CHAPTER SIX

FREE SOCIETY AND FREE GOVERNMENT

SHORTLY before the United States entered this war the City of New York staged a "freedom rally" under the slogan: "It's fun to be free." It is unlikely that the choice of this slogan was dictated by anything more profound than the conviction of those great thinkers, our modern advertising and propaganda sages, that a "consumers' demand" and a "market" can be created for ideas in the same way, by the same means, and to the same end as for lipstick. Yet as a symptom the incident was important. It illustrates the confusion and the loss of political sense and understanding which is the greatest weakness of the free countries today. To say that it is fun to be free comes close to a repudiation of the real freedom. The mob of Imperial Rome at least never pretended that circuses and freedom were identical. It had the courage to admit that it preferred circuses.

Freedom is not fun. It is not the same as individual happiness, nor is it security or peace and progress. It is not the state in which the arts and sciences flourish. It is also not good, clean government or the greatest welfare of the greatest number. This is not to say that freedom is inherently incompatible with all or any of these values—though it may be and sometimes will be. But the essence of freedom lies elsewhere. It is responsible choice. Freedom is not so much a right as a duty. Real freedom is not freedom from something; that would be licence. It is freedom to choose between doing or not doing something, to act one way or another, to hold one belief or the opposite. It is never a release and always a responsibility. It is not "fun" but the heaviest burden laid on man: to decide his own individual conduct as well as the conduct of society, and to be responsible for both decisions.

Unless there are decision and responsibility there is no

freedom. There may be happiness, security, peace, and progress. But it would be the happiness and peace of that most despotic tyranny, that of Dostoevsky's Grand Inquisitor who did not even leave to his subjects the right to be unhappy or the decision whether they wanted to live in peace and security or not.

We know that freedom is not a "primitive" state of human existence. Primitive society everywhere and at any time tries to eliminate both choice and responsibility—the first through a rigid system of customs, taboos, and traditions; the second through magic ritual. Nor does man instinctively incline toward freedom. The "well-adjusted" person will try instinctively to run away from the burden of choice and the weight of responsibility. If there is one statement that is more contrary to the facts than that man is born free, it is that man will choose freedom if only left to himself. Psychologically, the Grand Inquisitor of Dostoevsky's legend was certainly right when he maintained against Jesus that man would rather be a happy slave than a responsible freeman.

Yet freedom is the "natural" state of human existence. It is neither the original condition of man historically nor his instinctive or emotional choice psychologically. But it is natural, necessary and inevitable metaphysically—though only under one philosophical concept of man's nature. Freedom is not only possible, it is inevitable on the basis of the belief that every single human being has to choose between good and evil. No man, no group of men can escape this choice; for no man nor any group of men can ever be in possession of absolute knowledge, absolute certainty, absolute truth, or absolute right.

The only basis of freedom is the Christian concept of man's nature: imperfect, weak, a sinner, and dust destined unto dust; yet made in God's image and responsible for his actions. Only if man is conceived as basically and immutably imperfect and impermanent, is freedom philosophically both natural and necessary. And only if he is

seen as basically and inescapably responsible for his acts and decisions, in spite of his imperfection and impermanence, is freedom politically possible as well as required. Any philosophy which claims perfection for human beings denies freedom; and so does a philosophy that renounces ethical responsibility.

An assumption of human perfection or of a known or knowable process of human perfectibility leads inescapably to tyranny and totalitarianism. Freedom is impossible as soon as only one man out of the whole of humanity is assumed perfect or more nearly perfect than his fellow men. For the assumption of human perfection or perfectibility renounces man's right and duty to choose.

The perfect man is in possession of absolute truth. He is at least closer to it than his fellow men; or he knows an infallible method to reach it. But if absolute truth is known or knowable there is no justification for doubt or for choice. There can be no freedom against absolute truth, no opposition against absolute right. To choose differently when truth is known, to decide for oneself when right has spoken, is at best folly. If stubbornly persisted in, it becomes wickedness and treason.

Any man assumed perfect or perfectible is not only entitled to absolute rule but has a moral obligation to assume the rule. He must disregard criticism, opposition and dissenting counsel. Since he, and he alone, knows what is good for his subjects, he is in duty bound to suppress all their expressions of the freedom of choice and decision. Torture and concentration camps for dissenters, the firing squad for opponents, and a secret police spying on everybody's words, deeds, and thoughts are perfectly legitimate from the point of view of the ruler who claims or is accorded perfection or perfectibility. For those who do not accept his dictates repudiate truth deliberately. They willingly and wittingly choose evil.

All this is just as true if we substitute a group of men for

the one infallible ruler. No other government but tyranny is possible on the basis of the assumption that one man or one group of men is right or likely to be right. And no tyranny could be more oppressive or more complete than that based on the claim to absolute truth and absolute right. "Ye shall be as gods, knowing good and evil" has for ever been the advice of the Serpent.

There can also be no freedom if man is not held responsible for his decisions between good and evil, true and false. Without responsibility there can only be anarchy and a war of all against all.

To deny responsibility is to deny that there is an absolute good or an absolute truth. But freedom becomes meaningless if there is only relative good or relative evil. Decisions would have no ethical meaning; they would be nothing but an arbitrary guess without consequences.

There are many people today who are perfectly willing to admit that no man can claim possession of absolute truth or absolute reason. The basis for their admission is, however, not the imperfection of man but the non-existence of absolutes. They do not doubt man's perfection; they doubt God's existence. Hence they deny that there is any ethical responsibility for decisions. And they deny freedom fully as much as the man who says: "I am God." The relativist and the pragmatist say in effect that the decision ought to go to the stronger; for everything is equally socially workable. Whoever can make his view prevail is therefore right. On this basis there can be no reason why the freedom of the weaker should be protected, or why he should even be allowed to express his dissenting opinion.

It may be said that freedom is possible only on the assumption that in a conflict of fundamentals either side is likely to be wrong and certain to be at least partially wrong. If one side is assumed to be likely to be right, there can be no freedom. The other side could not demand a

right to advocate an opinion which dissents from what is presumed to be the truth. It would not even have a right to have such an opposing view. Also, in order to have freedom, it must be assumed that there is absolute truth and absolute reason—though for ever beyond man's grasp. Otherwise there could be no responsibility; without responsibility there would be no reason other than material interests to have any opinion at all, and no right to voice it except the right of the stronger.

Freedom is the strength arising out of inherent human weakness. It is the scepticism based upon profound faith. If *one* man were perfectly good there could be no freedom, as he would be entitled to absolute rule. And if one man were perfectly evil he would inevitably possess himself of absolute rule. If *all* men were perfectly good or perfectly evil, there need be no freedom since there never would be any doubt about any decision. It is only because no man is perfectly good or perfectly evil that there is a justification of freedom. And only because it is everybody's personal duty to strive for the good is there a need for freedom.

Freedom, as we understand it, is inconceivable outside and before the Christian era. The history of freedom does not begin with Plato or Aristotle. Neither could have visualized any rights of the individual against society, although Aristotle came closer than any man in the pre-Christian era to the creed that man is inherently imperfect and impermanent. Nor does the history of freedom begin with those Athenian "totalitarian liberals," the Sophists who denied all responsibility of the individual because they denied the existence of absolutes.

The roots of freedom are in the Sermon on the Mount and in the Epistles of St. Paul; the first flower of the tree of liberty was St. Augustine. But after two thousand years of development from these roots we still have trouble in understanding that freedom is a question of decision and responsibility, not one of perfection and efficiency. In other words, we still confuse only too often the Platonic

question: what is the best government? with the Christian question: what is a free society?

It is impossible to define freedom in other than individual terms—as a right and duty which can neither be taken from the individual nor be evaded or delegated by him. But this does not mean that freedom has no social meaning. There has been no greater and no more fatal mistake than that of the early Lutheran theologians who declared the social sphere to be irrelevant, indifferent and outside individual decision and responsibility. Freedom is destroyed if it is confined to "inner freedom," and responsibility to one's private life. Individual freedom requires a free society for its fulfilment. Yet there can be no freedom of society against the individual. The right of society to protect itself against the individual is one limitation of freedom, not freedom itself. There can be no freedom of the majority against the minority, no freedom of the stronger against the weaker. It is important to protect and preserve society. But it has nothing to do with freedom, except as restriction on it. The legitimate rights of society, of the organization group, of the majority against the individual, are the one limit to freedom. Its other limit is licence—the free individual choice without responsibility. To be "free" to choose between ice cream and plum pudding for dessert is not freedom, since no responsibility attaches to the decision. Freedom is thus for ever contained within, and limited by, those two states of unfreedom: the one in which there is no individual decision, and the other in which there is no individual responsibility. The encroachment of the one or the other is thus for ever a threat to freedom. Too little individual decision on the one hand, too little individual responsibility on the other —are the end of freedom.

Man has the same right and the same duty to decide responsibly on the actions of the society of which he is a member as on his individual actions. He is not only his

brother's keeper; man is his brother's brother, and as much a member of the family as the brother. He cannot on the assumption of man's nature, on which freedom is based, deny responsibility for the group of which he is a member. He also cannot evade the responsibility by shifting the decision to other shoulders—neither to those of an absolute monarch nor to a parliamentary majority. And no group can deny the individual the right to participate in the decisions.

The political and social conclusions from the freedom of the individual is self-government, self-government as a right and as a duty of the individual. If there is no individual decision in the self-government, it is only a sham. But it is just as much a sham and a camouflage for tyranny if there is no individual responsibility. There must be active, responsible, and spontaneous participation of the individual in the government as his government, in its decisions as his decisions, in its burdens as his burdens. Political freedom is neither easy nor automatic, neither pleasant nor secure. It is the responsibility of the individual for the decisions of society as if they were his own decisions—as in moral truth and accountability they indeed are.

Freedom is an organizing principle of social life. It is not a social or political institution. Free societies with the most widely divergent basic institutions are conceivable and possible. But the institutions must always be organized by and for the responsible decision of the members.

Freedom is a purely formal principle. It always requires a concrete statement about what type of human activity is to be realized freely or what aim of society is to be fulfilled in freedom. There is no conflict between the concept of man as free and the concept of man as Spiritual Man or Economic Man. Any substantial concept of man can be made the basis of a free or of an unfree society. Freedom can be the organizing principle for any kind of society.

But a society is free only if it organizes its basic beliefs in freedom. That socially decisive sphere in which society seeks the fulfilment of its fundamental aims must be organized on the basis of responsible, individual decision.

It is most important to realize that political and social freedom is freedom in the socially constitutive sphere—the sphere in which the values are the social values of a society, the rewards the social rewards, the prestige the social prestige, and the ideals the social ideals. In one society this will be the economic sphere; in another the religious; in a third, for instance in the Germany of the nineteenth century, the cultural sphere. Social and political freedom is thus not an absolute. If the socially constitutive sphere of a society is organized on the basis of the responsible decision of the individual, we have a free society—even if nothing else in that society should be free. If the socially constitutive sphere in a society is not free, the whole society is unfree; yet everything else may be completely uncontrolled and a matter of social indifference and individual licence.

That freedom is an organizing principle of social life is one of the most important points in the theory and practice of politics. The failure to understand it has been responsible for a great many misunderstandings and mistakes. The Western world, for instance, found it almost impossible to understand that capitalist economic freedom was not freedom for the Balkan peasant. The national states which were organized in south-eastern Europe after 1918 expected to create a functioning society by adopting the mercantile capitalism and the free market and money economy of the nineteenth-century West. But to the peasants who constitute the great majority in the Balkans, the economic sphere was not a socially constitutive sphere, and economic values were not social values. They had no ideal of economic progress and no belief that freedom and justice could or should be realized in the economic sphere. Their society was tribal and religious. Economic freedom

to the Balkan peasants simply meant insecurity, the tyranny of the international market and the compulsion to choose and to act as a responsible individual in a sphere in which they saw neither need for. nor justification of, choice and responsibility. The Balkan peasants value and cherish freedom more perhaps than anybody else in Europe; yet economic freedom was only a threat to them.

This also explains the meaning and importance of political freedom—in the narrow formal sense of the word "political" in which it is confined to the sphere of organized government. There can be no free society unless it has a considerable degree of political freedom.

But formal political freedom and free government do not constitute a free society in themselves. They are an essential condition of freedom but not its fulfilment.

The political sphere is never in itself the socially constitutive sphere—except, perhaps, in a society engaged in total war. Political institutions are the mechanism through which power is organized for the fulfilment of society's purposes and decisions. Without free political institutions a free society could not be effectual; it could not translate its decisions into social reality. It could not institutionalize freedom in the form of responsible self-government. But if there is no freedom in the socially constitutive sphere the most perfectly free political institutions could not establish a free society. They would have nothing to do and would degenerate for lack of function.

Freedom rests on ethical decisions. But the political sphere deals with power. And power is only a tool and in itself ethically neutral. It is not a social purpose and not an ethical principle.

Individually, power may well be the goal of personal ambition. But socially it is a servant; its organization is only a means to a social end. The role of power in society may be likened to the role of money in an economy. Money may well be the goal of an individual's economic

activity. Yet if the economy is viewed as a whole, money does not exist. It is simply a means to distribute the goods internally among the individual members of the economic systems; socially, the only product of an economy are the goods. Similarly, power distributes rank and determines relations within a society; it is a means of internal organization. But the end of society is always an ethical purpose.

This thesis would probably be generally accepted. But it leads to conclusions which contradict some of the most popular beliefs. It is today almost an axiom that political action or constitutional legislation is socially omnipotent. But if formal political freedom is only the condition and not the realization of freedom, purely political action cannot create freedom nor increase it to any decisive extent —once there is the necessary minimum of free government. And a free society cannot be legislated into existence—though it can be legislated out of existence if the necessary minimum of free government is politically destroyed. The major risk in the building of a free society thus lies in the field of social institutions.

To give a specific example: The respect and reverence for the Constitution in the United States is a social phenomenon which could not have been produced by legislative enactment. But it is far more important and effective for America's free society than the actual provisions of the Constitution themselves, excellent though they are. Without the greatness of the Constitution, the reverence might never have become the moral force it is. But without this reverence the excellence of the Constitution would have been of no avail. The respect and reverence for the Constitution did by no means follow automatically from its excellence. There have been constitutions as good or perhaps even better in theory which never became social institutions and which, consequently, failed completely to safeguard freedom. The Constitutions of the German Republic from 1919 to 1933 is a case in point.

The Founding Fathers deserve all the admiration given them for their work. But their great achievement might have been in vain without the great presidents of the "Virginia Dynasty," without John Marshall, and without Lincoln. It is therefore a real danger that we today have come rather close to forgetting that freedom rests upon beliefs and social institutions and not upon laws. If we want to have a free society, we must learn again that the formal act of legislative enactment does not create or determine institutional structure, social beliefs, and human nature.

How much free government and formal political freedom are needed as the minimum for a free society, is a vital question. But it can hardly be decided theoretically or in terms applicable to every type of society.

We have learned that the old controversy between monarchical and republican forms of government has nothing to do with freedom, which is equally possible and can be equally destroyed under either.

A free society may be possible with far less free government and far less formal political freedom than the halcyon days of 1919 or 1927 would have regarded as a minimum. At least, by comparison with the modern unfree totalitarian society, the Imperial Germany of 1880 appears definitely a free society. The very limited degree of formal political freedom enjoyed by the Germans of the middle nineteenth century was apparently enough to make possible a very real and very considerable freedom in the economic and cultural spheres. And these were the socially constitutive spheres in German mid-Victorian society. The people in the Nazi-conquered countries—and in Germany too—would need only a fraction of their former political freedom to overthrow the Nazi tyranny and to rebuild a free society. And both the Nazi and Bolshevik secret police act on the assumption that one grain of the yeast of political freedom would spoil a ton of totalitarian dough.

If formal political freedom is only a pre-requisite of a free society but not its fulfilment, there are large areas in social life in which no freedom can meaningfully exist. For freedom is responsible choice; and there are spheres in every culture and in every society in which there is either no choice or no responsibility for the choice. Because freedom is an ethical principle of social choice, it has little or nothing to do with those two great areas of human activity and satisfaction: the technical one, in which there is no ethical choice; and the area of social indifference, in which no responsibility attaches to decisions. Only the socially constitutive sphere can be free or unfree; for only in this sphere are there both choice and responsibility.

It is obviously not an ethical or political question whether a right angle has ninety or ninety-five degrees, whether a devaluation of the dollar will raise commodity prices, whether sugar production in Australia would be possible or profitable, or whether a railroad from New York to Washington should be laid along one route or the other. These are technical questions. There can be a great deal of discussion about them, a great deal of disagreement among the experts, a tremendous amount of agitation and "free discussion." These questions constitute the great bulk of the daily problems of an individual and of a society. But to everyone there is one correct answer. What is correct today may be made incorrect tomorrow by an advance in our knowledge or experience or by changes in the facts; but at any given time and place there is one optimum. And this optimum is provable, measurable, demonstrable; in other words, it is objectively correct. It may be a mathematical proof, or a proper accounting method, engineering, or profitability—any of the tests of success which the pragmatists call "workability." Always there is one correct answer—and that means that the human will does not enter. Without human will, however, there can be no choice. And without choice there is

no freedom. The whole technical or scientific field is, in other words, ethically neutral; and freedom, like all other basic values, is an ethical value.*

This means, on the one hand, that the attempts to create a "Marxist" biology or a "Nazi" physics are as much nonsense as the talk about a "democratic" psychology. Such scientific or technical questions as the chemical composition of the atmosphere of the planets, the greatest amount of tax that can be raised from the smallest number of taxpayers, the effects of a new drug, and so on, are concerned with measurable and demonstrable facts. They furnish the means to realize political, social, or cultural decisions. But they are not decisions themselves. They answer the question: how can we reach a given aim? But the basic decisions are decisions about aims. We have to choose what is desirable; we have to determine the greater good or the lesser evil in the case of conflicting aims. We have to decide what sacrifice we are willing to make for a certain achievement, and at what point the sacrifice outweighs the advantages. But the scientist, the engineer, the economist, the expert, are not concerned at all with these political problems. Their work does in no way determine the basic decisions which are value, that is, ethical decisions. Their answers are equally valid whether society is free or unfree.

There is no real decision, no real alternative, no question of good or evil in the field of techniques. But there is no social responsibility in those spheres of social and individual life which are socially indifferent. Whether an American in the 1930's belonged to the Baptists or the Methodists, whether he was a Mason, a Rotarian, or a Shriner, whether he went to Harvard or to North Dakota Teachers' College or quit school at sixteen—all these may have been momentous decisions for the individual himself. But no social responsibility attached to them. They were decisions in a sphere of social indifference. The so-

* I am fully aware that this is a denial of the existence of "scientific truth"; there can be only scientific correctness.

called freedom of decision in these spheres is not freedom at all: it is permissible licence. The so-called tolerance in these spheres is not tolerance at all, but indifference. Tolerance for your neighbour's opinions and actions not only presupposes that you must consider him wrong; it also means that you must consider his actions or opinions important. They must be in a sphere which matters morally or socially. To tolerate something that does not matter is neither a virtue nor a vice.

This does not mean that indifference is bad. It only means that it has no direct bearing on the question of freedom. A society can be free yet lay down the most rigid rules of behaviour in the socially not constitutive sphere. Victorian England would be one example. And a society would be unfree which permitted absolute licence in the socially indifferent spheres, but no responsible decision in the socially constitutive sphere; this was, for instance, the structure of the empires of antiquity.

It is one of the oldest and most hotly debated questions of politics whether a rigid code or complete indifference in the socially indifferent spheres is more conducive or less dangerous to freedom. It is the debate between authoritarianism, or collectivism, and individualism. Much is to be said for each side. Up to a point the argument is correct that too much rigidity in the indifferent spheres tends to undermine the freedom of decision in the socially constitutive sphere. But the opposite argument is also true within limits, that too much licence in the indifferent spheres undermines the responsibility in the socially constitutive sphere.

It must be realized, however, that the issue between authoritarianism and individualism is an issue under freedom—or unfreedom—and not a discussion about freedom itself.

To sum up: A free society is one in which the socially constitutive sphere is organized on the principle of the

responsible decision of the members of the society. A free society is possible only if man is seen as basically and inherently imperfect and imperfectible—yet responsible for not being perfect or perfectible. There can be no freedom if one man or one group of men—however large or small—is assumed to be inherently perfect or perfectible. Its claim to perfection or perfectibility is a claim to absolute rule.

There can also be no freedom if a man-made absolute is set up as the one and exclusive goal of human endeavour, or as the one and exclusive rule of individual or social conduct. The man-made absolute may be peace or war, economic progress or security, the Nordic Race or the greatest happiness of the greatest number. Each of these must destroy freedom if set up as The Absolute.

Every man-made absolute is a flight from freedom. It denies choice in favour of a determinism under which men act "inevitably." It denounces responsibility for a tyranny under which any action is justified if it conforms to the commands or demands of the absolute ruler with his absolute truth. On the other hand, freedom is possible only if the existence of true absolutes is assumed as certain; otherwise, there can be no responsibility.

Against the idealists who set up as absolute and exclusive their own concepts and ideals, the defenders of freedom must always be realists. But against the realists, positivists, functionalists, pragmatists, relativists, etc., who deny the existence of beliefs and ideals, the defenders of freedom must always be idealists. For freedom is in meaning and essence dualistic. It is based on the polarity between man's imperfection and his responsibility. Without this basic faith there can be no freedom, whatever the laws and the constitution of a society.

Freedom is not a supreme goal. It is not a goal at all but an organizing principle. It is not *a priori*. It is a conclusion from the Christian dogma of man's nature; the right of choice and the responsibility for it are truly *a*

prioris. Freedom, in other words, is not a concrete institutional form. It is a faith—a faith in man's being at the same time a "proud and yet a wretched thing."

2

If freedom is possible only on the assumption that man is inherently imperfect and imperfectible, it can exist only under organized government. The absence of government —the utopia of the anarchists—can never be freedom. Anarchy is a state in which the perfectly good and the perfectly wise can live, and in which the perfectly evil must live. Angels do not need a government and devils cannot organize one. Neither of them could or need be free. Hobbes's famous foundation of government upon a contract between perfectly evil men engaged in perpetual civil war is a *non sequitur.* The conclusion from his assumptions regarding human nature should have been that the war of all against all would go on until there is either only one master with all the rest slaves, or only one man alive with all the rest killed. But there is no warrant in Hobbes's scheme of human nature for the sudden conversion of the human brutes to that moderation and reasonableness which leads them to accept a government. The argument that the reasonably certain expectancy of one slice of bread is preferable to the desperate gamble for the whole loaf has never converted greed or lust for power.

The imperfect, however, must have a government because they can and must be free. They must have objective rules, they must have authority, they must have a final arbiter and they must have organized force to give sanction to the rules and social decisions. Organized government is both the sign of man's weakness and imperfection, and the means to convert this weakness into the strength of freedom.

That man needs an organized government is another way of saying that he needs an organized society. Organized

government is a necessary part—though by no means the whole—of society. To be free, a government must, however, be a great deal more than just legally and politically organized. It must above all be limited, both as to the extent and the exercise of its power. It must be responsible. And it must be substantially self-government.

Each of these demands follows directly from the assumption regarding the nature of man on which alone freedom can be based. No man, however elected or selected, can be perfect. Hence, no man can be allowed to rule absolutely; whatever the government, there must be limits to its powers beyond which it cannot go without becoming a despotism.

The old demand that government acts be public and according to definite rules has the same source. If the government is not bound to formal rules of procedure, there would be no barrier against arbitrariness. Hence, one of the greatest safeguards of freedom has been the judicial review of administrative acts in Anglo-American constitutional law and practice. That administrative officers and administrative agencies are accountable and responsible to the law courts for their official acts is perhaps the most successful institutional limitation on bureaucratic omnipotence. Judicial supervision of administrative agencies may actually be more important as a safeguard of freedom than the justly celebrated right of the American courts to review legislative acts. At least government in England did not become arbitrary, though the English courts can control only administrative acts and cannot set aside Acts of Parliament. But on the Continent of Europe administrative arbitrariness has been a severe threat to freedom. Even where there were special administrative courts dispensing a special administrative code, bureaucracy could not be limited and controlled effectively. And this administrative omnipotence undermined self-government far more than the lack of judicial control of the legislative. This was particularly true of France where

administrative acts are held to be outside ordinary law—in contrast to the Anglo-American subordination of administration to the courts.

The demand that government be a "government of laws and not of men" is legalistic nonsense if taken literally. Government is necessarily in the hands of men. It is necessarily concerned with decisions. It is necessarily "political." It deals with matters in which assertion stands against assertion, interest against interest, creed against creed—with no infallible or automatic criterion which is best. There is no greater mistake than the attempt to take the politics out of government. If it is done by making a civil service bureaucracy omnipotent and by entrusting political decisions to the expert selected by the merit system of competitive examinations, it leads not only to the government of the least fit but straight to the tyranny of the printed form. And there is nothing more despotic than bureaucratic rules made absolute.

The basic decisions of government—the substance of politics—cannot be made subject to automatic rules; there would be no decision left. But it is equally true that the forms of the decision, the techniques and the modus in which a free government exercises its power, have to be predictable, public, and subject to some impersonal rule—in other words, limited in their exercise by objective rules of procedure.

The demands that free government be responsible, and that it be substantially self-government, are more or less overlapping. Both are based upon the assumption that man has a responsibility for his decisions which he can neither evade nor delegate. An irresponsible government would be a government which has taken the burden of the decision off the shoulders of the citizens. It would make little difference whether the government is irresponsible because it has arrogated to itself irresponsible power, or because such power has been delegated to it. And the

moral responsibility of the individual for the acts of his government is only very incompletely realized by the formal responsibility of the government to the citizens. To make a government a free government the active responsible participation of the citizens in the government is needed. No government can be free in which the citizens do not assume voluntarily the burden of self-government.

3

Are free government and majority rule compatible? The almost automatic response of the Western world to the question today would be that the two are synonymous. Free government and majority rule are commonly used as freely interchangeable terms. Actually, majority rule is no more identical with free government than is minority or one-man rule. Popular government is compatible with freedom. Under very stringent conditions and limitations it is the best instrument for the realization of freedom. On the other hand, majority government can be incompatible with, and hostile to, freedom and free government. And the concept of majority rule popularly accepted today in the Western world is absolutely and diametrically opposed to freedom and a direct attack upon free government.

Consciously or unconsciously, almost all modern doctrines of popular government start from the premise that the majority decides what is right or wrong, or that its decision creates right. At least, the majority is held more likely to be in possession of reason and truth than the minority. In other words, there is an assumption that the numerical majority is either perfection or nearer to perfection than the minority. In a more extreme—and more usual—form the majority is simply identified with absolute truth and absolute right. What the majority decides to be right is right because the majority decides it is. Further appeal is impossible; indeed, this maxim has been pro-

claimed as an axiom and as incontrovertible.

We are not interested here in the logical, philosophical or metaphysical implications of a theory which bases a quality: truth, upon a quantity: majority. We are concerned only with the question of practical politics: Is such a majority-rule theory compatible with a free government and a free society? The answer is undoubtedly: No. The majority principle as it is commonly accepted today is a despotic, a tyrannical, an unfree principle.

There could be no right of opposition against the majority if the majority either finds or creates right, truth, or goodness. The majority is the law. It is assumed to be either perfect or closer to perfection than the minority. As soon as it has been determined what fifty-one per cent of the people want, the other forty-nine per cent would have the moral duty to climb on the band wagon and join the majority. It may be theoretically possible under the majoritarian assumption to use free discussion, free speech, and other forms of doubt and dissent before the majority has spoken. But once the will of the majority has been established, there could not be a justification even for the expression of a doubt or of dissent. And in reality not even the limited freedom before majority decision is practically possible under the majoritarian assumption. The absolute majority of today will at once perpetuate itself and will lay down final rules for all time to come. And how could it be stopped? If the majority has reason or right by virtue of being a majority, how and why should it be limited?

Under the majoritarian assumption as it is commonly held today, only the majority can have rights and duties. Yet freedom is a right and a duty of the minority and the individual, independent from, and against, the rights of the majority. Even the most absolutist majoritarian acknowledges that; he instinctively talks of individual freedom, civil liberties, and minority rights. There is really no room in his creed for individual freedom and

responsibility, or for civil liberties. Yet most present-day majoritarians think, though mistakenly, that their belief represents freedom; and they are subjectively sincere in their protest that they want to strengthen civil liberties and minority rights.

There is therefore a basic conflict between the objective consequences of the belief of the modern majoritarian and his emotions—a conflict typical of the liberal. And the liberal parties have spent much time and ingenuity on attempts to resolve the conflict. The best they can do, however, is to demand that the majority restrain itself voluntarily, observe civil liberties, and grant protection for minorities. But in theory as well as in practice such self-restraint is both insufficient and impractical.

In the first place, such self-limitation cannot create even the barest minimum of freedom. Minority protection and guarantees of civil liberties ensure only a negative freedom: the absence of unrestrained majority tyranny. But they give the individual neither choice nor responsibility; they are not positive freedom. They are vital, and, where they are not safeguarded, freedom and responsible self-government are impossible. But they still withhold from the individual the responsible participation in government which is both his right and his duty.

Secondly—and more importantly—individual rights and civil liberties cannot be maintained or justified under the modern doctrine of majority rule, whatever the intention of the liberal. If the majority finds or creates right and reason, can any minority, any dissident, be protected or even tolerated? And how would any restriction of majority rule be inalienable, permanent, and absolute? The majority would always have the right to withdraw these voluntary concessions. At best, modern majoritarian theory and practice can regard the rights and liberties of the individual as polite but meaningless concessions to ancient superstition. But sooner or later these rights and liberties

must come to be regarded as reactionary barriers against the will of the people. They must appear as unjustified privileges of the few against the many, built and operated only by private pressure groups and interests. It will always be those rights and liberties, which are really safeguards of individual freedom, that will most likely be attacked in the name of majority and progress. For they will be the ones that come into conflict with the majority will. True freedom, true inalienable rights, and true civil liberties cannot possibly be maintained under a creed that bases the right of the majority to rule on the claim of the majority to be right or more nearly right than the minority. Modern majoritarian doctrine is completely incompatible with freedom.

That the rule of the absolute majority is tyrannical has been a dogma of political thinking since the earliest days. But the usual conclusion of the reactionary—that monarchy or oligarchy is preferable—is as untenable as the opposite modern view of the majority-rule democrats. The counter-argument for monarchy or oligarchy has never been concerned with freedom; it has always been that monarchy and oligarchy are *better* governments. We have here the most blatant example of the confusion between Christian politics concerned with free government, and Aristotelian politics concerned with the best government. All our theoretical and practical discussion of politics suffers from the fact that arguments about freedom are supported or opposed by arguments about the best government and vice versa.

It must be realized that the classic discussion about the best government denies freedom—tacitly but definitely. Freedom is possible only if it is firmly believed that there is no such thing as a "best government"—not even a "better government." Freedom is possible only if no one particular set of rulers—selected or elected one particular way—is assumed better or best. If they are regarded as the

best there can be no right of dissent and opposition against them, no choice for the citizen, no responsibility for the individual who would have done his duty by submitting to the superior wisdom of the wiser and better government. Those concerned with freedom will frankly admit that one particular free government may be a much less "good" government than one particular unfree one. All they have to say is that the argument is not relevant to the issue. They will also admit that that government is best in which the best rule. They will only deny that there is any predictable or knowable way to pick the best.

This, far from being an attack on democracy, actually strengthens it. We eliminate the weakest point in the democratic creed if we regard the question of the best government as something human beings can neither answer nor solve in any generally applicable and permanently valid manner. For we can then drop the contention that election by the majority is the most rational method of selecting the *best* man. No other point in the traditional majority-rule doctrine has drawn the enemy's fire so persistently and with so much reason. It is simply an untenable and really a ridiculous proposition. But the difficulty disappears when it is realized that we are not talking about the best government and the selection of the best rulers but about free government and the realization of self-government. We can admit—as is only too obvious—that election by the majority in no way guarantees the selection of the wise, the just, and the best. But the same is true of any other method. It would be just as good or just as bad—how good or how bad depends upon the men who run it at any given time or place. For there is no definite and definable way to select the wise and the best. What matters is whether election by majority vote comes nearer to being a realization of free government than any other method or not.

There have been monarchies which were better governments than democracies, democracies which were better

governments than monarchies, and oligarchies better than either. This will be found true, however "good government" is defined. The traditional reactionary argument has been that majority rule is tyranny while monarchy and oligarchy are good; and the traditional radical argument has been that monarchy and oligarchy are tyrannies while democracy is good. Both arguments are equally inconsistent and equally confused. Neither argues the other's point. The question is not which is the better government but which is more likely to allow a free government. Majority rule, if conceived in the terms in which it is usually defined today, is incompatible with freedom. But it is also true that monarchy or oligarchy is just as tyrannical if the monarch or the ruling minority base their rule on a claim to be right or more nearly right than the rest. If perfection is claimed for the ruler, there is no difference in the effects on freedom between one-man rule, the rule of the few, or the rule of the many. What is incompatible with freedom is not the number of sovereigns but the claim to perfection. Majority rule is neither a greater nor a lesser danger to freedom than one-man rule or oligarchy.

Good government cannot be planned; it cannot be ensured by legal or institutional means. For good government is a function of those incalculable and intangible factors: the moral character of a society, and the genius of the individual statesman. Monarchy and oligarchy are intrinsically neither better nor worse than democracy. It is impossible even to establish as a hypothesis which of these will more often be likely to be good than the others. There is no answer to the Aristotelian question. Indeed, there is no question if we believe that man is imperfect though responsible. For the Aristotelian question in itself denies freedom. And the assumption of freedom denies the possibility of any "best government."

There can be no freedom if the majority is deemed per-

fect and unlimited. But the very imperfection and limitation of man and of government can be better expressed on a democratic than on any other basis.

In the first place, the need for majority approval is one of the most stringent and most potent limitations on government ever devised. Though not enough in itself, the need to obtain the consent of the governed is a powerful restriction of governmental power and a safeguard of political freedom. Nothing is less in concordance with the idea of freedom than a government that is just a slave of the majority. But no government is more likely to be a free government than one limited by the consent of the governed as expressed in a majority decision.

Far more important even is the use of popular assemblies, of popular vote and elections as an instrument for the realization of that most important requirement of a free government: self-government. No government can be free in which the citizens do not participate in the responsibilities and decisions. The majority vote can be made the most satisfactory device known to political experience for the realization of the greatest possible approximation to the ideal of self-government. But it should never be forgotten that it can be used just as well to deprive the individual citizen of his responsibility.

Popular government may be made more nearly a free government than either monarchy or oligarchy. Majority consent may provide a limitation of government. And the mechanism of votes and elections may be used to realize self-government. But popular government degenerates into tyranny if it becomes government of the divine right of a perfect or near-perfect majority. It dissolves in anarchy if it is abused as the means through which the citizen shirks his responsibility and evades his duty to participate in the social and political decisions.

This theory of a free popular government will not surprise anyone who is even superficially acquainted with the

history of political theory. It is substantially the theory of Christian freedom which underlay the first great democratic development in Europe: that of the fourteenth and fifteenth centuries. The political theorists of that time understood perfectly the need for political freedom, the function of popular government and the danger of majority rule. This theory of popular government was also that of the Glorious Revolution of 1688, of the *Federalist,* of Burke, and of all the other "liberal Conservatives" down to Lord Acton and Mr. Justice Holmes. What has changed in the course of the last five centuries is the concrete, institutional realization; the basic theory has remained the same.

Yet there is a fundamental difference between the traditional Christian theory of freedom and the solution of the late eighteenth century on which was based the nineteenth-century free society. The original theory was concerned only with formal political freedom; it was a theory of "free government," not one of a "free society." The Founding Fathers in America, however, and Burke in England centred their efforts on the establishment of a free society. They successfully achieved an integration of free government and free society.

They not only understood that a free government is not in itself a free society. They also saw that without an integration of the two there could be no real safeguard against the twin dangers to free government: the degeneration of majority consent into majority rule, and the degeneration of popular self-government into party tyranny.

The great innovation of the late eighteenth-century "liberal conservatives" was the juxtaposition of political government and social rule. The nineteenth century based political power consciously on a principle of legitimacy different from that on which social rule was based. It organized government and society in different institutions. And it limited the rule in the one sphere by that in the

other. It is perfectly true, as has often been said by critics of the nineteenth-century solution, that there is no natural separation of political government and society. It is a purely artificial one, made by man in order to make possible a free government and a free society. It is also true that it cannot be demanded that there be no government in society. The socially constitutive sphere—whatever it is—is far too important and far too "political" to go without government. But as already explained, the separation of the two spheres never had the meaning of *laissez-faire* which nineteenth-century liberalism read into it. Far from demanding that there be no rule in the socially constitutive sphere, the solution of the late eighteenth century provided for a definite organization of power in that sphere. It demanded only that this government of society be different from the political government proper in its institutions and in the basis of its legitimacy.

To the great political thinkers of the generation of 1776 we owe whatever freedom there has been in the Western world since. Their starting point was the idea that the consent of the majority as the ethical basis of free government had to be counterbalanced. Politically, legally, and institutionally there has to be a competing ethical principle for the power in the socially constitutive sphere. And this principle in the socially constitutive sphere had to be limited by a competing principle in political government. The starting point of Madison, Jefferson, Burke, and Hamilton was the conviction that *any one ethical principle of power will become an absolutist, i.e., a tyrannical, principle unless checked, controlled, and limited by a competing principle.* Constitutional safeguards on which the past has always relied are not good enough. They have always been overthrown. A monist basis of power must become an absolutist one. Because it is exclusive, it must come to be accepted as perfect—and as soon as this happens freedom is impossible.

As a philosophical principle, the separation of government in the political sphere from social rule was not new. It is as old as the Christian theory of free government. It was St. Augustine who first separated society: the City of God, from temporal government. The same thought was expressed in the famous theory of the "two swords": the temporal one of political government wielded by the emperor, the spiritual one of social order wielded by the Church, through which the High Middle Ages attempted to find a free society. It was brought out in very clear form in Chief Justice Coke's juxtaposition of the common law against the law of King and Parliament during the reign of the Stuarts, which later became so decisive as the theoretical basis for that great bulwark of freedom, the United States Supreme Court, with its right of judicial review of Congressional Acts. The refusal of the West to adopt a unitarian social order may even be said to have been the real issue in the break with the Byzantine Empire in which government and society had become fused in the person of the emperor. Altogether the basic idea is as old as His counsel to render unto Cæsar what is Cæsar's, and unto the Lord what is the Lord's.

As a working principle of practical politics, however, the separation of government and society originated with the generation of 1776 and 1787—the Founding Fathers of the American Revolution and the liberal conservatives such as Burke in England. They were the first who clearly recognized it to be the basis of freedom. They also understood that the essence of the solution is the separation of the two spheres and the juxtaposition of two independent principles of legitimate power. In all earlier theories the philosophical juxtaposition of the two spheres had led to an attempt in practical politics to subordinate the one to the other. In the solution of 1776 for the first time they were used to balance each other.

In the nineteenth-century society both spheres were autonomous, equal, and legitimate. In both the basis

was the responsible decision, the responsible participati of the citizens. But the basis of this rule was a differe one in each sphere: majority consent made governme legitimate; private property ruled society. For th economic sphere was the socially constitutive sphere of t nineteenth century. Property rights always limit majority rights and prevented their degeneration in majority rule. Majority rights always checked proper rights and prevented their degeneration into plutocrac

That property rights were the basis for social rule i the particular society of the nineteenth century is not so important for the general principle. What matters is that a free society and a free government are possible only if there are not one but two competing bases of power: one of social and one of political organization. The great and lasting contribution of the generation of 1776 to the theory and practice of freedom is the realization that a free popular government—however correct theoretically—cannot be prevented in practice from degenerating into mob tyranny or into the despotism of the demagogue, unless there is a dualistic basis of power. Freedom will endure only if the free government in the political sphere and the free rule in the socially constitutive sphere balance and check each other. This discovery represented the greatest advance in political thinking since the days of the early Christian humanism of the City Republics of 1350 or 1400. It also was the first fully satisfactory answer to the old question: how is the realization of a free society actually possible? It must therefore be the starting point for all concrete political thinking about the free society of the future.