

"*American Ideals and the American Conscience*" is the first chapter in Gunnar Myrdal's classic work, *An American Dilemma: The Negro Problem and Modern Democracy* (1944). Myrdal, a Swedish economist, was commissioned by the Carnegie Foundation to study the problem of race in American society. The thought was that a non-American would be able to be more objective in his study. Central to Myrdal's analysis was the idea of the American Creed, a set of ideals shared by virtually all Americans. Our interest is in his articulation and analysis of the American Creed in American society. After reading the article, go back to the text and respond to the following prompts.

1. What is the historical context in which Myrdal is working? What is going on and how might that be relevant?
2. Why is America "truly a shock to the stranger?"
3. How is America different from "every other country in Western civilization?"
4. According to Myrdal, why do the values of the American Creed stand out so clearly in American society?
5. What is "America's peculiar brand of nationalism" and how is the Creed related?
6. Myrdal points out that "America is... conservative in fundamental principles" yet "...only the liberals have gone down in history as national heroes." Explain this paradox.
7. How are the Enlightenment and the American Creed related? What are the roots of the American Creed in the Enlightenment?
8. How are Christianity and the American Creed related? What are the roots of the American Creed in Christianity?
9. How is English Law related to the American Creed? What are the roots of the American Creed in English Law?
10. Why does it seem that all Americans, "Old Americans" and "other" alike believe so strongly in the American Creed?
11. What is "natural law" and how does it affect law in the United States?
12. Why do Americans tend to have low respect for the law?
13. What criticisms does Myrdal have of the theory that "stateways cannot change folkways?"
14. Given that Americans do not practice the ideals of the Creed, why is Americans' adherence to the ideals of the Creed not simply "lip-service" or "hypocrisy?"
15. Why is America the "least cynical of all nations?"
16. Why does Myrdal begin his analysis of America's race problem with a discussion of the American Creed?

## CHAPTER I

### AMERICAN IDEALS AND THE AMERICAN CONSCIENCE

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#### I. UNITY OF IDEALS AND DIVERSITY OF CULTURE

It is a commonplace to point out the heterogeneity of the American nation and the swift succession of all sorts of changes in all its component parts and, as it often seems, in every conceivable direction. America is truly a shock to the stranger. The bewildering impression it gives of dissimilarity throughout and of chaotic unrest is indicated by the fact that few outside observers—and, indeed, few native Americans—have been able to avoid the intellectual escape of speaking about America as "paradoxical."

Still there is evidently a strong unity in this nation and a basic homogeneity and stability in its valuations. Americans of all national origins, classes, regions, creeds, and colors, have something in common: a social *ethos*, a political creed. It is difficult to avoid the judgment that this "American Creed" is the cement in the structure of this great and disparate nation.

When the American Creed is once detected, the cacophony becomes a melody. The further observation then becomes apparent: that America, compared to every other country in Western civilization, large or small, has the *most explicitly expressed* system of general ideals in reference to human interrelations. This body of ideals is more widely understood and appreciated than similar ideals are anywhere else. The American Creed is not merely—as in some other countries—the implicit background of the nation's political and judicial order as it functions. To be sure, the political creed of America is not very satisfactorily effectuated in actual social life. But as principles which *ought* to rule, the Creed has been made conscious to everyone in American society.

Sometimes one even gets the impression that there is a relation between the intense apprehension of high and uncompromising ideals and the spotty reality. One feels that it is, perhaps, the difficulty of giving reality to the *ethos* in this young and still somewhat unorganized nation—that it is the prevalence of "wrongs" in America, "wrongs" judged by the high standards of the national Creed—which helps make the ideals stand out so

clearly. America is continuously struggling for its soul. These principles of social ethics have been hammered into easily remembered formulas. All means of intellectual communication are utilized to stamp them into everybody's mind. The schools teach them, the churches preach them. The courts pronounce their judicial decisions in their terms. They permeate editorials with a pattern of idealism so ingrained that the writers could scarcely free themselves from it even if they tried. They have fixed a custom of indulging in high-sounding generalities in all written or spoken addresses to the American public, otherwise so splendidly gifted for the matter-of-fact approach to things and problems. Even the stranger, when he has to appear before an American audience, feels this, if he is sensitive at all, and finds himself espousing the national Creed, as this is the only means by which a speaker can obtain human response from the people to whom he talks.

The Negro people in America are no exception to the national pattern. "It was a revelation to me to hear Negroes sometimes indulge in a glorification of American democracy in the same uncritical way as unsophisticated whites often do," relates the Dutch observer, Bertram Schrieke.<sup>1</sup> A Negro political scientist, Ralph Bunche, observes:

Every man in the street, white, black, red or yellow, knows that this is "the land of the free," the "land of opportunity," the "cradle of liberty," the "home of democracy," that the American flag symbolizes the "equality of all men" and guarantees to us all "the protection of life, liberty and property," freedom of speech, freedom of religion and racial tolerance.<sup>2</sup>

The present writer has made the same observation. The American Negroes know that they are a subordinated group experiencing, more than anybody else in the nation, the consequences of the fact that the Creed is not lived up to in America. Yet their faith in the Creed is not simply a means of pleading their unfulfilled rights. They, like the whites, are under the spell of the great national suggestion. With one part of themselves they actually believe, as do the whites, that the Creed is ruling America.

These ideals of the essential dignity of the individual human being, of the fundamental equality of all men, and of certain inalienable rights to freedom, justice, and a fair opportunity represent to the American people the essential meaning of the nation's early struggle for independence. In the clarity and intellectual boldness of the Enlightenment period these tenets were written into the Declaration of Independence, the Preamble of the Constitution, the Bill of Rights and into the constitutions of the several states. The ideals of the American Creed have thus become the highest law of the land. The Supreme Court pays its reverence to these general principles when it declares what is constitutional and what is not. They have been elaborated upon by all national leaders, thinkers and

statesmen. America has had, throughout its history, a continuous discussion of the principles and implications of democracy, a discussion which, in every epoch, measured by any standard, remained high, not only quantitatively but also qualitatively. The flow of learned treatises and popular tracts on the subject has not ebbed, nor is it likely to do so. In all wars, including the present one, the American Creed has been the ideological foundation of national morale.

## 2. AMERICAN NATIONALISM

The American Creed is identified with America's peculiar brand of nationalism, and it gives the common American his feeling of the historical mission of America in the world—a fact which just now becomes of global importance but which is also of highest significance for the particular problem studied in this book. The great national historian of the middle nineteenth century, George Bancroft, expressed this national feeling of pride and responsibility:

In the fulness of time a republic rose in the wilderness of America. Thousands of years had passed away before this child of the ages could be born. From whatever there was of good in the systems of the former centuries she drew her nourishment; the wrecks of the past were her warnings . . . The fame of this only daughter of freedom went out into all the lands of the earth; from her the human race drew hope.<sup>3</sup>

And Frederick J. Turner, who injected the naturalistic explanation into history that American democracy was a native-born product of the Western frontier, early in this century wrote in a similar vein:

Other nations have been rich and prosperous and powerful. But the United States has believed that it had an original contribution to make to the history of society by the production of a self-determining, self-restrained, intelligent democracy.<sup>4</sup>

Wilson's fourteen points and Roosevelt's four freedoms have more recently expressed to the world the boundless idealistic aspirations of this American Creed. For a century and more before the present epoch, when the oceans gave reality to the Monroe Doctrine, America at least applauded heartily every uprising of the people in any corner of the world. This was a tradition from America's own Revolution. The political revolutionaries of foreign countries were approved even by the conservatives in America. And America wanted generously to share its precious ideals and its happiness in enjoying a society ruled by its own people with all who would come here. James Truslow Adams tells us:

The American dream that has lured tens of millions of all nations to our shores in the past century has not been a dream of merely material plenty, though that has doubtless counted heavily. It has been much more than that. It has been a dream of

being able to grow to fullest development as man and woman, unhampered by the barriers which had slowly been erected in older civilizations, unrepressed by social orders which had developed for the benefit of classes rather than for the simple human being of any and every class. And that dream has been realized more fully in actual life here than anywhere else, though very imperfectly even among ourselves.<sup>5</sup>

This is what the Western frontier country could say to the "East." And even the skeptic cannot help feeling that, perhaps, this youthful exuberant America has the destiny to do for the whole Old World what the frontier did to the old colonies. *American nationalism is permeated by the American Creed*, and therefore becomes international in its essence.

### 3. SOME HISTORICAL REFLECTIONS

It is remarkable that a vast democracy with so many cultural disparities has been able to reach this unanimity of ideals and to elevate them supremely over the threshold of popular perception. Totalitarian fascism and nazism have not in their own countries—at least not in the short range of their present rule—succeeded in accomplishing a similar result, in spite of the fact that those governments, after having subdued the principal precepts most akin to the American Creed, have attempted to coerce the minds of their people by means of a centrally controlled, ruthless, and scientifically contrived apparatus of propaganda and violence.

There are more things to be wondered about. The disparity of national origin, language, religion, and culture, during the long era of mass immigration into the United States, has been closely correlated with income differences and social class distinctions. Successive vintages of "Old Americans" have owned the country and held the dominant political power; they have often despised and exploited "the foreigners." To this extent conditions in America must be said to have been particularly favorable to the stratification of a rigid class society.

But it has not come to be. On the question of why the trend took the other course, the historians, from Turner on, point to the free land and the boundless resources. The persistent drive from the Western frontier—now and then swelling into great tides as in the Jeffersonian movement around 1800, the Jacksonian movement a generation later, and the successive third-party movements and breaks in the traditional parties—could, however, reach its historical potency only because of the fact that America, from the Revolution onward, had an equalitarian creed as a going national *ethos*. The economic determinants and the force of the ideals can be shown to be interrelated. But the latter should not be relegated to merely a dependent variable. Vernon L. Parrington, the great historian of the development of the American mind, writes thus:

The humanitarian idealism of the Declaration [of Independence] has always echoed as a battle-cry in the hearts of those who dream of an America dedicated to

democratic ends. It cannot be long ignored or repudiated, for sooner or later it returns to plague the council of practical politics. It is constantly breaking out in fresh revolt. . . . Without its freshening influence our political history would have been much more sordid and materialistic.<sup>6</sup>

Indeed, the new republic began its career with a reaction. Charles Beard, in *An Economic Interpretation of the Constitution of the United States*,<sup>7</sup> and a group of modern historians, throwing aside the much cherished national mythology which had blurred the difference in spirit between the Declaration of Independence and the Constitution, have shown that the latter was conceived in considerable suspicion against democracy and fear of "the people." It was dominated by property consciousness and designed as a defense against the democratic spirit let loose during the Revolution.

But, admitting all this, the Constitution which actually emerged out of the compromises in the drafting convention provided for the most democratic state structure in existence anywhere in the world at that time. And many of the safeguards so skillfully thought out by the conservatives to protect "the rich, the wellborn, and the capable" against majority rule melted when the new order began to function. Other conservative safeguards have fastened themselves into the political pattern. And "in the ceaseless conflict between the man and the dollar, between democracy and property"—again to quote Parrington<sup>8</sup>—property has for long periods triumphed and blocked the will of the people. And there are today large geographical regions and fields of human life which, particularly when measured by the high goals of the American Creed, are conspicuously lagging. But taking the broad historical view, the American Creed has triumphed. It has given the main direction to change in this country. America has had gifted conservative statesmen and national leaders, and they have often determined the course of public affairs. But with few exceptions, only the liberals have gone down in history as national heroes.<sup>9</sup> America is, as we shall point out, conservative in fundamental principles, and in much more than that, though hopefully experimentalistic in regard to much of the practical arrangements in society. But *the principles conserved are liberal* and some, indeed, are radical.

America got this dynamic Creed much as a political convenience and a device of strategy during the long struggle with the English Crown, the London Parliament and the various British powerholders in the colonies. It served as the rallying center for the growing national unity that was needed. Later it was a necessary device for building up a national morale in order to enlist and sustain the people in the Revolutionary War. In this spirit the famous declarations were resolved, the glorious speeches made, the inciting pamphlets written and spread. "The appeal to arms would seem to have been brought about by a minority of the American people,

directed by a small group of skillful leaders, who, like Indian scouts, covered their tracks so cleverly, that only the keenest trailers can now follow their course and understand their strategy."<sup>10</sup>

But the Creed, once set forth and disseminated among the American people, became so strongly entrenched in their hearts, and the circumstances have since then been so relatively favorable, that it has succeeded in keeping itself very much alive for more than a century and a half.

#### 4. THE ROOTS OF THE AMERICAN CREED IN THE PHILOSOPHY OF ENLIGHTENMENT

The American Creed is a humanistic liberalism developing out of the epoch of Enlightenment when America received its national consciousness and its political structure. The Revolution did not stop short of anything less than the heroic desire for the "emancipation of human nature." The enticing flavor of the eighteenth century, so dear to every intellectual and rationalist, has not been lost on the long journey up to the present time. Let us quote a contemporary exegesis:

Democracy is a form of political association in which the general control and direction of the commonwealth is habitually determined by the bulk of the community in accordance with understandings and procedures providing for popular participation and consent. Its postulates are:

1. The essential dignity of man, the importance of protecting and cultivating his personality on a fraternal rather than upon a differential basis, of reconciling the needs of the personality within the frame-work of the common good in a formula of liberty, justice, welfare.
2. The perfectibility of man; confidence in the possibilities of the human personality, as over against the doctrines of caste, class, and slavery.
3. That the gains of commonwealths are essentially mass gains rather than the efforts of the few and should be diffused as promptly as possible throughout the community without too great delay or too wide a spread in differentials.
4. Confidence in the value of the consent of the governed expressed in institutions, understandings and practices as a basis of order, liberty, justice.
5. The value of decisions arrived at by common counsel rather than by violence and brutality.

These postulates rest upon (1) reason in regarding the essential nature of the political man, upon (2) observation, experience and inference, and (3) the fulfillment of the democratic ideal is strengthened by a faith in the final triumph of ideals of human behavior in general and of political behavior in particular.<sup>11</sup>

For practical purposes the main norms of the American Creed as usually pronounced are centered in the belief in equality and in the rights to liberty.<sup>12</sup> In the Declaration of Independence—as in the earlier Virginia Bill of Rights—equality was given the supreme rank and the rights to liberty are posited as derived from equality. This logic was even more clearly expressed in Jefferson's original formulation of the first of the

"self-evident truths": "All men are created equal and from that equal creation they derive rights inherent and unalienable, among which are the preservation of life and liberty and the pursuit of happiness."<sup>13</sup>

Liberty, in a sense, was easiest to reach. It is a vague ideal: everything turns around *whose* liberty is preserved, to *what extent* and *in what direction*. In society liberty for one may mean the suppression of liberty for others. The result of competition will be determined by who got a head start and who is handicapped. In America as everywhere else—and sometimes, perhaps, on the average, a little more ruthlessly—liberty often provided an opportunity for the stronger to rob the weaker. Against this, the equalitarianism in the Creed has been persistently revolting. The struggle is far from ended. The reason why American liberty was not more dangerous to equality was, of course, the open frontier and the free land. When opportunity became bounded in the last generation, the inherent conflict between equality and liberty flared up. Equality is slowly winning. The New Deal during the 'thirties was a landslide.<sup>14</sup>

#### 5. THE ROOTS IN CHRISTIANITY

If the European philosophy of Enlightenment was one of the ideological roots of the American Creed, another equally important one was Christianity, particularly as it took the form in the colonies of various lower class Protestant sects, split off from the Anglican Church.<sup>15</sup> "Democracy was envisaged in religious terms long before it assumed a political terminology."<sup>14</sup>

It is true that modern history has relegated to the category of the pious patriotic myths the popular belief that *all* the colonies had been founded to get religious liberty, which could not be had in the Old World. Some of the colonies were commercial adventures and the settlers came to them, and even to the religious colonies later, to improve their economic status. It is also true that the churches in the early colonial times did not always exactly represent the idea of democratic government in America but most often a harsher tyranny over people's souls and behavior than either King or Parliament ever cared to wield.

But the myth itself is a social reality with important effects. It was strong

<sup>14</sup> New Dealers, like most American liberals today, pronounce liberty before equality. But they do so in the eighteenth century Jeffersonian sense, not in the American businessman's sense. The "four freedoms" of Franklin D. Roosevelt are liberties, but they are liberties to get equality, not liberties of the stronger to infringe on the weaker. In this sense, equality is logically derivable from liberty, just as liberty is from equality: if there is real liberty for all there will be equal opportunity and equal justice for all, and there will even be social equality limited only by minor biological inequalities.

<sup>15</sup> While the Protestant sects emphasized the elements of the American Creed, it should not be forgotten that there was an older trait of humanitarianism and equalitarianism in the creed of the Medieval Church.

already in the period of the Revolution and continued to grow. A small proportion of new immigrants throughout the nineteenth century came for religious reasons, or partly so, and a great many more wanted to rationalize their uprooting and transplantation in such terms. So religion itself in America took on a spirit of fight for liberty. The Bible is full of support for such a spirit. It consists to a large extent of the tales of oppression and redemption from oppression: in the Old Testament of the Jewish people and in the New Testament of the early Christians. The rich and mighty are most often the wrongdoers, while the poor and lowly are the followers of God and Christ.

The basic teaching of Protestant Christianity is democratic. We are all poor sinners and have the same heavenly father. The concept of natural rights in the philosophy of Enlightenment corresponded rather closely with the idea of moral law in the Christian faith:

The doctrine of the free individual, postulating the gradual escape of men from external political control, as they learned to obey the moral law, had its counterpart in the emphasis of evangelicism upon the freedom of the regenerated man from the terrors of the Old Testament code framed for the curbing of unruly and sinful generations. The philosophy of progress was similar to the Utopian hopes of the millenarians. The mission of American democracy to save the world from the oppression of autocrats was a secular version of the destiny of Christianity to save the world from the governance of Satan.<sup>15</sup>

But apart from the historical problem of the extent to which church and religion in America actually inspired the American Creed, they became a powerful container and preserver of the Creed when it was once in existence. This was true from the beginning. While in Europe after the Napoleonic Wars the increasing power of the churches everywhere spelled a period of reaction, the great revivals beginning around 1800 in America were a sort of religious continuation of the Revolution.

In this way great numbers whom the more-or-less involved theory of natural rights had escaped came under the leveling influence of a religious doctrine which held that all men were equal in the sight of God. Throughout the Revival period the upper classes looked upon the movement as "a religious distemper" which spread like a contagious disease, and they pointed out that it made its greatest appeal to "those of weak intellect and unstable emotions, women, adolescents, and Negroes." But to the poor farmer who had helped to win the Revolution only to find himself oppressed as much by the American ruling classes as he had ever been by Crown officials, the movement was "the greatest stir of Religion since the day of Pentecost."<sup>16</sup>

Religion is still a potent force in American life. "They are a religious people," observed Lord Bryce about Americans a half a century ago, with great understanding for the importance of this fact for their national ideology.<sup>17</sup> American scientific observers are likely to get their attentions

fixed upon the process of progressive secularization to the extent that they do not see this main fact, that America probably is still the most religious country in the Western world. Political leaders are continuously deducing the American Creed out of the Bible. Vice-President Henry Wallace, in his historic speech of May 8, 1942, to the Free World Association, where he declared the present war to be "a fight between a slave world and a free world" and declared himself for "a people's peace" to inaugurate "the century of the common man," spoke thus:

The idea of freedom—the freedom that we in the United States know and love so well—is derived from the Bible with its extraordinary emphasis on the dignity of the individual. Democracy is the only true political expression of Christianity.

The prophets of the Old Testament were the first to preach social justice. But that which was sensed by the prophets many centuries before Christ was not given complete and powerful political expression until our Nation was formed as a Federal Union a century and a half ago.<sup>18</sup>

Ministers have often been reactionaries in America. They have often tried to stifle free speech; they have organized persecution of unpopular dissenters and have even, in some regions, been active as the organizers of the Ku Klux Klan and similar "un-American" (in terms of the American Creed) movements. But, on the whole, church and religion in America are a force strengthening the American Creed. The fundamental tenets of Christianity press for expression even in the most bigoted setting. And, again on the whole, American religion is not particularly bigoted, but on the contrary, rather open-minded. The mere fact that there are many denominations, and that there is competition between them, forces American churches to a greater tolerance and ecumenical understanding and to a greater humanism and interest in social problems than the people in the churches would otherwise call for.

I also believe that American churches and their teachings have contributed something essential to the emotional temper of the Creed and, indeed, of the American people. Competent and sympathetic foreign observers have always noted the generosity and helpfulness of Americans.<sup>19</sup> This and the equally conspicuous formal democracy in human contacts have undoubtedly had much to do with the predominantly lower class origin of the American people, and even more perhaps, with the mobility and the opportunities—what de Tocqueville called the "equality of condition"—in the nation when it was in its formative stage. But I cannot help feeling that the Christian neighborliness of the common American reflects, also, an influence from the churches. Apart from its origin, this temper of the Americans is part and parcel of the American Creed. It shows up in the Americans' readiness to make financial sacrifices for charitable purposes. No country has so many cheerful givers as America. It was not only "rugged individ-

ualism," nor a relatively continuous prosperity, that made it possible for America to get along without a publicly organized welfare policy almost up to the Great Depression in the 'thirties but it was also the world's most generous private charity.

#### 6. THE ROOTS IN ENGLISH LAW

The third main ideological influence behind the American Creed is English law. The indebtedness of American civilization to the culture of the mother country is nowhere else as great as in respect to the democratic concept of law and order, which it inherited almost without noticing it. It is the glory of England that, after many generations of hard struggle, it established the principles of justice, equity, and equality before the law even in an age when the rest of Europe (except for the cultural islands of Switzerland, Iceland, and Scandinavia) based personal security on the arbitrary police and on *lettres de cachet*.

This concept of a government "of laws and not of men" contained certain fundamentals of both equality and liberty. It will be a part of our task to study how these elemental demands are not nearly realized even in present-day America. But in the American Creed they have never been questioned. And it is no exaggeration to state that the philosophical ideas of human equality and the inalienable rights to life, liberty, and property, hastily sowed on American ground in a period of revolution when they were opportune—even allowing ever so much credit to the influences from the free life on the Western frontier—would not have struck root as they did if the soil had not already been cultivated by English law.

Law and order represent such a crucial element both in the American Creed and in the spotty American reality that, at a later stage of our argument in this chapter, we shall have to devote some further remarks to this particular set of ideological roots.

#### 7. AMERICAN CONSERVATISM

These ideological forces—the Christian religion and the English law—also explain why America through all its adventures has so doggedly stuck to its high ideals: why it has been so conservative in keeping to liberalism as a national creed even if not as its actual way of life. This conservatism, in fundamental principles, has, to a great extent, been perverted into a nearly fetishistic cult of the Constitution. This is unfortunate since the 150-year-old Constitution is in many respects impractical and ill-suited for modern conditions and since, furthermore, the drafters of the document made it technically difficult to change even if there were no popular feeling against change.

The worship of the Constitution also is a most flagrant violation of the

American Creed which, as far as the technical arrangements for executing the power of the people are concerned, is strongly opposed to stiff formulas. Jefferson actually referred to the American form of government as an experiment. The young Walt Whitman, among many other liberals before and after him, expressed the spirit of the American Revolution more faithfully when he demanded "continual additions to our great experiment of how much liberty society will bear." Modern historical studies of how the Constitution came to be as it is reveal that the Constitutional Convention was nearly a plot against the common people. Until recently, the Constitution has been used to block the popular will: the Fourteenth Amendment inserted after the Civil War to protect the civil rights of the poor freedmen has, for instance, been used more to protect business corporations against public control.<sup>a</sup>

But when all this is said, it does not give more than one side of the cult of the Constitution. The common American is not informed on the technicalities and has never thought of any great difference in spirit between the Declaration of Independence and the Constitution. When he worships the Constitution, it is an act of American nationalism, and in this the American Creed is inextricably blended. The liberal Creed, even in its dynamic formulation by Jefferson, is adhered to by every American. The unanimity around, and the explicitness of, this Creed is the great wonder of America. The "Old Americans," all those who have thoroughly come to identify themselves with the nation—which are many more than the Sons and Daughters of the Revolution—adhere to the Creed as the faith of their ancestors. The others—the Negroes, the new immigrants, the Jews, and other disadvantaged and unpopular groups—could not possibly have invented a system of political ideals which better corresponded to their interests. So, by the logic of the unique American history, it has developed that the rich and secure, out of pride and conservatism, and the poor and insecure, out of dire need, have come to profess the identical social ideals. The reflecting observer comes to feel that this spiritual convergence, more than America's strategic position behind the oceans and its immense material resources, is what makes the nation great and what promises it a still greater future. Behind it all is the historical reality which makes it possible for the President to appeal to all in the nation in this way: "Let us not forget that we are all descendants from revolutionaries and immigrants."

#### 8. THE AMERICAN CONCEPTION OF LAW AND ORDER

While the Creed is important and is enacted into law, it is not lived up to in practice. To understand this we shall have to examine American

<sup>a</sup> See Chapter 20, Section 5.

attitudes toward law. It is necessary to discuss the legal tradition of America at the outset, since it gives a unique twist to each of the specific problems that we shall take up in ensuing chapters.<sup>a</sup>

Americans are accustomed to inscribe their ideals in laws, ranging from their national Constitution to their local traffic rules. American laws thus often contain, in addition to the actually enforced rules (that is, "laws" in the ordinary technical meaning of the term), other rules which are not valid or operative but merely express the legislators' hopes, desires, advice or dreams. There is nothing in the legal form to distinguish the latter rules from the former ones. Much of the political discussion has to do with the question of strengthening the administration of laws or taking other measures so as to enforce them. Between the completely enforced rules and the unenforceable ones there are many intermediary types which are sometimes, under some conditions, or in some part, only conditionally and incompletely enforced.

To an extent this peculiar cultural trait of America is explainable by the fact that the nation is young and, even more, that it owes its state structure to a revolution—a revolution in the courageously rationalistic age of Enlightenment. Americans have kept to this custom of inscribing their ideals in laws.<sup>b</sup>

The "function," from the legislator's point of view, of legislating national ideals is, of course, a pedagogical one of giving them high publicity and prestige. Legislating ideals has also a "function" of dedicating the nation to the task of gradually approaching them. In a new nation made up of immigrants from all corners of the world and constantly growing by the arrival of other immigrants, carrying with them a greatly diversified cultural heritage, these goals must have stood out as important to statesmen and political thinkers.

Another cultural trait of Americans is a relatively low degree of respect for law and order. This trait, as well as the other one just mentioned, is of paramount importance for the Negro problem as we shall show in some detail in later chapters. There is a relation between these two traits, of high ideals in some laws and low respect for all laws, but this relation is by no means as simple as it appears.

<sup>a</sup> Our analysis is somewhat parallel to that of James Truslow Adams, "Our Lawless Heritage," *Atlantic Monthly* (December, 1928), pp. 732-740.

<sup>b</sup> Other countries, and I am thinking primarily of Great Britain, Holland, and Scandinavia, also sometimes commit their ideals to legislation, but they do so rarely and with great circumspection and extreme caution. On the whole, these countries have left even the essential liberties of citizens in a democracy unformulated as merely implied in all legislation and judicial procedure. Yet they have afforded a greater protection of the common citizens' liberties under the law than America (although they have not faced the same problems as America).

### 9. NATURAL LAW AND AMERICAN PURITANISM

On this point we must observe somewhat more closely the moralistic attitude toward law in America, expressed in the common belief that there is a "higher law" behind and above the specific laws contained in constitutions, statutes and other regulations.

The idea of a "natural law" has long been a part of our common line of legal tradition. When the elected "lawman" in pre-Christian times "spoke the law" to the assembled arm-bearing freemen, he was not assumed to make the law or invent it but to expound something which existed prior to and independent of himself and all others participating in the procedure. The idea of a "higher law," as well as the whole procedure of letting it become a social reality and, indeed, the entire legal system as it functioned and grew in the northern countries, had deep roots in primitive religion and magic, as is revealed by studies of the contemporary mythology and the peculiar formalistic mechanisms of the creation and operation of law. The distinguishing mark of the particular type of magical thinking in these countries was, however, that out of it developed what we now understand to be the characteristic respect for law of modern democracy.

When representative bodies, among them the English Parliament, emerged as political institutions, they also did not conceive of themselves as "legislatures" in the modern sense, but pretended only to state the law that already "existed." Even when these legislatures began to take on new functions and to make rules to meet new situations, they still kept up the fiction that they only "declared" or "explained" the law as it existed. The modern idea of creating laws by "legislation" is thus a late product in the historical development of Western democracy, and it was never totally freed from the connotation of its subordination to a "higher law" existing independent of all formally fixed rules.

In America the Revolution gave a tremendous spread to this primitive idea of "natural law" as it, in the meantime, had been developed in the philosophies of Enlightenment under the further influences of Greek speculation, Roman law, medieval scholasticism, and free naturalistic speculation since Francis Bacon, Thomas Hobbes and Hugo Grotius. American religion supported it strongly. The idea fixed itself upon the entire American state structure. "A peculiarity of American democracy had been from the beginning that it put its faith in a higher law rather than in the changing will of the people."<sup>20</sup> The role given to the Supreme Court and the tradition of this tribunal not to "legislate," which as a court it could hardly have the right to do, but to refer to the higher principles back of the Constitution strengthened still more the grip of this old idea on the mind of the Americans.

The adherence even in modern times to this idealistic conception of the



origin and reality of the judicial order undoubtedly, in one way, raised its moral prestige among the American people as it had done earlier in the history of the Old World. No careful observer of the present American scene should miss seeing, in spite of everything we shall discuss presently, the common American's pride in and devotion to the nation's judicial system and its legal institutions. Government authorities constantly appeal to this idealistic pride and devotion of the citizens in order to enforce the law. In America, there is a continuous endeavor to keep the judicial system orderly, and there is a continuous educational campaign on behalf of this idealism. Undoubtedly *the idealistic concept of American law as an emanation of "natural law" is a force which strengthens the rule of law in America.*

But, in another way, it is at the same time most detrimental to automatic, unreflecting law observance on the part of the citizens. Laws become disputable on moral grounds. Each legislative statute is judged by the common citizen in terms of his conception of the higher "natural law." He decides whether it is "just" or "unjust" and has *the dangerous attitude that, if it is unjust, he may feel free to disobey it.*<sup>21</sup> The strong stress on individual rights and the almost complete silence on the citizen's duties in the American Creed make this reaction the more natural. The Jeffersonian distrust of government—"that government is best which governs least"—soon took the form, particularly on the Western frontier, of a distrust and disrespect for the enacted laws. The doctrine of a higher law fosters an "extra-legal" disposition towards the state and excuses illegal acts.

But the frontier was not, in this respect, fundamentally different from the old colonies. Without stepping outside the American tradition, Garrison could pronounce even the Constitution to be a "compact with Hell" on the slavery issue. This, by itself, would not have been dangerous to democracy, if he had meant to argue only for a change of the Constitution. But he and many more Northerners of conscientious inclinations found it a moral obligation not to obey the fugitive slave laws. Here the citizen does not stop to criticize the laws and the judicial system and demand a change in them, but he sets his own conception of the "higher law" above the existing laws in society and feels it his right to disobey them. It is against this background also that we shall have to study the amazing disrespect for law and order which even today characterizes the Southern states in America and constitutes such a large part of the Negro problem. This anarchistic tendency founded upon a primitive concept of natural law has never left American political speculation or American popular thought.<sup>22</sup>

This anarchistic tendency in America's legal culture becomes even more dangerous because of the presence of a quite different tendency: *a desire to regulate human behavior tyrannically by means of formal laws.* This last tendency is a heritage from early American puritanism which was some-

times fanatical and dogmatic and always had a strong inclination to mind other people's business. So we find that this American, who is so proud to announce that he will not obey laws other than those which are "good" and "just," as soon as the discussion turns to something which in his opinion is bad and unjust, will emphatically pronounce that "there ought to be a law against . . ." To demand and legislate all sorts of laws against this or that is just as much part of American freedom as to disobey the laws when they are enacted. America has become a country where exceedingly much is permitted in practice but at the same time exceedingly much is forbidden in law.

By instituting a national prohibition of the sale of liquor without taking adequate steps for its enforcement, America was nearly drenched in corruption and organized crime until the statute was repealed. The laws against gambling have, on a smaller scale, the same effect at the present time. And many more of those unrespected laws are damaging in so far as they, for example, prevent a rational organization of various public activities, or when they can be used by individuals for blackmailing purposes or by the state or municipal authorities to persecute unpopular individuals or groups. Such practices are conducive to a general disrespect for law in America. Actually today it is a necessity in everyday living for the common good American citizen to decide for himself which laws should be observed and which not.

#### 10. THE FALTERING JUDICIAL ORDER

We shall meet this conflict as a central theme in all angles of the Negro problem. The conflict should not, however, be formulated only in terms of the national ideology. Or, rather, this ideology is not fully explainable in terms of the thoughts and feelings out of which the American Creed was composed.

A low degree of law observance already became habitual and nationally cherished in colonial times when the British Parliament and Crown, increasingly looked upon as a foreign ruler by the Americans, insisted upon passing laws which the Americans considered unwise, impractical or simply unjust. The free life on the frontier also strained legal bonds. There the conflict between puritanical intolerance and untamed desire for individual freedom clashed more severely than anywhere else. The mass immigration and the cultural heterogeneity were other factors hampering the fixation of a firm legal order in America. The presence of states within the nation with different sets of laws and the high mobility between states were contributing factors. The jurisdictional friction between states and the federal government, the technical and political difficulties in changing the federal Constitution, the consequent great complexity of the American legal system, and the mass of legal fiction and plain trickery also are among the



important factors. For example, it cannot be conducive to the highest respect for the legal system that the federal government is forced to carry out important social legislation under the fiction that it is regulating "inter-state commerce," or that federal prosecuting agencies punish dangerous gangsters for income tax evasion rather than for the felonies they have committed.

So this idealistic America also became the country of legalistic formalism. Contrary to America's basic ideology of natural law and its strong practical sense, "the letter of the law," as opposed to its "spirit," came to have an excessive importance. The weak bureaucracy<sup>a</sup> became tangled up in "red tape." The clever lawyer came to play a large and unsavory role in politics, in business, and in the everyday life of the citizens. The Americans thus got a judicial order which is in many respects contrary to all their inclinations.

Under the influence of all these and many other factors the common American citizen has acquired a comparatively low degree of personal identification with the state and the legal machinery. An American, when he accidentally comes by the scene of a crime or of an attempt by the police to seize an offender, is, on the average, more inclined to hurry on in order not to get involved in something unpleasant, and less inclined to stop and help the arm of the law, than a Britisher or a Scandinavian would be under similar circumstances. He is more likely to look on his country's and his community's politics and administration as something to be indulged and tolerated, as outside his own responsibility, and less likely to think and act as a would-be legislator, in a cooperative endeavor to organize a decent social life.<sup>b</sup> He is even inclined to dissociate himself from politics as something unworthy and to take measures to keep the worthy things "out of politics." This is part of what Lord Bryce called "the fatalism of the multitude" in America. This political fatalism and the lack of identification and participation work as a vicious circle, being both cause and effect of corruption and political machine rule.

The authorities, when not relying upon the idealistic appeal, will most often meet the citizen's individualistic inclinations by trying to educate him to obey the law less in terms of collective interest than in terms of self-interest. They try to tell the young that "crime does not pay," which, in some areas, is a statement of doubtful truth.

In the exploitation of the new continent business leaders were not particular about whether or not the means they used corresponded either with the natural law or with the specific laws of the nation or the states. This became of greater importance because of the central position of business in the formation of national aspirations and ideals. When Theodore

<sup>a</sup> See Chapter 20, Section 2.

<sup>b</sup> The low degree of participation will be discussed in Chapter 33.

Roosevelt exclaimed: "Damn the law! I want the canal built," he spoke the language of his contemporary business world and of the ordinary American.

We have to conceive of all the numerous breaches of law, which an American citizen commits or learns about in the course of ordinary living, as psychologically a series of shocks which condition him and the entire society to a low degree of law observance. The American nation has, further, experienced disappointments in its attempts to legislate social change, which, with few exceptions, have been badly prepared and inefficiently carried out. The almost traumatic effects of these historical disappointments have been enhanced by America's conspicuous success in so many fields other than legislation. One of the trauma was the Reconstruction legislation, which attempted to give Negroes civil rights in the South; another one was the anti-trust legislation pressed by the Western farmers and enacted to curb the growth of monopolistic finance capitalism; a third one was the prohibition amendment.

#### II. INTELLECTUAL DEFEATISM

Against this background, and remembering the puritan tendency in America to make all sorts of haphazard laws directed at symptoms and not at causes and without much consideration for social facts and possibilities,<sup>23</sup> it is understandable that the social scientists, particularly the sociologists, in America have developed a defeatist attitude towards the possibility of inducing social change by means of legislation.<sup>a</sup> The political "do-nothing" tendency is strong in present-day social science in America. It is, typically enough, developed as a *general* theory—actually as a scientific translation of the old natural law idea in its negative import. The social scientists simply reflect the general distrust of politics and legislation that is widespread among the educated classes of Americans.

Of particular importance to us is that this view is common even among Negro intellectuals when reflecting on various aspects of the Negro problem. The failure of Reconstruction had especially severe effects on them. Younger Negro intellectuals are disposed to express disbelief in the possibility that much can be won by politics, legislation, and law suits, and have become inclined to set their hopes on what they conceive of as more fundamental changes of the economic structure. Sometimes they think in terms of an economic revolution. But, whether their thoughts take such a radical direction or stay conservative, a common trait is fatalism in regard to politics and legislation. Fatalism in regard to *res publica* is, however,

<sup>a</sup> These points are developed at greater length in Appendix 2. We are here referring not to the specialists on law and law enforcement but to the general sociologist, economist, or political scientist when he meets legislation as an angle of his respective problems.

by no means a Negro characteristic. It is a common American disease of the democratic spirit which is on the way to becoming chronic.

We shall meet this tendency as it affects various aspects of the Negro problem as we go along. A few critical remarks on the general theory that "stateways cannot change folkways" need to be made at the start. In this abstract form and as applied to various specific problems, the theory cannot be true, since in other parts of the world similar changes are effectuated by means of legislation. The theory must, therefore, be qualified in the light of specific American conditions. But even in America new legislation, infringing upon old customs and upon individual and local interests, is often made fairly watertight nowadays.<sup>24</sup> The general explanation why some laws have been more successful than others in America is that *they have been better prepared and better administered.*

This means that, among the explanations for the general disrepute and deficiency of law and order in America, there are two other factors: *the habit of passing laws without careful investigation, and the relatively low standard of American administration of law.* To the latter point we shall return in a later chapter,<sup>a</sup> where we shall point also to the new but strong tendency in America toward the building up of an independent and legal administration. On the former point we shall restrict ourselves to quoting a high authority: "For nothing is done with so little of scientific or orderly method as the legislative making of laws."<sup>25</sup>

These two factors are strategic. When the foolish attempts to suppress symptoms of ills while leaving the causes untouched become censored, and when lawmaking increasingly becomes an important task of scientific social engineering, and when, further, administration becomes independent, legal, impartial, and efficient, better laws will be made, and they will be better enforced even in America. It is a problem to explain why lawmaking and administration have been so backward in a nation where private business and also private agencies for public good are often excellently organized.

The mere possibility of change in these two factors shows the fallacy of the general theory that law cannot change custom. In the face of the tendency in American society toward more careful lawmaking and improved administration the theory appears politically as well as theoretically biased; biased against induced change. In this book we shall meet other dynamic tendencies in American society favoring the same development, the chief among them being, perhaps, the growing cultural homogeneity and the increasing political and social participation of the masses. Many social scientists tend not only to ignore these changes, but to deny them and, in some cases, to oppose them.

If in the course of time Americans are brought to be a law-abiding people, and if they at the same time succeed in keeping alive not only their

<sup>a</sup> See Chapter 20.

conservatism in fundamental principles and their pride and devotion to their national political institutions, but also some of their puritan eagerness and courage in attempting to reform themselves and the world—redirected somewhat from the old Biblical inclination of thinking only in terms of prescriptions and purges—this great nation may become the master builder of a stable but progressive commonwealth.

## 12. "LIP-SERVICE"

The conflict in the American concept of law and order is only one side of the "moral overstrain" of the nation. America believes in and aspires to something much higher than its plane of actual life. The subordinate position of Negroes is perhaps the most glaring conflict in the American conscience and the greatest unsolved task for American democracy. But it is by no means the only one. Donald Young complains:

In our more introspective moments, nearly all of us Americans will admit that our government contains imperfections and anachronisms. We who have been born and brought up under the evils of gang rule, graft, political incompetence, inadequate representation, and some of the other weaknesses of democracy, American plan, have developed mental callouses and are no longer sensitive to them.<sup>26</sup>

The *popular* explanation of the disparity in America between ideals and actual behavior is that Americans do not have the slightest intention of living up to the ideals which they talk about and put into their Constitution and laws. Many Americans are accustomed to talk loosely and disparagingly about adherence to the American Creed as "lip-service" and even "hypocrisy." Foreigners are even more prone to make such a characterization.

This explanation is too superficial. To begin with, the true hypocrite sins in secret; he conceals his faults. The American, on the contrary, is strongly and sincerely "against sin," even, and not least, his own sins. He investigates his faults, puts them on record, and shouts them from the housetops, adding the most severe recriminations against himself, including the accusation of hypocrisy. If all the world is well informed about the political corruption, organized crime, and faltering system of justice in America, it is primarily not due to its malice but to American publicity about its own imperfections. America's handling of the Negro problem has been criticized most emphatically by white Americans since long before the Revolution, and the criticism has steadily gone on and will not stop until America has completely reformed itself.

Bryce observed: "They know, and are content that all the world should know, the worst as well as the best of themselves. They have a boundless faith in free inquiry and full discussion. They admit the possibility of any number of temporary errors and delusions."<sup>27</sup> The present author remembers, from his first visit to this country as an inexperienced social scientist

at the end of the 'twenties, how confused he often felt when Americans in all walks of life were trustingly asking him to tell them what was "wrong with this country." It is true that this open-mindedness, particularly against the outside world, may have decreased considerably since then on account of the depression, and that the present War might work in the same direction, though this is not certain; and it is true also that the opposite tendency always had its strong representation in America. But, by and large, America has been and will remain, in all probability, a society which is eager to indulge in self-scrutiny and to welcome criticism.

This American eagerness to get on record one's sins and their causes is illustrated in the often quoted letter by Patrick Henry (1772), where he confessed that he had slaves because he was "drawn along by the general inconvenience of living here without them."

I will not, I cannot, justify it. However culpable my conduct, I will so far pay my devoir to virtue as to own the excellence and rectitude of her precepts, and lament my want of conformity to them.<sup>28</sup>

American rationalism and moralism spoke through Patrick Henry. America as a nation is like its courageous and eloquent son of the Revolution. It is continuously paying its *devoir* to virtue; it is repeating its allegiance to the full American Creed by lamenting its want of conformity to it. The strength and security of the nation helped this puritan tradition to continue. No weak nation anxious for its future could ever have done it. Americans believe in their own ability and in progress. They are at bottom moral optimists.

In a great nation there is, of course, division of labor. Some Americans do most of the sinning, but most do some of it. Some specialize in muckraking, preaching, and lamentation; but there is a little of the muckraker and preacher in all Americans. On the other hand, superficially viewed, Americans often appear cynical. Their social science has lately developed along a deterministic track of amoralistic nonconcernedness; but this is itself easily seen to be a moralistic reaction. As a matter of fact, this young nation is the least cynical of all nations. It is not hypocritical in the usual sense of the word, but labors persistently with its moral problems. It is taking its Creed very seriously indeed, and this is the reason why the ideals are not only continuously discussed but also represent a social force—why they receive more than "lip-service" in the collective life of the nation. The cultural unity of the nation is this common sharing in both the consciousness of sins and the devotion to high ideals.

Americans accuse themselves, and are accused by others, of being materialists. But they are equally extreme in the other direction. Sometimes an American feels moved to put the matter right, as Josiah Royce did when he explained:

When foreigners accuse us of extraordinary love for gain, and of practical materialism, they fail to see how largely we are a nation of idealists. Yet that we are such a nation is something constantly brought to the attention of those whose calling requires them to observe any of the tendencies prevalent in our recent intellectual life in America.<sup>29</sup>

The American problem to be studied in this book would, indeed, have an entirely different prognosis if this fact were forgotten.

### 13. VALUE PREMISES IN THIS STUDY

For the study of a national problem which cuts so sharply through the whole body politic as does the Negro problem, no other set of valuations could serve as adequately as the norm for an incisive formulation of our value premises as can the American Creed. No other norm could compete in authority over people's minds. "The American democratic faith is a pattern of ideals providing standards of value with which the accomplishments of realistic democracy may be judged," observes an author surveying the historical trends of American thinking.<sup>30</sup>

And there is no doubt that these ideals are active realities. The student of American history must be professionally near-sighted or blinded by a doctrinal belief in a materialistic determinism if he fails to see the significance of tracing how the Creed is gradually realizing itself. *The American Creed is itself one of the dominant "social trends."* "Call it a dream or call it vision," says John Dewey, "it has been interwoven in a tradition that has had an immense effect upon American life."<sup>31</sup> Or, to quote a distinguished Negro thinker, the late Kelly Miller:

In this country political, social and economic conditions gravitate toward equality. We may continue to expect thunderstorms in the political firmament so long as there exists inequality of political temperature in the atmosphere of the two regions. Neither Massachusetts nor Mississippi will rest satisfied until there is an equality of political condition in both States. . . . Democratic institutions can no more tolerate a double political status than two standards of ethics or discrepant units of weight and measure.<sup>32</sup>

But apart from trends, the American Creed represents the national conscience. The Negro is a "problem" to the average American partly because of a palpable conflict between the status actually awarded him and those ideals.

The American Creed, just because it is a living reality in a developing democracy, is not a fixed and clear-cut dogma. It is still growing. During the Revolutionary epoch the interests of statesmen and philosophers and of the general public were focused on the more formal aspects of freedom, equality and justice. After a long period of material expansion but not rapid spiritual growth, the American Creed is in this generation again in

a formative stage. It is now discovering its ideals in the social and economic sphere and in the realm of international organization.

While this is going on, there are great disparities in opinions even on fundamentals in these new fields of valuation—as there were during the Revolution concerning the ideals which then became crystallized. Some Americans see in trade unions a denial of the rights to human liberty; others see in the unions an expression of the common man's right to reach for greater equality and freedom. Some Americans want to tax property and nationalize public utilities in order to defend equality of opportunity for the masses of the people and to preserve their liberties; others see in such attempts an assault upon American principles of liberty. In the international field American ideals in recent decades and even today seem divided and rambling in the wide space of the triangle marked by the three points: absolute isolationism, an organized world democracy, and American world imperialism.

These great disparities of opinion would, in any other social problem, considerably increase the technical difficulties of utilizing the Creed as a set of specified and definite value premises for research. When in later chapters we face the task of defining our value premises specifically, we shall find that this is not the case in the Negro problem. The Creed is expressive and definite in practically all respects of importance for the Negro problem. Most of the value premises with which we shall be concerned have actually been incorporated for a long time in the national Constitution and in the constitutions and laws of the several states.

The deeper reason for the technical simplicity of the value aspect of the Negro problem is this: From the point of view of the American Creed the status accorded the Negro in America represents nothing more and nothing less than a century-long lag of public morals. In principle the Negro problem was settled long ago; in practice the solution is not effectuated. The Negro in America has not yet been given the elemental civil and political rights of formal democracy, including a fair opportunity to earn his living, upon which a general accord was already won when the American Creed was first taking form. And this anachronism constitutes the contemporary "problem" both to Negroes and to whites.

If those rights were respected, many other pressing social problems would, of course, still remain. Many Negroes would, together with many whites, belong to groups which would invoke the old ideals of equality and liberty in demanding more effective protection for their social and economic opportunities. But there would no longer be a *Negro* problem. This does not mean that the Negro problem is an easy problem to solve. It is a tremendous task for theoretical research to find out why the Negro's status is what it is. In its unsolved form it further intertwines with all other social problems. It is simple only in the technical sense that in America the value

premises—if they are conceived to be the ideals of the American Creed—are extraordinarily specific and definite.

Finally, in order to avoid possible misunderstandings, it should be explained that we have called this Creed "American" in the sense that it is adhered to by the Americans. This is the only matter which interests us in this book, which is focused upon the Negro problem as part of American life and American politics. But this Creed is, of course, no American monopoly. With minor variations, some of which, however, are not without importance, the American Creed is the common democratic creed. "American ideals" are just humane ideals as they have matured in our common Western civilization upon the foundation of Christianity and pre-Christian legalism and under the influence of the economic, scientific, and political development over a number of centuries. The American Creed is older and wider than America itself.