CHAPTER III - "WE, THE PEOPLE"

An account of the American Revolution which took cognizance only of the armed conflict with England would tell much less than half the truth, and even that half would be misleading. If anyone doubts that the real inspiration which made America a nation was drawn, not from Whiggish quarrels about taxes, but from the great dogmas promulgated by Jefferson, it is sufficient to point out that the States did not even wait till their victory over England was assured before effecting a complete internal revolution on the basis of those dogmas. Before the last shot had been fired almost the last privilege had disappeared.

The process was a spontaneous one, and its fruits appear almost simultaneously in every State. They can be followed best in Virginia, where Jefferson himself took the lead in the work of revolutionary reform.

Hereditary titles and privileges went first. On this point public feeling became so strong that the proposal to form after the war a society to be called "the Cincinnati," which was to consist of those who had taken a prominent part in the war and afterwards of their descendants, was met, in spite of the respect in which Washington and the other military heroes were held, with so marked an expression of public disapproval that the hereditary part of the scheme had to be dropped.

Franchises were simplified, equalized, broadened, so that in practically every State the whole adult male population of European race received the suffrage. Social and economic reforms having the excellent aim of securing and maintaining a wide distribution of property, especially of land, were equally prominent among the achievements of that time. Jefferson himself carried in Virginia a drastic code of Land Laws, which anticipated many of the essential provisions which through the Code Napoleon revolutionized the system of land-owning in Europe. As to the practical effect of such reforms we have the testimony of a man whose instinct for referring all things to practice was, if anything, an excess, and whose love for England was the master passion of his life. "Every object almost that strikes my view," wrote William Cobbett many years later, "sends my mind and heart back to England. In viewing the ease and happiness of this people the contrast fills my soul with indignation, and makes it more and more the object of my life to assist in the destruction of the diabolical usurpation which has trampled on king as well as people."

Another principle, not connected by any direct logic with democracy and not set

forth in the Declaration of Independence, was closely associated with the democratic thesis by the great French thinkers by whom that thesis was revived, and had a strong hold upon the mind of Jefferson--the principle of religious equality, or, as it might be more exactly defined, of the Secular State.

So many loose and absurd interpretations of this principle have been and are daily being propounded, that it may be well to state succinctly what it does and does not mean.

It does not mean that anyone may commit any anti-social act that appeals to him, and claim immunity from the law on the ground that he is impelled to that act by his religion; can rob as a conscientious communist, murder as a conscientious Thug, or refuse military service as a conscientious objector. None understood better than Jefferson--it was the first principle of his whole political system--that there must be some basis of agreement amongst citizens as to what is right and what is wrong, and that what the consensus of citizens regards as wrong must be punished by the law. All that the doctrine of the Secular State asserted was that such general agreement among citizens need not include, as in most modern States it obviously does not include, an agreement on the subject of religion. Religion is, so to speak, left out of the Social Contract, and consequently each individual retains his natural liberty to entertain and promulgate what views he likes concerning it, so long as such views do not bring him into conflict with those general principles of morality, patriotism and social order upon which the citizens of the State are agreed, and which form the basis of its laws.

The public mind of America was for the most part well prepared for the application of this principle. We have already noted how the first experiment in the purely secular organization of society had been made in the Catholic colony of Maryland and the Quaker colony of Pennsylvania. The principle was now applied in its completeness to one State after another. The Episcopalian establishment of Jefferson's own State was the first to fall; the other States soon followed the example of Virginia.

At the same time penalties or disabilities imposed as a consequence of religious opinions were everywhere abrogated. Only in New England was there any hesitation. The Puritan States did not take kindly to the idea of tolerating Popery. In the early days of the revolution their leaders had actually made it one of the counts of their indictment against the British Government that that Government had made peace with Anti-Christ in French Canada--a fact remembered to the permanent hurt of the Confederacy when the French Canadians were afterwards invited to make common cause with the American rebels. But the tide was too strong even for Calvinists to resist; the equality of all religions before the law was

recognized in every State, and became, as it remains to-day, a fundamental part of the American Constitution.

It may be added that America affords the one conspicuous example of the Secular State completely succeeding. In France, where the same principles were applied under the same inspiration, the ultimate result was something wholly different: an organized Atheism persecuting the Christian Faith. In England the principle has never been avowedly applied at all. In theory the English State still professes the form of Protestant Christianity defined in the Prayer-book, and "tolerates" dissenters from it as the Christian States of the middle ages tolerated the Jews, and as in France, during the interval between the promulgation of the Edict of Nantes and its revocation, a State definitely and even pronouncedly Catholic tolerated the Huguenots. Each dissentient religious body claims its right to exist in virtue of some specific Act of Parliament. Theoretically it is still an exception, though the exceptions have swallowed the rule.

Moreover, even under this rather hazy toleration, those who believe either more or less than the bulk of their fellow-countrymen and who boldly proclaim their belief usually find themselves at a political disadvantage. In America it never seems to have been so. Jefferson himself, a Deist (the claim sometimes made that he was a "Christian" seems to rest on nothing more solid than the fact that, like nearly all the eighteenth-century Deists, he expressed admiration for the character and teaching of Jesus Christ), never for a moment forfeited the confidence of his countrymen on that account, though attempts were made, notably by John Adams, to exploit it against him. Taney, a Catholic, was raised without objection on that score to the first judicial post in America, at a date when such an appointment would have raised a serious tumult in England. At a later date Ingersoll was able to vary the pastime of "Bible-smashing" with the profession of an active Republican wire-puller, without any of the embarrassments which that much better and honester man, Charles Bradlaugh, had to encounter. The American Republic has not escaped the difficulties and problems which are inevitable to the Secular State, when some of its citizens profess a religion which brings them into conflict with the common system of morals which the nation takes for granted; the case of the Mormons is a typical example of such a problem. But there is some evidence that, as the Americans have applied the doctrine far more logically than we, they have also a keener perception of the logic of its limitations. At any rate, it is notable that Congress has refused, in its Conscription Act, to follow our amazing example and make the conscience of the criminal the judge of the validity of legal proceedings against him.

Changes so momentous, made in so drastic and sweeping a fashion in the middle of a life and death struggle for national existence, show how vigorous and

compelling was the popular impulse towards reform. Yet all the great things that were done seem dwarfed by one enormous thing left undone; the heroic tasks which the Americans accomplished are forgotten in the thought of the task which stared them in the face, but from which they, perhaps justifiably, shrank. All the injustices which were abolished in that superb crusade against privilege only made plainer the shape of the one huge privilege, the one typical injustice which still stood--the blacker against such a dawn--Negro Slavery.

It has already been mentioned that Slavery was at one time universal in the English colonies and was generally approved by American opinion, North and South. Before the end of the War of Independence it was almost as generally disapproved, and in all States north of the borders of Maryland it soon ceased to exist.

This was not because democratic ideals were more devotedly cherished in the North than in the South; on the whole the contrary was the case. But the institution of Slavery was in no way necessary to the normal life and industry of the North; its abrogation made little difference, and the rising tide of the new ideas to which it was necessarily odious easily swept it away. In their method of dealing with it the Northerners, it must be owned, were kinder to themselves than to the Negroes. They declared Slavery illegal within their own borders, but they generally gave the slave-holder time to dispose of his human property by selling it in the States where Slavery still existed. This fact is worth noting, because it became a prime cause of resentment and bitterness when, at a later date, the North began to reproach the South with the guilt of slave-owning. For the South was faced with no such easy and manageable problem. Its coloured population was almost equal in number to its white colonists; in some districts it was even greatly preponderant. Its staple industries were based on slave labour. To abolish Slavery would mean an industrial revolution of staggering magnitude of which the issue could not be foreseen. And even if that were faced, there remained the sinister and apparently insoluble problem of what to do with the emancipated Negroes. Jefferson, who felt the reproach of Slavery keenly, proposed to the legislature of Virginia a scheme so radical and comprehensive in its character that it is not surprising if men less intrepid than he refused to adopt it. He proposed nothing less than the wholesale repatriation of the blacks, who were to set up in Africa a Negro Republic of their own under American protection. Jefferson fully understood the principles and implications of democracy, and he was also thoroughly conversant with Southern conditions, and the fact that he thought (and events have certainly gone far to justify him) that so drastic a solution was the only one that offered hope of a permanent and satisfactory settlement is sufficient evidence that the problem was no easy one. For the first time Jefferson failed to carry Virginia with him; and Slavery remained an

institution sanctioned by law in every State south of the Mason-Dixon Line.

While the States were thus dealing with the problems raised by the application to their internal administration of the principles of the new democratic creed, the force of mere external fact was compelling them to attempt some sort of permanent unity. Those who had from the first a specific enthusiasm for such unity were few, though Washington was among them, and his influence counted for much. But what counted for much more was the pressure of necessity. It was soon obvious to all clear-sighted men that unless some authoritative centre of union were created the revolutionary experiment would have been saved from suppression by arms only to collapse in mere anarchic confusion. The Continental Congress, the only existing authority, was moribund, and even had it been still in its full vigour, it had not the powers which the situation demanded. It could not, for instance, levy taxes on the State; its revenues were completely exhausted and it had no power to replenish them. The British Government complained that the conditions of peace were not observed on the American side, and accordingly held on to the positions which it had occupied at the conclusion of the war. The complaint was perfectly just, but it did not arise from deliberate bad faith on the part of those who directed (as far as anyone was directing) American policy, but from the simple fact that there was no authority in America capable of enforcing obedience and carrying the provisions of the treaty into effect. The same moral was enforced by a dozen other symptoms of disorder. The Congress had disbanded the soldiers, as had been promised, on the conclusion of peace, but, having no money, could not keep its at least equally important promise to pay them. This led to much casual looting by men with arms in their hands but nowhere to turn for a meal, and the trouble culminated in a rebellion raised in New England by an old soldier of the Continental Army called Shay. Such incidents as these were the immediate cause of the summoning at Philadelphia of a Convention charged with the task of framing a Constitution for the United States.

Of such a Convention Washington was the only possible President; and he was drawn from a temporary and welcome retirement in his Virginian home to re-enter in a new fashion the service of his country. Under his presidency disputed and compromised a crowd of able men representative of the widely divergent States whose union was to be attempted. There was Alexander Hamilton, indifferent or hostile to the democratic idea but intensely patriotic, and bent above all things upon the formation of a strong central authority; Franklin with his acute practicality and his admirable tact in dealing with men; Gerry, the New Englander, Whiggish and somewhat distrustful of the populace; Pinckney of South Carolina, a soldier and the most ardent of the Federalists, representing, by a curious irony, the State which was to be the home of the most extreme dogma

of State Rights; Madison, the Virginian, young, ardent and intellectual, his head full of the new wine of liberty. One great name is lacking. Jefferson had been chosen to represent the Confederacy at the French Court, where he had the delight of watching the first act of that tremendous drama, whereby his own accepted doctrine was to re-shape France, as it had already re-shaped America. The Convention, therefore, lacked the valuable combination of lucid thought on the philosophy of politics and a keen appreciation of the direction of the popular will which he above all men could have supplied.

The task before the Convention was a hard and perilous one, and nothing about it was more hard and perilous than its definition. What were they there to do? Were they framing a treaty between independent Sovereignties, which, in spite of the treaty, would retain their independence, or were they building a nation by merging these Sovereignties in one general Sovereignty of the American people? They began by proceeding on the first assumption, re-modelling the Continental Congress--avowedly a mere alliance--and adding only such powers as it was plainly essential to add. They soon found that such a plan would not meet the difficulties of the hour. But they dared not openly adopt the alternative theory: the States would not have borne it. Had it, for example, been specifically laid down that a State once entering the Union might never after withdraw from it, quite half the States would have refused to enter it. To that extent the position afterwards taken up by the Southern Secessionists was historically sound. But there was a complementary historical truth on the other side. There can be little doubt that in this matter the founders of the Republic desired and intended more than they ventured to attempt. The fact that men of unquestionable honesty and intelligence were in after years so sharply and sincerely divided as to what the Constitution really was, was in truth the result of a divided mind in those who framed the Constitution. They made an alliance and hoped it would grow into a nation. The preamble of the Constitution represents the aspirations of the American Fathers; the clauses represent the furthest they dared towards those aspirations. The preamble was therefore always the rallying point of those who wished to see America one nation. Its operative clause ran: "We, the People of the United States, in order to form a more perfect Union, ... do ordain and establish this Constitution for the United States of America." That such language was a strong point in favour of the Federalist interpreters of the Constitution was afterwards implicitly admitted by the extreme exponents of State Sovereignty themselves, for when they came to frame for their own Confederacy a Constitution reflecting their own views they made a most significant alteration. The corresponding clause in the Constitution of the Southern Confederacy ran, "We, the deputies of the Sovereign and Independent States, ... do ordain," etc., etc.

For the rest two great practical measures which involved no overbold challenge to State Sovereignty were wisely planned to buttress the Union and render it permanent. A clause in the Constitution forbade tariffs between the States and established complete Free Trade within the limits of the Union. An even more important step was that by which the various States which claimed territory in the as yet undeveloped interior were induced to surrender such territory to the collective ownership of the Federation. This at once gave the States a new motive for unity, a common inheritance which any State refusing or abandoning union must surrender.

Meanwhile it would be unjust to the supporters of State Rights to deny the excellence and importance of their contribution to the Constitutional settlement. To them is due the establishment of local liberties with safeguards such as no other Constitution gives. And, in spite of the military victory which put an end to the disputes about State Sovereignty and finally established the Federalist interpretation of the Constitution, this part of their work endures. The internal affairs of every State remain as the Constitution left them, absolutely in its own control. The Federal Government never interferes save for purposes of public taxation, and, in the rare case of necessity, of national defence. For the rest nine-tenths of the laws under which an American citizen lives, nearly all the laws that make a practical difference to his life, are State laws. Under the Constitution, as framed, the States were free to form their separate State Constitutions according to their own likings, and to arrange the franchise and the test of citizenship, even for Federal purposes, in their own fashion. This, with the one stupid and mischievous exception made by the ill-starred Fifteenth Amendment, remains the case to this day, with the curious consequence, among others, that it is now theoretically possible for a woman to become President of the United States, if she is the citizen of a State where female suffrage is admitted.

Turning to the structure of the central authority which the Constitution sought to establish, the first thing that strikes us--in the teeth of the assertion of most British and some American writers--is that it was emphatically not a copy of the British Constitution in any sense whatever. It is built on wholly different principles, drawn mostly from the French speculations of that age. Especially one notes, alongside of the careful and wise separation of the judiciary from the executive, the sound principle enunciated by Montesquieu and other French thinkers of the eighteenth century, but rejected and contemned by England (to her great hurt) as a piece of impracticable logic--the separation of the executive and legislative powers. It was this principle which made possible the later transformation of the Presidency into a sort of Elective Monarchy.

This result was not designed or foreseen; or rather it was to an extent foreseen,

and deliberately though unsuccessfully guarded against. The American revolutionists were almost as much under the influence of classical antiquity as the French. From it they drew the noble conception of "the Republic," the public thing acting with impersonal justice towards all citizens. But with it they also drew an exaggerated dread of what they called "Cæsarism," and with it they mixed the curious but characteristic illusion of that age--an illusion from which, by the way, Rousseau himself was conspicuously free--that the most satisfactory because the most impersonal organ of the general will is to be found in an elected assembly. They had as yet imperfectly learnt that such an assembly must after all consist of persons, more personal because less public than an acknowledged ruler. They did not know that, while a despot may often truly represent the people, a Senate, however chosen, always tends to become an oligarchy. Therefore they surrounded the presidential office with checks which in mere words made the President seem less powerful than an English King. Yet he has always in fact been much more powerful. And the reason is to be found in the separation of the executive from the legislature. The President, while his term lasted, had the full powers of a real executive. Congress could not turn him out, though it could in various ways check his actions. He could appoint his own Ministers (though the Senate must ratify the choice) and they were wisely excluded from the legislature. An even wiser provision limited the appointment of Members of Congress to positions under the executive. Thus both executive and legislature were kept, so far as human frailty permitted, pure in their normal functions. The Presidency remained a real Government. Congress remained a real check.

In England, where the opposite principle was adopted, the Ministry became first the committee of an oligarchical Parliament and later a close corporation nominating the legislature which is supposed to check it.

The same fear of arbitrary power was exhibited, and that in fashion really inconsistent with the democratic principles which the American statesmen professed, in the determination that the President should be chosen by the people only in an indirect fashion, through an Electoral College. This error has been happily overruled by events. Since the Electoral College was to be chosen ad hoc for the single purpose of choosing a President, it soon became obvious that pledges could easily be exacted from its members in regard to their choice. By degrees the pretence of deliberate action by the College wore thinner and thinner. Finally it was abandoned altogether, and the President is now chosen, as the first magistrate of a democracy ought to be chosen, if election is resorted to at all, by the direct vote of the nation. At the time, however, it was supposed that the Electoral College would be an independent deliberative assembly. It was further provided that the second choice of the Electoral College should be Vice-President,

and succeed to the Presidency in the event of the President dying during his term of office. If there was a "tie" or if no candidate had an absolute majority in the College, the election devolved on the House of Representatives voting in this instance by States.

In connection with the election both of Executive and Legislature, the old State Rights problem rose in another form. Were all the States to have equal weight and representation, as had been the case in the old Continental Congress, or was their weight and representation to be proportional to their population? On this point a compromise was made. The House of Representatives was to be chosen directly by the people on a numerical basis, and in the Electoral College which chose the President the same principle was adopted. In the Senate all States were to have equal representation; and the Senators were to be chosen by the legislatures of the States; they were regarded rather as ambassadors than as delegates. The term of a Senator was fixed for six years, a third of the Senate resigning in rotation every two years. The House of Representatives was to be elected in a body for two years. The President was elected for four years, at the end of which time he could be re-elected.

Such were the main lines of the compromises which were effected between the conflicting views of the extreme Federalists and extreme State Rights advocates, and the conflicting interests of the larger and smaller States. But there was another threatened conflict, more formidable and, as the event proved, more enduring, with which the framers of the Constitution had to deal. Two different types of civilization had grown up on opposite sides of the Mason-Dixon line. How far Slavery was the cause and how far a symptom of this divergence will be discussed more fully in future chapters. At any rate it was its most conspicuous mark or label. North and South differed so conspicuously not only in their social organization but in every habit of life and thought that neither would tamely bear to be engulfed in a union in which the other was to be predominant. To keep an even balance between them was long the principal effort of American statesmanship. That effort began in the Convention which framed the Constitution. It did not cease till the very eve of the Civil War.

The problem with which the Convention had to deal was defined within certain well-understood limits. No one proposed that Slavery should be abolished by Federal enactment. It was universally acknowledged that Slavery within a State, however much of an evil it might be, was an evil with which State authority alone had a right to deal. On the other hand, no one proposed to make Slavery a national institution. Indeed, all the most eminent Southern statesmen of that time, and probably the great majority of Southerners, regarded it as a reproach, and sincerely hoped that it would soon disappear. There remained, however,

certain definite subjects of dispute concerning which an agreement had to be reached if the States were to live in peace in the same household.

First, not perhaps in historic importance, but in the insistence of its demand for an immediate settlement, was the question of representation. It had been agreed that in the House of Representatives and in the Electoral College this should be proportionate to population. The urgent question at once arose: should free white citizens only be counted, or should the count include the Negro slaves? When it is remembered that these latter numbered something like half the population of the Southern States, the immediate political importance of the issue will at once be recognized. If they were omitted the weight of the South in the Federation would be halved. In the opposite alternative it would be doubled. By the compromise eventually adopted it was agreed that the whole white population should be counted and three-fifths of the slaves.

The second problem was this: if Slavery was to be legal in one State and illegal in another, what was to be the status of a slave escaping from a Slave State into a free? Was such an act to be tantamount to an emancipation? If such were to be the case, it was obvious that slave property, especially in the border States, would become an extremely insecure investment. The average Southerner of that period was no enthusiast for Slavery. He was not unwilling to listen to plans of gradual and compensated emancipation. But he could not be expected to contemplate losing in a night property for which he had perhaps paid hundreds of dollars, without even the hope of recovery. On this point it was found absolutely necessary to give way to the Southerners, though Franklin, for one, disliked this concession more than any other. It was determined that "persons held to service or labour" escaping into another State should be returned to those "to whom such service or labour may be due."

The last and on the whole the least defensible of the concessions made in this matter concerned the African Slave Trade. That odious traffic was condemned by almost all Americans--even by those who were accustomed to domestic slavery, and could see little evil in it. Jefferson, in the original draft of the Declaration of Independence, had placed amongst the accusations against the English King the charge that he had forced the slave trade on reluctant colonies. The charge was true so far at any rate as Virginia was concerned, for both that State and its neighbour, Maryland, had passed laws against the traffic and had seen them vetoed by the Crown. But the extreme South, where the cotton trade was booming, wanted more Negro labour; South Carolina objected, and found an expected ally in Massachusetts. Boston had profited more by the Slave Trade than any other American city. She could hardly condemn King George without condemning herself. And, though her interest in the traffic had diminished, it had

not wholly ceased. The paragraph in question was struck out of the Declaration, and when the Convention came to deal with the question the same curious alliance thwarted the efforts of those who demanded the immediate prohibition of the trade. Eventually the Slave Trade was suffered to continue for twenty years, at the end of which time Congress might forbid it. This was done in 1808, when the term of suffrance had expired.

Thus was Negro Slavery placed under the protection of the Constitution. It would be a grave injustice to the founders of the American Commonwealth to make it seem that any of them liked doing this. Constrained by a cruel necessity, they acquiesced for the time in an evil which they hoped that time would remedy. Their mind is significantly mirrored by the fact that not once in the Constitution are the words "slave" or "slavery" mentioned. Some euphemism is always used, as "persons held to service or labour," "the importation of persons," "free persons," contrasted with "other persons," and so on. Lincoln, generations later, gave what was undoubtedly the true explanation of this shrinking from the name of the thing they were tolerating and even protecting. They hoped that the Constitution would survive Negro Slavery, and they would leave no word therein to remind their children that they had spared it for a season. Beyond question they not only hoped but expected that the concession which for the sake of the national unity they made to an institution which they hated and deplored would be for a season only. The influence of time and the growth of those great doctrines which were embodied in the Declaration of Independence could not but persuade all men at last; and the day, they thought, could not be far distant when the Slave States themselves would concur in some prudent scheme of emancipation, and make of Negro Slavery an evil dream that had passed away. None the less not a few of them did what they had to do with sorrowful and foreboding hearts, and the author of the Declaration of Independence has left on record his own verdict, that he trembled for his country when he remembered that God was just.