the other shall be regarded at least in so far as they continue to trade and barter. Let these same economic processes within a community force men from different classes together into relations which do not carry with them their own social organization and hence their own guarantee of mutual rights, and again some outside institution must arise to act as a surrogate for the control which a completely organized group would exercise directly. In a word, the political institution presupposes first, relations set up between those at an effective distance from each other, distance which may be measured in miles and days, or in unsurmounted barriers of social classes and castes; and second, that the social control over the conduct of men in this relationship, which would arise through the other social relations if these distances were overcome, must in the interest of the whole be exercised by some compelling social force within the radius of whose action the distant individuals fall; and third, that with the completion of the socialization of those who lie within this relationship the function of the institution, its guarantee of rights, ceases. Most of our quarrels are settled out of court, and except at the street corners within the loop district few of our actions are governed by the police, nor are human rights the less carefully guarded; they are indefinitely better protected than the most vigilant police administration or system of courts could guard them. Human rights are never in such danger as when their only defenders are political institutions and their officers.

If this is in any sense a true account of the situation, every right that comes up for protection by our courts or other constitutional institution is confessedly in a form which is incomplete and inade-

quate, because it represents a social situation which is incomplete and inadequate. Until that situation can change the right may demand such defense as an institution can give it. But to stereotype the incomplete social situation even in the interest of action which should be neither hasty nor inconsiderate is not the proper function of the institution. It is true that until the human interests involved can be brought to public consciousness action should halt. But is it wise to have one organ to halt action and quite others or perhaps none at all for bringing these issues to the surface when the actual right is being safeguarded?

Furthermore, whatever confidence we may have in the brakes and drags which we put upon the wheels of popular action, we should not forget that the ultimate guarantee must be found in the reaction of men and women to a human situation so fully presented that their whole natures respond. However lacking in rigidity and solidity this may seem, it is at bottom the only guarantee of a human right to which we can finally appeal. Our other appeals are to institutions which delay the action in this highest court, and are legitimate when they make possible the complete presentation of the case. But is it wise to put our faith entirely in the valiant delayer of action, rather than in the agencies which will lead to the final social readjustments through their adequate presentation of the issues involved? Is it not true that our confidence in our courts has worked in no small degree with other causes to weaken the responsibility of our legislatures on the one hand, and on the other, to lead many of us to face social problems by turning our backs upon them, and approach them only when we have exhausted every delay the constitution provides?

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ON HAVING FRIENDS: A STUDY OF SOCIAL VALUES

BY far the largest part of our social psychology consists of analyses, often genetic, of the idea-content of social consciousness. Upon social motives, values, and what may be called the sense of social reality comparatively little work has been done. Of the little that has been done, nearly all has reference to phenomena of instinct and impulse, as the actions of gregarious animals, of young children, or of crowds. Our more deliberate social acts and attitudes, in which we define to ourselves values that may be obscure or possibly lacking at more instinctive levels of conduct, have rarely been directly studied. Yet they offer an inviting field for research, a field that is