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LE PROBLÈME DU CHANGEMENT SOCIAL AU 20ÈME SIÈCLE

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Introductory Symposium  
Colloque d'Introduction

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THE PROBLEMS OF CHANGE IN SOCIAL LIFE

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# The Sociological Study of Social Change

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Concepts have their vicissitudes as do the books in which they are expounded. Their first enunciation, the reception with which they meet, their propagation, their supersession by other concepts and their more or less complete disappearance reflect a considerable portion of the history of thought. Through them we become aware of the predominant direction of scientific interest during a particular period of time or in a particular country. These historical variations in the use of words are revealed in precisely those terms which themselves express change (e.g., Wandel, Wechsel). In a play upon words, we might say: the changing of "change" makes great demands on our attention. The question has two aspects: the abundance of the conceptions of change and the explanation given of this phenomenon. The modes of thought and explanations of investigators in all the sciences which are especially concerned with the fact of time, can be divided into two groups, according to whether they are more concerned with continuity, with similarity in the march of events, or whether they prefer to lay emphasis on variations. It is a question of the antithesis between being and becoming, which has been so much discussed in all ages, or, to use the expression that has been preferred for the past hundred years, of the contrast between "static" and "dynamic". In this connection it is worth while pointing out once again that since the days of Hegel and of Comte the word "dynamic" has been wrongly used almost without demur: for the opposite of statics, the branch of science dealing with the state of rest, is not "dynamics", the branch which deals with forces, but "kinetics", the theory of motion. However, let us disregard the ineradicable preference of modern writers for the word "dynamic" and confine our attention to the terminology relating to the same antithesis between being and becoming. Perhaps the circumstance that some scholars are principally attracted by the condition of being and others by the nature of becoming is deeply engrained in their psychic nature. However, it is not only individual scholars, but also the tendency of whole periods and peoples, which can be differentiated according to the direction of their views with regard to being or becoming. During the 19th century, and also at the present time, the tendency, first and foremost was, and is, to observe changes, thereby assenting to the aphorism of Heraclitus "panta rhei" and extending it further. The clearest expression of this tendency was given, nearly 20 years ago, by the German historical philosopher Kurt Breysig, when he said: "It is, perhaps, one of the most serious acts of

self-deception of the human mind that it has for so long made the verb 'be' the basis for all its views, for its outlook on life. It would have been far more correct if it had made 'become' the basic word, or had even employed a more general, more colourless and, at the same time, more comprehensive word which would mean 'self-changing' and which does not yet exist".<sup>1</sup>) ("Es ist vielleicht eine der schwersten Selbsttäuschungen des menschlichen Geistes, dass er die längste Zeit das Zeitwort Sein zum Grundwort für alle seine Betrachtungen, sein Schauen der Welt machte. Es wäre viel richtiger gewesen, wenn er "Werden" zum Grundwort gemacht hätte oder ein noch allgemeineres, noch blasserer und zugleich doch umfassenderes Wort, das Sich-Wandeln bedeuten würde, und das es doch nicht gibt.<sup>1</sup>)

It is not possible to decide whether the longitudinal or the cross-sectional view of life is the more revealing; even the historian, for whom the time sequence is the point of departure and who observes changes, must not renounce the significance of the element which is almost eternal, or at any rate, persists for many generations or is continually recurring; indeed, I should imagine that one of the chief attractions in all historical judgments consists in discovering the permanent in the transient. It would, however, be futile to demand, in a period such as the present, which is so enamoured of speed and restlessness, that we should be willing to sink into a state of rest. Today we observe change and, within the range of our knowledge, we naturally notice social change first and foremost.

Concern with these changes did not, however, originate the use of change with this neutral and colourless concept; even in sociological literature it is of recent date. It first became widely disseminated when, in 1923, William Fielding Ogburn published the first edition of his *Social Change*, which has since been frequently reprinted.

Prior to Ogburn, Park and Burgess had referred to "social change" although somewhat more casually; but Small and, as far as I can ascertain, Cooley, did not use the expression. After 1923, however, it spread rapidly—and beyond the United States—because it obviously filled a gap in the vocabulary of the present day. To an astonishing degree it has almost entirely superseded the terms "evolution" and "development" (Entwicklung) which were formerly so popular, and has replaced to an even greater extent the word "progress" (Fortschritt), the product of an optimistic tendency.

This is very remarkable, because in this supersession of "evolution" (and the same remark applies to the almost synonymous word "development") by "change", expression is given to the more cautious and sceptical evaluation of the vital and social variations in human life and of the differences between the generations. Even previous to this, however—in fact, ever since the days of Spencer—the word "evolution" has undoubtedly been employed sometimes as a colourless term which approximated more to the neutral meaning of change; but, on the whole, "evolution" is used to express the idea that the later stage

is the more perfect one, so that there is frequently no difference between this word and the term "progress".

With a stricter use of words we are bound to become aware of the representative image on which the concept of evolution is based. This is most clearly shown in the description of the growth of a plant; in the beginning only seeds are present; some of these seeds send out shoots from which flowers later unfold, and then these flowers develop into fruit. The sequence seeds, shoots, flowers, fruit prevails not only in biology, but also in sociology. The sequence; beginning, unfolding, ripening, end, expresses the same thing in a more general way; only the concepts of beginning and end are not sociological or biological. We can determine instants in which a social phenomenon is obviously present; but the prior process of development was the result of the presence of numerous shoots, which at first were very small and widely scattered; suitable environmental conditions lead to union between some shoots from which new life germinates, while countless numbers of other shoots perish. This is correspondingly true of the end, which is also not clearly ascertainable; here and there, where a social relationship or, in a more distinct form, a social institution was present, its pattern fades and becomes blurred, while it survives elsewhere. Finally, it disappears there also; but nowhere does it vanish without leaving a trace. It remains as an element in association with other forces, even though it may often be faint and indistinct.

Although this outline of the interrelated chain of changes attempts to summarise the actual course of a process of development, we must not disregard the fact that in social life the human will attempts to bring about mutations and interruptions of the continuous series of processes, by creating institutions and organisations, and this frequently occurs in clearly distinguishable acts of establishment. In the same way, social structures are brought to an end, sometimes voluntarily, but often by force. If, however, a new organisation is founded, the material for its construction must be available and if a structure is abolished, its elements take refuge in other forms. The law of the conservation of energy is also a sociological law. Sociological analysis can no more function with concepts such as beginning and end than it can with conceptions of substances. In every case the seeds are already in existence and what is in being always survives in an altered form. Well-known examples, also cited by MacIver<sup>2</sup>, are the survival of totemism in modern symbols, the continuance of slavery in a different form, the difficulty of demonstrating the beginning of the state or indeed of industrialisation.

Before a social form is established, corresponding social processes must have been completed and acts of preparation of various kinds must have been carried out.

Since the days of Spencer we have been obliged to accept without question that every development comprises processes of separation and combination, of differentiation and integration. The polarity of

these phenomena is the great secret of these occurrences. The contradictory antithesis of both kinds of process becomes an intricate association. However, I am unable to follow MacIver when he asserts<sup>3</sup> that differentiation also connotes integration: he would, in that case, have to extend the meaning of the verb "connote" to such a degree that it would signify that the one does not exist without the other. It seems to me, however, that in order to explain the processes, and hence the nature of development, it is necessary to make a sharp conceptual distinction between the two primary processes. To whatever extent, for example, division of labour can only be profitable if it is accompanied by concentration of labour, separation and association still remain absolute opposites. Only thus can analysis fulfil its task.

This interpretation of the concept of evolution corresponds primarily to characteristics which can be related to the facts of biology. This was the form in which it spread during the 18th century, and even more during the 19th century, under the influence of Darwinism, which was in an eminent degree a doctrine of evolution. According to its definition it did not necessarily exhibit an optimistic tendency. But Darwinism itself did identify evolution with progress. Its theme was the origin of the *higher* species. Even earlier, however, in the 17th century, especially after the work of Vico, the history of man was regarded in social philosophy mainly as a continuous progress, in so far as this optimism was not neutralised under the influence of theologians, by the completely contrary doctrine of decline and the lost Paradise.

During the last 150 years the two interpretations, the gloomy and the hopeful have, in fact, been present in opposition; but belief in continuous, even though at times interrupted, progress has predominated. Condorcet, Comte, Darwin, Spencer and Marx believed in it. Actually, this belief has only changed through the effect of the two world wars; Oswald Spengler, especially, draws a cheerless picture.

Nevertheless, the ingenuousness of an entirely one-sided tendency has gradually waned; although even earlier it was but seldom that the progress of an uninterrupted ascent or descent was described; it was, rather, that the lines of development demonstrated by influential thinkers were shown in the form of various kinds of curves, in accordance with the theory of historical recurrence already outlined by Vico and illustrated by MacIver.

These well-known facts of the history of thought will not be repeated here in detail; the theories of cycles and strata, the interpretations (so very tempting to historical philosophers in all ages) of the relations of historical epochs, will only be mentioned here in passing.

In contrast to these thinkers, who live entirely in ideas of development, there are those who, in general, deny the scientific value of these conceptions. Thus Georges Gurvitch<sup>4</sup> says: "In the field of sociology, properly so-called, neither laws of evolution, nor cyclic and wave laws, are valid". They pass over those of biology.

In actual fact, owing to the recession of the ever less frequently used word "evolution" (or "development") before the word "change", during the last 30 years, there has been an urge to avoid tendencies and subjective interpretations. This might be regarded as a step towards a more strictly scientific method and greater exactness. There is a certain resignation prevailing, as if the decision had been taken to refrain from any judgment as to better or worse, or even as to a causal connection between the past and the present, still less with the future, and to determine merely alteration or change.

We have also become more cautious in another respect. The authors of the 19th century were so often dazzled by *one* particular historical connection, that they gave free rein to their inclination to attribute social development solely or mainly thereto. There would have been no objection to this if they had made it clear that they were dealing with one of many causal connections, which particularly arrested their attention, but did not dispute the fact that this was not the only decisive connection. Very frequently, however, they raised it to such a position of isolation that social development appeared practically reduced to this connection. The inclination towards mono-causal explanation, and the joy of the discoverer over an interpretation which was apparently so simple, was very marked. Presently, however, critics arrived from other camps and pointed out that the course of the world was by no means determined solely by geographical or economic or racial associations, or by those of the history of thought. Multi-linear interpretation of history marked an advance on the monolinear explanation and without doubt corresponded far more nearly with the facts. Just as in the case of the advent of the word "change", the recession of the monolinear interpretation is to be regarded as scientific progress.

In the same way, however, as objections to the triumph of the term "change" must be recorded, so the multilinear interpretation is not unassailable. It corresponds to a strong propensity of the human intellect not to be satisfied with the fact of multiplicity and its consequent unmethodical character, but, with MacIver, to seek out a "*main line of evolution*". This could be found either in the differentiation mentioned previously, that is to say, in the disintegration of what was formerly compact, or else in integration, in fitting together. Thus the very abstract sentence: "All social phenomena are polar", does not, however, contain any principle of development; for these phenomena are always polar, and do not alter in this respect.

The desire for unity and concord is, however, ineradicable; at least it has to be borne in mind that some authors place more emphasis on diffusion, on abundance of forms, while others lay stress on association and the recurrence of the eternally similar.

The historical consideration of succession, and of the changes connected with it, will always require supplementation by *systematic* investigations of the concomitant circumstances in cross-section. From

these it will be clearly evident that loosing and binding are always present in juxtaposition and stand in reciprocal relationship to one another. This emphasis on reciprocity, which is so readily designated by the ambiguous, and therefore misleading, word "function", borrowed from mathematics, seems to me to be a greater advance in scientific progress than are other innovations; it originated with John Stuart Mill and was further emphasised by Pareto and others. The latter did away with the misconception of simple causality in favour of mutual interdependence. It must not be overlooked, however, that if  $a$  is the cause of  $b$  and  $b$  is the cause of  $a$ , the transitional effect is mostly of varying strength, sometimes so different in strength that the old conception of simple causality is certainly inaccurate, but not entirely erroneous.

If, as we have said, the word "change" has very largely displaced the terms "evolution" or "development", the same cannot be said of the use of the words "movement", or "mobility", and "control". Fundamentally, "mobility" scarcely denotes anything other than change; but it is rather in the nature of a statistical concept, especially in connection with population statistics. Occasionally, it acquires a somewhat more sociological meaning, in cases where the rise and fall in occupations, or in social value is meant;<sup>5</sup> but it would be better to reserve the term for the purely quantifying aspect.

It is a typically American characteristic of sociology that the idea of control (Lenkung) which has come into such favour since it was advanced by Cooley and Ross, is often so closely connected with social change. The valuable journal *Sociological Abstracts*, which gives a quarterly report on new publications, contains the important heading "Social Change and Control". This is interesting: for the consideration of social change leads at once to the question: Can social change be influenced by direction on the part of the responsible authorities (e.g., the Government)? This connection between describing conditions and broaching the question of setting standards is particularly frequent in problems that concern the relationships between classes and races—(as in the question of coloured peoples)<sup>6</sup>.

In Park and Burgess,<sup>7</sup> as in certain other American authors, the idea of social change is indeed, closely associated with social unrest. In the work we have quoted we find: "All more marked forms of social change are associated with certain manifestations that we call social unrest. . . . All social changes are preceded by a certain degree of social and individual disorganisation." This seems to me to apply only to certain types of social change, namely, the *openly* revolutionary. There are, however, very many other forms, which take place calmly and almost unnoticed. We must decline to equate change and unrest.

The way is now clear for some observations on the manner in which the words "social change" are used at the present time. They are rarely employed in an entirely neutral, non-tendentious and all-embracing sense, like "variation" (Veränderung). One objection to

this expression is that it is only with difficulty that we can free ourselves from its connection with development (*Entwicklung*) and (what is still more essential) from the idea of progress. Many authors find it hard not to identify change with improvement, more especially if their gaze is directed towards the future. To contemplate the future without expectation of greater perfection is impossible for anyone who, in the course of his work, is concerned with new standards or with the maintenance of existing principles.

That is one tendency; the other trend attenuates the concept of change to a merely statistical usage; and makes "change" a purely quantitative conception. The words "cultural change" are very frequently placed in juxtaposition with the term "social change". On closer examination we find that, as a rule, no clear distinction is drawn between the use of the adjectives "social" and "cultural".<sup>8</sup> It may, however, be observed that, where a reference is made to cultural change, there is very often a tendency to use the phrase mainly in the sense of technique and to lay stress on the history of technical development to a greater degree than on other spheres of life. It seems to me worth suggesting that, if a clearer verbal designation is preferred, we should make the following distinction: "social change" should rather denote alterations in man-man relationships, while "cultural change" should refer to variations in man-matter connections. Culture is concerned with the products of inter-human activities, society with the producers themselves.

MacIver<sup>9</sup> contrasts continuity and change (*Stetigkeit und Wandel*) in a clear and simple manner. I should, however, prefer to avoid his concept of "equilibrium" (*Gleichgewicht*) borrowed from physics, and unsuitable for the description of social life, even though the phenomenon so designated is worthy of special emphasis, namely the belief "in the essential sameness of the fate and fortunes of mankind throughout the ages" (p. 103). With very good reason he quotes Machiavelli's saying from the *Discorsi*: "The world has always been the same and has always contained as much good and evil, though variously distributed according to the times"). MacIver's aphorism is formulated somewhat paradoxically: "We perceive change and therefore continuity; we perceive continuity and therefore change".

It is not only the facts of change and their course that are essential, the effects of change are no less important, and for them the expression "impact" has now come into favour. The influences which extend from one sphere of life into another are rightly given special prominence.<sup>10</sup> It is, in fact, essential to stress the interdependence of all social spheres; for instance, the effect of technical progress on population. In this case the chief concern is to show the differences in degree of these impacts, which exist in accordance with the suitability of the field of activity. It seems to me inexpedient to make use of the idea of variables, borrowed from mathematics, because in social life there is no antithesis between constant and variable phenomena; either all

facts are regarded as relatively constant (see the quotation from Machiavelli given above) or as variable. It is only for quite definite experiments and analyses that it is possible to employ with success the fiction that some facts are constant while others are variable.

The use of the newly-coined concept of "innovation"<sup>11</sup> is extremely convenient, if carefully applied, especially when it is a question of the influences of technical achievements on other spheres of life. In this case, as Gross rightly emphasises, it is a matter of importance that the innovation which is successful in one field can have a destructive effect on another, e.g., industrialisation on primitive agriculture.

The use of words in Wayne Hield's article, "The Study of Change in Social Science"<sup>12</sup> is confusing. In this case too little distinction is made between change, control and adjustment. Basically, his essay is not a contribution to the theory of social change, but of control. This is shown even in his incongruous definition of social change. In conjunction with Talcott Parsons and Robert K. Merton, Hield describes social change as a "by-product in the malfunctioning of social control or order". This definition is thoroughly inadequate; such a specialised view of the much more general facts of change is only possible for definite investigations which derive from social control. It would be more correct to regard the control phenomena as by-products of change.

Finally, let us now direct our attention to the phenomena, so frequently discussed nowadays, of social or cultural "lag", the study of which, combined with the observation of change, was undertaken by Ogburn 23 years ago.<sup>13</sup> This is definitely a problem of the present day. The observation that intellectual and ethical culture lags more and more behind the rapid advance of technical progress is especially significant. According to the German mode of expression it is, therefore, a case of culture in comparison with civilisation.

There is no doubt that we are here concerned with phenomena in the European-American world of to-day, which demand the closest attention and are profoundly disturbing to the minds of thinking people. There is, however, the danger that social "lag" may be congealed into a catchword, much used but little studied. The confrontation of material civilisation and ethical-intellectual culture is complicated and problematical. It is difficult to find the right characteristics which would lend themselves to comparison. On the whole, it can only be said that work in the service of technical and scientific progress claims the energies of so many human beings and withdraws them from the fostering of culture, that the field of the inner life for millions of people is threatened with impoverishment. Even the picture of two spheres of human activity—here the material sphere and there the spiritual one—competing with each other at the same rate of progress, is entirely inadequate. An appeal is made to the intellectual workers: "Can you not see how rapidly the automobiles and the aircraft, the splitting of the atom and chemistry are constantly improving, and will you kindly

make an effort to speed up your own rate of progress!" That is an extremely commonplace and inapt comparison. It may be a proof of culture not to allow oneself to be carried away by the delusion that a tradition must be destroyed and something new put in its place. The concept of pace is certainly unsuitable for the measurement of culture. The constant increase in population necessitates a continual speeding-up in technology; but it certainly does not require the intellectual-moral life to strive towards the goal of attaining a rate of change which is faster than sound.

To sum up: in the use of the concept of "social change" there is, at the present time, a variegated and questionable multiplicity of meanings extending from a purely statistical designation of numerical variations to a tendency to bring cultural values and evaluations within its range. This variegation is unavoidable; but every author and speaker should make clear, both to himself and to his readers or audience, what he means by this concept, which is apparently so simple, but is in reality so complex.

## NOTES

<sup>1</sup> Cf. L. v. Wiese, *Homo sum*, p. 23, Jena, 1940, G. Fischer.

<sup>2</sup> *Society*, p. 496 *et seq.*

<sup>3</sup> *Loc. cit.*, p. 412.

<sup>4</sup> *Déterminismes sociaux et liberté humaine*, Paris, 1954.

<sup>5</sup> Thus, for example, in the article by Hollinghead *et al.* on "Social Mobility and Mental Illness" in the journal *Sociological Review* (vol. 19, no. 5, October, 1954).

<sup>6</sup> Instead of numerous examples we will mention the article "The control of social change, a South African experiment" (*Social Forces*, October, 1954, p. 19 *et seq.*) Cf. also the above-mentioned extracts from *Sociological Abstracts*.

<sup>7</sup> Cf. Park and Burgess, *Introduction to the Science of Sociology*, 1st ed., Chicago, 1921, e.g. pp. 54-55.

<sup>8</sup> For example, in Kimball Young, *Sociology, a Study of Society and Culture* (New York, 1942) or in Ogburn and Nimkoff, *Sociology* (Boston, 1946).

<sup>9</sup> Especially in *Social Causation* (Boston, etc., 1942).

<sup>10</sup> e.g., by Feliks Gross in his *Value Approach to Social Change*, not yet published at the time of writing.

<sup>11</sup> e.g., H. G. Barnett, *The Basis of Cultural Change*, New York, 1953.

<sup>12</sup> In *British Journal of Sociology*, vol. v, 1954, p. 1 *et seq.*

<sup>13</sup> Especially in Parts iv and v of his *Social Change*.

## Factors in Social Change

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By factors I mean part conditions which together with other conditions are concerned in bringing about a social change. By social change I understand a change in social structure, e.g. in the size of a society, the composition or balance of its parts, or the type of organization. The term is, however, also used to indicate changes in the products of group-life, e.g. in the arts or in language. The field of inquiry is thus very wide. Here I am concerned with certain fundamental problems, involved in all sociological analysis, but requiring reformulation from time to time in the light of current thought. I have in mind such questions as the following: is it true that in the last resort changes are to be traced back to desires or purposes or, perhaps, unconscious drives, in individual minds, that the "real agents" are always individuals? If so, what significance is to be attached to the phrase "social forces"? Are these concatenations of individual desires or volitions, as modified by the interaction of individuals? Or is causal agency to be ascribed to changes in social structure conceived as bringing about other changes? Is the function of the physical and social environment to induce or stimulate changes in individual minds, or do they also act in other ways? Finally, there is the problem of teleology. Changes seem to occur in societies which look *as if* they were designed, but have not been designed or foreseen. How do such functional changes occur and how are they related to consciously directed changes?

These problems have been discussed again and again by philosophers, historians and sociologists. I do not propose to add yet another theory to theirs. Instead, I should like to bring out, in the light of examples drawn from different fields of social inquiry, the kinds of explanations that have in fact been offered of social changes, and in particular the sorts of factors to which causal agency has been attributed by competent authorities.

I am aware, of course, that the conception of causality is under a cloud. It has even been asserted that in proportion as sciences become more exact they cease to make use of it. Of this I do not feel convinced. What has been abandoned is the "animistic" interpretation of causality, as a sort of "activity" or power passing over from cause to effect. This is recognised to be an anthropomorphic extension to all cases of causation of certain characteristics which accompany the experience of effort when we initiate an action by an act of will. But though the notion of a mysterious agency has been given up, I doubt whether even in the physical sciences there is not an implicit assumption

of real connections between events, such that changes of character require to be accounted for in terms of other changes or variations. It is this assumption that leads us to seek for the conditions of events, and to expect a proportionality between the variations in the conditions and the variations in the events.

As to the nature of the causal connection there is still a good deal of disagreement. It is best described, perhaps, as a relation of immediacy or continuity in transition. A cause is an assemblage of factors which, in interaction with each other, undergo a change of character and are continued into the effect. In the social sciences where we are concerned with highly variable and complex phenomena, and where even comparatively simple events are the result of numerous converging and diverging factors, causal continuities are specially difficult to establish. Yet in practical life and in the scientific studies arising out of practical needs, we are always in search of such continuities. We assume that one difference implies another and that changes do not occur in isolation but are linked without gaps in time or space with other changes.

The causal relationship, it seems to me, is not a necessary relationship in the sense of logical entailment. What events are causally connected can only be discovered by experience. We cannot construct the effect *a priori* by combining what we know of the constituent elements. This factual nature of the causal relationship holds also of mental or psycho-physical events. It is true that in voluntary activity we have direct experience of a causal connection. But this is not to say that we "understand" it. As Hume pointed out, we do not know "why" we can control our outward bodily movements but not our visceral activities or our pains. We establish the connection or absence of connection by experience and try to define the relationship more closely by varying the conditions and eliminating the irrelevant. Similarly we know empirically that memory is strengthened by repetition, but the scientific explanation of this is still to seek.

But if the cause is not necessarily linked with the effect in the sense of the one being logically derivable from the other, the connection is nevertheless "necessary" in another sense, namely, that if we can be sure that in the instances under observation we have succeeded in eliminating irrelevant concomitant circumstances, then the connection or relation is a "real" connection and will hold good generally. Regularity of succession is on this view not of the essence of causality, but rather one of the signs by which we judge with more or less conviction that the causal relation is present. In practical life and in the social sciences regularity of succession, so far from being identical with the causal relationship, rather suggests a search for causes. If we find, for instance, that changes in the volume of trade are regularly associated with changes in the marriage rate, we do not forthwith assert a causal relation but proceed to look for factors mediating the connection. The difficulty in inductive inquiries generally is to isolate cause factors and to eliminate the possibility of unobserved

concomitants. This difficulty, it is commonly recognised, is greatest in the social sciences.

By cause, then, I understand a set of factors jointly sufficient and independently necessary to the production of the effect. In practical life we are usually not interested in stating all the conditions making up the set, but single out those which are, so to say, decisive. In some investigations, for example, in medicine, a distinction is sometimes drawn between proximate, exciting and predisposing causes, or between "true" causes and auxiliary. Thus in dealing with tuberculosis, the cause is the tubercle bacillus and the conditions those which favour infection, or lower resistance to infection. Which conditions are taken as decisive depends to a large extent on the perspective of the inquiry. Strictly the cause includes the entire set of conditions. But in practice many conditions are not specified either because, being commonly present, they are taken for granted, or because the phenomena are so complex that many of the conditions remain undetermined and may even be undeterminable.

These are all familiar points. I mention them because they are of special relevance in considering the causal rôle of desires, volitions or unconscious mental drives in the analysis of social changes. I take it that no one seriously doubts that mental factors are part conditions or cause factors in social change. But what is sometimes forgotten is that they require the presence of other factors to be effective. Mental processes do not occur in a vacuum. They imply a change in the situation, internal or external, which acts as a stimulus. These changes in the situation must be considered as cause factors, since upon them depends which of the many possible reactions shall occur and in what form. We are not entitled to relegate the situational factors to the rank of auxiliary or precipitating. The weight to be attached to the different cause factors must clearly depend upon the nature of the available evidence, in each case.

A case in point is the hypothesis offered by some psycho-analysts of the causes of war. They draw a distinction between the economic and political factors, which they tend to consider as secondary, and the psychological factor, which they regard as "fundamental". But it is very hard to see on what grounds greater weight is attached to repressed aggression than to, say, differences in the level of economic development between countries, which tend to encourage expansionist tendencies and frictions connected therewith. In regard to motivation it is abundantly clear that very similar motives will express themselves very differently in different social structures. It has, for example, been repeatedly shown that while economic rivalries between states are apt to generate frictions conducive to war, similar clashes of economic interest between localities within a state produce no such effect. The intensity of the competitive motive may be the same in the two cases, but the behaviour is different as we move from one form of political organization to another. As far as the psycho-analytic hypothesis is

concerned, we need to know how societies differ from one another in respect of the amount and intensity of repression to which they subject their members and whether there is an ascertainable relation between such repression and inter-group conflict. For example, is there any difference in amount or intensity of unconscious tension between, say, the Scandinavian peoples and the people of the Netherlands? If such differences exist, are they in any way related to the fact that the Norwegians and the Swedes managed to settle their disputes by peaceful negotiation while the Belgians and the Dutch fought a war? Or again, can it be shown that the decline in the intensity of wars in the 18th and 19th centuries, as compared with the 15th and the 16th, and the marked increase in the 20th, were correlated with a corresponding rise and decline of inner tensions in the individuals concerned? If such inner tensions are cause-factors of war, it has to be shown with what other cause factors they have to be linked to issue in war, and it is quite arbitrary to dismiss these other factors as secondary. The problem is to show in what ways economic and political factors intertwine to produce conditions of tension or to arouse latent tensions. Similar considerations apply to the study of the rise of nationalist movements. Like wars, they no doubt originate "in the minds of men", and a psychological analysis of nationalist sentiments is therefore necessary and important. But reference to basic social impulses or to the need of stability and security or devotion to a cause or being greater than ourselves, will not account for the different forms of nationalism or for its formidable strength in modern times.

Bearing these considerations in mind, let us now try to sort out the main types of factors which have been singled out as likely to account for social changes. There are firstly (i) "spontaneous" individual variations. The most familiar examples can be found in the study of languages. It is agreed by linguists that significant changes often begin as individual variations. Whether these are purely random or whether they are determined by physiological or psychological causes need not here be considered. A process of unconscious selection occurs and the accumulation of minute differences may in time result in a substantial re-modelling of the language. The differentiation of dialects is also held to be rooted in individual variations, aided by isolation or segregation of groups. In other elements of culture the part played by spontaneous variations has not been studied in detail. But there can be no doubt of its importance. Manners and morals change by slow attrition or cumulation; and in their case, too, differentiation is aided by isolation or segregation.<sup>1</sup>

Secondly, (ii) social changes, that is, changes in the social structure, come about as the consequences, often unintended, of purposive acts by an indefinite number of individuals. For example, important changes took place in the structure of rural society in England between the years 1300 and 1500. In 1300 the majority of countrymen were graded as villeins. By 1500 only a small minority were servile and the

system of demesne agriculture, in which much or most of the work done on the lords' land was done by tenants in villeinage, was all but extinct. How did this happen? It seems that without any formal break the practice of leasing land for life or for a term of years spread rapidly during the 13th century, replacing the elaborate arrangements of tenure and service. Contemporaneously, the practice of commutation became more frequent. Eventually the lawyers took a hand in giving the villein greater protection through the recognition of "copyhold" tenure.<sup>2</sup>

Here we have a tremendous change effected through countless transactions between individuals, each pursuing as he no doubt thought, his own ends. Were these individual acts the sole causes of the change? Clearly not, for they would not have occurred had not the circumstances favoured the transition from an arrangement based primarily on a natural economy to one based increasingly on commercial and contractual relations. There is no logical ground for dismissing these circumstances as merely secondary or subsidiary.

(iii) In movements of the type just referred to, outstanding individuals or groups of them sometimes play a very important rôle. Their contribution, however, may easily be exaggerated. An interesting example of this tendency is provided by the accounts given of the industrialisation of Japan from 1868 to 1938. The impression is sometimes conveyed that this process was initiated and sustained by a powerful oligarchy sharing a common and clearly defined end and commanding the disciplined obedience of a docile people. Recent work shows that the activities of the politicians at most accelerated a process which was latent in the whole conjuncture of forces at work. Without minimising the great contributions made by the big concerns in association with the government in developing new sources of power and long distance transport and providing credit facilities, it remains that the expansion of industry during this period owes much to the enterprise and energy of millions of small business men, farmers and workers. As to the relative importance of the various cause factors, however, opinions differ widely. According to some authorities nearly every industry started between 1870 and 1900 did so on the initiative of the government, and mostly in factories opened and operated by the government and sold to private enterprise, when they had got over their initial difficulties.<sup>3</sup> Professor William W. Lockwood, on the other hand, takes a very different view. He argues that some of the basic industries, e.g. coal and electric power, were developed mainly through private investment and enterprise, and that in respect of a very wide range of industry, both large and small scale, there was little direct or active intervention on the part of the State.<sup>4</sup> The difficulties of dynamic analysis are evidently formidable in this, as in other instances of growth.

The part played by the "great man" in social change has been discussed *ad nauseam* by historians and philosophers. Social determinants tell us that the great man has first to be made before he can remake society. Others say that however made, he is rarely the arbiter

of events. Bismarck, who by all accounts must be reckoned as having exercised an enormous influence on the political events of the 19th century, remarked: "The statesman can do nothing of himself. He can only lie in wait and listen until amid the march of events he can hear the footsteps of God. Then he leaps forward and grasps the hem of His garment. That is all he can do". In the case of the founders of the great religions, it may be noted that, whatever view be taken of the originality and novelty of their contributions, they rarely succeeded in imposing their ideas upon large masses of men in their own lifetime. By the time their influence comes to be widely felt their teaching has been profoundly transformed and has assimilated many elements quite foreign to its original spirit. It is what "history" has made of them rather than, or more than, what they actually were that counts in the long run. Nevertheless, it is foolish to deny the great importance of men of genius whether as innovators or as the vehicles of large and massive forces.

It is unfortunate that so little is known as yet of the genetic basis of genius or exceptional ability. Are they to be thought of as mutations? If so, under what conditions do they occur? Or are they due to "accidental" combinations of genes carried in the stock? Is the proportion of exceptional ability produced by a given stock constant over long periods of time? If so, are we to account for the apparent variations in their distribution over time by differences in the opportunity offered for their development or expression? Is it possible that there are always the same qualities present in a population but that some of them remain dormant, unknown even to their possessors, awaiting the stimulus of exceptional circumstances? In more general terms, the question may be raised whether social changes are effected by changes in inborn characteristics, for example in qualities making for leadership, innovation or conservatism, or whether social changes are, as seems likely, in the main, independent of genetic changes. Only a comparative sociology giving the life history of different types of society accompanied by a genetic analysis of mental characteristics and of the action of selection can supply an answer to these complicated questions.

An interesting variant of the problems thus raised is suggested by the various hypotheses that have been put forward of the part played by "new men" in effecting social changes. To give but one example, Pirenne's study of a thousand years of European capitalism led him to the conclusion that we can trace with a "truly astonishing regularity" an alternation between periods of economic freedom and periods of economic control and a similar alternation between periods of energetic innovation and periods of conservatism and stabilization. The explanation suggested is that each phase is introduced by "new men" who make their way by audacity and independence. Their descendants, on the other hand, lose the impetus of the early phases, are anxious to preserve what has been won and are inclined, therefore, to give their support to any authority, however stringent, capable of giving them

the necessary security. This explanation is confirmed by an analysis of the social origins of the men who were influential in initiating the new phases, supported by an appeal to a sort of common sense psychology of the mentality of the "parvenu" turned respectable. Somewhat similar views are put forward by Pareto in the analysis he gives of political and other social and cultural changes with the aid of his theory of residues and derivations. Pareto's discussion is of special interest in that it raises the problem of the relations between individual psychology and sociology in an illuminating manner. He is far from suggesting that the course of events is completely determined by what goes on in the minds of particular "speculators". Their policy is the resultant of a complex set of forces and an indefinite number of acts, leading collectively to results which individually they do not foresee, even though they may have a clearer conception of their own ends than the masses have of theirs. In this, as in other contexts, Pareto is anxious to replace the notion of a one-sided causality by that of mutual dependence among the factors involved.

(iv) This leads me to a fourth group of cause factors which may be described as structural changes and structural strains. By structural changes I mean changes in parts of a social structure due to changes in other parts or to a change in the balance of forces. By structural strains I mean tensions set up in a society by a lack of equilibrium between its parts. The two are closely related. The democratisation of the political structure of England was, for example, associated with changes in the balance of forces between the different social classes. The reforms of 1832 reflected the growing power of the middle classes. The Acts of 1867 and 1884-85 showed that by then it had become important for both political parties to compete for popular favour by offering a further extension of the franchise. By 1918 it had become impossible to keep the working classes in tutelage and the enfranchisement of the whole adult population was effected quietly, with scarcely any opposition. Without claiming exclusive influence for the economic changes, it is nevertheless not to be disputed that the changes of the economic structure played an important part in the changes of the political structure.<sup>5</sup> As another example we may refer briefly to the reduction in the size of the family characteristic of modern Western societies. There is general agreement that this is to be traced in the main to a change in the attitude to the bearing and rearing of children. But this changed attitude is conditioned by numerous interlocking changes in the social and economic structure. Among these may be mentioned: the establishment of compulsory education, which removed children from the labour market and made the rearing of large families more costly; the provision of educational facilities for women, which contributed greatly to raising the status of women; the wider opportunities for employment of women outside the home, the increase in social mobility which facilitated the spread of influences first felt by the upper economic grades to the lower and encouraged the desire of parents to help their

children to rise in the social scale by giving them a better education than they had themselves; the immense increase in leisure and of amusements outside the home. These, and no doubt other factors, connected with changes in the economic structure, constitute strong inducements for the restriction of births, to which must be added changes of moral and religious outlook and the fact that for various reasons the movement for the emancipation of women came in many countries to be associated with the propaganda in favour of birth control. The factors involved differ from country to country. But everywhere the changing structures of the family seems to be conditioned by changes in the economic structure and the changes in the mode of life associated with them, which have come about in the last few decades.

Connected with the interactions between the parts of the social structure are what I have called structural strains. I have in mind such phenomena as the tensions set up within a society by changes of size, by the difficulties in absorbing immigrants or making good losses by emigration, or the difficulties caused by the need, real or imaginary, for expansion, by clashes between the forces making for centralisation and the spirit of local independence, by the failure of changes in different parts of the structure to keep pace, by the fact that units which have developed to meet certain requirements, e.g. political, are not suited for others, e.g. economic. These strains set up disturbances or conflicts, latent or overt, which sooner or later find expression in movements for change. Societies differ greatly in plasticity. They may be too rigid to meet changing conditions, or expand to a size which threatens inner cohesion, or adopt principles of organisation which sap the vitality of their members, or fail to make the corrections in the structure as a whole, necessitated by changes in the parts. The major sources of social change are, it seems to me, conditions generating these "strains" or "contradictions" and the efforts made to overcome them.

(v) Social changes are often due to a confluence or collocation of elements derived from different sources but converging at a given point. Examples will readily suggest themselves to historians. Thus the institutions of feudalism were the product of many different lines of development, some of them coming from widely different places. Among these were the Germanic *comitatus*, the Roman *patrocinium*, combined with the system of *precaria*, the deliberate efforts of the French monarchs to remodel these institutions, the association of military service with tenure and of land-holding with jurisdiction. All these played their part in different European countries shaped by local conditions and varying greatly with them.<sup>6</sup>

Another striking example is to be found in the great social and industrial changes in England in the "age of invention". These changes have been traced back to a remarkable conjunction of circumstances. There was the stimulus derived from the Continent, whether by direct importation of machines or by the immigration of skilled artisans, itself

the result of long social and religious disturbances. There was the drift of able natives and immigrants to the towns in the north, which were relatively free from the restrictions of the corporations and guilds. There were the social ferments tending to dissolve traditions opposed to change. There was the rise of experimental and applied science and the interest shown in applying these to the "useful arts". Finally, there were the economic factors making for an expansion in the demand for English goods and an increase in purchasing power, these in their turn being due to complex collocations of causes.<sup>7</sup> Another example from our own time is provided by the Russian Revolution. In this case, too, there was a very complicated combination of circumstances. There was first the prolongation of the war of 1914 and the inability of the Czarist regime to sustain a large-scale war. There was the land-hunger of the peasantry and the presence together of a depressed peasantry with a relatively advanced proletariat. There was the fact that in Russia capitalist industry had developed as a result of foreign pressure and under the patronage of the state, with the result that a proletariat had been created without an independent class of bourgeois entrepreneurs. There was the further fact that the Russian intelligentsia did not possess social roots in the commercial bourgeoisie and was not committed to any deep-seated bourgeois allegiance. To all this must be added the existence of a small and determined group of men, able to seize power and, above all, the "accident" of the great personality of Lenin.

(vi) I come now to the problem of teleology. The causes leading to social changes so far enumerated all include as factors desires and purposive acts of men stimulated and shaped in varying ways by other factors in the physical and social environment. It follows that in one sense social changes are teleological, since they depend on acts initiated to bring about a preconceived end: though we should have to add the qualification that the clarity with which the ends are foreseen varies from case to case. But purposive or, more generally, conative action is only one kind of teleology. There is also in addition the functional teleology of living organisms, which certainly does not depend on conscious contrivance on the part of the minds animating them. Such functional teleology may be described as teleology below consciousness. Is there also a functional teleology above consciousness, a pattern or scheme emerging out of the linked action of innumerable separate minds, but not as such due to any of them? I am not referring here to theological theories of the "ways of Providence" or to metaphysical theories of an absolute mind, utilising the passions of men in the realisation of a purpose, which is not their purpose. What I have in mind is rather whether, from the point of view of an empirical sociology, the conception of supra-conscious teleology is at all helpful. Few, if any, would nowadays commit themselves to the notion of a single over-riding principle or pattern in the historical process. But in the various parts of culture patterns are discernible which are not attributable to

conscious design. The form or structure of languages, for example, is certainly not the product of conscious design and is there before anyone is aware of it. Again, the changes that languages undergo are not random but have "direction". We learn also that changes at particular points often give rise to chains of supplementary changes, so as to correct the "disturbances" and that these tendencies may spread over centuries or even millennia.<sup>8</sup> Very little, however, seems to be known about the origin of the variations or of the selective forces which make for their survival or elimination. In this case explanation in terms of conscious contrivance breaks down, as it does, no doubt, in dealing with some other spheres of social or cultural change. On the whole, however, it seems unwarranted to assert that historical events are the products of "a force acting without consciousness or intent" (Engels) or "that nothing is properly due to finite mind as such which never was a plan before any finite mind" (Bosanquet, following Hegel).<sup>9</sup> On the contrary, much that goes on in social life is clearly attributable to the actions of men in conflict or unison and slowly becoming aware of the possibilities of harmonious cooperation. The results of their acts are embodied in the social structures which, in turn, react upon the individuals concerned, creating new situations and generating new wants and strains which in their turn stimulate new acts. The process is very complicated, but in successes and failures alike suggests a series of groping efforts rather than the working out of a single, underlying pattern. Whether or not we recognise the operation of teleology below and above consciousness, there is nothing in the facts to throw doubt on the view that, in the main, social forces consist of the energies of men in conscious or unconscious interaction. The individual will is often powerless largely because it is thwarted or unaided by other wills, though on occasion, when opposing forces are equally balanced, its action may be decisive. Conscious purpose plays an increasingly important part in the shaping of events. But it is limited by the nature of the will and the conditions in which it has to work, including the consequences of its own action. Social processes are thus neither fatally predetermined nor free from limiting conditions. But the greater the knowledge of the limiting conditions the larger is the scope offered to conscious direction and control.

## NOTES

<sup>1</sup> Cf. E. Sapir, *Language*; and J. Vendreys, *Le Langage*.

<sup>2</sup> Cf. Sir John Clapham, *A Concise Economic History of Britain*; and P. Vinogradoff, *Villeinage in England*.

<sup>3</sup> Cf. Arthur Lewis, *The Theory of Economic Growth*, p. 350.

<sup>4</sup> *The Economic Development of Japan*, pp. 571-592.

<sup>5</sup> Cf. Bryce, *Modern Democracies*, vol. 1.

<sup>6</sup> For a brief discussion, see T. F. T. Plucknett, *A Concise History of the Common Law*.

<sup>7</sup> Cf. W. Bowden, *Industrial Society in England towards the end of the Eighteenth Century*.

<sup>8</sup> Cf. Sapir, *Language*, p. 195.

<sup>9</sup> *The Principle of Individuality and Value*.

## Morals and Social Change

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Social change has been considerable during the 20th century not only in Europe but in non-European countries. Difficult as it is to separate much of this social change from technological change—so characteristic of the present century—it is equally difficult to avoid considering the problem of values or morals, when one has to deal with problems of social and technological change. For they seem to be different or particular aspects of a general process: the process of change, as an expression of what seems to be an equally general human tendency towards new experiences—physical and non-physical—as opposed to what seems to be a still more general human tendency towards stability, routine, conservatism: conservatism in physical and conservatism in non-physical or moral activities.

It has been said that “habit becomes ten times nature”. And habit, under the form of “tradition” or “order”, and not of the taboos of the so-called primitive societies, is a powerful and almost natural ally of moral codes and moral systems, just as it is an ally of what sociologists call social control. For social control is based mainly on the conscience of a community, or its feeling that it is desirable to guarantee the majority of its members against an excess of differentiation or change or innovation in the behaviour of bohemian as well as of creative individuals or groups; and in referring to bohemian and creative individuals and groups I am using terms whose use in social science became classic, since they were given a particular sociological—or psychosociological—meaning, by Thomas, the American sociologist.

This being so, it is easy to understand why change, even when called “progress”, has been, and continues to be, considered by numerous moralists—and by some sociologists and social anthropologists pre-occupied with morals or moral values or attitudes—a menace to national or regional or tribal systems of morals or values, a factor of disintegration for these groups or communities. For maintaining, as most of these moralists, sociologists and anthropologists do, that “orderliness” is, to a high degree, necessary in social organization, they associate orderliness, in a very intimate way, with moral systems, even when, as moralists or sociologists or anthropologists, they are objective enough not to overlook the fact that moral systems, whether among civilized or primitive groups, have no autonomous existence but are in close interdependence with other systems, that deal, some mainly with physical, others, mainly with non-physical activities, of social and cultural organization: the political, the legal, the economic, the technological, the religious, the æsthetic activities.

It has been pointed out by more than one sociologist that resistance to change is in the main non-rational; that, as S. McKee Rosen and Laura Rosen write<sup>1</sup> "groups take, in order to protect themselves, 'every means' at their disposal 'to enforce conformity', non-conformity becoming, in such circumstances, 'not the road to personality equilibrium'". On the contrary—it becomes the road to personal-social maladjustments that may become disintegrative of a system of morals or values. And in nearly all cases of enforcement of conformity on the members of a community, or large group, conformity, whether national or tribal, and morals, whether national or tribal, seem to become closely associated with protection—usually non-rational protection—against change. Change thus becomes a moral, and not only a legal risk, for individuals or sub-groups who are bold or adventurous enough to break with routine or conformity, for the sake of new physical or non-physical experiences and change also becomes associated with suggestions of immorality. Social historians seem to agree that disintegrating and demoralizing social effects have followed technical changes, as, for instance, the impact of modern industrialism, in non-European as well as in European communities.

But even before the impact of modern industrialism one finds, within the limits of the modern history of Western civilization and of its contacts with non-European territories—specially in the tropics—a vivid example of the way in which changes in styles of activity or of existence or of behaviour in physical and social space, have meant moral disintegration for those Europeans who have gone through the adventure of radically new experiences in such areas, without protecting themselves against change, by keeping, as others have kept, an almost morbid attachment to maternal moral values: the values they carried or brought (I am writing in Brazil)—with them, from their mother cultures. This almost morbid attachment characterized the behaviour of some of the Puritans in North America; and also some of the Protestants who, even before the Puritans, came to America—to Brazil—under the severe leadership of Villegaignon, a Frenchman who was a close friend of Calvin, to establish themselves in the tropics as if there was nothing new in the physical and cultural space chosen for their Calvinistic adventure: new and contrary to the rigid maintenance, in such an environment, of Calvin's European morals and rules of human behaviour.

Thus the attitude that the Puritans in North America were relatively successful in maintaining (perhaps on account of the fact that social change for them happened in a country similar, in its physical conditions of soil and climate, to the one that they were used to in Europe), was taken, before them, with remarkable success, by the Calvinists or Protestants who were brought to Brazil by Villegaignon, in the 16th century. They, too, adopted—or were forced to adopt—an attitude of rigid puritanical resistance to social and cultural change in a country, tropical Brazil, physically and culturally so different from Europe, as

to demand change in moral or morally significant styles of behaviour—dress, for instance—much more than would be the case in a boreal or temperate climate like the one that was to be occupied by English Puritans in the same American continent.

This brings us to a problem that is, perhaps, more ecological than purely sociological; the problem of the physical conditions of a new territory contributing to make human resistance to social change easier, or more difficult, according to what these physical conditions are in regard to the newcomers' more or less rigid attachment to moral values, brought by them from another sociocultural and physical space; or space-time, since one must take into account the fact that the inhabitants of the tropical areas of America, Asia and Africa, were living in a socio-cultural time different from the Western European one. Consequently, time and space were found to be fused in a single condition or situation, physical as well as moral and cultural, that made social and cultural change necessary for the newcomers, whose aim was to remain in the new territories as residents. And with social and cultural change, attitudes to values—moral as well as aesthetic values—would either change, or the attempt of Europeans to remain as residents or founders of stable colonies in tropical countries would completely fail, as was the case with the French Protestant adventure in Brazil in the 16th century.

The problem of social change, in cases like this one—and these cases have been numerous since the expansion of Europe has given to Western moral values a continuous mobility outside Europe, so intensive during the 19th century and the first decades of the 20th century—although, basically ecological, is also sociological; and in its sociological aspects it may be considered an expression of what seems to be a general tendency of migrant human groups to hesitate, once placed in a new situation, between attachment to old moral values and the desire—as Thomas would say—for new experience, through change in behaviour.

The trousers, for instance, that are now considered by some the most obvious symbol of Westernization—and also of Western moral behaviour, so far as men are concerned—have almost always met in the tropics, or among tropical peoples, a contrast varying from nakedness, to a cloth wrap. Not only this: as Professor Ralph Linton recently pointed out, in an essay on "The Problem of Universal Values"<sup>2</sup> nearly all societies "have a conceptual value for modesty which is reflected in specific patterns of coverage for various parts of the body under various circumstances", with "the custom of wearing a garment of a particular type" constituting in itself a value of what Professor Linton calls "the instrumental type", as distinct from a value of conceptual type. To illustrate the distinction between the two classes of values the well-known social anthropologist mentions a very interesting example: "Thus some years ago the head of a great Christian denomination refused to receive the late Mahatma Gandhi because the latter insisted on wearing a loin-cloth instead of trousers.

Both the parties involved would certainly have agreed on the conceptual value of modesty, yet for each the behaviour pattern by which this was instrumental in his own culture had acquired meanings and attitudes which made it a value in its own right". And more: "Trousers, as the garb of the politically dominant European, had acquired negative associations. He (Gandhi) no doubt felt that to don them for his reception would be an act of obeisance to the British Raj." This example serves to suggest that the concrete, instrumental moral values of a society tend to carry, as Professor Linton himself says, "higher emotional effect than the conceptual values," the latter though lying at the base of the whole cultural structure, being abstract and generalized in their expression.

What non-ecclesiastical European has thought, since the 15th century, of preserving his European dignity and sustaining his European male behaviour—without dressing himself, among tropical peoples, as in Europe since the Middle Ages, in trousers? This non-rational attitude has been preserved for five centuries: rigidly by Nordic Europeans and less rigidly by Southern Europeans, of whom the Portuguese have in some cases gone as far as to adopt, as in East India, certain tropical styles of dress, thus falling into an irregularity of behaviour which made 17th-century Englishmen criticize them for their lack of European and Christian dignity, their moral irregularity. The fact is that by being irregular in their dress, from a strictly moral European point of view, the Portuguese were being rationally adaptive, in their style of dress, to new physical and cultural conditions. And in this change—cultural change and, by extension, social change—they were acting scientifically, since as has been pointed out by modern students of clothing in tropical or quasi-tropical climates, women's dresses and skirts are basically more suited to these climates than trousers. As one of these students, Paul Siple, says in his *Physiology of Heat Regulation*,<sup>3</sup> in a generalization that some think may be extended from desert conditions to other tropical and quasi-tropical conditions, "if it were not for the fact that robes or togas have been generally discarded by Western civilization, except for ceremonial indoor usage, a robe worn without underwear would appear to be the best answer for desert clothing". More moderate is this suggestion for a scientific revolution in clothes to be worn by Westerners in warm countries: "The next best approach would seem to be the use of a short, loose jacket and loose trousers suspended rather than belted. By being kept loose, these garments should have some of the benefits of the robe".

Why has the robe not been used instead of the trousers by Western men, in the tropics and quasi tropics, while natives of these regions have usually been strongly pressed to abandon the use of robes and adopt that of trousers? Because of a non-rational resistance to cultural and social change on the part of peoples whose *élites* have stood for centuries, and continue to stand, as champions of a predominantly

rational civilization in contrast with non-rational cultures. Science, however, has been disregarded in favour of a non-rational and non-scientific attitude that has been inspired mainly by an attachment, less to values as concepts, than to values as instruments. Here I am using the very convenient distinction that has recently been suggested by Professor Ralph Linton: a distinction that seems to give a modern development to an old idea of Thomas and his collaborator, Professor Florian Znaniecki, when these two sociologists pointed out, in their famous work *The Polish Peasant in Europe and America*, that men live in a world that is not merely physical, but also moral.

For such a resistance varies in time and space, not only according to influences of circumstance and environment, but also—as Thomas and Znaniecki pointed out in their epoch-making investigation—according to the different ways that men define, select, and, in a sense create their environment. This seems to explain why European immigrants in the tropics have defined, selected and created environments which vary, as far as morals are concerned, from the extremely plastic adaptation of the Portuguese through changes that go from changes in the morals of dress to changes in more intimate moral behaviour (e.g. marriage), to the extreme Anglo-Saxon resistance to the same conditions.

Only the Portuguese seem to have approached ecological or symbiotic harmony with tropical conditions, through an adventure in social change that has been what some modern German scientists would call an adventure in ethnobiological change. Have they become moral outcasts from an European point of view? At first, yes: to the eyes of many Europeans in the 17th, 18th and 19th centuries they became a disgrace to Europe, through their disposition to adopt, in the tropics, non-European ways of moral behaviour, through a polygamous activity that included, of course, the union of Europeans with tropical women and the recognition of the products of these unions as children to be raised as "Christians" and "Portuguese". But the present century has brought a new attitude on the part of many North Europeans in regard to what has been the behaviour of the Portuguese in the tropics: the recognition of this behaviour as at least an experiment in social, cultural and ethnobiological activities, that may correspond better than the secretive or isolationist activities of other Europeans—too reluctant to change, when in non-European lands, their morals as well as the physical type of their descendants—to the present, and increasingly pan-human, civilization. The world is being led to this pan-human civilization by its scientific and technical conquests over space as well as time: conquests whose tendency seems to favour a paradoxical moral world at once pan-human and ecological: varying, in its instrumental moral aspects, according to various ecological environments, but increasingly universalistic—with less and less ethnocentric bias—in its general moral concepts.

It is true that two antagonistic types of civilization dramatically face each other today. But it is possible that technical developments in both

groups, and in areas that lie between them, may contribute to increase in both that scientific attitude which Professor Kurt Goldstein has described<sup>4</sup> as "the critical use of science", granted that technical advancement is not capable of maintaining itself, for a long time, entirely independent from scientific and critical development. The ways to "the critical use of science", having been opened, men of diverse ideologies may recognize, as Professor Goldstein has suggested, that most differences in social—including moral—behaviour of peoples, are really "only variations in the arrangement of the same factors, corresponding to general differences in life and environment"; and that a process of mutual adaptation between peoples "will permit a fuller actualization of all the different factors that harmoniously combined represent human nature". This does not mean lyrically believing in a world without tension but a world where some antagonisms, now in violent conflict, may coexist, "harmoniously combined", just as Christian and Mahommedan morals, under the impact of the same technical and scientific influences, have developed areas of mutual tolerance of their differently instrumental moral ways of promoting and maintaining common moral concepts.

A few years ago—in 1937—Professor Crane Brinton, published an essay on *The Anatomy of Revolution*, where this very interesting point is suggested: that the analysis of four typically Western revolutions as the English Revolution of 1640, the American Revolution, the French Revolution and what he then considered "the present Revolution in Russia"—probably the most violent social change that so far has happened in the 20th century—seem to indicate that all revolutions, after having a "thermidor period" (p. 280) go through an opposite period of tolerance, and even glorification, of traditional moral values, or concepts, presented—one might add—under the form of new instrumental morals. It is generally known that the Russian Revolution, after an attempt to violently destroy what was considered, by most of its leaders, corrupting moral institutions derived from capitalism and Christianity, has changed its attitude in such a way as to hedge legalized abortion "so much as to limit it to cases of the strictest medical necessity" and to "actually set up premiums for large families", at the same time making divorce more difficult and holding in high honour in press, cinema, stage and school, such apparently bourgeois virtues as filial piety. The anti-thermidor tendency may go so far as to glorify positive archaisms, as the Soviet Russians have done in considering homosexuality a crime, after holding it as a simple abnormality, open to scientific treatment.

This tendency to stability, in the opposite direction to social and moral change, is evident in an epoch like the one we are now going through, of intensive and extensive technological change brought about by different kinds of revolution, political or economic, or total revolutions, like the one that the Russians went through in 1917 and the Chinese seem to be going through at present; or revolutions towards Westernization,

as the ones among the Japanese, the Turks, and some of the Arabs; or towards industrialization and urbanization, as the revolutions that the Brazilians, the Argentinians, the Mexicans, the East Indians, are going through in the present century; these last revolutions being also like the Chinese one, anti-European and anti-Anglo-American. Observers, like Professor Brinton, of changes that began to happen a quarter of a century ago, would find, in present developments, a wealth of evidence to confirm their prognostication of "certain forces pulling in the opposite direction, in the direction of stability", though in a rather undramatic way: so much so that these forces do not seem to interest intellectuals as much as the forces making for change.

Here there seems to be a new situation: intellectuals who, though revolutionary in some of their attitudes and methods, have allied themselves with forces pulling in the direction of stability—social and moral stability, not intellectual stagnation—are perhaps more numerous now than they were in the beginning of the century. The Aprista movement in South America—for some time so active—has been a movement for social and economic change, at the same time characterized by a glorification of archaic values which were once the vivid expression of an ecological culture or civilization, among the most culturally and technically advanced natives of what is now Spanish America. It is absurd to imagine that a complete return to these values is possible. But there seems to be no doubt that this movement, and other similar 20th century movements of glorification of the Indian or Amerindian, the Spanish, the Portuguese and even of the Negro past have contributed, or are contributing, to a possibly healthy equilibrium between change and stability in the attitudes and the mores of these peoples. Perhaps it has liberated some of them from an excess of subordination to mores and attitudes of the French, the English, the Germans and the Anglo-Americans, that did not correspond to their environment—usually a tropical environment—and to their civilized inheritance: an Iberian inheritance very much influenced, in its moral attitudes and in its mores, by contacts with non-European civilizations, previous to the colonization of America by the Spaniards, and the Portuguese.

Nevertheless, the moral conceptual values that have become decisive among these peoples have been European moral values with an increasing tendency to diversity from Europe so far as instrumental moral forms are concerned. One may see in modern tropical Latin America, as well as in other non-European areas where European techniques and styles of living were once passively followed by considerable groups of people even with sacrifice of human adaptation to a tropical or quasi-tropical environment, the beginning of a consciously un-European, though not anti-European, moral world, where technical concepts imported from Europe may be adapted to moral instruments different from the European ones and *vice-versa*.

Prefabricated housing, adapted to tropical spaces, may cause another revolution among non-European populations, now said to be morally

as well as materially inferior to Western European populations on account of being unable to "live decently". There is a distinctly moral implication in the words of Europeans who say, as Mr. P. Johnson-Marshall recently said in a Conference on Tropical Architecture held at University College, London, in 1953, before giving his fellow architects a report on architectural problems in the tropics. "The vast size and population of the tropical land masses and their present condition of widespread poverty, overcrowding and sub-standard living conditions constitute a world problem of great urgency". They do. But perhaps one should bear in mind the fact that houses are not as closely associated with morals, among tropical populations, as they are among boreal peoples or inhabitants of temperate regions. It is preferable to have a slow development of an inexpensive type of sanitary house adapted to the tropics, than to build quickly prefabricated houses of a European type, with European material and according to European standards of domestic morals, which, instead of contributing to greater morality among tropical poor populations, will break their present harmony, imperfect but still considerable, with their environment. As Professor Morston Bates writes,<sup>5</sup> "Latin America"—he refers particularly to tropical Latin America—"might possibly be used to support the thesis that Western civilization, in its pure form, is not readily adaptable to tropical conditions; but this is hardly damning except to those who consider the Western variety to be the only possible form of civilization in general. Latin America is, in fact, most interesting in the ways and places where it has diverged from the typical Western, picking up elements from the local environment, as in the development of Mexican art." As in the development, also, of a Brazilian cuisine—for a long time considered by elegant Europeans to be un-European to the point of being "uncivilized" and even "indecent"; indecent, according to European and Anglo-American bourgeois Puritans who have disapproved of Afro-Brazilian dishes such as "vatapá" and "carurú" for reasons perhaps more moral than æsthetic, since corrupting standards of supposed good taste are often associated, among these bourgeois, with moral standards.

This moral disapproval, by European and by Anglo-American bourgeois of everyday non-European expressions of art such as the cuisine (so closely associated among non-European peoples with other aspects of culture), takes us to the consideration of the disturbing effect of the presence of that European type of civilization—the bourgeois one, with its conviction of being morally superior to other civilizations in every respect: even in regard to the selection, preparation and decoration of food and the ritual of eating—upon mores not obviously or apparently connected with this ritual and with cookery. In China, for instance, as well as among other peoples of the East who are carriers of old non-European civilizations, such superior expressions of human wisdom as the humanism of Confucius and that of Ghautama have endeavoured, since the 18th century, to defend their civilizations not

so much against Christianity or Western science and technology, as such, as against the disturbing effects of these upon their morals. If this is true, the moral conflict among modern civilizations is not always a conflict between scientific and non-scientific cultures, monotheistic and non-monotheistic cultures, but between sub-civilizations, e.g. between the triumphant post 18th-century bourgeois European and Anglo-American sub-civilizations and the patriarchal sub-civilizations of the East: specially that of humanistic China. China would possibly have assimilated more easily into its civilization, what is scientific and technical in European and Anglo-American civilization, and would have developed a new civilization of its own, with new morals that would reflect its assimilation of Western science and technology, if it were not for the fact that, from the decisive days of Chinese contact with Europe, Europe has systematically tried to impose upon non-European peoples, not a European Christian, scientific and technological blend of civilization, but a blend of these values within a rigid bourgeois form or structure: a bourgeois moral system, based on a narrow European experience—narrow in time and narrow in space; a narrowly bourgeois interpretation of Christianity; a narrowly bourgeois utilization of science and technology in industry, agriculture, public works, architecture, urbanization, bank organization and international trade. This has had a demoralizing effect upon a number of non-European and non-bourgeois vital inter-relationships, aesthetic, intellectual and moral or ethical. Otherwise, some of these civilizations, would possibly have been able to assimilate Western values without sacrificing to this assimilation their particular love of flowers, gardens, landscape architecture, poetry, painting and of what European historians of Chinese civilization call "a highly cultivated culinary art". This sacrifice has been made under the spell of Westernization and Americanization that for some time dominated progressive Chinese, as it dominated Latin Americans. In both areas, ultra-progressive youths for some time shocked their elders, not, as in more recent times, with their "Communism" or their repudiation of bourgeois Christian morals, but with their adoption of such exoticisms as the abuse of American cigarettes by both sexes and of chewing gum even by "refined society" boys and girls, together with an enthusiasm, also shocking to their elders, for commercial or business success, with its new moral implications. For we know that morals are not, as it was thought for some-time, an unchanging system of behaviour, as opposed to manners which change and are contingent. Techniques of conduct also change and as sociologists who have specialized in the study of this aspect of human behaviour point out, overlap manners, folkways and mores in such a way that they become expressions of prevailing general attitudes not only in regard to right and wrong but also in regard to success and failure. Value-attitudes, consequently vary from one epoch to another. That is why Professor Horace M. Kallen, in his sociological definition of morals, points out that foodstuffs and sex objects, clothing, shelter,

defence against diseases and enemies, "are such necessities," causing, in relation to food and eating, for instance, different attitudes—different in space and time—concerning what to eat and what not to eat, how to secure it and prepare it, in what company to eat and so on; attitudes that, in some cases, are responsible for rigid differences in social space within the same physical space, as in some parts of the East in regard to the space socially and even physically occupied by the various castes or groups of the same population.

It seems that morals are connected not only with value-attitudes with regard to right and wrong but also—I insist on this point—with regard to success or failure. We often find morals connected with prestige: with the prestige of a class in face of other classes within the same civilization; and with the prestige of a civilization in face of other civilizations within a certain social epoch. This seems to explain why progressive young members of a society whose civilization has been invaded by a scientifically and technically superior one—as China was invaded by bourgeois European and Anglo-American civilization during the 19th century—have a tendency to imitate the morals and the manners of the invaders, becoming disdainful of ancestral manners and ancestral morals. Disdainful even of traditional foods, they prefer ham and eggs and canned Boston pork and beans. Within a national civilization, acquiescence in "the supremacy of the ruling classes and their ways"—a moral pressure—has been pointed out by sociologists as a process of moral assimilation, where imitation seems to play an equally important part through value-attitudes not only with regard to right and wrong—hero-worship, for instance, and repudiation of traitors—but also with regard to success and failure. In the civilization of the United States, for instance, it is morally desirable for the young immigrant or the young country boy who comes to a metropolitan centre to become a successful business man. This ideal of material success, as an expression of moral victory, has spread to such vigorous new Latin-American civilizations as the Argentinian, the Cuban, the Mexican and even the Brazilian, where a monarchic and aristocratic tradition was responsible for a stronger resistance to the adoption of this characteristically bourgeois value-attitude, now almost as Brazilian as it is Argentinian or Cuban, though among a minority of ultra-progressive youths this attitude has been surpassed by one of radical repudiation of bourgeois success.

How much is this the pure consequence of the fact that these non-bourgeois and more or less feudalistic, patriarchal, civilizations, are being increasingly reached by modern science and modern technology, spread from Western Europe and from the United States as expressions of a superiority not only technical but moral, as well? This is a delicate point. For peoples have a tendency to follow a different rhythm of social and cultural change, through the adoption of technical and scientific advantages. This adoption may take place without a passive imitation of morals and manners, which are not all inherent in certain

technical and scientific styles of living, work, transportation, production. A non-European community does not seem to have to become passively bourgeois in its morals and manners, as a fatal consequence of its adopting from Europe or Anglo-America such technical conveniences as air transportation and radio; or such scientific modernisms as Einstein's theory or Professor Moreno's sociometric sociology. The Russians, through their mystique of extreme idealization and glorification of the Proletariat, have avoided following some of the bourgeois morals and manners of Western Europe and of the United States, without ceasing to be followers and imitators of technical conveniences developed by the scientific genius and technical skill of Western Europeans and Anglo-Americans. Professor Eric Fischer, a German geographer, goes as far as to write that "it sounds paradoxical, but it is nevertheless undeniable, that the Soviet Union, though most remote in its ideas and ideals, is quite exceptionally fascinated by America, specially by her technical standards and achievements in organization, but also by certain things in the intellectual sphere as, for example, educational ideals". How far "technical standards", "achievements in organization," "certain things in the intellectual sphere, as for example, educational ideals," may be separated from moral techniques of behaviour that make these standards and ideals effective, would be difficult to say. But it is easy to accept Professor Fischer's suggestion that Russian susceptibility to these American values may be traced to the fact that both Russians and Americans cherish or, at least, feel "the pioneer spirit", that to a considerable extent is inseparable from an orthodox bourgeois civilization during its heroic, expansive phase, just as it is inseparable from a "proletarian" civilization during its equally expansive phase.<sup>6</sup>

Besides this, some Russians and some Americans seem to be engaged in the task of transplanting to new regions—the Russians, mainly to Asia, the Anglo-Americans mainly to Latin America—attitudes and values which some of them seem to know will become in these new regions something different from what they are in Russia and in the United States: new techniques, including new techniques of moral behaviour. The pioneer in a new region has to be selective even of the moral techniques that he carries with him to apply to new conditions, for if he does otherwise—as some Europeans and Anglo-Americans have done—he will have to expand through coercion and violence: a method of expansion that will cause only a superficial spread of the expanding civilization. It is through a pioneering spirit that is ready to be selective, adaptive, plastic—as the Portuguese were in the East with such a success that populations such as most of the population of Goa, for instance, remain morally and culturally Portuguese, though ethnically East Indian—that new types of civilization, somewhat morally and technically different from the older one, are possible. This may confirm the very interesting thesis of Professor Fischer that transformed Western civilization may survive in new centres outside

Europe; transformed in its moral as well as in its technical, æsthetic and intellectual aspects: especially in the intellectual and moral field—to specify what Professor Fischer describes somewhat vaguely as the “cultural” field, as distinct from the political, the economic and the technical ones. The rise of such new centres “need not spell decline for the old”, for the “survival of the old centres beside the new ones may enrich all of them”.

Only it is becoming increasingly difficult for Europeans to be so strict in their European manners and morals; for an important European or Anglo-American personality to refuse, on moral grounds, to receive a non-European like Gandhi because this non-European insists, as Gandhi used to insist while in Western countries, in wearing oriental clothes instead of European trousers. Reciprocity, tolerance and broadness in this, as well as in other points of morals—both conceptual and instrumental—and manners, seem to be necessary if European moral values and value-attitudes which Europeans and non-Europeans seem to consider as of universal validity, are to be saved as essential concepts. To remain as vital concepts, some of them seem to have to change as instruments—to use a very convenient discrimination between concepts and instruments; and even to take entirely non-bourgeois and even non-European instrumental aspects. The modern development of civilization—most of it taken from Europe—in tropical areas, may mean a readaptation of European styles of dress, food, habitation, to Oriental, Moorish, Indian traditions, with new moral implications and new hygienic and even biological connotations. This may give to moral change, as well as to other aspects of social change, a firmer ecological foundation for its instrumental diversity, as well as a firmer basis for a really conceptual universality. But the subject, here as well as in other of its margins, tends to become more philosophical than sociological, more normative than scientific.

In a very stimulating essay published in New York in 1940, J. D. Unwin, a British social philosopher, wrote that changes, within what he calls an “energetic society”, are inevitable as an effect on the groups that make a society of this type, of “their experiences”; and that cultural—including moral—behaviour—is part of a cultural as well as of biological process.<sup>7</sup> Adaptation of morals and manners taken, or brought, from Europe or Anglo-America, to tropical spaces, seems to be an example of this double process: cultural and biological. For dress and food habits—with their moral implications—have to correspond to ecological realities in a way that is not only cultural but also biological.

Social philosophers may consider it against the best interests of a human society ecologically organised in regional societies differing in their cultural and moral adaptation to conditions of life, for modern men to favour absolute standardisation of morals and manners, with the entire sacrifice of regional diversity. For this reason, it seems to some of them that modern commercial advertisement, with its stimulation

of similar desires in men, women and children of different areas—British wool or flannel for men's trousers, French furs for women, Scandinavian skates as toys for children—acts against those interests and in favour of an undesirable type of standardisation: of mores as well as of morals. For tropical ladies who wear furs in the tropics not only behave anti-ecologically but—from a social philosophical point of view—are culturally and morally disloyal to their civilisations. They disregard something vital in their own civilisations to fall under the spell of advertisements from other civilizations, and become "marginal" instead of "liberated", in the sense of "the liberated man" conceived by Professor Howard Becker.<sup>8</sup>

Social change in our time seem to be meeting with a reaction against too passive imitation of European and Anglo-American morals and manners by non-European peoples or societies. The problem, now, for these peoples, whose nationalism has become so intensively cultural, seems to be for them to combine assimilation of European and Anglo-American values and techniques of moral behaviour, with their new *élan*—a predominantly moral *élan*—towards the relative preservation of ancestral values and attitudes. Relative because, as Professor Edward H. Spicer points out,<sup>9</sup> no generation, within a particular culture, "seems to behave precisely like a former generation": "the outstanding fact of constant change . . . remains".

## NOTES

<sup>1</sup> S. McKee Rosen and Laura Rosen: *Technology and Society*, New York, 1941, p. 311.

<sup>2</sup> In *Method and Perspective in Anthropology*, ed. Robert F. Spencer, Minneapolis, 1954, p. 151.

<sup>3</sup> Quoted by Marston Bates, *Where Winter Never Comes—A Study of Man and Nature in the Tropics*, New York, 1952, p. 111.

<sup>4</sup> Kurt Goldstein, *Human Nature in the Light of Psychopathology*, Cambridge, Mass., 1940, p. 236.

<sup>5</sup> Marston Bates, *op. cit.*, p. 83.

<sup>6</sup> E. Fischer, *The Passing of the European Age*, Cambridge, Mass., 1948, p. 123.

<sup>7</sup> J. D. Unwin, *Hopousia or the Sexual and Economic Foundations of a New Society*, New York, 1940, p. 59.

<sup>8</sup> H. Becker, *Through Values to Social Interpretation*, Durham, 1950, p. 88.

<sup>9</sup> E. H. Spicer, editorial introduction to *Human Problems in Technological Change*, New York, 1952. On the "variabilité de l'expérience morale immédiate placée dans la durée plus ou moins qualitative" (Bergson), see G. Gurvitch, *Morale théorique et science des mœurs*, Paris 1948, Introduction. On the possibility of a "technique morale pleinement analogue à d'autres techniques" (Lévy-Bruhl), see *ibid.* Chapter I. See also E. Durkheim, "Le jugement de valeur et de réalité", *Revue de Métaphysique et de Morale*, Paris 1911.

## Droit et Changement Social

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Il ne semble pas qu'une définition du droit comme régulation de la vie sociale puisse être contestée. Par contre, si l'on demande quelle est la nature de l'ordre ainsi réglé, une alternative s'offre : un ordre peut être imposé par la force des gouvernants ou recevoir l'adhésion volontaire des gouvernés. Dans le cas de la force il n'y a pas de problème autre que le fait constatable de son maintien. Car si elle se maintient, soit simplement en se montrant soit en s'employant avec efficacité, elle n'a pas à se justifier; et s'il lui faut se justifier, elle n'est plus la force. Dans le cas de l'adhésion au contraire il faut chercher sur quoi celle-ci se fonde: respect voulu d'une tradition de pouvoir divin—avec d'ailleurs plusieurs figures possibles de ce divin—ou soumission à l'intérêt social, ou enfin acceptation d'un idéal rationnel de cité humaine. Le Droit, dans cette dernière hypothèse, devient un règle non plus seulement d'ordre mais aussi et surtout de justice; d'équilibre mécanique il se fait juste équilibre d'hommes libres sous la garantie incontestée d'une loi souveraine: *constans et perpetua voluntas jus suum cuique tribuendi*.

Mais, comme l'avaient bien vu les stoïciens qui fournirent au *corpus juris* cette célèbre formule, la loi et la qualité de volonté ainsi définies sont l'œuvre de la raison dont la valeur universelle est le seul gage de cette constance et de cette perpétuité prêtées à la loi idéale et au sujet qui l'accepte. N'a-t-on pas, à travers les âges douloureux de l'humanité, entendu toujours s'élever la revendication d'un tel idéal et la sagesse de tous les âges en proclamer l'excellence? On ne s'étonne pas que pareil appel au gouvernement idéal de la raison ait retenti, en France, à la fin du XVIII<sup>e</sup> siècle, sur les ruines d'un régime de servitude et de privilège et pour annoncer au monde l'aube d'un droit nouveau.

Ce droit nouveau que nous allons voir en effet annoncé avec cet esprit de foi en la raison se trouve cependant, notons le, contemporain *en fait* d'un changement social tel que l'Europe presque entière en fut secouée. N'y-a-t-il pas dans cette coïncidence historique une occasion privilégiée de soulever cette question générale: quelle sorte de rapport y a-t-il entre la structure juridique que se donnent les sociétés et les changements sociaux qui viennent les affecter? De tels changements ne sont-ils que l'occasion d'un grand appel à la raison et qui invite celle-ci à entreprendre ou à reprendre son œuvre de législatrice idéale? ou bien sont-ils, en même temps, l'occasion aussi qui, par l'ébranlement même qu'ils produisent, fait surgir ces sources de juridisme latent que recèlent et libèrent alors les changements sociaux? Non que la raison n'ait, en pareil cas, qu'un rôle d'appareil enregistreur; elle se

trouve seulement contrainte de ne pas imiter Descartes recréant le monde dans les espaces imaginaires : il lui faut au contraire légiférer pour des circonstances définies et dans cet espace réel et historique où les changements sociaux semblent presque ébaucher leur structure en même temps qu'ils accomplissent leur révolution, comme si au groupe social, et du fait même qu'il est groupe, était inhérente une sorte de force structurante que le droit n'aurait qu'à capter pour la cristalliser en institutions. En d'autres termes, et sans songer à nier le rôle des *impératifs de raison* dans la construction du modèle juridique attendu, faut-il admettre qu'ils rencontrent des *impératifs de situation* avec lesquels il ne peuvent pas ne pas composer, si même ils ne les subissent pas ? Car une dernière question est de savoir si, le nouveau modèle construit, d'ultérieurs changements sociaux ne peuvent pas rendre assez pressants de nouveaux impératifs de situation pour contraindre la raison à se renier elle-même et à tout recommencer.

Que nous enseigne donc l'exemple choisi et comment témoignent les auteurs et le destin de ce droit nouveau proposé par la Révolution de 89 et dessiné par notre Code Civil ? Le grand message fut-il proposé comme éternel ? et l'illusion de l'éternel fut-elle celle de tous ? Et enfin l'illusion de l'éternel à part, qu'advint il dans le siècle de cette codification : la raison qui l'avait construite fut-elle capable de l'adapter aux nouvelles situations ou finalement contrainte de la reprendre sur de nouvelles bases, sacrifiant radicalement par exemple le droit subjectif à la fonction sociale et le libéralisme individualiste à son contraire pour la ruine de cette autonomie de la volonté dont J. J. Rousseau avait infusé le dogma au droit nouveau.

Confrontation peut-être décisive à l'époque choisie si l'on accepte l'image qu'a récemment proposée de cette époque André Siegfried dans un Discours de réception à l'Académie Française et voici en quels termes : “. . . le siècle ivre de technique s'habitua à une nouvelle hiérarchie de valeurs qui risquait de compromettre les bases mêmes de notre civilisation. Si l'on regarde plus profond, il ne s'agissait pas seulement d'une nouvelle période historique, mais d'un âge nouveau de l'humanité fondé sur la machine, la série et la masse, nécessitant une mise au point—si nous voulions simplement survivre—des notions les plus essentielles sur lesquelles nous avons vécu jusqu'alors”. Et d'abord quelles furent les vraies intentions du droit nouveau ?

Le projet de Code Civil de l'An VIII proclame expressément : “ il existe un droit universel et immuable source de toutes les législations positives et qui n'est que la raison naturelle en tant qu'elle gouverne les hommes ”. Et les auteurs de notre code civil avaient, on l'a répété, la prétention de légiférer au nom de cette raison exaltée par la philosophie des lumières et dont il croyaient ne faire que graver, et de façon intemporelle, les préceptes immuables sur les tables de la loi. Montesquieu n'avait-il pas écrit, dans son *Esprit des Lois* : “ La loi en général est la raison humaine en tant qu'elle gouverne tous les peuples ”. N'avait-il pas ajouté : “ Les juges de la nation ne sont

que la bouche qui prononce les paroles de la Loi, des êtres inanimés qui n'en peuvent modérer ni la force ni la rigueur". Et Robespierre: "Le mot de jurisprudence doit être effacé de notre langue. Dans un état qui a une constitution, une législation, la jurisprudence des tribunaux n'est autre chose que la loi. Alors il y a toujours identité de jurisprudence." Et quarante ans plus tard encore le Doyen de la Faculté de Droit de Paris, Blondeau, dans un mémoire lu à l'Académie des Sciences Morales, se montre tout aussi attaché à l'immuable perfection du Code Napoléon et à sa très stricte exégèse dont la jurisprudence, toujours passive, n'a pas, selon lui, à se départir. En face de pareille conception du Droit, fortifiée par la longue tradition du Droit naturel reprise de l'antiquité par le Christianisme, puis laïcisée par le XVIII<sup>e</sup> siècle, comment parler de changement social autrement que par antithèse et pour souligner la misère du relatif devant la perfection de l'absolu, ou le déclin du droit parmi les mouvances et les compromissions de la vie? Comment en un plomb vil l'or pur s'est-il changé? Est-ce donc de ce qui change que l'on verrait sortir la loi de ce qui doit être? Nous voilà bien en présence de l'illusion d'éternel dont nous avons parlé.

Un éminent juriste contemporain qui ne saurait ni ne désirerait d'ailleurs être qualifié en même temps d'éminent sociologue, recensant les transformations du droit dans le cours du XX<sup>e</sup> siècle n'y voit en effet bue *déclin*.

Ce qui implique de sa part quelque chose encore de l'illusion de l'éternel. Avant de déceler avec complaisance toutes les preuves de déclin qu'il découvre au XX<sup>e</sup> siècle, il qualifie le XIX<sup>e</sup> de grand siècle juridique, parce qu' "il a professé, dit-il, que le droit était imposé par la raison, et, le dégageant de la nature de l'homme, il a permis de croire à son universalité; qu'il réalise ce que les philosophes et les juristes du siècle précédent avaient vu et désiré". Or, selon lui toujours, tout aurait changé du jour où la puissance politique a passé aux mains du plus grand nombre, à "un assemblée élue au suffrage universel, tenue par son recrutement même de satisfaire les intérêts et les désirs du plus grand nombre, obligée de créer d'une façon continue un droit nouveau parce que les électeurs exigent d'elle des réformes." Que pèse, répondons nous, l'insatiabilité de l'électeur en face du fait capital de l'industrialisation de la société et de l'évidente nécessité corrélative de réglementer de nouveaux rapports humains? Il est certain que si l'on opte pour l'explication électorale on mettra facilement au compte du déclin toutes les réglementations, plus ou moins imparfaites certes, qu'ont entraînées et la complexité croissante et la difficulté aussi de la vie économique non moins que surtout peut-être le changement d'échelle de tant de problèmes. L'auteur pose que "prise en elle-même toute interdiction est fâcheuse"; et de ce que le nombre de défenses édictées par l'état se multiplie il tire non pas une conclusion, mais une profession de libéralisme intégral, tout en se défendant de choisir entre libéralisme et dirigisme: "Si vraiment, écrit-il en effet, le progrès du droit a consisté

autrefois à assurer la liberté de l'action et la force des conventions, de telles défenses marquent à coup sûr une régression". Plus généralement interdictions, obligations nouvelles étendent le domaine du droit public, ce qui revient à violer celui de la vie privée. Or n'est-il pas presque normal par définition qu'une réglementation publique porte quelque atteinte aux libertés individuelles, ce qui d'ailleurs souvent aboutit à les protéger, pour l'ensemble du moins, plus qu'à les limiter. Que ces exemples suffisent pour faire comprendre pourquoi toute adaptation juridique risque d'apparaître comme le déclin de principes absolus. Un autre livre plus récent du même auteur concédant l'importance du machinisme répond: "mais la machine n'est qu'un objet, et le droit régit les rapports des hommes. Sur des objets nouveaux faisons du droit antique" (p. 39). A procéder autrement l'on compromettrait la stabilité du droit ébranlée au dire de l'auteur par les sociologues, et qui s'avère d'ailleurs impossible, s'il n'y a pas dans le pays une volonté prépondérante capable d'imposer une législation unitaire, ou encore si l'on s'emploie sophistiquement à identifier la règle juridique à la règle morale "pour permettre de dire que la loi est imposée par la justice sociale" (p. 161).

A une telle vue dont l'absolutisme ne peut guère apercevoir en effet dans l'évolution que déclin et jamais légitime exigence issue d'une mouvance toujours plus complexe du changement social dans un monde qui échappe de tant de côtés à l'échelle nationale, qu'il soit permis d'en opposer une autre: celle d'un juriste non moins éminent, mais ouvert, celui-là, au point de vue sociologique en même temps que particulièrement qualifié par sa fonction de président du comité de révision du code civil, c'est du Doyen de la Morandière qu'il s'agit et due regard que, dans un discours solennel à l'Académie des Sciences Morales, il a jeté sur l'évolution précisément de la législation issue du code civil: "Déclin, je le concède, dit-il, mais déclin d'une certaine manière de concevoir le droit; déclin de certaines règles juridiques anciennes; peut-être déclin aussi d'une idéologie trop absolue et trop rigide. N'y a-t-il pas en réalité évolution plutôt que déclin du droit?" Ayant ainsi parlé de cette évolution notre auteur la déclare "irrésistible tout au moins dans son courant essentiel". Et ce qui la rend irrésistible c'est précisément qu'ellenait sans cesse des changements sociaux du siècle et de l'évidente nécessité corrélative de les régler. Nous emprunterons au même auteur quelques exemples de cette nécessité. Qu'il suffise de noter pour le moment chez lui cette significative remarque: loin de mettre en accusation les principes de droit du code civil en face des faits qui en clameraient l'impuissance, il loue au contraire les auteurs de ces principes de les "avoir conçus et appliqués de telle sorte qu'ils contenaient en eux-mêmes le germe de leur propre destruction. Sur quoi il conclut: "il n'est pas question de renier les principes essentiels mais de leur permettre de garder leur efficacité". Ce qui revient à ouvrir, sous leur très souple juridiction, le champ à ce que nous avons appelé les impératifs de situation et qui mettent en relief l'essentielle liaison entre

le facteur réel qu'est le changement social et le facteur technique qu'est la codification juridique. D'où la possibilité de voir s'ébaucher, jaillissant de la vie, sans dénoncer l'"*impuissance des lois*" ou la "*révolte des faits contre le droit*" un droit nouveau adapté précisément à ces changements sociaux que n'avait pu prévoir, mais que n'avait pas non plus niés d'avance le code de 1804. Nous ne sommes plus cette fois sous le signe de l'antithèse, mais sous celui de la genèse, et nous nous trouvons invités non du tout à désavouer l'autorité et la majesté du droit, mais à rechercher comment naît, à partir des faits mais pour les ordonner, un droit qui fasse l'accord de principes de justice toujours, avec, sans cesse cependant, les inéluctables nécessités de ce qu'Auguste Comte appellerait les conditions d'existence, c'est à dire les transformations de la vie sociale.

De cette inévitable et salutaire correspondance entre les législations, structure nécessaire de toute société, et le changement social, condition de vie non moins nécessaire de toute société, ce serait d'ailleurs une erreur de penser qu'elle n'ait commencé d'apparaître qu'avec l'industrialisation et l'urbanisation croissantes des sociétés européennes. Elle y est devenue plus pressante seulement et plus manifeste. Mais elle constitue fondamentalement pour toute société la condition à la fois de son équilibre et de sa vie, s'il est vrai qu'une société ne peut *exister* que par la vertu structurante incluse en elle et qui lui fait ordonner la place et le rôle de ses éléments—*ubi societas ibi jus*—et ne peut *vivre* que par l'activité de ces éléments qui sans cesse la transforment mais avec plus ou moins d'accélération selon le rythme de son progrès.

Statisme et dynamisme sont les deux aspects indissociables que nous offrent toute vie sociale et dont précisément le caractère indissociable concilie, au lieu d'opposer, l'exigence de fixité qui est dans le droit, et l'impératif de régulation appropriée qui émane de tout changement social, qu'il soit évolution ou révolution—si du moins il n'est pas pure et simple subversion. C'est l'adage de tout à l'heure, mais avec cette fois le signe négatif; là où il n'y a plus droit il n'y a plus société.

Cette correspondance que nous venons de définir entre le droit et les conditions d'existence ou de progrès de la société qu'il régit est de vérité si constante qu'il est possible de la découvrir là même où il semble qu'elle doive être absente parceque presque contradictoire, je veux dire dans le cas d'une construction juridique, érigée en système, basée sur des principes et qui se veut rationnelle, universelle et perpétuelle. Tel fut bien le cas, n'est-il pas vrai, et de notre Déclaration des Droits de l'homme et de notre code qui, sans la suivre immédiatement, n'en recueillit pas moins l'inspiration individualiste et universaliste. Or que de facteurs temporels il serait facile de déceler derrière la visée intemporelle de cet universalisme ! En ce qui concerne les principes d'abord nous avons déjà indiqué de quels traits traditionnels était composé leur nouveau visage. Les formules si souvent lapidaires de la Déclaration

de 1789 ont été justement admirées. Mais leur simplicité ressemble à celle de la lumière blanche. Elles ont fondu en elles de multiples composantes, et cela en une unité plus harmonieuse qu'on ne l'a cru parfois. Irons-nous chercher par exemple une dualité d'inspiration dans la Déclaration des Droits ? Selon une telle vue, les deux premiers articles affirmant que " les hommes naissent et demeurent libres et égaux en droits ", que " le but de toute association politique est la conservation des droits naturels et imprescriptibles de l'homme ", et que " ces droits sont la liberté, la propriété, la sûreté et la résistance à l'oppression " viendraient des Encyclopédistes et de Locke et représenteraient des droits caractéristiques de l'état de nature. De cette énumération donc se trouverait exclue la souveraineté. Au contraire une seconde tendance s'affirmerait avec l'article III qui, lui, proclame catégoriquement la dite souveraineté : " Le principe de toute souveraineté réside essentiellement dans la nation. Nul corps, nul individu ne peut exercer d'autorité qui n'en émane expressément." Ce que l'article VI développe ainsi : " La loi est l'expression de la volonté générale. Tous les citoyens ont le droit de concourir personnellement ou par leurs représentants à sa formation." Nous aurions cette fois du Rousseau mais plus de droits naturels : seulement des droits issus de l'état civil et délégués à l'individu par la volonté générale. Du Rousseau d'accord, et mêlé en outre de Montesquieu puis-qu'il est question de représentants. Mais un Rousseau que l'on ne saurait opposer à l'individualisme des premiers articles sous prétexte qu'apparaît maintenant la souveraineté : l'individu est en effet souverain en même temps que sujet ; et si la volonté générale est souveraine c'est dans le but d'imposer l'égalité, seule façon d'assurer à tous, et non plus à quelques uns, la liberté native de l'homme—liberté dont précisément une société viciée par l'inégalité l'a dépouillé. C'est donc bien finalement le droit naturel fondamental de l'individu libre qui est restauré dans l'état civil par la médiation de la volonté générale. Or si la revendication de la liberté appartient bien à une longue tradition dont on pourrait presque dire qu'elle n'est le monopole d'aucun temps, n'est-il pas vrai qu'elle est aussi l'un des thèmes les plus actuels du 18<sup>e</sup> siècle où gronde une exaspération croissante contre les abus, les privilèges et toutes les formes d'arbitraire de l'ancien régime. L'horreur de l'arbitraire n'est pas moins sincère chez Montesquieu que n'est véhémentement chez Rousseau la dénonciation de l'inégalité.

La conception du droit qui anime la célèbre Déclaration peut donc se présenter comme vérité universelle, elle n'en porte pas moins la marque de son temps et le reflet de l'état social en même temps qu'elle est une synthèse très unifiée mais composée tout de même d'éléments traditionnels divers.

Si l'on voulait une sorte de preuve inverse on la trouverait par exemple dans la fameuse loi Le Chapelier qui, interdisant toute association qui viendrait s'interposer comme un écran entre l'individu et l'état souverain peut paraître, à un siècle de distance, comme une

atteinte à la liberté alors qu'à sa date elle était voulue comme une garantie précisément de la liberté. C'est ce que, dans sa *Philosophie du Libéralisme*, M. Emile Mireaux a fort bien expliqué en quelques lignes que je lui emprunte : " Dans un système de petites entreprises où le nombre des maîtres n'était pas énormément plus faible que celui des compagnons, où la concurrence entre employeurs en quête de bons ouvriers était effective, la suppression de ce régime de coalition patronale légale et permanente que représentait l'organisation coopérative libérait en effet le marché du travail. Elle plaçait l'ouvrier, ou peu s'en faut, sur un pied d'égalité avec le patron dans la discussion du contrat. — Au total la liberté absolue n'était pas défavorable à la main d'œuvre, elle représentait en tout cas un progrès évident par rapport à l'état de choses antérieur. Il n'en faut pas d'autre indice que la migration continue au XVIII<sup>e</sup> siècle de la population ouvrière vers les faubourgs qui échappaient à l'emprise des corporations." Echo social, dirai-je à mon tour, bien caractéristique si on veut le rapprocher du souci qu'a Rousseau de libérer l'électeur de toute tutelle, de tout parti afin de permettre à chacun de n'opiner, ainsi qu'il dit, que par lui-même.

Mais la preuve la plus frappante peut-être du rapport qui existe entre un Droit et les changements sociaux et politiques dont il est contemporain c'est précisément, et paradoxalement sans doute, notre Code civil, réputé exclusivement rationaliste et universaliste, qui l'offre au simple examen des conditions et de l'esprit qui ont présidé à sa naissance.

Pour rendre probant cet examen, il faut rappeler d'abord à quel moment d'évolution et en face de quelle tradition va surgir, progressivement d'ailleurs ce qui va devenir le "*Code civil des français*".

Si l'on met à part deux corps de règles émanant directement d'autorités constituées, le droit canon, valable notamment en matière de mariage et de famille, et les ordonnances royales, valables pour tout le royaume à condition, pour chaque province, d'avoir été enrégistrées par son Parlement, notre ancien droit se composait de coutumes, coutumes du Nord, mixte exclusivement coutumier d'usages surtout gaulois et germains, et coutumes du Midi, celles-ci de droit écrit et pénétrées de droit romain. Ces coutumes, reflet des mœurs, se fixaient peu à peu grâce à l'interprétation des Cours de Justice et des Parlements. Mais il fallut attendre jusqu'au XVI<sup>e</sup> siècle pour que leur rédaction, depuis longtemps réclamée, fût en partie réalisée : et du XVI<sup>e</sup> au XVIII<sup>e</sup> siècle nos grands juristes, les Dumoulin, les Loysel, les Domat, les Pothier contribuèrent à leur unification. L'esprit de ce droit coutumier était de consacrer la hiérarchie sociale dans la société et dans la famille : classes privilégiées, puissance paternelle et maritale du chef de famille, incapacité de la femme, privilège de masculinité et droit d'ainesse, simple douaire en usufruit à la veuve. D'autre part, et en harmonie avec un tel droit des personnes, un régime de propriété hérité des idées féodales, consacrant un domaine éminent générateur, pour le propriétaire de fait, d'innombrables servitudes, et destiné à conserver les

biens dans les familles. Enfin propriétés collectives, sous forme surtout de biens de mainmorte. Face à quoi tout à coup, mais en réalité préparée depuis plusieurs décades et par les conditions de vie et par l'état des esprits, la grande secousse révolutionnaire et qui va précisément renouveler le droit en fonction du changement social, car il ne faut pas être dupe du nom péjoratif de *droit intermédiaire* appliqué traditionnellement par les juristes pour désigner le droit de l'époque révolutionnaire. Dans un terrain brusquement déblayé se trouvent semés les germes d'un droit nouveau de la même façon et en même temps que l'on plante les arbres de la liberté. Un premier dessin d'ensemble est tracé dont le code tout proche ne va pas recueillir toutes les audaces, mais dont, pour tout l'essentiel, il conservait l'esprit. C'est d'abord la grande condamnation du régime d'autocratie et de privilège, et la grande exaltation de la liberté, sans la vue nette d'abord, sans doute, que celle-ci également peut avoir ses excès et tendre, ainsi que Montesquieu l'a montré du pouvoir, à abuser d'elle-même. Pour protéger cette liberté et l'étendre à tous, la Loi est proclamée souveraine, l'unification politique est réalisée par la suppression des provinces et des diversités locales, l'unification judiciaire par la suppression des Parlements et la création des tribunaux. Reste l'unification juridique plus laborieuse et qui appelle un code dont trois projets élaborés par Cambacérès n'aboutissent pas.

En attendant donc, un régime-pilote, pour ainsi dire, et dont toutes les avenues d'avenir ne seront pas suivies jusqu'au bout est mis sur pied. Avec l'abolition des classes, du droit d'aînesse, ce régime proclame bien entendu l'égalité des personnes et des terres, la sécularisation du mariage et l'admission du divorce, la libération de la famille et le contrôle de la puissance paternelle et, au nom de la liberté toujours, la reconnaissance et la libération de la propriété individuelle, où l'on voit, avec Locke, le signe de la personnalité et de la liberté. Ce à quoi répond d'autre part, afin de consacrer l'autonomie de la volonté individuelle, la liberté des conventions et la liberté du commerce, sans oublier la suppression, dont j'ai parlé plus haut, des corporations et de toutes organisations professionnelles.

Ce n'est donc pas sans un modèle et qui, lui-même, se trouvait dicté par les convulsions de la réalité que la commission de quatre membres; dont l'illustre Portalis et Tronchet, désignée le 24 Thermidor an VIII, va soumettre à son tour au Tribunal de Cassation et aux Tribunaux d'appel—souci évident de contact avec la pratique—un projet qui, après diverses vicissitudes, deviendra le 21 Mars 1804 le "*Code civil des Français*", lequel, déjà, n'abroge l'ancien droit qu'à l'égard des matières réglées par le Code nouveau. Si grand que soit un changement social en effet, il ne bouleverse pas tout. Le code conservera donc de la tradition ce qui en demeure vivant et acceptable dans le régime nouveau. Dans un esprit de réalisme et de transaction on vise à consacrer les conquêtes de la révolution sans tarir toutes les sèves de la tradition. D'où par exemple telle retouche au régime de la famille

tel qu'il avait été défini par le droit "intermédiaire". D'où inversement la reprise des principaux thèmes du même droit que nous avons énumérés. D'où enfin les mêmes méconnaissances et des dangers de la liberté illimitée et de l'importance des intérêts collectifs et des problèmes du travail. Aveuglement ou astuce des possédants ? Peut-être y a-t-il de cela ? Il y a surtout ce fait, sujet précisément de notre propos, que le droit reflète et exprime plus qu'il ne devance le changement social. Ce n'est pas sans intention que nous venons d'insister sur ce qu'il a fallu d'efforts, d'essais et de temps pour mettre au point les formules juridiques adéquates au grand changement de 1789. Comment les codes même s'ils ne la devançaient pas, suivraient-ils si facilement toujours l'accélération de l'histoire ?

En tout cas il faut rendre cette justice aux auteurs du Code que s'ils ont cherché à voir plus qu'à prévoir, ils n'ont pas cru tous à la fin de l'histoire ni à une armature juridique complète et définitive qu'ils auraient donnée au cours à venir de l'histoire. Leurs formules trouvées, et si conformes qu'elles pussent apparaître aux commandements mêmes de la raison, tous n'ont pas partagé l'illusion de Robespierre non plus que celle de toute une génération d'exégètes du Code nouveau. Témoin cette déclaration si juste et en un sens si prophétique de Portalis : " Nous nous sommes préservés de la dangereuse ambition de vouloir tout régler et tout prévoir. Les besoins de la société sont si variés, la communication des hommes est si active, leurs intérêts sont si multiples et leurs rapports si étendus qu'il est impossible au législateur de pourvoir à tout.—D'ailleurs comment enchaîner l'action du temps ? Comment s'opposer au cours des événements ou à la pente insensible des mœurs ? Comment connaître et calculer d'avance ce que l'expérience seule peut nous révéler ? La prévoyance peut-elle jamais s'étendre à des objets que la pensée ne peut atteindre—Les lois une fois rédigées demeurent telles qu'elles ont été écrites. Les hommes au contraire ne se reposent jamais. Ils agissent toujours—Une foule de choses sont donc abandonnée nécessairement à l'empire de l'usage, à la discussion des hommes instruits, à l'arbitrage des juges. L'office de la loi est de fixer par de grandes vues les maximes générales du droit, d'établir des principes féconds en conséquence."

Texte d'une remarquable ouverture d'esprit, n'est-il pas vrai ? Lorsque en effet il prévoit, à côté de ce qu'il appelle un peu plus loin le "sanctuaire des lois", le rôle de la coutume, de la jurisprudence et de la doctrine, ici clairement désignées, et lorsqu'il vise en même temps les transformations incessantes des mœurs et des relations entre les hommes, ne laisse-t-il pas tout le champ nécessaire non seulement à toutes les applications de détail—ce qui ne demanderait pas tant de justification—mais aussi à l'adaptation des maximes et des principes sans laquelle, du fait de changements sociaux, le repos des textes écrits que Portalis lui-même oppose à l'activité des hommes risquerait de se muer en un sommeil éternel et définitivement stérilisant ?

On sait assez que, moins d'un demi-siècle après la parution du Code, les progrès de la technique et de l'industrialisation avec les changements sociaux qui les accompagnaient nécessairement sont devenus si sensibles et si rapides qu'ils ont exigé non seulement les interprétations de plus en plus souples, ingénieuses et extensives de la part de la jurisprudence, mais que, peu à peu, ce sont presque de nouvelles régions du droit qu'il a fallu ouvrir par suite des excès ou des impuissances de l'individualisme libéral en face du changement de nature et d'échelle des problèmes, en particulier de l'entreprise et du salariat. S'il y avait *abus* du droit, comme on commence à le penser, ou déficience du droit, comment la même loi qui fait obligation au juge, sous peine de forfaiture, de dire le droit pourrait-elle se soustraire elle-même à l'obligation de mettre le juge en mesure de dire en effet le droit dans la nouvelle conjoncture? Si face à l'impératif du changement social, le droit, pour être fidèle à sa mission d'ordre et de justice, a besoin d'un supplément d'âme, et de se faire solidariste en même temps qu'individualiste, ce n'est pas Portalis sans doute qui l'accuserait de s'être renié lui-même.

C'est une vue un peu sommaire—nous avons essayé de le montrer—que celle qui immobilise la législation de 1804 et les principes qui l'inspirèrent dans l'airain de l'*a priori*. Le juriste Morin qui a clamé avec éloquence la révolte des faits contre le droit n'est pas tout à fait exempt d'un tel jugement sommaire quand il parle de "dogme éternel", de "construction définitive du juste faite pour les hommes de tous les temps". Ceci se rattache sans doute chez lui à une vue générale du XVIII<sup>e</sup> siècle qu'il est aujourd'hui difficile de partager. N'écrit-il pas en effet dans le livre auquel nous avons fait allusion: "Cette évidente contradiction de l'individualisme avec les faits n'était pas de nature à en éloigner les hommes du XVIII<sup>e</sup> siècle. Dans tous les domaines de l'esprit, même dans celui de la science physique, l'on prenait alors les plus grandes libertés avec l'expérience. Les spéculations de la raison devaient l'emporter sur les données fournies par l'observation." Par contre nous abonderons dans le sens de M. Morin lorsqu'il affirme que l'homme isolé, titulaire de droits sans limites, n'est qu'une abstraction, et que la technique juridique qui découlait de l'individualisme n'est pas en harmonie avec les résultats de l'évolution. "Pour la réglementation des relations entre les hommes, écrit-il, le contrat doit perdre de son monopole. A côté de lui il y a place pour les organismes."

Sans soulever ici, ce qui est impossible, la question de savoir si le contrat n'est vraiment que ce que croit M. Morin et s'il n'est pas chargé au contraire de socialité; et, attachant la même importance que M. Morin au groupement en tant que tel et à son statut organique, remarquons seulement que, de l'aveu de notre auteur, il existe dans notre législation, et depuis longtemps des groupements où, même pour la modification des statuts, la loi de la majorité s'est substituée à celle de l'unanimité: ce sont les sociétés par actions. La même majorité suffit encore pour obliger tous les créanciers de la faillite,

lesquels se trouvent ainsi constitués en corps. Même disposition obligatoire aussi en ce qui concerne le corps électoral où la majorité fait loi. M. Morin a-t-il raison alors de s'en prendre à Rousseau qui est celui précisément qui, après Hobbes d'ailleurs, a très précisément distingué le rôle de l'unanimité et celui de la majorité dans la constitution et le fonctionnement du corps politique. L'art du contrat peut être tout aussi bien de retrouver la nature oblitérée, pour la légitimer, que de substituer à une nature que l'on veut ignorer, une fiction artificielle qui lui soit étrangère. A la formule "les faits contre le droit" qui veut accuser une fausse antinomie substituons la consigne: "le droit à la mesure des faits," et ne méconnaissons pas les efforts du droit individualiste pour s'adapter à cette mesure.

Ce qui demeure en tout cas assuré c'est que cent cinquante ans d'évolution économique, politique et sociale ont montré que cette évolution commande au droit plus qu'elle n'est commandée par lui. Pendant cette période, le droit, loin de se raidir dans une intransigeance métaphysique absolue dont un Portalis, assez bon témoin en la matière, nous a montré qu'elle n'était pas dans son intention même première, s'est efforcé, par les voies parallèles de la jurisprudence et de la doctrine, s'est constamment efforcé de s'assouplir pour s'adapter, cependant que l'y aidait, concurremment, un mouvement d'opinion certain en faveur de l'humanisation des rapports entre les hommes et d'une conception moins inégale de la liberté. Il est significatif à cet égard de constater—côté doctrine—l'intérêt passionné soulevé, autour en particulier de l'œuvre de Geny, par la question des méthodes d'interprétation. Les variations mêmes de Geny sur le rôle respectif de la stricte loi et de la libre recherche scientifique et sur l'importance majeure finalement accordée par lui à la technique sont à noter comme d'instructifs témoignages.

Mais c'est la jurisprudence surtout qui, soutenue d'ailleurs par la doctrine, va jouer un rôle décisif. La doctrine représente l'enseignement en même temps que la recherche. Or les juges qui vont fixer la jurisprudence ont reçu l'enseignement et n'ont pas rompu tout lien avec les maîtres de la doctrine qui ont été leurs professeurs, et dont au delà de l'école l'enseignement continue à porter à travers leurs livres. D'autre part il y a les notes commentant les arrêts principaux et où magistrats et maîtres de la doctrine se retrouvent comme collaborateurs. Mais l'avantage surtout du juge qui fait la jurisprudence c'est son contact continu avec la pratique dont la variété étend singulièrement l'éventail de son information. Et puis le juge est un homme et qui vit dans son temps en même temps que dans son métier. Pour cette double raison aucun écho ne lui échappe ni des difficultés contentieuses ni des mouvements d'opinion, non plus que des changements sociaux. A ces titres divers le juge occupe une place de choix non seulement pour interpréter avec souplesse et ingéniosité le code, et intégrer à cette interprétation les tendances contingentes, mais pour préparer aussi les voies à l'action législative, comme il s'est vu par

exemple à propos de la loi de 1898 sur la responsabilité des accidents du travail.

Ce sont ces efforts conjugués de la doctrine, de la jurisprudence et de l'activité législative, ainsi préparée, du Parlement qui ont permis au code civil de continuer à régir la vie sociale depuis cent cinquante ans : combien cependant de bouleversements l'ont affectée ! Rappelons le mot de Siegfried cité plus haut : " un véritable âge nouveau de l'humanité " !

Mais ces efforts mêmes et toutes les stimulations qu'ils ont reçus des grandes discussions sur la méthode d'interprétation auxquelles nous n'avons pu faire qu'une simple allusion n'attestent—ils pas suffisamment l'action exercée sur le droit par les changements sociaux. Si nous avons parlé d'impératifs de situation c'est en pensant précisément au caractère quasi-irrésistible de cette action.

Nous n'avons pas ici le loisir de procéder à un examen suffisant. Citons seulement quelques exemples montrant qu'à ces impératifs sociaux la jurisprudence a réussi à répondre d'une façon assez satisfaisante sans s'écarter de façon telle des grandes voies tracées par le code qu'il lui ait fallu le renier catégoriquement. Un vin nouveau a pu, sans les faire craquer, remplir les vieilles outres. C'est ainsi que le droit du contrat, que le droit de la propriété, ces deux citadelles cependant de l'individualisme juridique, l'un à l'enseigne de l'autonomie de la volonté, l'autre à l'enseigne du droit absolu du propriétaire de la chose, n'ont pas empêché que, à l'intérieur même et autour de ces citadelles, s'élèvent des constructions jurisprudentielles, puis législatives, d'un style nouveau, et susceptibles de donner asile et satisfaction à des revendications sociales dont on eût pu croire qu'elles ne franchiraient jamais l'enceinte de 1804. Ainsi le régime des contrats a-t-il vu se multiplier les restrictions d'ordre public, les causes de nullité, la notion d'imprévision ébranler la liberté et la stabilité qui paraissaient cependant attributs constitutifs d'un régime de liberté. Et cependant demeure l'art. 1134 du Code civil. De la même façon l'article 1165 qui écarte du contrat l'effet à l'égard des tiers n'a pas empêché de naître la stipulation pour autrui dont il suffit de songer aux assurances pour comprendre tout le rôle à la fois juridique et social. Et que dire du contrat collectif et de toutes ses applications sinon que pour s'adapter aux impératifs sociaux et aux changements intervenus dans le monde du travail et de l'entreprise il a transformé à la fois la théorie classique du contrat et celle de la personnalité. Que dire encore de la prolifération des articles 1382 à 1386 du Code Civil qui réglementent la responsabilité centrée sur l'idée de *faute* et d'où l'on a pu faire sortir une responsabilité où l'idée objective de *risque créé* remplace l'idée subjective de *faute* commise pour aboutir à la grande loi sociale du 9 avril 1898 sur les accidents du travail qu'étendront encore tant de décisions de la jurisprudence, sans parler de l'organisation de la sécurité sociale obligatoire.

Plus générale peut-être encore est la théorie nouvelle de l'abus du droit, car elle n'englobe pas moins les restrictions imposées au droit,

si sacré aux yeux du code, de la propriété, que les restrictions à la liberté des contrats. Comme la notion de risque nous menait au caractère social de la responsabilité et à la considération des changements intervenus dans le monde ouvrier, l'abus du droit une fois reconnu témoigne du caractère social du droit et qui fait que " qui use de son droit ne saurait abuser de sa liberté " est un adage aujourd'hui périmé.

Ce n'est pas seulement la propriété qui tend à devenir une fonction sociale, mais il peut sembler, et il a semblé à certains, que la notion de droit elle-même, de droit subjectif du moins, c'est à dire de droit reconnu à l'individu et garantissant sa liberté devait faire définitivement place à celle de fonction sociale et disparaître donc du droit privé en même temps et de la même façon que devait disparaître aussi du droit public la notion de souveraineté. Il ne faudrait plus parler que de situations juridiques, de statuts légaux et de compétences. La critique radicale de Duguît et de son école n'a pas certes manqué d'utilité. Mais peut-être a-t-elle dépassé son but. Écoutons un éminent juriste déjà cité, La Morandière, et qui n'est certes pas de ceux qui ferment les yeux aux changements sociaux et aux incidences que ces changements ne peuvent pas ne pas avoir sur le droit. Il ne craint pas de défendre la vieille notion, mais rajeunie, de droit subjectif, persuadé qu'il est que le code avec ses si souples formules n'était pas d'une intransigeance aussi individualiste qu'on a pu le croire et que c'est pour cela qu'il vit encore : " Même en se plaçant, déclare-t-il, à un point de vue social, il nous paraît difficile de nier que les situations juridiques comportent des prérogatives reconnues à certains individus à l'égard des autres. Toutefois les doctrines sociales ont, à juste titre, rappelé que les droits, s'ils ne sont pas que des fonctions, ont une fin sociale et ne sont pas reconnus à l'individu uniquement pour la seule satisfaction de sa liberté et de ses besoins égoïstes."

Cette dernière remarque nous permettra de conclure. Nous avons vu les changements sociaux imprimer peu à peu leur marque au droit qui ne peut les ignorer. Dans le même temps d'ailleurs les doctrines sociales ont, dit le texte que nous venons de citer, à juste titre *rappelé* que les droits ont une fonction sociale.

Soulignons ce mot : *rappelé*. Ce caractère de fonction sociale n'est pas proprement en effet une innovation non plus qu'une radicale condamnation du code individualiste et de son droit dit subjectif. Car comment oublier que la Déclaration de 89 qui l'inspire proclame, à l'instar de Rousseau, les hommes non seulement libres, mais aussi égaux en droits (art. 1); que cette liberté n'est qu'un pouvoir de faire ce qui ne nuit pas à autrui (art. 4), précepte que précise le même article 4 en donnant comme " bornes " à l'exercice des droits naturels de *chaque* homme celles qui assurent aux *autres* la jouissance des *mêmes* droits, cependant que l'art. 5 donne à la loi mission de défendre les actions *nuisibles à la société* et que l'art. 6 définit cette loi comme une volonté générale, la même pour tous et aux yeux de laquelle tous les citoyens sont égaux. L'art. 12 enfin souligne que la force publique qui garantit

les droits de l'homme est instituée pour l'avantage de tous. Droit et liberté ne sont donc jamais séparés de leurs deux limites: l'égalité de tous et l'intérêt de la société.

Pourquoi renier un droit ainsi défini à moins de vouloir l'incliner devant un totalitarisme de quelque couleur qu'il soit. Le reniera-t-on par crainte de son caractère soi-disant absolu et au nom des méfaits certains d'un individualisme sans bornes. Mais nous venons de voir qu'il n'est, en son principe du moins, rien de cela. L'absolu n'est pas dans le droit lui-même, mais dans la volonté d'attribuer à chacun sa juste part de droit. Droit pour chacun, oppression pour aucun. Et la volonté conjointe de liberté et d'égalité qui sortit de ce grand cri de libération et qui, le désignant sans le nommer, condamnait déjà l'abus du droit associait donc d'emblée droit et devoir et justifiait d'avance toutes les adaptations sociales nécessaires. Le droit subjectif ramené à sa vraie définition peut naturellement s'investir d'une fonction sociale sans par cela ni trahir cette fonction ni se renier lui-même. Qu'il se rappelle seulement que, n'étant pas un absolu, il ne se définit qu'en se limitant, et que la question qu'il pose n'est pas de tout ou rien, mais de degré et de réciprocité.