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## CONFLICT, CONSENSUS, CONFIRMED TRENDS, AND OPEN CHOICES\*

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A little over a century ago, De Tocqueville ended the first volume of *Democracy in America* with the flashing paragraph which identified two rising nations destined to become transcendent centers of power. The prescience of that ending was matched by the closing sentence of the second volume: "The nations of our time cannot prevent the conditions of men from becoming equal, but it depends upon themselves whether the principle of equality is to lead them to servitude or freedom, to knowledge or barbarism, to prosperity or wretchedness." This sentence is more than a frame of the age, even to the hour. It hints at a theory of history; it is a clue to the relation of trends and choices.

### I

Each major trend, holding such momentous alternatives, is itself the cumulative outcome of choices. The main alternatives, likewise, result from the interaction of fresh ideas with tradition, available resources, and potential techniques. Each new choice sets in motion its limited train of consequences, to be worked out in a succession of adaptive changes. In this restricted sense, man is intermittently the captive of his own discoveries. But spontaneity survives amid the accommodating changes launched by earlier acts of creation. Recurrently, as well as originally and fundamentally, ideas are the determinants.

In societies that are evolutionary in mood and method, constantly

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but moderately in motion, the angle of deviation at any time in the choice of public policies is likely to be small. It is true that sweeping arcs of change may be generated if one step is followed by others which repeat the angle and do not merely project the altered direction. But the outstanding fact is the consistency of cumulative policy. Conflict plays its rôle in a moving consensus which conditions and absorbs it. The resulting steadiness of confirmed trends permits us to view more confidently than we might otherwise do the ability of the modern democratic state in the setting of the multiple interests of a free society to avoid a dilemma which, if it were real, might be fatal either to the method or to the program of the democratic state.

The supposed dilemma may be stated baldly. Shifts of party control—an essential possibility in responsible government—might be ruinous to an economy in which the influence of the state had become important. A modern industrial society is too delicately interdependent to stand the sudden wrenching of policies to which it had accommodated itself. Such a society could hardly prosper under the paralyzing uncertainty of probable but not sure reversals. The difficulty would exist even if only domestic commitments were at stake. The present-day involvements of government, to say nothing of impending burdens, would render intolerable a political process in which rival parties, like succeeding waves on the beach, wiped out each other's ripple marks in futile alternation. A collateral difficulty may be noted. Modern administration, in wielding the discretion necessarily given to it, must accurately project the legislative intent and at the same time be genuinely creative in exploring and recommending possible developments of going policies. Loyalty to the law is indispensable and the habit of trained administration. But energy, courage, and inventiveness, which are also imperative needs, would not be easy to obtain if basic policies were always tentative. Furthermore, the semi-autonomous administrative forms which provide flexibility in the conduct of governmental entrepreneurial activities are workable only when major purposes are settled and stable.

So runs the statement of the supposed dilemma. Two very different conclusions are mistakenly drawn from it, based on a false premise about the political process. One extreme is the conclusion that government cannot afford to have much to do with the economy because precious values inhere in the system of competitive

politics. The other extreme conclusion is that the apparatus of competitive politics must be abandoned since the modern state must increasingly assume heavy and delicate tasks, to be performed steadily and confidently as well as expertly. Happily, both extreme conclusions may be rejected. The dilemma itself is unreal.

In the setting of such a society as the United States, electoral campaigns are concerned with the tempo rather than the trend—in other words, the main course of development or the direction—of public policy. Principles once enacted are seldom repealed; steps firmly taken are seldom retraced. Oscillations in politics are common. But the metaphor of the pendulum, properly understood, notes that the pendulum controls the timing of the clock; it does not drive it. The hands, furthermore, turn in one direction. In politics, of course, this version of the analogy of the pendulum, while it neatly symbolizes electoral swings on questions of tempo, breaks down—in the way of all mechanical figures of speech—on the point of the irregular rate of political change.

The rate of change is reflected mainly in additions to the statutory accretion, which may be many or few, and in any case by the size of the appropriations, the conditions attached to them, and the relative vigor in the execution of laws inherited from the past. So tempo, not direction, is actually in dispute. The controversy is complicated by doctrinal overtones about how far the trend should and will be carried. The issues of distance and destination thus become mixed with the immediate and practical issue of tempo. The questions of distance and destination are crucial only to the extent that, on the one hand, any particular step starts an irresistible sequence or, on the other hand, is not worth taking at all unless pursued. These conditions are seldom present. Therefore the important question of destination is largely fictitious in any campaign. A decision to go more slowly, or to go no farther, or even to withdraw a little, does not involve a marked deviation from the course already traced.

Confirmation of the view that has been expressed could be read during the last two decades in the extent to which, on the one hand, certain policies associated with the New Deal had been anticipated, while, on the other hand, its specific innovations, if not its innovative temper, were virtually endorsed by the opposition party in all presidential campaigns through 1944, along with complaints about administrative inefficiency and doubts of the need for further rapid

extensions. This seeming acceptance gained significance from the fact that the era was not wholly one of good feeling. The generalization must now be qualified in the light of congressional policy since the 1946 elections. But the qualification is not fundamental; the main conclusion stands. In the case of labor legislation, for example, the test of consistency in the growth of public policy is to consider, not the hopes for harm to the labor movement that may have been held by some of the proponents of the 1947 act, or even the harm actually done, but rather the disclaimers of hostile intent on the part of these proponents. Such disclaimers signified the recognition, however grudging, of a virtual national consensus about organized labor as an autonomous force and about voluntary collective bargaining.

It may be argued, of course, that the degree of opposition acceptance of completed action has reflected blurred conditions of party division in the United States. To this argument is sometimes added the forecast that the pressure of restive interests and unsolved problems will force a resorting of elements in the two-party system which will result in starker conflicts. Under such conditions, it is said, the verdict at the polls will be resented bitterly and counter-attacked tenaciously, whichever side wins. The reply to this argument must concede a crucial rôle for conflict and for the mobilization of majority opinion. But clarity in a two-party system will always be approximate except under conditions that approach revolution. In the United States, the amount of heterogeneity within major parties may vary from time to time; it may be lessened by gradual or seismic shifts of sectional, group, and family voting habits. But the effect upon party cohesion and the sharpness of party conflict would at the most be a matter of degree. Moreover, so far as sharpened issues yielded decisive measures, their involvement in the economy would probably lessen the disposition to dislodge them wholesale.

Cumulative consistency, wherein competitive politics oscillate mainly on questions of tempo, is hardly possible except in societies endowed for measured development. The favorable if not absolute prerequisite is a combination of such factors as abundant and balanced natural resources, an accumulation of skills, a standard of living already high and diffused enough to blunt want's rawest edges, relatively fluid classes, a tradition of tolerance, the habit of participation, and rules of constitutional organization and political

procedure definite enough to become ingrained and flexible enough to be workable. The nearly unique endowment of the United States is the measure of its precious and almost peculiar opportunity to cherish the prime assets of the political heritage of the Western world while contriving to deal with economic and other problems at home and abroad. Our very understanding of the needs, handicaps, and exigencies of other peoples is additional ground for the determination to hold fast to this opportunity and to respect the process of growth that it makes possible.

## II

Consistency in the development of the broad outlines of policy does not remove the need for majority decisions as part of the larger process of a moving consensus. Few actions benefit all equally, at least in their short-run and visible effects. Even under a general strategy of incentives, some governmental measures will be sharply restrictive and punitive. A politics based on unanimity alone would utterly frustrate its own ideal. Majority action as the antecedent of agreement is frequently a double process. First, certain crucial decisions are driven home, characteristically in the form of statutes. Second, such decisions are clinched by reiterated support at the polls. This process was illustrated in the Thirties by the increase of the congressional majorities in 1934 and by the approval given to the Administration in 1936. These reaffirmations helped to confirm the trend. The structure of consensus cannot be erected without hard-driven pinnings at many points.

The double process of driving and clinching requires institutions through which fluent majorities can combine and act. The territorial apportionment of representation and the political party provide the most practicable method. Majority rule through geographical constituencies has many defects, including those that attend sectional fixations or result from the manipulation of apportionment, but the system is fundamentally dynamic in permitting varied combinations to mobilize in support of ideas fused into programs. Vocationally apportioned bodies require some prearranged weighting of power. They are therefore less suited to shape policy than to advise on the application of policies already settled in outline. In this sense such bodies are more appropriate to the multiple fields of administration than to the main vortex of national debate and decision. But this conclusion, while it warns of the difficulties

in giving too wide a jurisdiction even when the organs in question are advisory, does not foreclose the possible value of balanced councils for the exploration of agreement within very broad fields. The majority process of driving and clinching decisions at key points must be preceded as well as followed by methods which discover areas of agreement, help to perfect the detailed application of measures, cultivate a sense of mutuality in the results, hasten acclimatization, and set in motion complementary voluntary programs.

### III

A moving consensus is the condition of survival as well as growth in a society textured like ours. Though we reject a plural pattern for government itself, our national community is inherently plural. We truly pronounce this a condition of freedom. We recognize, however, the tenuity of such a fabric. It is criss-crossed by veto powers. Some of these veto powers must survive as potentials of balance. A supreme task of positive statecraft in such a society is to predispose the motivation in favor of understanding, continuity, and affirmative response.

In cherishing equipoise in these terms, we are not constrained to a choice between the horns of what some people imagine to be the inveterate dilemma of monarchy and feudalism: monarchy in the figurative sense of an essentially political vortex of all power; feudalism in the sense of the counterpoise of vast and resourceful aggregations of property. Nor would escape be found in atomizing society. The vogue of this dream is not unnatural in a shell-shocked world. Now that collectivism in various forms and degrees has actually been installed in certain countries, *laissez faire* is quite literally the only untried utopia. As such, its appeal is strong to generous minds. But we are deterred by more than the revolution which this utopia avows when it is candid, including, evidently, considerable sacrifice of property to the ideal of production. A deeper ground for doubt is the further rootlessness of industrial man which is threatened by the perfect fluidity of the market-place, including perfect mobility of labor supply, contemplated by this utopia.

Diversity and a degree of counterpoise there must be. But no automatic guarantee can be found in institutional forms. The ultimate assurance of flexibility is in men's ideas. This statement does

not mean that ideas could survive without embodying themselves in institutions that fortify them. The outcome reacts upon the source; the two must be reckoned with together. The survival of liberty is not less fundamentally a matter of ideas because it requires the help of a calculated balancement. While the ideas live, they will insist upon forms of decentralization. In ideas, not in the diversities of the external institutional structures themselves, lies the tolerance which invites diversity to arise and insists that it shall survive.

Amid the resulting diversity, an outstanding requisite of the democratic state is the existence of means and methods which develop and apply the sense of interdependence—the habit of side-sight as well as foresight. Both take account of the spreading and obscure consequences of action. Both enlighten self-interest. If the analysis is sharp and thorough and widespread enough, everyone learns how far he is in his brothers' keeping and incidentally his brothers' keeper.

#### IV

Basic values must underlie an advancing consensus worked out among the diverse groups of a plural society. The values themselves are absolute. They are so largely embodied in the means, however, that their application is endlessly flexible. For example, the ideal of resilient personality, at once self-reliant and related, is absolute; likewise it is an element in the apparatus of liberty. It remains an end-value in the sense that its survival is a condition of every choice accomplished through the methods in which these attributes of personality are crucial elements.

It is not true, despite many fears, that the substructure of agreement has disintegrated in a secular age. The deep belief in the importance and dignity of the individual can more readily survive the secularization of modern thought because theologies seem to have been the derivatives of ethics rather than their source. Thus the idea of divine fatherhood may well have been a kind of posterior logical justification of the primary idea which was the sense of brotherhood deep in the all-embracing compassion of great men. This sequence offers reassurance for the durability of absolute ethical standards. Agreement, moreover, draws on new philosophical resources. Science, while it probes the mysteries that lie between the different levels of existence, teaches fresh respect for the signifi-

cance of these differences. The effect is paradoxical, for it quickens the zest to comprehend wholeness in its various settings. One result of this subtly pervasive attitude of our times—the signs of which can be read in so many ways and places—is attention to men as wholes in any given situation. This emphasis has its own risk of narrowing distortion, its own susceptibility to fads, its own hazards of diversion into dead-ends. But it is deeply favorable to types of analysis which insist upon viewing human problems in terms of the way whole men are made and behave.

Agreement about the dignity of the individual is aided rather than threatened by the drive in the modern world to command as well as to understand nature. This outlook stresses the physical basis of the good life, not merely in avoidance of pain and in positive health but also in facilities and goods. These physical conditions provide measurable standards. Such a calculus is a safeguard against obscurantism. Much is said against materialistic attitudes in societies like our own; we quickly agree to the need in all relations, industrial and otherwise, for greater insight into the nature of man—the total man. But the threats to man's very survival may be lessened rather than increased by a cool consideration of his needs and conditions. It is a useful check always to ask, very concretely and exactly, what is actually happening in the lives of men. At the same time, this test and the elemental questions that cluster around it contain far-reaching potentials of agreement.

Fear as motive seems strangely limited. Thus a long-held conviction about hell-fire—the ultimate of suffering—failed to produce one hundred per cent probity. This fact offered something like a laboratory demonstration of the limited persuasiveness of fear unless a very clear and present danger. Certainly we have reason to fear greatly, whether we look abroad or merely look at home at such simple things as wasting soil and falling water tables. There are already at hand enough fearful reasons, if fear can move us, to redeem our national carelessness and to remake our national life. But, despite the political theory of fear, man is curiously perverse in his dynamics. Except in the dreadful instant itself, it is not fear but love that seems to move men.

As we look afield and reflect on the condition of life on all the continents, we are saved the mistake of an unrealistically literal projection of our own political and economic opportunities. It is part of the duty of the social studies to discipline our expectations.

In this connection we must generally be on guard against a strain between standards and institutional developments which may easily produce a deep *malaise* in sensitive minds. Presumably the human race, with close to a million years already behind it, will live on the planet for many hundreds of thousands of years or longer, unless it is buried by its own historical records, the accumulation of discarded automobile bodies, or some quicker chain of small events. Yet already the mind of man at its best has conceived ultimates of nobility and harmony. The great points of perspective which guide us necessarily lie outside the pictures we presently draw. Tough-minded caution on this matter is the very opposite of a call to inaction or to desperation. The friendly support of mankind will not be won without a demonstration of our ability to utilize our productive capacity, to mitigate our irregularities and inequalities, and also, beyond the present filling of vacuums, to solve the problem of exporting capital and techniques without a train of infeudation and smoldering resentment. We no longer sail the summer seas of which James Bryce wrote with kindly foresight. Imperative burdens of action rest upon the oldest government in the world.

## v

The constitutionalism of this country makes no distinction between becoming and being. We assume no moratorium of transition. End-values are present in the means. Their permanent retention is assumed. Subject to this fundamental limitation, no preordained bounds are set on what the constitutional system may yield. These facts are at once the glory of our constitutionalism and the promise of its survival.

As to the responsiveness of the system, Edward S. Corwin correctly foretold in his presidential address to this Association in 1931 that the governmental difficulties ahead, and the attendant pre-occupations of political science, would be less those of constitutional power than of political and administrative structures and behavior. This forecast has been abundantly vindicated. It must be qualified, however, to take account of a seeming exception; for in one important respect the judicial veto has been expanding.

While clearing the way for substantive action, the Supreme Court has been reshaping the constitutional guarantees as restrictions on the way things are done, not on what may be done. This

momentous doctrinal development has already transformed the Fourteenth Amendment, absorbing in it the prohibitions of the First. The reorientation has been a little embarrassed, if not impeded, by the tendency of some justices to see an inconsistency between the invalidation of state and local laws as infringements of liberty, on the one hand, and, on the other hand, the Court's wish to defer to electorates and legislatures as the intended masters of policy. "Reliance for the most precious interests of civilization," wrote Justice Frankfurter in his unrepentant dissent in the second flag salute case (*West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 671, 1943), "must be found outside of their vindication in courts of law." He added: "Only a persistent positive translation of the faith of a free society into the convictions and habits and actions of a community is the ultimate reliance against unabated temptations to fetter the human spirit." These quoted sentiments hold much wisdom, but carry judicial self-restraint unnecessarily far. The alleged inconsistency in invalidating some legislation while upholding the rest is more seeming than real. The controverted legislation in question falls under due process as a procedural safeguard. Responsible popular government as a whole may be regarded as a gigantic procedure which includes individual conscience and curiosity, access to facts, expression, the means of organized communication, involving groups, parties, elections, and open discussion in legislative bodies. To call all of this procedural is more than a play on words. To call it procedural rather than substantive does not disparage the end-values that inhere in the process itself. The utility of this viewpoint is to fortify the tendency to keep and strengthen the constitution as a system of dikes, as it were, while abandoning the effort to throw it like a dam across the stream of the deliberate popular will. The shift of emphasis summarized in this strained metaphor is profoundly hopeful for the perpetuation of constitutional government. River channels can be diked against disastrous overflows; freshets in their numerous headwaters can be detained or diverted. But the main flow cannot be stopped by any practicable means. If it could be arrested, the damage from the backward flooding would be incalculable, the inevitable break catastrophic.

The foreseeable problems are not primarily those of absence of positive powers. The seemingly irrevocable trend of interpretation has gone far in liberating legislative discretion. In upholding the

Fair Labor Standards Act in 1941, the Supreme Court held obsolete certain inhibiting implications which had survived even the decisions sustaining the National Labor Relations Act. The congressional power to regulate interstate commerce, it was held in the later case, is not confined to facilitating commerce by removing obstructions or to cleansing its stream; the power is plenary in the judgment of Congress. To be sure, serious complications survive in assimilating intrastate to interstate commerce where the two interact to a degree that requires more than administrative cooperation. The possibilities of such assimilation, in the absence of a clear mandate from Congress, have been treated cautiously by a Court disposed to free the states from the negative effects of the commerce clause as well as the bondage of due process as an obstacle to economic regulation. But at least the doctrinal basis of assimilation is already available. What has been said is not grounds for constitutional complacency. There is continued need for truly creative constitutional law. Broadly speaking, however, any economic question which Congress is persuaded to identify as of major national concern can be reached under the commerce power, however clumsily and incompletely. Meanwhile the ramifications of the defense power were illustrated in the fact that the constitutionality of the Atomic Energy Act of 1946 was assumed almost without discussion.

The problem of compulsion is lessened by the fact that the control methods of a moving consensus, although pinned initially by majority action at crucial points, will be largely a calculated interplay of inducements, incentives, and indirect influences, not direct coercion. Prohibitions have their place, but the sins they correct are faults of commission. It is the faults of omission which chiefly concern the creative outlook. The early novelty of governmental programs will not lie in any one approach or in the newness of the methods considered separately. The novelty will consist in more comprehensive analysis and more deliberate interlocking of multiple influences with an eye to their timing and their joint effect. The need for concert involves more than the zone in which lie the most important unanswered questions of administrative structure; the need challenges afresh the workability of the grand partitions of government.

Dual representation through the channels of Congress and the Presidency is attended by ambiguities deeper than those which

come from their frequent possession by different parties at the same time. Apart from this factor, apparently, variant impulses flow at the same time from the same electorate as it projects itself on the plateau of the Presidency and in the valleys which are the legislative districts. The phenomenon is customarily explained as the difference between reflecting the whole and the parts. But the problem awaits more revealing analysis. Such analysis will doubtless stress, with attention both to social forces and to facilities for advice, how the two representative levels differ in the way they take account of the elements of interdependence, including neighborhood complexes and those distant in space and time. The challenge to an architectonic political science is not disposed of by reminding ourselves, no doubt soundly, that under the localized politics of a country of continental scale a parliamentary executive system might leave the disintegration as bad or worse. The increasingly critical problem of the modern state is precisely at the stage of synthesis in reckoning with interlocking factors.

## VI

The mention of an architectonic sense invites a concluding comment on the attitudes of the professional congeries called political science. Its branches are linked by common concern with man's association in the state or concern at least with processes, under whatever name and circumstances, which have the characteristics of those found in association through the state. Thus broadly must we use the word "political." In the face of this range of interest, not to mention ferment on many frontiers, generalizing is foolhardy and prescriptions are impertinent. It is enough to speak of one major attitude which claims attention not only because it is widespread, but also and especially because it is related to what has been said about the nature of public policy in the United States. This attitude may be identified by the word instrumental. In the absence of an apter term, the word is drafted into service here from distant uses in philosophy and psychology. The meaning of the instrumental temper in political science is best revealed by considering it in several settings.

A vague instrumentalism underlies the extensively descriptive method which came to characterize political science as it detached itself from moral philosophy and history. The motivation was indirectly practical. It was assumed that a widely disseminated

knowledge of governmental machinery in all its parts would increase interest as well as skill in using the machinery. Such description, still informed by such a motive, constitutes the bulk of our teaching and writing. Often, to be sure, the intended impetus has been dulled by slurring the problems of power and the points of control. Attention to these matters has sharpened. More seriously, the whole method has frequently fallen amid three stools. The thinned description has become cool and disinterested without being sufficiently focussed and intensive for true anatomical insight and without being eclectic enough to draw meaning from distant relevancies.

The nascent zest for political theory seemed a break with the instrumental attitude. Fundamental questions were asked. The far-reaching significance of this development goes without saying. But basically the subject is shaped as a reaffirmation of values. In this sense the motivation is instrumental. The method may be partly comparative, but the essence is to reveal a tradition to itself. This tendency is natural and proper. The risk is reiteration in a vacuum. Content and context are requisites of expansive thinking. As Woodrow Wilson said before this Association in 1910 in a capacity in which one of his successors feels quaintly disproportionate: "Sympathy is your real key to the riddles of life." In this sense, humble facts, when they inform widening sympathies, are the raw materials or at least the catalytic agents of fruitful abstraction. But the reaffirmation of values may be creative when, working out from absolutes at the center, it strips these to their essence and then projects them to all the institutional parts as tests and guides.

The instrumental attitude is most apparent where political science seeks to be manipulative and not merely observant or reflective. Here political science takes its clues from nascent tendencies, its assignments from situations. It heralds the tendencies; in this sense its creativeness is vicarious. The major institutional outlines are taken for granted, although they may be described and contrasted with other systems. The flair is for contrivance, adaptation, adjustment, fulfillment. If in practicing this method we are sometimes less original than we seem, our plagiarism is of events rather than each other. Usually we are eager to avow the documentation of the recent and the impending deed. Such is the setting of instrumental inventiveness.

But if the characterization conveyed by the word instrumental is

taken as a condemnation of the prevailing temper of political science, all that has been said about the conditions of growth in the United States has been misunderstood. The instrumental attitude has the advantage of working within a tradition and close to a body of going institutions. This fact conserves and applies its energies; at the best, as in a channeled stream, the velocity of thinking is increased. For the reasons already suggested, the instrumental approach peculiarly fits the situation of the United States. It suits the methods of what we have called the moving consensus. So far as the instrumental manner has present faults, they are not in the attitude as such, although it may have contributed to a kind of structural conservatism. The fault of the instrumental mind is not in drawing leads from what is emergent; it is in failing often to see what is really emerging. The error is not in the source to which we look for assignments, but in being blind to great assignments.

We do not need to abandon the instrumental outlook, but to lift its sights. There are middle areas for observation, insight, and inventiveness that lie above the level of small though still useful contrivance and below the zones of irrelevant alternatives. In these middle areas, especially, are the thronging opportunities for the heightened application of instrumental political science. At this level we need to provide the guides that may come from the projection of absolute values at the core. Account must be taken of the import of the stupendous novelties forced on a government which has known little of arms or secrecy. The structural arrangements for the articulation of policy raise architectural problems hardly minor to those of the primary forms of the state. Foreign relations, involving every part of the government and touching every resource and activity, must be harmonized and channeled. Domestic economic policies must move in flexible accommodation. Our attention must run to the policies themselves as well as the processes. Students of foreign affairs do not need this advice. On the domestic side, we must equip ourselves to understand, not general procedures only, not trends merely, but also specific policies in their impetus, involvement, and impact. This is hard counsel, but if political science cannot respond we risk having to move out of our own house. Consensus in such a society as ours requires an organized awareness of interdependence. Since we would not wish kings, even if they were philosophers, it appears that everyone must become an economist, even to the humblest citizen. But the summons

in the name of interdependence is not less to us. We do not need to support this statement by noting how far economics is turning into political economy. Our subject is peculiarly the study of deliberate interaction.

When we thus extol a heightened practice of the instrumental temper in relation to the trends of cumulative policy, we are mindful of the rôle of education, whether it is that of academic halls or the activity of all who write or speak without acknowledging a master. Education must be at once organic and autonomous in relation to the society in which it exists. In repetitive societies, the relation is almost wholly organic. In progressive societies, by the happiest of paradoxes, education is most effectively organic when it is autonomous, the ever-flowing source of evaluation, criticism, invention.