

CONCEPTS OF PUBLIC OPINION

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I. THE CONCEPTUAL APPROACH TO PUBLIC OPINION

Public opinion in democracies should be the final element in political life which gives significance to the activity of the state and the fact of membership in it. The recognition of the force of opinion implies that in the overflowing of the individual's will to his neighbor's will, in the desire to administer the things common to wills, we have perhaps one of the most basic psychological foundations of the state.¹ While one may contend that the problems of the nature of the state or of jurisprudence are more than adequately conceptualized, this certainly cannot be said of public opinion. Yet since the very early use of the term by John of Salisbury in 1159, its significance in human history has not been less than that of justice, liberty, or law.² It is suggested that a statement of the elements which appear to be universal is the proper first step in the scientific study of public opinion. The method here proposed may seem barren of immediate results, but it is necessary to clarify reasoning on public opinion as force-ideas³ in political history. Commonly understood abstractions are necessary to pave the way for organized thinking and action.

It is clear that emphasis on public opinion is a comparatively late development in the history of the state. Public order, as Dean Pound has observed, is the first interest of primitive law and government.⁴ Public order in a primitive community is essentially

¹ W. E. Hocking, *Man and the State* (New Haven, 1926), Part III.

² *The Statesman's Book of John of Salisbury*, trans. and ed. by John Dickinson (New York, 1927), pp. xxii, 39, 130.

³ Alfred Fouillée, "Synthesis of Idealism and Naturalism," *Modern French Legal Philosophy* (Boston, 1916), p. 179.

⁴ Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven, 1922), p. 72.

an objective factor, opinion itself having little significance. Public opinion became important when in later state development political opinions were weighted with value as determinants of governmental conduct. If public opinion is to be accepted finally as a political force, we must believe that opinion has value in itself. A pragmatic test of policy is therefore a part of the theory of public opinion.

II. THE PUBLIC

The public is the *bête noir* of public opinion, since writers have for it a deeply critical attitude. Yet a clear notion of the meaning of the public is essential to lucid thinking about public opinion, for otherwise opinion has no political significance. One may assume either a political and legal or a psychological and sociological conception of the public. Owing to the fact that public opinion itself is a concept developed intimately with democratic theory, the public should also be a legal and governmental concept.⁵ The sociological concept starts with groups and the action of groups, and it uses the idea of the public to explain the formation, control, extent, and content of opinion. A separate concept will be developed to cover the expression of opinion which involves the relation of opinion, public, and government.⁶

Two significant concepts of the public have been presented by Lowell and Lippmann. Lowell believes the public to be those who are willing to abide by the decision of the majority. He discusses the conditions necessary to the existence of the public, the most important being a certain basic homogeneity of view and the treatment of questions where decision by political action is possible. Lippmann agrees with Lowell to the extent that the essential problem of the public is participation,⁷ but he stresses the in-

⁵ The idea of public law as related to the structure and function of government is of value in this connection. Sociological definitions of law, as in the works of Duguit, break down the historic distinction between public and private law. The principles of the public are to be properly drawn from public law.

⁶ Early American tradition thought of the people as distinct from the public. The people, though they might not have the right to vote or hold office, could participate in government ultimately by the right of revolution. See J. A. Smith, *Growth and Decadence of Constitutional Government* (New York, 1930), pp. 14-15, 172-175. The right of revolution complemented a restricted political participation. As the right of revolution is discredited, people and public have been assimilated, confusing the nature of the public. People is a political concept implying allegiance.

⁷ See A. L. Lowell, *Public Opinion and Popular Government* (New York, 1913), and Walter Lippmann, *The Phantom Public* (New York, 1925). Lowell's idea that

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effectiveness of the masses in dealing with the "unseen environ- ment" and proposes a set of canons as to the activity of the public. A public consists of those who are spectators, who are not judges of the merits of a question, and who are interested chiefly in making certain "rules of the game" and in obedience to those rules by the parties to a dispute.

A number of views as to the nature of the public are possible. The public may be those who can influence the conduct of govern- ment. This is essentially a sociological theory, in which groups are of the greatest importance, and finally it must resolve itself into a study of the formation of opinion and the action of weighted groups. It is a statement of the importance of the expression of opinion, but as a concept of the public it is not as basic as the idea of participation. A converse proposition, in which participation is eliminated, is that the public consists of those upon whom the in- cidence of governmental action falls.⁸ Such a concept is without the emphasis required by democratic theory, for opinion as a system of force-ideas requires participation as an indispensable theoretical element.

A narrower statement which contains this feature by implication is that the public is a body of persons owing allegiance to the state, or perhaps the citizens of a state, or those who have a legal duty of obedience.⁹ There is something to be said for this view, though it would be difficult so to associate such a public with opinion as to derive the modern notion of public opinion. It is hardly necessary to discuss here the sense in which a journalist refers to the public in regard to the press—the public consists of those who are willing to pay attention to the news. This has, however, more bearing on opinion, and especially its formation, than on the concept of the public.¹⁰

the people may have valid opinions as to how a problem may be settled is developed as a major thesis by Lippmann.

⁸ Cf. John Dewey, *The Public and its Problems* (New York, 1927). Dewey is really developing a thesis as to the nature of the state. The public, in his use of the term, is, when organized, the state. The burden of his argument applies to the consequences of non-governmental behavior rather than to the incidence of governmental ac- tion.

⁹ Cf. Lord Bryce, *Modern Democracies* (New York, 1921), I, p. 430. "The public opinion of a people is the expression (as applied to politics) of the intelligence, taste, the temper and the moral feelings, of the individual citizens." Italics are mine.

¹⁰ An indirect suggestion as to the nature of the public occurs in F. Gény, "Ju- dicial Freedom of Decision . . ." *Science of Legal Method* (New York, 1921), p. 7.

In any case, when we consider the public we must begin with the state, and in all states there is some scheme of participation, the logical starting point of our investigation. For an absolute government, as pictured by Hobbes, the concept of the public offers no problems. It is all those who are subject to the rulership of one absolute monarch by virtue of their participation in one decision, that is, to be so legally obligated. Such a limited participation is envisaged by Locke, though further participation in connection with individual natural rights is retained, eventually by the right of revolution. Hobbes and Locke have, therefore, little difficulty with the notion of the public, as indeed a strict adherence to the social contract theory of original participation would indicate. However vaguely outlined, any representative institutions, as admitted by Hobbes and Locke, present the ultimate difficulty of the public. Such an admission is a prophecy of the modern democratic problem of participation in government.

In making participation an essential attribute of citizenship and majority will in fact a test of the general will, Rousseau comes close to Lowell's theory of the public. An individual not willing to be bound by the general will is a political outcast, i.e., he is not a member of the public. But the nineteenth-century development of the general-will theory into a metaphysical interpretation of the public, it would seem, is contrary to the American tradition of the contractual or associational state which was inherited from the seventeenth century. Hence the general-will theory, as distinguished from majority rule, is untenable as far as our tradition, and pluralism, indicate future development.

Participation becomes a dominant problem by virtue merely of the organization of political society. We have defined forms of government in terms of participation from Aristotle to the present, though the general agreement in modern states that stability comes chiefly from well-recognized means of participation has devalued the principles of governmental classification. Nothing is so inherent in democracy as participation, and this gives the surest ground for a definition of the public. In defining the public, as a concept of politics, as those persons who have the right of partici-

Gény objects to the idea of the legal historical school "that public opinion, representing the general feelings, more or less conscious, of the people *interested*, can legitimately suggest to the courts the solutions of juridical problems . . ." Italics are mine.

pation, we reach the political organization, the legal distinctions, the aspect of opinion.

But even if we participation as a substance of participation, and many especially by organizing developing. In some legal position in realized in other such means of participation as *action* which reliance activity of those concept; it may are becoming less to laws is a form of

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¹¹ Cf. Rudolph von 224. This tendency in Scientific Codification ing that political and class, he says: "Does of a country's affairs opinion?" If, however than the Idealists, it ests among the citizens purposes that T. H. insisted that every general will. A. D. pp. 46, 78ff, has re-st of the specific case of the participation of the problem of participat

we must begin with the theme of participation, action. For an absolute concept of the public offers no alternative to the rulership of one man in one decision, and limited participation is participation in connection with the law eventually by the right of the majority. Therefore, little difficulty is to be expected in strict adherence to the principle of participation would indicate. The nature of the institutions, as well as the ultimate difficulty of the modern democratic

of citizenship and will, Rousseau comes to the conclusion that the individual not willing to participate in the majority, i.e., he is not a citizen. The development of the modern democratic interpretation of the American tradition of the individual is inherited from the social contract theory, as distinguished from our tradition, and

by virtue merely of the various defined forms of participation from Aristotle to the present, it is stated that stability of participation has depended on the definition. Nothing is so important as this gives the surest way of influencing the public, as a result of the right of partici-

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pation, we reach the highest possible ground. The legal character of political organization is not obscured by psychological or sociological distinctions, and the problem of groups is conceived as an aspect of opinion rather than the public.

But even if we assume an essential validity in the idea of participation as a test of the public, it does not mean that the substance of participation is unchanging. Many of the historic reforms in government have been attempts to reorganize participation, and many new ways of making participation effective, especially by organized or conflicting groups or interests, have been developing. In some cases, these means have as yet an uncertain legal position in relation to the public. Participation is being realized in other ways than by the ballot, and the stabilization of such means of expression alters the limits of participation. Yet participation as an essential concept remains; it is the basis of *action* which relies on the will of the individual. Nor does the inactivity of those having the right of participation invalidate the concept; it may mean merely that older devices, such as the vote, are becoming less effective. It may also be true that disobedience to laws is a form of negative participation in political life.¹¹

III. OPINION

If man acts only by cause and effect, and if he has no freedom to choose between two or more possible lines of conduct, there can be no value in considering opinion as a force, for the forces which are important are behind opinion. But if there is ever so little ability in human beings to deliberate and choose, opinion becomes important

¹¹ Cf. Rudolph von Ihering, *Law as a Means to an End* (Boston, 1913), pp. 223-224. This tendency in the analysis of the public appears in A. Alvarez, "Methods of Scientific Codification," *Science of Legal Method* (New York, 1921), p. 430. Observing that political and legal science must train both the governing and the governed class, he says: "Does not the latter class, through the vote, participate in the conduct of a country's affairs? Does not its state of mind synthetically constitute public opinion?" If, however, we use the idea of the general will somewhat more loosely than the Idealists, it is an expression which indicates that there are common interests among the citizens of the state. It was on the basis of common interests and purposes that T. H. Green, in his *Lectures on the Principles of Political Obligation*, insisted that every one should have an opportunity or right to contribute to the general will. A. D. Lindsay, *The Essentials of Democracy* (Philadelphia, 1929), pp. 46, 78ff, has re-stated this point with great force. It might be added that much of the specific case of the political pluralists is devoted to elaborating means whereby the participation of the individual may be made more vital. The re-statement of the problem of participation is one of their chief contributions.

to the extent of this freedom. As far as practical politics is concerned experience seems to indicate a power of choice. To think of opinion in a vital sense, we think of deliberative freedom in man and not of man as completely controlled by external or psychological forces, or innate ideas. The state must deal with wills in order to satisfy them, and, concretely, the will to power through ideas is merely another name for a public opinion which involves the freedom of deliberation and choice.¹²

Fouillée thinks of free-will as a power to choose between contrary views. Evolution or progress is his link between the ideal and the real. Every idea conceived tends toward realization by virtue of the fact that it is conceived, says Fouillée, very much as Mr. Justice Holmes said that every opinion tends to become a law.¹³ "When we permit our actions to be guided by the directive idea of freedom . . . we actually perceive its image growing clearer and clearer within us, by virtue of determinism itself." The notion of an ideal freedom, the development within the individual of constantly increasing energy, implies that man is not a mere thing, but that he has consciousness, intellect, and will which is capable ideally of willing for the universe. The mere fact that such a freedom is conceived is directive in human conduct.

While Taine said that history chooses our constitutions and that we merely adapt ourselves to them, Fouillée believes that history was enacted with human aid. Even realists might admit that a nation should be conscious of a "capacity for progress," which is a pure idea. While we may begin a theory of rights or opinion with a pure idea, we must analyze scientifically the consequences of action and the means of realization at hand. The idea of freedom and the fact of freedom (let us say in opinion) tend toward realization. Practical freedom is compatible with science; it moves in the direction of the ideal by natural and intellectual means constituting a determinism. Thus naturalism and idealism unite in a practical and progressive freedom which is the power to develop all our faculties by reflection on experience.¹⁴ Such a synthesis is but another state-

¹² Hocking, *op. cit.*, pp. 316, 404. The purely psychological approach to opinion chiefly suggests that the only important aspect for political science is behavior with an attendant emphasis on its irrationality. Without denying the importance of behavior, the suggestion is here made that will is equally important.

¹³ *Lochner v. New York*, 198 U. S. 45 (1905).

¹⁴ See G. E. G. Catlin, *A Study of the Principles of Politics* (New York, 1930), pp. 24-26.

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ment of a pragmatism which relies on human ideas for values and on the eventual influence of objective or scientific reality as a channel of achievement.¹⁵

But when we consider various theories of truth, it is striking how infrequently the individual opinion is given value.¹⁶ Moral theology within its field leaves nothing of an essential character to public opinion; idealism often stresses the ability of those trained in philosophy; and naturalism places truth outside of any vital perception of the individual. Even in the case of the great democratic leaders, public opinion is represented as arriving at the truth. Perhaps Milton, Jefferson, and Lincoln best illustrate this tendency.¹⁷ If we, as Duguit, begin with will and consciousness, we must inquire likewise as to the relation of this will and consciousness to the "objective" fact of social solidarity.¹⁸ Will and the content of consciousness, for Duguit, have no real contribution to make to truth. Truth is social solidarity. But whatever one's theory as to the nature of ideas may be, we can rest in part on the fact that individuals do have opinions and that these opinions are significant in human relations.

¹⁵ Fouillée, *op. cit.*, pp. 158, 179-188. As Vinogradoff points out (*Outlines of Historical Jurisprudence*, Oxford, 1920, I, 37), consciousness once created becomes a powerful agent in itself and one of the means of carrying on evolution. This has been clearly emphasized by Fouillée. Rightly understood, his theory of ideas as forces gets rid of the supposed passivity of the mind and lays stress on the most elemental form of its conscious reaction against the outer world. Cf. Dewey, *op. cit.*, Chap. I.

¹⁶ Cf. Fritz Berolzheimer, *The World's Legal Philosophies* (New York, 1912), pp. 64, 68, 83-84, 151, *passim*.

¹⁷ "The people," said Cicero, "although ignorant, yet are capable of appreciating the truth, and yield to it readily when it is presented to them by a man whom they esteem worthy of their confidence." Niccolo Machiavelli, *Historical, Political, and Diplomatic Writings: Discourses* (tr. C. E. Detmold, Boston, 1882), II, 106. Cf. Henry Sidgwick, *The Development of European Polity* (London, 1903), p. 109. In explaining the errors of public opinion, we may take as a cause the sin of Adam, as Christian theology formerly did; its lack of wisdom or true experience; its lack of intelligence; or its lack of instruction. Laski, in harmony with modern writers, emphasizes the importance of the instructed judgment. *A Grammar of Politics* (New Haven, 1925), pp. 146-147.

¹⁸ Léon Duguit, "Theory of Objective Law Anterior to the State," *Modern French Legal Philosophy* (Boston, 1916), pp. 267, 272, 294. See Catlin, *Principles*, p. 225: "For this combination which involves a measure of community interest and an interdependence which is thought of as in some measure a free act of will, rising above bare mutualism, the term 'solidarity' has been put forward by the French school of thought. . . ." Hocking, *op. cit.*, p. 383: "The affirmation of the state is deeper than conscious acquiescence, deeper also than fear, deep as the instinctive sense of the necessities of personal growth."

The formation of habits of thought may be observed historically, and within limits the revision of previous customary points of view.¹⁹ Custom is an evidence of opinion, and particularly so when habits of thought are organized means of social control. Each mind shows a systematization in points of view in which we observe, first, feelings which, when organized with mental valuations, become sentiments; and, second, the organization of sentiments into pattern reaction types which may be called attitudes. Attitudes are organizations of feelings and sentiments into consistent groups.

Lippmann develops the concept of the stereotype to explain this fact, but he stresses the visual aspect of opinion almost to the exclusion of valuations, and this, combined with his failure to appreciate the stability of opinion, robs the term of its analytical value.²⁰ It is doubtful in any case if such a term, borrowed by Lippmann from a field of art in which visualization is significant, can be stretched to cover the needs of political science. He does use at times, the term attitude, but he wavers between the idea of opinion as formed in a short time and opinion as a relatively permanent force.²¹ The *cliché* is undoubtedly valuable in the discussion of casual opinion which is formed primarily to meet an issue, but it is defective in treating permanent valuations where the visual element is only an incident of application.²²

With mental attitudes as a starting point, we reach the problem of the formation of opinion. As a generalization, it may be said that broader and more fundamental opinions are slowly matured and are relatively permanent when formed,²³ and that it is only in cases

¹⁹ The historical school of jurisprudence in the nineteenth century deserves great credit for insisting on the *development* of ideas. As Pound says: "The historical school insisted on the social pressure behind rules where the philosophical school of the preceding centuries had insisted on the intrinsic force of the just rule as binding upon a moral entity and the analytical school later insisted upon the force of politically organized society." *Interpretations of Legal History* (New York, 1923), p. 18.

²⁰ See *Public Opinion*, pp. 81 ff. Cf. K. G. Wurzel, "Methods of Juridical Thinking," *Science of Legal Method* (New York, 1921), pp. 339-342, for emphasis on images in the formation of concepts, which are viewed as groups of images connected by memory. Yet Wurzel makes the will the foundation of logical thinking, with logic as a directive power in language and the body of concepts. On p. 371, he shows how valuations make up the great part of our thinking.

²¹ *Public Opinion*, pp. 87-92, 125, 133, 197, 254, 351. See also *The Phantom Public* (New York, 1925), pp. 65 ff, 127, 128.

²² *Public Opinion*, p. 254.

²³ For instance, Machiavelli follows Hesiod in stating that the voice of the people (when not corrupted) is the voice of God, but he stresses, in harmony with the above

where individuals formed in a situation is formed in a developed mental heritage is the formation of opinion. This to observe something composed of ideas in culture. Ogburn has defined culture.²⁶ How changing applications what effect they on the content if any, the historical temporary tendency on ideas in periods of time.

view (divine will). Cf. the statement people cannot be considered impulse. . . assumes that social Catlin, *The Science*

²⁴ See Pitirim p. 710: "When opinion, ceremony under the names 'forces.' In this what is different,

²⁵ Cf. Lippmann *Public Opinion*; by the public and views, as set forth "Public Opinion" *Public Opinion* (New York, 1922), p. 19

²⁶ W. F. Ogburn

²⁷ Dewey, *op. groups in general civilization which*

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observed historically, customary points of view particularly so when under social control. Each mind is formed in which we observe, mental valuations, be- liefs, and opinions of sentiments into attitudes. Attitudes are formed by consistent groups. A stereotype to explain this opinion almost to the extent of its failure to appear in its analytical term, borrowed by socialization is significant, in the social science. He does use the term between the idea of opinion as a relatively valuable in the dis- crepancy primarily to meet an end in valuations where the difference is not.

When we reach the problem of opinion, it may be said that opinion is slowly matured and that it is only in cases

of the twentieth century deserves great attention. Pound says: "The historical development of the philosophical school of natural law of the just rule as binding upon the force of political authority" (New York, 1923), p. 18. In his *Methods of Juridical Thinking* (1942), for emphasis on images and symbols of images connected by logical thinking, with logic and symbols. On p. 371, he shows how

51. See also *The Phantom*

that the voice of the people is in harmony with the above

where individuals have no immediate interest that opinion can be formed in a short time. But it should be noted that casual opinion is formed in harmony, for the most part, with the more slowly developed mental attitudes or permanent opinions. The social heritage is undoubtedly the most important single factor in the formation of opinion, and a clear understanding of it will ordinarily give a certain degree of predictability as to the nature of individual opinion.²⁴ This the literature of opinion has neglected in its hurry to observe surface flurries.²⁵ Needless to say, the social heritage is composed of ideas and values as well as material equipment. Evolution in culture may be hastened by certain types of changes, but Ogburn has demonstrated a lag in the development of immaterial culture.²⁶ However, it is possible to see values as fixed but with a changing application as material culture alters. It is too early to say what effect the rapid technological changes of the present will have on the content of thought; nor can we say definitely what effect, if any, the historic ideas of western civilization will have on contemporary technology. It is probable that the effect of the machine age on ideas will be indirect and will appear only over considerable periods of time.²⁷

view (divine will being stable), the permanence of popular ideas. *Op. cit.*, II, 217. Cf. the statement of Mr. Justice Holmes (233 U. S. 389): "The universal sense of a people cannot be accidental; its persistence saves it from the charge of unconsidered impulse. . . ." Mr. Justice Brown said (163 U. S. 537): "The argument also assumes that social prejudices may be overcome by legislation. . . ." See G. E. G. Catlin, *The Science and Method of Politics* (New York, 1927), p. 167.

²⁴ See Pitirim Sorokin, *Contemporary Sociological Theories* (New York, 1928), p. 710: "When one reads attentively the existing discussions about the rôle of belief, opinion, ceremony, law, arts, religion, morals, and so on, he may easily discover that under the names of these various agencies there are, to a great extent, identical 'forces.' In this way the same agency is counted several times. The theories identify what is different, and separate what is identical."

²⁵ Cf. Lippmann's views on the transfer of stereotypes to new issues as stated in *Public Opinion*; Lowell's limitations on the type of questions which may be treated by the public and his insistence on the element of choice between two opposing views, as set forth in his *Public Opinion and Popular Government*; C. L. King, "Public Opinion in Government," Introduction to W. B. Graves, *Readings in Public Opinion* (New York, 1928); W. B. Munro, "The Pendulum in Politics," 154 *Harper's Monthly* (1927), 718-725.

²⁶ W. F. Ogburn, *Social Change with Respect to Culture and Original Nature* (New York, 1922), *passim*.

²⁷ Dewey, *op. cit.*, p. 7. Hocking, *op. cit.*, p. 260, for the functioning of small groups in generating new ideas. Of course, it is the interpretation of mechanical civilization which will change.

It has been the fault of individualism not to emphasize the joint behavior of individuals. Natural rights theory withdrew the individual from pre-existing associations, and so did economic individualism. Natural law in economics and natural rights have been assimilated, and neither views man in realistic association with his fellows. Rationalism tends toward the same result, but while a theory of public opinion must start with the individual will, it cannot remain there, for the meaning of that will in its efforts to deal with the world can be understood only in connection with other wills and the impact of environmental conditions. This effect is produced, to be sure, by the mechanics of contacts, primary and secondary, but more fundamental is the significance of associated life which those contacts impart to the individual. Attitudes are the product of life in society, whether we think of them as favoring or opposing a given order. If opinions are generated in associated life, they can best be expressed in group activity. Unless we assume some theory of the state as a moral, a real, person, we must continue to deal with the individual, though to understand the individual we cannot forget his life in association with others.²⁸

Today the need of experts and technicians in finding a basis of action is recognized. If we develop means of getting at what may be spoken of as relative truth, opinion will be left as the ruler of a functionless kingdom. If opinion may only support, and if it has no right to resist, the experts, the value of democracy is clearly in question. If the technique of finding and acting on facts is to be restricted to experts, popular government, except as a means of obtaining obedience from the masses, may well be only one short phase in the history of politics. There is some evidence to show that those dealing with the problem of keeping economic life functioning

²⁸ See Dewey, *op. cit.*, *passim*; R. E. Park and E. W. Burgess, *Introduction to the Science of Sociology* (Chicago, 1921), pp. 280-287. Cf. the discussion of Giddings' views by C. L. King, "Public Opinion as Viewed by Eminent Political Theorists," *University Lectures, 1915-16* (University of Pennsylvania Press, 1916), III, 442. In connection with group aspects of opinion, we may ask: What is international public opinion? First, we may deny that there is anything organic in it: it is merely the sum of the public opinion of various countries. Second, granting a legal unity to the states in the League system, there may be a rudimentary international public taking shape in so far as the League involves a system of international legal participation. International public opinion, of course, must be strictly differentiated from public opinion on foreign affairs.

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efficiently have a steadily diminishing confidence in the mass of the people. This is shown by the concerted efforts to control casual opinion which, though expensive, have been relatively effective. An integrated and sensitive economic society cannot tolerate too much effective heterodoxy in opinion; homogeneity in certain matters of opinion is a condition of its existence.²⁹

The difficulty of arriving at tentative conclusions as to opinion as a concept of political science has been increased by a series of distinctions which serve no real purpose. Public opinion, says King, is not mob action, public indignation, public sentiment, popular impression, preponderant opinion, general opinion, or public judgment. With this careful refinement completed, public opinion remains as a "social judgment reached upon a question of general or civic import after conscious, rational public discussion." Public opinion in this view is essentially what may be called casual as against permanent opinion, though King quotes with approval the idea of Ellwood that public opinion is a force back of all regulative institutions, which obviously involves the preservative rather than the generative aspect.

Mob action is rejected because it carries old standards, while public opinion creates new ones; but the maintenance of standards when formed cannot be excluded clearly from the action of opinion. It is not clear why public indignation should not be considered at least a manifestation of stable opinion, nor why public sentiment cannot include rational thought as well as feelings. It is not clear that popular impressions, which, he says, are unthinking reactions caused by suggestion and imitation, are always shallow, transient, and fickle, and are not to be viewed, let us grant, as inferior public opinion. A preponderant opinion is artificially defined as a majority judgment without discussion, and in accordance with mental attitudes and habits; but there is no logical reason why such a decision can never be as rational as one derived by discussion, and there is certainly no objective criterion of the discussion necessary to convert preponderant opinion into public opinion. A general opinion, according to King, involves a fatal unanimity, and is wanting in recent discussion and criticism. Yet should not this be public

²⁹ See G. E. G. Catlin, *The Science and Method of Politics* (New York, 1927), p. 96. But see also John Dickinson, "Democratic Realities and Democratic Dogma," in this REVIEW, Vol. 24, p. 305 (May, 1930).

opinion? Public judgment is merely less mature than public opinion, and perhaps more calm.³⁰

Plainly, these distinctions are subjective, and they make it almost impossible to determine what Lowell would call "real" opinion. They are qualitative judgments on the panorama of social conflict and human wills in action. We need start only with will and its content or wish; we need say only that public opinion is the content, in terms of valuation and attitude, of the wills of those persons who compose the public. To one, the opinion which seems predominant may be good; to another, bad. To one, it is instructed; to another, it is uninstructed.³¹ The formation of opinion and the judgment of its content is not a static or universal problem; it is to be faced in different ways depending on the character of civilization and a moving world of struggle and strife in the development and liberation of the capacities of mankind.³²

IV. OPINION, THE PUBLIC, AND THE GOVERNMENT

It is of primary importance to show that in a democracy the member of the public has a right to his opinions, and that the expression of this opinion, when effective, is a criterion of public policy. There are three possible questions at hand: the relation of opinion and the public, the relation of the public and government, and the relation of opinion and government. The latter two relations will be considered in the next two sections, where the effectiveness and creativeness of opinion are analyzed. If we assume that the public consists of those who have the right of participation in government, the function of such a concept is ultimately to designate the area or body of opinion which will be given weight

³⁰ See C. L. King, *loc. cit.*, in Graves, *op. cit.*, pp. xxi-xxxi. Cf. Lowell's distinction between "real" opinion and that which is not "real," and between impression and opinion. *Public Opinion and Popular Government*, Chap. IV; *Public Opinion in War and Peace* (Cambridge, 1923), Chap. I. See Stuart A. Rice, *Quantitative Methods in Politics* (New York, 1928), p. 51, for the conclusions of the Second National Conference on the Science of Politics: (1) opinion need not be the result of a rational process; (2) it need not include an awareness of choice; and (3) it must be sufficiently clear or definite to create a disposition to act upon it under favorable circumstances.

³¹ Catlin, *Principles*, pp. 48-49: "In fact, however, it is a commonplace that unity of social ideal is not something which comes by nature, but that it is something wrought by the influences which play upon public opinion. . . . The study of true ideas is not of itself the study of social forces."

³² Cf. Seba Eldridge, *The New Citizenship* (New York, 1929), pp. 80 ff.

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³³ Cf. John A. Rice (1922), *passim*.

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by any certain political organization. The political aspects of opinion arise logically, therefore, from the primary concept of the public.

But in other definitions of the public the relation between opinion and public becomes more complex. To say, for instance, that the public consists of those who are interested in the rules of the game, and who are not parties to a controversy, is really a statement of limitation on the function of opinion. To say, again, that the public consists of those who are willing to abide by the decision of the majority makes opinion itself the test of membership in the public, at least logically, so that public and opinion are not really separable concepts as Lowell would have them. If we say that the public consists of those upon whom the incidence of governmental action falls, our emphasis is not on opinion at all, and there is no need of a statement of relation between the two ideas.

It may be assumed that there is no relation between opinion, the public, and the government; that true opinions come from God, natural law, or the right use of reason. Authoritarian theories would limit or destroy the relation at the source, but demand of necessity that certain true opinions be held. For instance, in a theocracy there would be no room for functioning opinion on issues of significance, because true opinions would be drawn from the flamenic code at the base of public and private institutional life.³³ Modern democratic theory developed first in connection with the authoritarian view. It was asserted that men have rights, religious and political, which governments must respect, and it was under this belief that the disfranchised people insisted upon and finally won the Western code of political and civil rights. But during the last century the authoritarian basis of democracy was weakened. Democracy has become pragmatic, to use a new word for older utilitarian views; what the people want is presumed to be the standard of right conduct in government, and Fouillée's synthesis of idealism and naturalism suggests that knowledge and rational valuations may be embodied in these wants. In theory at least, modern democracy demands a close conformity between opinion and government, which is to be attained through the legal concept of the public. The public is merely the lever of social mechanics, as

³³ Cf. John A. Ryan and M. F. X. Millar, *The State and the Church* (New York, 1922), *passim*.

Ithering might say, for the realization of the force of opinion on government. The public, with its related opinion, becomes a factor in political control, and the functioning total concept of public opinion emerges.

V. THE LIMITED EFFECTIVENESS OF PUBLIC OPINION

It is only when there is a definite theory of a close relation between actual opinion and the public that the study of public opinion is fundamental in politics. Democracy makes the assumption that opinion, which is subjective in itself, has some validity, especially as it approaches unanimity;³⁴ and a further assumption is made that democratic control of government is, therefore, the best ethical foundation of the state.

Any theory of opinion as such, without reference to a standard above it, must be in essence pragmatic. The development of faith in public opinion has coincided generally with an abandonment of authoritarian notions with reference to the state. So long as a theological or natural bias is prevalently held, the function of opinion is limited.³⁵ In the political dicta of St. Paul or John Locke there is little scope for public opinion. The "general interpretation" of the words of St. Paul³⁶ and the rejection of natural law have made for the play of opinion. In other words, the state is being thrust from the domain of absolute ethics, and it must move in a world of relative values; democratic theory holds that its highest duty is to be responsive to the effective opinion of the public. Perhaps the rise

³⁴ Hocking, *op. cit.*, p. 384.

³⁵ Virtue, not opinion, said Penn, is the cement of society. G. P. Gooch, *Political Thought in England from Bacon to Halifax* (London, 1914-15), p. 226. Said John of Salisbury: "Vain is the authority of all laws except it bear the image of the divine law; and useless is the decree of the Prince unless it be conformable to the discipline of the Church." R. L. Poole, *Illustrations of the History of Medieval Thought and Learning* (2nd. ed., New York, 1920), p. 206. Democratic theory and practice has succeeded to a certain extent in repudiating this restriction on the majority by discrediting natural law. Smith, *op. cit.*, Chap. VIII. But cf. J. H. C. Wu, "The Juristic Philosophy of Roscoe Pound," 18 *Illinois Law Review* (1929) 302: "Such general notions as 'due process of law,' 'reasonableness,' 'natural law,' receive their contents continually from the social psychology, or in a more familiar expression, the 'public opinion.' . . . In the mechanism of law, the above-mentioned general notions are empty vessels through which public opinion is continually conducted to the interior of the machine." Cf. Fouillée, *op. cit.*, p. 202.

³⁶ John A. Ryan, *Catholic Doctrine on the Right of Self-Government* (New York, 1920), p. 4.

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of the modern theory of public opinion is a tacit admission that the search for truth in terms of the absolute has been a failure.³⁷

The discussion above has indicated that philosophical valuations, when held by dominant forces in a community, do in fact limit the functioning of opinion, and especially is this true when the valuations are part of a long-established human culture. There are other ways of viewing objective factors in the concepts of public opinion. Social institutions in most cases are limitations on public opinion. The traditional legal materials in the hands of judges have directed the development of civilization often without regard to public opinion.³⁸ Our greatest judges have never been afraid of the force of opinion, and in economic relations they have been able to make their conclusions hold no matter what the people may have thought at certain times. Law, as an institutional limit on public opinion, has not been so effective in the field of standards and conduct; and here what Dean Pound calls individualization in the application of the law has been in reality an expression of public opinion.

A distinction must be observed at this point, however, between the institutional limitation on the individual and on the group. The "social facts" of Durkheim stand primarily as a restriction on the vagaries of the individual will. The state and the community, in the hands of custom,³⁹ stand as resistant facts, "enduring and organized over centuries by the agreement of millions of wills, built up as a coral reef by a myriad of coral insects, slowly changing under pressure from a changing environment."⁴⁰ But the institutional limitation also conditions the vagaries of groups. Habits of individuals are hard to change, whether individually or in association, but externally larger groups comprehending smaller ones limit the latter, even when there is substantial agreement to disagree with the former.

³⁷ Hocking, *loc. cit.* "But whatever the machinery of decision, since it is to establish a deed which is the deed of all, the test of its rightness is an eventual unanimity of approval. No present majority, however large, can evade this ultimate test."

³⁸ Cf. Charles Warren, *The Supreme Court in United States History* (Boston, 1922), I, Chap. I; II, p. 460; Dickinson, *op. cit.*, p. 290. Cf. Catlin, *Principles*, p. 443: "Law, then, does not depend solely upon opinion, but also upon the facts of the social structure." See also C. G. Haines, *The Revival of Natural Law Concepts* (Cambridge, 1930), which shows in detail the use of natural law ideas by American judges.

³⁹ R. M. MacIver, *The Modern State* (Oxford, 1926), p. 40.

⁴⁰ Catlin, *ibid.*, pp. 85-86.

In his theory of social solidarity, Duguit attempts a statement of the objective needs of human society. A modern technological community is very sensitive to disarrangements, which can be understood immediately only by those in directive positions.⁴¹ Public opinion is unable, experience teaches, to solve many of the most important technical problems of the present age. Economic organization has generally been superior to the force of casual opinion, as likewise the corpus of social heritage. Although neither immediately controls opinion, each does in the long run, partly at least through the conscious program of education developed by those who have the power and whose interests are at stake.⁴² The results of the Industrial Revolution were not foreseen, and its indirect consequences are now considered more significant in social development than the obvious results to which thinkers looked. People are joined together by vast currents which they cannot control and seldom understand. "The forms of associated action," says Dewey, "characteristic of the present economic order are so massive and extensive that they determine the most significant constituents of the public (that is, the state) and the residence of power."⁴³ While some of the fundamental habits and traditions have been little affected, such as the desire for profit, Dewey concludes that the "new forms of combined action due to the modern economic régime control present politics, much as dynastic interests controlled those of two centuries ago. They affect thinking and desire more than did the interests which formerly moved the state."⁴⁴

Effective legislation suggests the fields in which public opinion can best operate, and these involve human relations, conduct, and

⁴¹ Cf. Stuart Chase, "One Billion Wild Horses," *League for Industrial Democracy* (New York, 1930), *passim*. See Walter Lippmann, *A Preface to Morals* (New York, 1929), *passim*.

⁴² A complex environment is a great limitation on the action of public opinion. The "unseen environment," according to Lippmann, adds greatly to the actual complexity of society. He sees it, however, primarily as a problem in the organization and distribution of intelligence. *Public Opinion*, pp. 270, 345, 369-418. Cf. René Demogue, "Analysis of Fundamental Notions," *Modern French Legal Philosophy* (Boston, 1916), pp. 376-377, 410, 430, 539-540, 569. It might be added that in some ways the rise of dictatorship is an expression of the objective needs of society. Under dictatorship, the function of opinion is to support the leader, and the dictator in turn must achieve the technological integration of the state.

⁴³ Dewey, *op. cit.*, p. 107.

⁴⁴ *Ibid.*, p. 108. See Roscoe Pound, *The Spirit of the Common Law* (Boston, 1921), pp. 165, 192, 195-196.

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attempts a statement of modern technological conditions which can be understood in various positions.⁴¹ Public opinion is one of the most important factors in the economic organization of casual opinion, although neither in the long run, partly at least, are at stake.⁴² The future is foreseen, and its influence is significant in social organization which thinkers looked for which they cannot conceive of as dissociated action," says Dewey. Economic order are so mass-produced that the most significant conditions are the residence of habits and traditions for profit, Dewey concludes that due to the modern conditions such as dynastic interference they affect thinking and have formerly moved the

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standards, though even here the historic heritage of ideas controls and limits. The choice of personalities, the maintenance of things as they are, the decision as to new problems of conduct and standards may, with adequate machinery, be dominated at times by public opinion.⁴⁵ But the more we stress the objective factors in society, the less is public opinion a gateway to truth, and in time we may become tired of leading opinion to what may be called the objective necessities of society as perceived by those in authority.⁴⁶

A further broad qualification of the effectiveness of opinion is seen in the uncertain development of social invention and the ineffectiveness of majority coercion, which is a phase of social invention. It is one thing to recognize a social need or to adopt a particular concept of purpose, and it is quite another to attain the purpose or satisfy the need. While legislation has been discovered in modern times as an agency for the attainment of purpose, the facts show that an exaggerated faith in the efficiency of majority enactment and judicial decision is not justified. Inventiveness in mechanical fields is much more certain to continue than is social invention. It is probably true that the greatest contribution to scientific method will be in the mechanics of social technique. In regard to prohibition, for instance, no law has made it possible for the state to guarantee that those who drink and are not a menace to their fellows may still drink, and that those who drink and are a menace may not drink.

⁴⁵ Roscoe Pound, *Introduction to the Philosophy of Law*, pp. 137-138. Another way of stating this fundamental principle of the action of public opinion is to indicate that opinion is effective within those limits in which political discussion is effective, in which discussion may discover the principles of common purpose in society. Lindsay, *op. cit.*, pp. 53ff. It can be argued that the term "real" opinion may be used here to denote the area of the creativeness of opinion, and that opinion on objective factors is "non-real" opinion. *Ibid.*, p. 57. Opinion on subjects outside of the competence of opinion, or of the individual, must of necessity be somewhat doubtful. *Ibid.*, p. 58.

⁴⁶ Cf. Taft's opinion in *Truax v. Corrigan*, 257 U.S. 312 (1921); Smith, *op. cit.*, Chap. v; Charles and Mary Beard, *The Rise of American Civilization* (New York, 1930), I, 295-296; Pound, *The Spirit of the Common Law*, pp. 83-84. Cf. Berolzheimer, *op. cit.*, p. xliii. He denies that progress is the issue of conscious, rational, and deliberate striving as depicted in the utilitarian view. "History shows that the ends striven for and attained are not correctly formulated in consciousness; the alleged purpose and the achieved accomplishment are rarely the same." See also Rudolph Stammler, *The Theory of Justice* (New York, 1925), Appendix II, p. 574; Duguit, *op. cit.*, *passim*, for a treatment of social solidarity; Catlin, *Science and Method of Politics*, pp. 160 ff.

The objective factors in relation to public opinion may be summarized in the following order: first, the continuity of social institutions, the organized folkways and mores of a society, in which should be included the detached and restraining influence of governmental organization, the historic constitution, and the law; second, the objective needs of society must be recognized as a social force which limits the effectiveness of public opinion; and third, the ineffectiveness of majority coercion where public opinion might otherwise act as in the field of conduct and standards, and the slowness of social invention, which might make human effort more effective and organized public opinion more easily felt.

VI. THE CREATIVE OPINION

The objective and limiting factors surmounting public opinion are generally recognized. But admitting that the acts of government may have a great effect is not admitting also that opinion can have the same effect. Agents of a modern government moving in a primitive culture are almost immune from the impact of native opinion, and by breaking down primitive sanctions for belief they can undermine a whole culture. In modern society, political action is taken by the government and not by the public; it is a truism to say that government has the greater effectiveness. The public may, however, influence what is being done. It is not that governments have more information, but that the agents of the state deal with a problem in an official capacity. The government is able to compromise, to adjust conflicting interests, while opinion must speak in terms of yes, no, and silence.⁴⁷

If we assert that the action of government is creative in certain respects, what is meant by the concept of a creative public opinion? It does not matter how opinion is formed; what matters is the significance of opinion after it exists. Do we mean that opinion is a source of truth whatever may be its genesis? The pragmatist is apt to say that this is one aspect of its creativeness. Yet what we must mean by creative opinion is that it is effective in controlling government within the objective limitations on the action of government. It is obviously true that any objective limitations on government are likewise restrictions on public opinion, and in the preceding

⁴⁷ Cf. Bruce Bliven, "Who Makes our Foreign Policy," *New Republic*, April 6, 1927, pp. 187 ff.; L. D. White, *Introduction to the Study of Public Administration* (New York, 1929), pp. 475-476.

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The pragmatist believes in the efficacy of human effort, and Kohler, the neo-Hegelian, comes to the same conclusion—that culture in a creative sense is the control of man over nature, the preservation of his control, and its development in the future. In this connection, a negative creativeness of public opinion may be seen in conditions favorable to human activity which public opinion might disrupt but does not. There is also a close correlation between the permanency of opinion and its creativeness; by its stability, opinion remains a consistent force on government and its policies; it is quite possible for the government to ignore unstable and new opinion, especially in our form of constitutionalism. If we remember also the theory of Fouillée in which idealism and naturalism are reconciled, it is seen that public opinion can accept objective limitations in order to be effective within those limits.⁴⁸

The problem of creative opinion in other than a negative sense is the problem of creative participation. It is the contribution to political life of a will containing the elements of rational activity, and a conscious judgment instructed as to the objective dictates of environment. It is essential in the long-run to the existence of democracy, though democracy, if its agents are capable, can build on the foundations of evolved culture.⁴⁹

From this discussion we derive a secondary concept—the creativeness of public opinion. The problem of modern democracy is largely how to make opinion more creative in the light of the present facts of society and the machinery thus far evolved for bringing about participation. To such men as Bertrand Russell and

⁴⁸ See Josef Kohler, "Judicial Interpretation of Enacted Law," *Science of Legal Method* (New York, 1921), p. 188. We may admit that force-ideas are not entirely produced by individual minds. Kohler remarks: "We have entirely overlooked the fact that the legislator is a man of his age, completely saturated with the ideas of his time, completely filled with the civilization surrounding him. . . ."

⁴⁹ Lippmann believes in the creativeness of opinion in his *Public Opinion* (e.g., p. 159), but in *The Phantom Public* his concept of the public is based on the uncreative character of opinion. His idea of the rules of the game as simple and external is simply untrue, for it is into the construction of these rules that the best of human thought has been poured for centuries. The rules of the game are the real problems of valuation; they imply valuations. The externality view of opinion in *The Phantom Public* seems also to contradict the theory of "government in the people" in *A Preface to Morals*. See Sorokin, *op. cit.*, pp. 706-709, for an opposite view of Lippmann's position in *Public Opinion*.

James Harvey Robinson, it is a problem in the reconstruction of the thinking process. As Russell says, men fear thought as they fear nothing else on earth; hence all the social invention to restrict the creative power of opinion.⁵⁰ Even in pragmatism, the creative function of opinion must be limited to the field of valuations; much of the world about us is callous and uninterested in our ideas. It is unconditioned in many respects by opinion or belief, and we must face it as a fact or body of facts. But by these limitations the creative power of opinion becomes much more real, for the boundaries of its effectiveness become clearer; and as they become clearer, human purpose becomes more rational and scientific.

Pragmatism, with its belief in human thinking and activity, scientific method, and the development of social science, may all be used to establish the effective creativeness of public opinion and "the legally outwitted and impotent masses of today."⁵¹ Social experimentation and reconstruction will not then be blind or stubborn opinion thrashing itself against a wall of objective reality. As Vinogradoff remarks, "through the power of formulating ideas, man obtains a greater control over the unformulated impulses of his nature, and this certainly contributes to the setting up and to the enforcement of moral standards. . . . Altogether, the evolution of human civilization is unthinkable without the guiding thread of intellectual intercourse and speculation."⁵²

VII. CONCLUSION

We have stressed the conceptual approach to public opinion, and characteristics of general validity have been suggested in an attempt to clarify the concepts of public opinion. These concepts are, first, that of the public, which in its most universal and accurate sense is the body of persons having the right of participation in government. The second is that of opinion which springs from the will and consciousness of individuals, and is best considered

⁵⁰ J. H. Robinson, "The Still Small Voice of the Herd," *Political Science Quarterly*, Vol. 32, pp. 312-319 (1917).

⁵¹ Hocking, *op. cit.*, p. 380.

⁵² *Op. cit.*, I, p. 39. See Luigi Miraglia, *Comparative Legal Philosophy* (Boston, 1912), p. 188: "Volition is the act of that energy accumulated by reflection, judgment, and abstract ideation, and is accomplished by a feeling of effort or tendency which a latent activity, overcoming obstacles and expanding, has for self-realization. . . . Energy is constituted little by little by that freedom which is not a lack of motive but an autonomy of deliberation."

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 er; and as they become
 anal and scientific.
 thinking and activity,
 social science, may all be
 of public opinion and
 es of today."⁵¹ Social
 then be blind or stub-
 of objective reality. As
 of formulating ideas,
 formulated impulses of
 to the setting up and to
 together, the evolution
 out the guiding thread

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ach to public opinion,
 e been suggested in an
 opinion. These concepts
 most universal and ac-
 e right of participation
 on which springs from
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ord," *Political Science Quar-*

Legal Philosophy (Boston,
 mulated by reflection, judg-
 feeling of effort or tendency
 panding, has for self-realiza-
 freedom which is not a lack

in a reconciliation of idealism and naturalism involving a broad interpretation of pragmatism. The third concept is that of the relation of opinion, public, and government, which involves one of the static characteristics of government, but is especially important in democratic theory. The fourth concept is the limited effectiveness of public opinion, which may also be accepted as of general validity. Finally, from the fact that public opinion is not completely ineffective, we reach a concept of the creative public opinion.

Catlin has observed that the object of political science is control.⁵³ We know that unity in our social ideals is wrought by the hands of men under the given restrictions of *conditions*. We know, because of the effectiveness of propaganda, that opinion and rectitude are not the same; that a knowledge of true ideas is not a knowledge of social forces. To know fallacies is not sufficient in itself, for we must also know how truths and fallacies are made effective in moving men. The constructive work of political science must start from abstractions and hypotheses which assist in moving on to the testing and application of them in that aspect of control which includes the formation and direction of opinion within the limits of its effectiveness.

⁵³ Catlin, *Principles*, pp. 49, 56, note 1.